



STATUTORY INSTRUMENTS.

S.I. No. 229 of 2017



EUROPEAN UNION (ROAD TRANSPORT) (WORKING CONDITIONS
AND ROAD SAFETY) REGULATIONS 2017

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AND ROAD SAFETY) REGULATIONS 2017

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EUROPEAN UNION (ROAD TRANSPORT) (WORKING CONDITIONS
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I, SHANE ROSS, 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 purposes of giving full effect to Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006¹ (as amended by Regulation (EC) No. 1073/2009 of the European Parliament and of the Council of 21 October 2009² and Regulation (EU) No. 165/2014 of the European Parliament and of the Council of 4 February 2014³), Commission Regulation (EU) No. 581/2010 of 1 July 2010⁴, Regulation (EU) No. 165/2014 of the European Parliament and of the Council of 4 February 2014³ and Commission Implementing Regulation (EU) 2016/799 of 18 March 2016⁵, hereby make the following Regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. These Regulations may be cited as the European Union (Road Transport) (Working Conditions and Road Safety) Regulations 2017.

Interpretation

2. (1) In these Regulations—

“approval” means approval as a workshop or a fitter under Regulation 10 and “approved fitter” and “approved workshop” shall be construed accordingly;

“authorised officer” means a person appointed under Regulation 15;

“control officer” means—

- (a) a transport officer,
- (b) an officer of customs, or
- (c) a member of the Garda Síochána;

“equipment” includes recording equipment and its components, devices and GPS tracker systems;

¹OJ No. L 102, 11.4.2006, p. 1

²OJ No. L 300, 14.11.2009, p. 88

³OJ No. L 60, 28.2.2014, p. 1

⁴OJ No. L 168, 2.7.2010, p. 16

⁵OJ No. L 139, 26.5.2016, p. 1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 2nd June, 2017.*

“EU Regulations” means the First Council Regulation, the Second Council Regulation, the Regulation of 2010 and the Implementing Regulation;

“European Agreement” means the European agreement concerning the work of crews of vehicles engaged in international road transport of 1 July 1970, as amended⁶;

“First Council Regulation” means Council Regulation 561/2006 of the European Parliament and of the Council of 15 March 2006¹, as amended by Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009² and the Second Council Regulation³;

“Implementing Regulation” means Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council⁵;

“NSAI” means The National Standards Authority of Ireland;

“online application” means an application for a driver card or a company card submitted online through a website designated for that purpose by RSA;

“personal identification number” means the unique number issued by RSA for use with a workshop card;

“records” means any books, accounts, documents or other recorded information including information recorded electronically or in other non-legible form;

“Regulation of 1985” means Council Regulation 3821/85 (EEC) of 20 December 1985⁷;

“Regulation of 2010” means Commission Regulation (EU) No 581/2010 of 1 July 2010⁴;

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

“RSA” means the Road Safety Authority;

“Second Council Regulation” means Regulation (EU) No 165/2014 of the European Parliament and of the Council³;

“tax clearance certificate” means a tax clearance certificate issued under section 1095 (inserted by section 127 of the Finance Act 2002) of the Taxes Consolidation Act 1997 (No. 39 of 1997);

“third country” means a country or territory that is not a Member State;

⁶E/ECE/811; E/ECE/TRANS/564 and amendments 1-4 (E/ECE/811; E/ECE/TRANS/564/Amend. 1-4) which entered into force respectively on 3 August 1983, 24 April 1992, 28 February 1995 and 27 February 2004, the fifth amendment (E/ECE/TRANS/SC.1/375/Add.1) which entered into force on 16 June 2006, and the sixth amendment (E/ECE/TRANS/SC.1/386/Add.1) which entered into force on 20 September 2010.

⁷OJ No. L 370, 31.12.1985, p. 8

“transport officer” means a person appointed under section 15 of the Road Transport Act 1986 (No. 16 of 1986) or section 16 of the Road Transport Act 2011 (No. 31 of 2011).

(2) A word or expression that is used in these Regulations and is also used in the EU Regulations shall have in these Regulations the same meaning as it has in the EU Regulations unless the contrary intention appears.

Application

3. (1) Subject to Regulation 4, these Regulations apply to carriage by road in relation to the matters set out in Article 2 of the First Council Regulation.

(2) The European Agreement applies, instead of the First Council Regulation, to international road transport operations undertaken partly outside the areas mentioned in Article 2.2 of that Regulation, but only—

- (a) if the vehicle concerned is, for the whole of the journey concerned, one that is registered in a Member State or in a country that is a contracting party to the European Agreement, or
- (b) where the vehicle concerned is registered in a third country which is not a contracting party to the European Agreement, for the part of the journey on the territory of a Member State or of a country that is a contracting party to the European Agreement.

Exception of certain categories of vehicles from application of certain Articles of First Council Regulation and from Second Council Regulation

4. (1) Carriage by—

- (a) the vehicles mentioned in subparagraphs (a) to (l) and (n) to (p) of Article 13(1) of the First Council Regulation, and
- (b) specialised vehicles transporting money for the purposes of mobile banking services, currency exchange or savings transactions, are excepted from the application of
 - (i) Articles 5 to 9 of that Regulation,
 - (ii) the Second Council Regulation,
 - (iii) the Implementing Regulation, and
 - (iv) the Regulation of 2010.

Revocations

5. The following are revoked:

- (a) the European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No. 62 of 2008);

- (b) the European Communities (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2009 (S.I. No. 51 of 2009);
- (c) the European Communities (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2010 (S.I. No. 431 of 2010);
- (d) the European Communities (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2011 (S.I. No. 578 of 2011);
- (e) the European Union (Road Transport) (Working Conditions and Road Safety) (Amendment) Regulations 2015 (S.I. No. 126 of 2015).

PART 2

COMPETENT AUTHORITIES

Competent authorities

6. (1) RSA is appointed as the competent authority in the State for—
- (a) the issue of digital tachograph cards,
 - (b) the maintenance of a register of lost, stolen and defective workshop cards and driver cards,
 - (c) the purpose of the sending of information to the Commission in accordance with Article 24(5) of the Second Council Regulation, and
 - (d) the purpose of the sending of information to Member States in accordance with Article 40 of the Second Council Regulation.
- (2) NSAI is designated as the type-approval authority for the purposes of Articles 12 to 21 of the Second Council Regulation.
- (3) NSAI is designated as the competent authority in the State for the purposes of Article 22(3) of the Second Council Regulation.
- (4) NSAI, the Garda Síochána, RSA and the Revenue Commissioners are the competent authorities in the State for the purposes of Articles 23(3) and (4) of the Second Council Regulation.

Responsibilities of NSAI under Article 24 of Second Council Regulation

7. (1) NSAI is responsible for the approval and regular control of workshops and fitters for the purpose of carrying out the activities referred to in Article 24(1) of the Second Council Regulation.
- (2) NSAI shall, having consulted RSA, establish and publish procedures in accordance with Article 24(2) of the Second Council Regulation.

(3) NSAI shall carry out audits of approved workshops and fitters in accordance with Article 24(3) of the Second Council Regulation.

Report by NSAI to RSA

8. NSAI shall report to RSA on its activities during the preceding year or part of it relating to the approval and regular control of workshops and fitters and shall include in its report a summary of all audits and controls of workshops and fitters that were carried out during the period to which the report relates.

PART 3

APPROVALS — WORKSHOPS AND FITTERS

Application for approval by NSAI of workshops and fitters

9. (1) A workshop may apply to NSAI—
- (a) for approval to carry out installations, checks, repairs and inspections in respect of analogue tachographs or digital tachographs or both, and
 - (b) where the workshop has been approved by NSAI in accordance with Regulation 10, on behalf of a fitter for the fitter to be approved to carry out at the workshop the matters referred to in paragraph (a).
- (2) An application under paragraph (1) shall—
- (a) be in such form as may be specified by NSAI and accompanied by such information and documents as NSAI may require for the purposes of the application, and
 - (b) include a declaration—
 - (i) in the case of an application under paragraph (1)(a), by the person or persons operating the workshop as to his or her or their fitness to perform the matters referred to in that paragraph, or
 - (ii) in the case of an application under paragraph (1)(b), by the fitter concerned as to his or her fitness to perform the matters referred to in paragraph (1)(a).
- (3) An application for renewal of approval given under Regulation 10 may be made by the workshop concerned and shall—
- (a) be in such form as may be specified by NSAI and accompanied by such information and documents as NSAI may require for the purposes of the application, and
 - (b) include a statement identifying any changes in the information which was submitted in the application for approval.

Approval of workshop or fitter, or refusal of application

10. (1) NSAI shall approve an application made in accordance with Regulation 9 where it is satisfied that—

- (a) in the case of an application for approval of a workshop, that the applicant has—
 - (i) suitable premises to operate a workshop,
 - (ii) the necessary equipment and facilities to carry out the matters referred to in Regulation 9(1)(a),
 - (iii) adequate document control and document security arrangements in place,
 - (iv) adequate security arrangements for workshop cards, sealing devices, seals and certificates,
 - (v) appropriate quality assurance measures in place for the purposes of maintaining the integrity and security of the installation, checks, inspections and repairs of tachographs, and
 - (vi) a tax clearance certificate issued to the applicant for the time being in force,

or

- (b) in the case of an application for approval of a fitter, that the fitter has completed such training as has been specified by NSAI,

and, in either case, that the person the subject of the application is of good repute.

(2) NSAI shall, where it approves a workshop or a fitter under this Regulation, issue a certificate of approval to the workshop concerned.

(3) An approval under this Regulation applies until the 31st day of January following the date of approval.

(4) Where NSAI is of the opinion that the criteria in paragraph (1) are not satisfied it shall notify the applicant in writing that it proposes to refuse the application, provide reasons for the proposed refusal and give the applicant an opportunity to make representations in writing not later than 21 days from the date of issue of the notification.

(5) NSAI shall consider any representations under paragraph (4) within 21 days of the date of receipt of the representations.

(6) Where, having considered any representations made under paragraph (4) NSAI remains of the view that the criteria in paragraph (1) are not satisfied, NSAI shall notify the applicant of its decision to refuse the application for approval as a workshop or a fitter and shall state the reasons for the decision.

(7) In paragraph (1)(a)(iv) “certificate” means a certificate referred to in—

- (a) Chapter VI, Section 6 of Annex I B to Commission Regulation (EC) No 1360/2002 of 13 June 2002⁸, or
 - (b) Chapter 6, Section 6.6 of Annex I C to the Implementing Regulation.
- (8) An annual fee of €580 plus VAT is payable by an approved workshop.
- (9) In this Regulation “approval” includes a renewal of approval.

Register of approved workshops and approved fitters

11. (1) NSAI shall establish and maintain a register, which shall be in electronic form, of approved workshops and approved fitters.

- (2) The register referred to in paragraph (1) shall include—
- (a) the address of the workshop,
 - (b) the name of the owner of the workshop and any trade name used,
 - (c) the names of any fitters who have been approved in connection with the workshop, and
 - (d) details as to whether the workshop’s approval covers analogue tachographs or digital tachographs, or both.

Withdrawal of approval

12. (1) NSAI may withdraw approval, either temporarily or permanently, of a workshop or fitter for breach of these Regulations, the Second Council Regulation or the Implementing Regulation.

(2) Before making a decision to withdraw approval of a workshop or a fitter for breach of these Regulations, the Second Council Regulation or the Implementing Regulation, NSAI shall—

- (a) notify the workshop concerned in writing that it proposes to withdraw the approval temporarily, or as the case may be, permanently, provide reasons for the proposal to withdraw approval and give the workshop an opportunity to make representations in writing not later than 21 days from the date of issue of the notification, and
- (b) consider within 21 days the representations (if any) which have been made in accordance with subparagraph (a) by the workshop concerned.

(3) A decision to withdraw approval of a workshop or a fitter shall state the reasons for the withdrawal and the date from which the withdrawal is to take effect.

(4) NSAI may, where it considers that a sufficiently serious breach of these Regulations, the Second Council Regulation or the Implementing Regulation

⁸O J L 207, 5.8.2002, p. 1

has occurred and without prior notification to the workshop or fitter concerned, withdraw approval granted to a workshop or fitter provided that—

- (a) the breach creates a significant risk to the reliability of the installation, repair, checks or inspections of tachographs at the workshop or by the fitter concerned, and
- (b) NSAI considers as soon as practicable any representations made by the fitter or workshop, as the case may be, as to why approval should not have been withdrawn.

(5) Where NSAI withdraws approval in accordance with this Regulation, the person in relation to whom the approval is withdrawn shall, with immediate effect, surrender to RSA any workshop card issued to him or her.

(6) A person who fails to return a workshop card in the circumstances provided in paragraph (5) commits an offence and is liable on summary conviction to a class A fine.

PART 4

INSPECTIONS

Obligation of approved workshop to perform tests

13. (1) At the request of an authorised officer or control officer, an approved workshop shall carry out tests on a vehicle in order to—

- (a) check that a tachograph works properly, records and stores data correctly and that calibration parameters are correct, and
- (b) detect whether manipulation devices are present in a vehicle.

(2) Tests pursuant to paragraph (1) shall be undertaken as soon as practicable following the request.

(3) A workshop that—

- (a) refuses to carry out a test pursuant to a request under paragraph (1),
or
- (b) fails to comply with paragraph (2),

commits an offence and is liable on summary conviction to a class A fine.

Retention of inspection reports

14. (1) An inspection report referred to in Article 23(4) of the Second Council Regulation which has been drawn up by a workshop pursuant to Article 23(3) shall be retained by the workshop.

(2) A person who contravenes paragraph (1) commits an offence and is liable on summary conviction to a class A fine.

PART 5

AUTHORISED OFFICERS

Appointment of authorised officers

15. (1) NSAI may appoint in writing such and so many persons, including members of the staff of NSAI, as it thinks fit to be authorised officers for the purposes of—

- (a) monitoring compliance by workshops and fitters with the Second Council Regulation, the Implementing Regulation and these Regulations, and
- (b) conducting audits and technical audits of workshops and fitters for the purposes of Article 24 of the Second Council Regulation.

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

(3) The appointment of an authorised officer 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) An authorised officer shall be furnished with a warrant of his or her appointment and, when exercising any power conferred on him or her under these Regulations, an authorised officer shall, if requested by any person thereby affected, produce the warrant or a copy of it to that person for inspection.

(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.

Powers of authorised officers

16. (1) An authorised officer may, for the purposes specified in Regulation 15(1), do one or more of the following:

- (a) subject to Regulation 17, at all reasonable times enter any place at which there are reasonable grounds to believe that any business or activity in connection with a workshop is being, or has been, carried

on, or that records, vehicles or equipment relating to that business or activity are kept, and search and inspect the place and any records, vehicles or equipment that are at that place;

- (b) secure for later inspection any, or any part of any, such place at which such records, vehicles or equipment are kept;
- (c) remove any equipment or records from such place or from any vehicles at such place and retain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions;
- (d) require any person at such place, including the owner or person in charge of the place, to give the authorised officer such information and assistance as the authorised officer may reasonably require for the purposes of his or her functions;
- (e) require any person at such place, including the owner or person in charge of the place, to produce to the authorised officer such equipment or records (and in the case of records stored in non-legible form, a legible reproduction thereof) that are in the person's possession or procurement, or under that person's control, as he or she may reasonably require for the purposes of his or her functions;
- (f) require any person, whom the authorised officer has reasonable grounds for believing to be, or to have been, an employee of a person involved in the operation of the workshop, or an employer, to answer such questions as the authorised officer may ask relative to any matter concerning his or her functions;
- (g) where the place concerned is an approved workshop, carry out at that place tests for the purposes of ascertaining whether installations, checks, repairs and inspections of tachographs are being carried out in accordance with these Regulations, the Second Council Regulation and the Implementing Regulation.

(2) When performing a function under these Regulations, an authorised officer may, subject to any warrant under Regulation 17, be accompanied by such number of other authorised officers and members of the Garda Síochána, as he or she considers appropriate.

(3) A person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or by a warrant under Regulation 17 or impedes the exercise by the officer or member, as the case may be, of such power commits an offence and is liable on summary conviction to a class A fine.

(4) A person who fails or refuses to comply with a requirement of an authorised officer or a member of the Garda Síochána pursuant to subparagraph (d) or (f) of paragraph (1), or in purported compliance with such requirement gives information or makes a declaration to the authorised officer or member that he

or she knows to be false or misleading in any material respect commits an offence and is liable on summary conviction to a class A fine.

(5) A statement or admission made by a person pursuant to a requirement under subparagraph (d) or (f) of paragraph (1) shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under paragraph (4)).

Search warrant — authorised officer

17. (1) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under this Regulation.

(2) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting that equipment or records required by an authorised officer under these Regulations, the Second Council Regulation or the Implementing Regulation is or are held at any place, the judge may issue a warrant authorising an authorised officer (accompanied by such other persons as provided for in Regulation 16(2)) at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter and search the place using reasonable force where necessary, and exercise all or any of the powers conferred on an authorised officer under these Regulations.

PART 6

PROHIBITIONS IN RELATION TO TACHOGRAPHS

Offence to install, check, inspect or repair tachographs without approval by NSAI

18. A person who installs or repairs a tachograph who is not—

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

commits an offence and is liable on summary conviction to a class A fine.

Prohibition on production, distribution, etc., of devices intended for manipulation of tachographs

19. (1) A person who takes part in the production, distribution, advertising or offer for sale, either on that person's own account or as agent or employee of a person seeking to promote the production, distribution, advertising or sale, of any device constructed or intended for use for the purpose of the manipulation of tachographs commits an offence.

(2) A person who commits an offence under this Regulation 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.

Prohibition on falsification, concealing, suppression or destruction of certain data

20. (1) A person who falsifies, conceals, suppresses or destroys—

- (a) data recorded on a record sheet or stored on a tachograph or on a driver card, or
- (b) print-outs from a tachograph,

commits an offence.

(2) A person who manipulates a tachograph, record sheet or driver card in such a manner as may result in data or printed information being falsified, concealed, suppressed, or destroyed commits an offence.

(3) A person who commits an offence under this Regulation is liable on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or both.

Prohibition on having device capable of interfering with tachograph

21. (1) A person who installs or permits the installation of a device that is capable of falsifying, concealing, suppressing or destroying—

- (a) data recorded on a record sheet or stored on a tachograph or on a driver card, or
- (b) print-outs from a tachograph,

commits an offence.

(2) A person who drives a vehicle with a device present that can be used to—

- (a) manipulate a tachograph, record sheet or driver card, or
- (b) falsify, conceal, suppress or destroy data or printed information from a tachograph,

commits an offence.

(3) A person who commits an offence under this Regulation is liable on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or both.

Checks and inspections

22. (1) The owner of a vehicle to which these Regulations and the EU Regulations apply or, where the vehicle is operated by a person other than the owner, the user of the vehicle, shall ensure that the inspections specified in, as the case may be—

- (a) Part VI of Annex I to the Second Council Regulation,

(b) Part VI of Annex 1B to the Regulation of 1985, or

(c) Part 6 of Annex IC to the Commission Implementing Regulation—

are carried out in respect of the recording equipment installed in the vehicle.

(2) A person who fails to carry out checks in accordance with paragraph (1) commits an offence and is liable on summary conviction to a class A fine.

PART 7

WORKSHOP CARDS, DRIVER CARDS, CONTROL CARDS AND COMPANY CARDS

Application for workshop card

23. (1) An approved workshop may apply to RSA for a workshop card in respect of an approved fitter.

(2) An application for a workshop card, including an application for a renewal of a workshop card and an application for a replacement of a workshop card in the case of a lost, stolen or defective card, shall be in such form as may be determined by RSA.

(3) An application under paragraph (1) shall be accompanied by such documents as may be specified in the form by RSA and a fee of €60.

(4) RSA shall, on receipt of an application in accordance with this Regulation, issue a workshop card in respect of an approved fitter and shall specify the start date and expiry date of the card.

Falsification or improper use of workshop card or personal identification number

24. (1) A person who—

(a) falsifies a workshop card,

(b) obtains a workshop card by means of a fraudulent or incorrect statement or by the production of a forged document,

(c) uses or attempts to use a workshop card or a personal identification number associated with the card where the person is not the holder of the card,

(d) uses or attempts to use a workshop card or personal identification number associated with a workshop card in circumstances unconnected with the purpose for which the card was issued, or

(e) permits a person to use the first mentioned person's workshop card or personal identification number associated with a workshop card,

commits an offence and is liable—

(i) on summary conviction to a class A fine, or

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

(2) A control officer may, if he or she considers a person is committing an offence under this Regulation, seize and detain a workshop card pending the outcome of any proceedings in relation to an offence under this Regulation.

(3) A person who fails to surrender a workshop card to a control officer under paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

(4) Where a person is convicted of an offence under this Regulation, RSA may withdraw or suspend the person's workshop card.

Application for driver card

25. (1) An application for a driver card, including an application for a renewal of a driver card, an exchange of a driver card or an application for a replacement of a driver card in the case of a lost, stolen or defective card shall be in such form as may be determined by RSA.

(2) An application under paragraph (1) shall be accompanied by such documents as may be determined by RSA in the form and a fee of—

(a) €45, in the case of an online application, and

(b) €60, in the case of an application submitted otherwise than online.

(3) RSA shall, on receipt of an application in accordance with this Regulation and Article 26 of the Second Council Regulation, issue a driver card in respect of a driver and shall specify the start date and expiry date of the card.

Falsification or improper use of driver card

26. (1) A person who—

(a) falsifies a driver card,

(b) possesses, uses or attempts to use a driver card where the person is not the holder of the card,

(c) permits a person to use the first mentioned person's driver card, or

(d) requires or permits a person employed or engaged by him to use a driver card issued to another person or a driver card that has been reported as lost or stolen,

commits an offence and is liable on summary conviction to a class A fine.

(2) A control officer may, if he or she considers a person is committing an offence under this Regulation, seize and detain a driver card pending the outcome of any proceedings in relation to an offence under this Regulation.

(3) A person who fails to surrender a driver card to a control officer under paragraph (2) commits an offence and is liable on summary conviction to a class A fine.

(4) Where a person is convicted of an offence under this Regulation, RSA may withdraw or suspend the person's driver card.

Application for control card

27. (1) An application for a control card shall be in such form as may be determined by RSA.

(2) RSA shall, on receipt of an application in accordance with this Regulation, issue a control card in respect of a control officer and shall specify the start date and expiry date of the card.

Application for company card

28. (1) An application for a company card, shall be in such form as may be determined by RSA.

(2) An application under paragraph (1) shall be accompanied by a fee of—

(a) €45, in the case of an online application, and

(b) €60, in the case of an application submitted otherwise than online.

(3) RSA shall, on receipt of an application in accordance with this Regulation, issue a company card in respect of a transport undertaking and shall specify the start date and expiry date of the card.

Stolen, lost or defective driver cards

29. (1) Where a driver card is damaged or malfunctions, a person to whom the card was issued whose normal residence is in the State shall return it to RSA together with an explanation as to how the damage or malfunction occurred and, if so required by RSA, provide such further information as to how the damage or malfunction occurred.

(2) Where a driver card is lost or stolen, a person—

(a) to whom the card was issued by RSA, or

(b) to whom the card was issued by a competent authority of a Member State other than the State but whose normal residence is in the State,

shall notify the loss or theft to a member of the Garda Síochána at a Garda Síochána station, and to RSA, together with an explanation as to how the loss or theft occurred and, if so required by RSA such further information relating to the loss or theft as may be specified by it.

(3) If, after notification to RSA under paragraph (2), the driver card is located and comes into the possession of the person to whom it was issued or any other person, that person shall return it to RSA.

(4) A person who contravenes this Regulation commits an offence and is liable on summary conviction to a class A fine.

PART 8

CONTROL OFFICERS

Powers of control officers — premises

30. (1) For the purposes of enforcing the EU Regulations and these Regulations, a control officer may—

- (a) enter and search any place at which the control officer reasonably believes—
 - (i) vehicles in relation to which the EU Regulations and these Regulations apply are located,
 - (ii) a business is being, or has been, carried on relating to carriage of passengers or goods by road and to which the EU Regulations and these Regulations apply, or
 - (iii) a business of a workshop is or has been carried out or at which the control officer reasonably believes there are records or equipment relating to the business of a workshop,
- (b) enter and search any vehicle mentioned in subparagraph (a)(i),
- (c) inspect any goods in a vehicle mentioned in subparagraph (a)(i) for the purposes of ascertaining whether the vehicle is a vehicle to which these Regulations and the EU Regulations apply,
- (d) inspect any records, driver cards, workshop cards, company cards or equipment located at the place or in the vehicle,
- (e) remove any such records, driver cards, workshop cards, company cards or equipment and retain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations and the EU Regulations,
- (f) require any person at the place to give the control officer such information and assistance as the control officer may reasonably require for the purposes of his or her functions under these Regulations and the EU Regulations,
- (g) require any person at the place to produce to the control officer such records, driver cards, workshop cards, company cards or equipment that are in that person's possession or procurement, or under that person's control, as he or she may reasonably require for the purposes of his or her functions under these Regulations and the EU Regulations,

- (h) require any person to answer such questions as the control officer may ask relative to the matters in relation to which the control officer has functions under these Regulations and the EU Regulations, and
- (i) where the place concerned is an approved workshop, carry out at that place tests for the purposes of ascertaining whether installations, checks, repairs and inspections of tachographs are being or have been carried out in accordance with these Regulations, the Second Council Regulation and the Implementing Regulation.

(2) A person who obstructs or interferes with a control officer in the course of exercising a power conferred on him or her by these Regulations or by a warrant under Regulation 31 or impedes the exercise by the officer of such power commits an offence and is liable on summary conviction to a class A fine.

(3) A person who fails or refuses to comply with a requirement of a control officer pursuant to subparagraph (f) or (h) of paragraph (1), or in purported compliance with such a requirement gives information or makes a declaration to the control officer that he or she knows to be false or misleading in any material respect commits an offence and is liable on summary conviction to a class A fine.

(4) A statement or admission made by a person pursuant to a requirement under subparagraph (f) or (h) of paragraph (1) shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under paragraph (3)).

(5) When exercising any power conferred on him or her under these Regulations, a control officer shall, if requested by any person thereby affected, produce—

- (a) where the control officer is a member of the Garda Síochána, evidence that he or she is such a member, or
- (b) where the control officer is a transport officer or an officer of customs, his or her warrant of appointment as such officer.

Search warrant — control officer

31. (1) A control officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under this Regulation.

(2) If a judge of the District Court is satisfied by information on oath of a control officer that there are reasonable grounds for suspecting that equipment, records, driver cards or workshop cards required by a control officer under these Regulations or the EU Regulations is or are held at any place, the judge may issue a warrant authorising a control officer or control officers at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter and search the place using reasonable force where necessary, and exercise all or any of the powers conferred on a control officer under these Regulations.

Powers of control officers — roadside

32. (1) For the purposes of enforcing these Regulations and the EU Regulations, a control officer who is a member of the Garda Síochána or a customs officer may direct a driver of a moving vehicle, which he or she has reasonable grounds for believing is used for carriage of passengers or goods by road and to which these Regulations and the EU Regulations apply, to stop the vehicle for the purposes of an inspection and search to be carried out by the control officer or another control officer.

(2) For the purposes of enforcing these Regulations and the EU Regulations, a control officer may—

- (a) require a vehicle that is stationary to be moved to a specified location within its immediate vicinity,
- (b) detain a vehicle during such time as is required for a control officer to exercise his or her functions under these Regulations and the EU Regulations, or
- (c) inspect and search a vehicle and, for the purposes of ascertaining whether a vehicle is a vehicle to which these Regulations and the EU Regulations apply, inspect any goods in the vehicle.

(3) In the course of any inspection and search carried out under paragraphs (1) and (2), a control officer may—

- (a) inspect any records, driver cards, workshop cards, company cards or equipment located in a vehicle,
- (b) remove any such records, driver cards, workshop cards, company cards or equipment and retain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations and the EU Regulations,
- (c) require any person at or in the vehicle to give the control officer such information and assistance as the control officer may reasonably require for the purposes of his or her functions under these Regulations and the EU Regulations,
- (d) require any person at or in the vehicle to produce to the control officer such records, driver cards, workshop cards, company cards or equipment that are in that person's possession or procurement, or under that person's control, as he or she may reasonably require for the purposes of his or her functions under these Regulations and the EU Regulations,
- (e) require any person at or in the vehicle to answer such questions as the control officer may ask relative to the matters in relation to which the control officer has functions under these Regulations and the EU Regulations,

- (f) require a driver or operator of the vehicle to take it or arrange for it to be taken to a workshop at an address specified by the control officer in order for the vehicle or any equipment or both to be inspected and checked for compliance with the requirements of the Second Council Regulation and the Implementing Regulation, or
- (g) require a driver to do all or any of the following:
 - (i) drive the vehicle for a reasonable time and as the control officer directs;
 - (ii) drive the vehicle for a reasonable distance in such direction and manner and at such speed as the control officer directs;
 - (iii) carry the control officer in the vehicle while it is being driven in accordance with subparagraph (i) or (ii);
 - (iv) carry out, or arrange to be carried out such tests as the control officer considers necessary and reasonable;
- (h) drive the vehicle for a reasonable time and distance as the control officer considers necessary for the purposes of his or her functions under these Regulations and the EU Regulations.

(4) In the course of any search carried out under paragraph (1), a control officer who is a member of the Garda Síochána or a customs officer may search a person where he or she suspects that the person is concealing a driver card that is not his or her own personalised driver card or a driver card that has been reported lost or stolen or that the person is concealing a device which may interfere with the proper functioning of recording equipment.

(5) A person who obstructs or interferes with a control officer in the course of exercising a power conferred on him or her by these Regulations or impedes the exercise by the officer of such power commits an offence and is liable on summary conviction to a class A fine.

(6) A person who fails or refuses to comply with a requirement of a control officer pursuant to subparagraph (c) or (e) of paragraph (3), or in purported compliance with such requirement gives information or makes a declaration to the control officer that he or she knows to be false or misleading in any material respect commits an offence and is liable on summary conviction to a class A fine.

(7) A statement or admission made by a person pursuant to a requirement under subparagraph (c) or (e) of paragraph (3) shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under paragraph (6)).

(8) A person who fails to act in accordance with a requirement under paragraph (3)(d), (f), (g) or (h) commits an offence and is liable on summary conviction to a class A fine.

Fixing immobilisation device

33. (1) In this Regulation, “immobilisation device” means any device or appliance designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion.

(2) Where a control officer considers that—

- (a) a breakdown or faulty operation of a tachograph has not been remedied in accordance with Article 37(1) of the Second Council Regulation, or
- (b) there has been a breach of the First Council Regulation which is of a kind that the officer considers is clearly liable to endanger road safety,

he or she, or a person acting under his or her direction, may—

- (i) fix an immobilisation device to the vehicle concerned while it remains in the place where he or she finds it, or
- (ii) move, or arrange for the vehicle to be moved from the place where he or she finds it to another place and fix an immobilisation device to it in that other place.

(3) When fixing an immobilisation device to a vehicle under this Regulation, a control officer shall also affix to the vehicle a notice—

- (a) indicating the reason for the device being fixed to the vehicle,
- (b) indicating—
 - (i) that the device has been fixed to the vehicle, and
 - (ii) the time and date when—
 - (I) the matter referred to in paragraph (2)(a) or (b) was detected, and
 - (II) the device was fixed to the vehicle,
- (c) warning that an attempt should not be made to drive the vehicle or otherwise put it in motion until the device is removed,
- (d) specifying the steps to be taken to secure such removal, and
- (e) giving details of his or her right of appeal pursuant to Part 3 of the Vehicle Clamping Act 2015 (No. 13 of 2015).

(4) A place where an immobilisation device is fixed to a vehicle under this Regulation is a statutory clamping place within the meaning of section 2 of the Vehicle Clamping Act 2015.

(5) A person who without being authorised to do so, removes or attempts to remove from a vehicle an immobilisation device or a notice fixed to it under this Regulation commits an offence and is liable on summary conviction to a class A fine.

Roadside check report

34. (1) A control officer who has carried out a roadside search and inspection under Regulation 33 and who believes on reasonable grounds that a contravention of these Regulations or the EU Regulations has occurred shall serve, or cause to be served in accordance with Regulation 38, on the driver of the vehicle a roadside check report.

(2) A roadside check report shall specify the particulars of the contravention which the control officer reasonably believes has occurred and which may be the subject of proceedings and the report concerned shall constitute evidence for the purposes of Article 20 of the First Council Regulation.

Power to require production of records, etc.

35. (1) For the purposes of enforcing these Regulations and the EU Regulations, a control officer may, by notice in writing require a person to produce at a place specified in the notice within such time (not being less than 10 days from the date of service of the notice) as may be specified in the notice any records, equipment or information, which the control officer reasonably requires for his or her functions.

(2) A person who is subject to a requirement under paragraph (1) may also be required to answer questions in relation to any such records, equipment, device or information.

(3) A notice under paragraph (1) shall be served in accordance with Regulation 38.

(4) A person who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a class A fine.

Power to require production of vehicle

36. (1) An authorised officer or a control officer may by notice in writing require a person to produce a vehicle at a workshop or other place specified in the notice for the purposes—

(a) referred to in Regulation 13(1), or

(b) of downloading from a digital tachograph.

(2) A notice under paragraph (1) shall be served in accordance with Regulation 38.

(3) A person who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a class A fine.

Directions

37. (1) Where, in the opinion of a control officer, a person to whom the EU Regulations and these Regulations apply, has not complied, or is not complying with the requirements of the EU Regulations and these Regulations, the control officer may direct the person in writing to so comply.

(2) A direction under paragraph (1) shall—

- (a) state that the control officer is of the opinion referred to in paragraph (1),
- (b) state the reason for that opinion,
- (c) be served in accordance with Regulation 38,
- (d) state when it is to come into effect, and
- (e) advise the person of his or her right of appeal pursuant to Regulation 40.

(3) A direction under paragraph (1) may include a requirement—

- (a) that a person takes all necessary steps to ensure that a vehicle is not driven in a public place until the non-compliance identified has been remedied,
- (b) that a person shall not move a vehicle while an immobilisation device is on the vehicle,
- (c) that a person move a vehicle or arrange for it to be moved to a specified location and such a requirement may include carrying the control officer or another control officer during such movement,
- (d) that a driver take a daily rest period or weekly rest period in compliance with the First Council Regulation,
- (e) that a driver is replaced with another driver who has, to the satisfaction of the control officer, demonstrated that he or she is in compliance with the requirements of the First Council Regulation.

(4) A direction under paragraph (1) shall take effect when the direction so provides notwithstanding any appeal made under Regulation 40.

(5) A person who fails to comply with a direction under paragraph (1) commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.

Service of notice and direction

38. (1) A notice under Regulation 35 or 36 or a direction under Regulation 37 shall be addressed to the person concerned by name and may be served on a person—

- (a) by giving it to him or her,
- (b) by leaving it at the address at which he or she carries on business,
- (c) by sending it by pre-paid registered post addressed to him or her at the address at which he or she carries on business,
- (d) if an address for the service of a direction has been furnished by him or her to the control officer, by leaving it at, or sending it by pre-paid registered post addressed to him or her, to that address, or
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the person ordinarily carries on business or, if an address for the service of a direction or a notice has been furnished by the person, that address provided that the sender's—
 - (i) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail, or
 - (ii) facsimile machine generates a message confirming successful transmission of total number of pages of the direction,

and the direction or notice, as the case may be, is also given in one of the other ways mentioned in the previous subparagraphs.

PART 9

APPEALS

Appeal against refusal to approve workshop or fitter or withdrawal of approval

39. (1) Where NSAI decides to refuse an approval as a workshop or a fitter under Regulation 10 or to withdraw approval under Regulation 12, the applicant or, as the case may be the person whose approval has been withdrawn may, within 21 days of notification of the decision, appeal to the judge of the District Court in whose district the person carries on business or resides.

(2) The judge may, on the hearing of an appeal under paragraph (1), confirm the decision, with or without modification, or allow the appeal.

(3) A decision of the District Court on an appeal under paragraph (1) shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

Appeal against direction

40. (1) Any person aggrieved by a direction under Regulation 37 may, within 14 days of receipt of the direction, appeal to the judge of the District Court in whose district the person resides or carries on business.

(2) A person who appeals a direction under paragraph (1) shall at the same time notify the control officer concerned of the appeal and the grounds for the

appeal and the control officer shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(3) The judge may, on the hearing of an appeal under paragraph (1), make any order he or she considers appropriate, including confirming the direction with or without modification, or cancelling the direction.

PART 10

OFFENCES

Offences — EU Regulations

41. (1) A person who contravenes—

(a) Article 5, 6, 7, 8, 9, 10, 12 or 20 of the First Council Regulation, or

(b) Article 1(1), 3(1) or (4), 4, 8, 9(1) or (7), 22(2), (3), (4) or (5), 23, 27(2), 28(1), 29(2), (3), (4) or (5), 32(1), 32(2) or (4), 33(1) or (2), 34, 35, 36 or 37 of the Second Council Regulation,

(c) Article 1(3) or (4) of the 2010 Regulation, or

(d) Article 1(2), (3) or (4) of the Implementing Regulation,

commits an offence.

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or both.

Offences — making false statements etc.

42. A person who, for the purposes of—

(a) obtaining approval as a workshop or a fitter under Regulation 10,

(b) an application for a workshop card under Regulation 23, or

(c) an application for a driver card under Regulation 25,

gives or makes any statement, declaration or information which is to his or her knowledge false or misleading in a material particular, produces a forged document or knowingly withholds or omits information commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or both.

Offences — European Agreement

43. A person to whom the European Agreement applies and who contravenes Article 5, 6, 7, 8, 9, 10(2) or 11 of that Agreement commits an offence and is liable on summary conviction to a class A fine.

Liability of transport undertaking for contravention by driver

44. (1) Where a person who contravenes—
- (a) Regulation 20(1), 20(2), 21(1) or (2), 26(1) or (3), 29(1) or (3), 33(5) or 37(5),
 - (b) Article 5, 6, 7, 8, 9, 12, or 20 of the First Council Regulation,
 - (c) Article 1(1), 3(1) or (4), 4, 8, 9(1), 22(5), 23, 27(2), 28(1), 29(2), (3), (4) or (5), 32 (1), (2) or (4), 34, 35, 36 or 37 of the Second Council Regulation, or
 - (d) Article 5, 6, 7, 9, 10(2) or 11 of the European Agreement,

is a driver who is—

- (i) an employee of a transport undertaking, or
- (ii) a person contracted by a transport undertaking,

the transport undertaking as well as the person commits an offence and shall be liable to be proceeded against as if it had committed the offence.

(2) Where a contravention referred to in subparagraphs (a) to (d) of paragraph (1) occurs in a Member State other than the State or in a third country and a penalty in relation to the contravention has not been imposed in the Member State or third country in relation to that contravention, proceedings in relation to the offence may be brought in any place in the State.

Liability for offences by bodies corporate

45. (1) Where an offence under these Regulations is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, commits an offence and may be proceeded against as if he or she commits the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Certain presumptions applicable to proceedings for offences under these Regulations

46. (1) If, in proceedings for an offence under these Regulations, the mass of a vehicle is in issue, the mass of the vehicle at the time of the alleged offence is presumed to have exceeded the maximum mass permitted by the First Council Regulation until the contrary is proved.

(2) If, in proceedings for an offence under these Regulations, the age of a driver of a vehicle or a driver's mate, or a conductor of a vehicle, is in issue, the age of the driver, driver's mate or conductor is presumed to be less than the minimum age required by the First Council Regulation until the contrary is shown.

(3) In proceedings for an offence under these Regulations, it is to be presumed, until the contrary is proved that none of the exceptions in Regulation 4 apply.

Admissibility of certain records in proceedings for offences

47. (1) If, in proceedings for an offence under these Regulations or the EU Regulations, direct oral evidence of a fact would be admissible, any statement contained in a record or in a recording medium that was obtained by a control officer in exercise of a power conferred by these Regulations and tending to establish that fact is, on production of the record or recording medium by the officer, admissible as evidence of that fact.

(2) Every document—

- (a) purporting to be a copy of a record or part of a record, or to have been extracted from a recording medium, and
- (b) certified by a control officer to be a true copy of the record or a part of the record, or to have been extracted from the recording medium,

is, without proof of the signature of the officer, admissible in evidence in any legal proceedings, and is, unless the contrary is shown, taken to be a true copy of the record or part of a record, or to have been properly extracted from the recording medium.

(3) In proceedings for an offence under these Regulations, a recording made by recording equipment installed and used in accordance with the Second Council Regulation or the Implementing Regulation is admissible as evidence of the facts that the equipment purports to record.

(4) In proceedings for an offence under these Regulations, a matter disclosed by a record or other recording medium is admissible as evidence of any other matter disclosed by the record or medium.

(5) Every record or other recording medium purporting—

- (a) to be a copy of, or to have been extracted from, a record or other recording medium, and
- (b) to be certified by a person who is authorised to keep or to have control over it as being a true copy of, or to have been extracted from, the record or medium,

is, without proof of the person's signature, admissible in evidence and is, unless the contrary is shown, taken to be a true copy of, or to have been properly extracted from, the record or medium.

Prosecution of offences

48. (1) An offence under Regulation 16(3) or (4) may be prosecuted by NSAI.

(2) An offence under Regulation 13(3), 14(2), 36(3) or 42 may be prosecuted by NSAI or RSA.

(3) An offence under Regulation 12(6), 18, 20(1) or (2), 21(1) or (2), 22(2), 24(3), 26(1) or (3), 29(4), 30(2) or (3), 32(5), (6) or (8), 33(5), 35(4), 36(3), 37(5), 41, 43 or 44 may be prosecuted by RSA.

(4) An offence under Regulation 19(1) and 24(1) may be prosecuted summarily by RSA.

PART 11

TRANSITIONAL ARRANGEMENTS

Transitionals

49. (1) Where, before the date of the making of these Regulations, a person made an application in accordance with Regulation 10 of the Regulations of 2008 and, by that date, the application had not been determined by NSAI, that application shall be deemed to be an application made under Regulation 9 and these Regulations shall apply accordingly.

(2) Where, before the date of the making of these Regulations, a person made an application under Regulation 11(4) of the Regulations of 2008 and, by that date, the application had not been determined by RSA, that application shall be deemed to be an application made under Regulation 23 and these Regulations shall apply accordingly.

(3) Where, before the date of the making of these Regulations, a person made representations under Regulation 11(5) or Regulation 17(2) of the Regulations of 2008 but those representations have not yet been considered by NSAI, they shall be considered as representations under Regulation 10(4) or Regulation 12(2), as the case may be, and these Regulations shall apply accordingly.



GIVEN under my Official Seal,
29 May 2017.

SHANE ROSS,
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 give full effect to Regulation (EU) 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport. The Regulations also contain provisions relating to the implementation and enforcement of Council Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport (driving time and resting times of drivers of large commercial vehicles and buses).

These Regulations update the powers of control officers concerned with the enforcement of the tachograph and driver's hours rules at roadside checks and operator premises and prescribe penalties for offences created by these Regulations. It includes measures designed to strengthen the standards that workshops and fitters must meet in order to install, repair, inspect and calibrate tachographs. The Regulations also include provisions aimed at reducing tachograph fraud.

These Regulations replace the European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. 62 of 2008).

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