Draft Regulations laid before Parliament under paragraphs 2(2) and 2A of Schedule 2 to the European Communities Act 1972 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2017 No. 0000

ROAD TRAFFIC

The Community Drivers' Hours Offences (Enforcement) Regulations 2017

Made - - - - 2017

Coming into force in accordance with regulation 1

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**a**) and section 90A(2)(b) of the Road Traffic Offenders Act 1988(**b**).

The Secretary of State has been designated(**c**) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the regulation and supervision of qualifications and working conditions of persons engaged in road transport.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for the reference to Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85(**d**) to be construed as a reference to that instrument as amended from time to time.

The Secretary of State has consulted such representative organisations as appear appropriate in accordance with section 90E(2)(**e**) of the Road Traffic Offenders Act 1988.

A draft of these Regulations has been laid before, and approved by resolution of, each House of Parliament in accordance with paragraph 2(2)(**f**) of Schedule 2 to the European Communities Act 1972.

(**a**) 1972 c. 68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 and S.I. 2007/1388.
(**b**) 1988 c. 53. Section 90A was inserted by section 11(1) of the Road Safety Act 2006 (c. 49).
(**c**) S.I. 1975/1707.
(**d**) OJ No L 102, 11.4.2006, p.1. Regulation (EC) No 561/2006 is referred to in regulation 5.
(**e**) Section 90E(2) was inserted by section 11(1) of the Road Safety Act 2006.
(**f**) Paragraph 2(2) of Schedule 2 was amended by section 27(2)(a) of the Legislative and Regulatory Reform Act 2006.

Citation, extent and commencement

1.—(1) These Regulations may be cited as the Community Drivers' Hours Offences (Enforcement) Regulations 2017.

(2) These Regulations extend to England and Wales and Scotland.

(3) These Regulations come into force on the twenty-first day after the day on which they are made.

Amendment of the Transport Act 1968

2.—(1) The Transport Act 1968(**a**) is amended as follows.

(2) In section 96(11A)(**b**) (permitted driving time and periods of duty: offence), after "contravention", insert ", whether occurring in the United Kingdom, another member State, or a contracting third country,".

(3) In section 98(4)(**c**) (written records: offence), for the words from "Any person who" to "summary conviction", substitute—

"(4) Any person who—

(a) contravenes any regulations made under this section, or

(b) contravenes, whether in the United Kingdom, another member State or a contracting third country, any requirement as to books, records or documents of the applicable Community rules,

shall be liable on summary conviction".

(4) In section 103(1) (interpretation for Part 6), after the definition of "the Community Drivers' Hours Regulation", insert—

""contracting third country" means a country other than a member State which is a contracting party to—

(a) the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970, as amended(**d**); or

(b) the EEA agreement;".

Amendment of section 54 of the Road Traffic Offenders Act 1988

3.—(1) Section 54(**e**) of the Road Traffic Offenders Act 1988 (notices on-the-spot etc.) is amended as follows.

(2) In subsection (1), for the words from "is committing" to the end, substitute—

"(a) is committing or has on that occasion committed a fixed penalty offence; or

(b) has, within the period of 28 days before the day of that occasion, committed a Community drivers' hours offence.".

(3) Before subsection (9), insert—

"(8A) In a case where this section applies by virtue of subsection (1)(b), a constable or vehicle examiner may not give a person a fixed penalty notice for the Community drivers' hours offence if the constable or vehicle examiner has reason to believe that—

(**a**) 1968 c. 73.

(**b**) Section 96(11A) was inserted by paragraph 9(2)(a) of Schedule 4 to the European Communities Act 1972 and amended by section 2(1)(c) of the Road Traffic (Drivers' Ages and Hours of Work) Act 1976 (c. 3) and by S.I. 1986/1457 and 2007/1819.

(**c**) Section 98(4) was amended by section 4 of, and paragraph 9(2) of Schedule 4 to, the European Communities Act 1972 and by section 2(1) of the Road Traffic (Drivers' Ages and Hours of Work) Act 1976.

(**d**) Cmnd 7401. Details of the amendments to the Agreement are available from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XI-B-21&chapter=11&clang=_en.

(**e**) Section 54(1) was amended by paragraph 103(2) of Schedule 4 to the Road Traffic Act 1991 (c. 40) and by paragraph 3(1) and (2) of Schedule 1 to the Road Safety Act 2006.

(a) a fixed penalty notice has already been given under this section to the person in relation to the offence;

(b) a conditional offer has already been issued to the person under section 75 of this Act in relation to the offence;

(c) proceedings have already been initiated against the person for the offence; or

(d) any other penalty has already been imposed on, or other proceedings have already been initiated against, the person in respect of the relevant breach in Northern Ireland, another member State or a contracting third country.

(8B) In subsection (8A)(d) "relevant breach" means the breach of the applicable Community rules which constitutes the Community drivers' hours offence concerned.".

Amendment of section 75 of the Road Traffic Offenders Act 1988

4.—(1) Section 75(**a**) of the Road Traffic Offenders Act 1988 (issue of conditional offer) is amended as follows.

(2) After subsection (3)(a), insert—

"(aa) on any occasion has reason to believe that a person he finds has, within the period of 28 days before the day of that occasion, committed a Community drivers' hours offence, he may hand to that person,".

(3) After subsection (3B)(a), insert—

"(aa) on any occasion has reason to believe that a person he finds has, within the period of 28 days before the day of that occasion, committed a Community drivers' hours offence, he may hand to that person,".

(4) After subsection (3B), insert—

"(3C) A constable or vehicle examiner may not hand a person a conditional offer under subsection (3) or (3B) for a Community drivers' hours offence where the constable or vehicle examiner has reason to believe that—

(a) a fixed penalty notice has already been given to the person under section 54 of this Act in relation to the offence;

(b) a conditional offer has already been issued to the person under this section in relation to the offence;

(c) proceedings have already been initiated against the person for the offence; or

(d) any other penalty has already been imposed on, or other proceedings have already been initiated against, the person in respect of the relevant breach in Northern Ireland, another member State or a contracting third country.

(3D) In subsection (3C)(d) "relevant breach" means the breach of the applicable Community rules which constitutes the Community drivers' hours offence concerned.".

Amendment of section 89 of the Road Traffic Offenders Act 1988

5.—(1) Section 89 of the Road Traffic Offenders Act 1988 (interpretation of Part 3) is amended as follows.

(2) In subsection (1)—

(a) before the definition of "authorised person", insert—

""the applicable Community rules" means any directly applicable EU 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

(**a**) Section 75 was substituted by section 34 of the Road Traffic Act 1991 and subsection (3B) was subsequently inserted by paragraph 15(3) of Schedule 1 to the Road Safety Act 2006.

Transport of 1st July 1970, as amended, as applied by Article 2(3) of the Community Drivers' Hours Regulation,";

(b) after the definition of "chief officer of police", insert—

""the Community Drivers' Hours Regulation" means Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15th March 2006 on the harmonisation of certain social legislation relating to road transport (and amending and repealing certain Council Regulations), as amended from time to time,

"contracting third country" means a country other than a member State which is a contracting party to—

(a) the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970, as amended; or

(b) the EEA agreement,".

(3) After subsection (2), insert—

"(3) For the purposes of this Part of this Act, a person commits a "Community drivers' hours offence" if the person commits a fixed penalty offence under—

(a) section 96(11A) of the Transport Act 1968 (permitted driving time and periods of duty);

(b) section 98(4)(b) of the Transport Act 1968 (written records);

(c) section 99C(**a**) of the Transport Act 1968 (failure to comply with prohibition), where the prohibition is imposed under section 99A(1)(b)(ii); or

(d) section 3(1) of the Road Traffic (Foreign Vehicles) Act 1972(**b**) (enforcement provisions) where the offence arises as a result of a contravention of the applicable Community rules.".

Amendment of section 90 of the Road Traffic Offenders Act 1988

6.—(1) Section 90 of the Road Traffic Offenders Act 1988 (index to Part 3) is amended as follows.

(2) Before the entry for "Authorised person", insert "The applicable Community rules" in the left-hand column and, in the corresponding position in the right-hand column, insert "Section 89(1)".

(3) After the entry for "Authorised person", insert "Community drivers' hours offence" in the left-hand column and, in the corresponding position in the right-hand column, insert "Section 89(3)".

(4) After the entry for "Community drivers' hours offence", insert "The Community Drivers' Hours Regulation" in the left-hand column and, in the corresponding position in the right-hand column, insert "Section 89(1)".

(5) After the entry for "the Community Drivers' Hours Regulation", insert "Contracting third country" in the left-hand column and, in the corresponding position in the right-hand column, insert "Section 89(1)".

Amendment of section 90A of the Road Traffic Offenders Act 1988

7.—(1) Section 90A of the Road Traffic Offenders Act 1988 (power to impose financial penalty deposit requirement) is amended as follows.

(2) For subsection (2)(a), substitute—

"(a) that the person—

(**a**) Section 99C was inserted by section 266 of the Transport Act 2000 (c. 38).
(**b**) 1972 c. 27.

(i) is committing or has on that occasion committed an offence relating to a motor vehicle; or

(ii) has, within the period of 28 days before the day of that occasion, committed an offence relating to a motor vehicle which is a Community drivers' hours offence, and".

(3) After subsection (5), insert—

"(6) A constable or vehicle examiner may not impose a financial penalty deposit requirement on a person under this section in relation to a Community drivers' hours offence where the constable or vehicle examiner has reason to believe that—

(a) a financial penalty deposit requirement has already been imposed on the person under this section in relation to the offence;

(b) proceedings have already been initiated against the person for the offence; or

(c) any other penalty has already been imposed on, or other proceedings have already been initiated against, the person in respect of the relevant breach in Northern Ireland, another member State or a contracting third country.

(7) In subsection (6)(c) "relevant breach" means the breach of the applicable Community rules which constitutes the Community drivers' hours offence.".

Amendment of section 90F of the Road Traffic Offenders Act 1988

8.—(1) Section 90F(**a**) of the Road Traffic Offenders Act 1988 (financial penalty deposits: interpretation) is amended as follows.

(2) Before the definition of "the appropriate amount", insert—

""the applicable Community rules" has the meaning given by section 89(1) of this Act, ".

(3) After the definition of "the appropriate refund", insert—

""Community drivers' hours offence" has the meaning given by section 89(3) of this Act,".

(4) After the definition of "conditional offer", insert—

""contracting third country" has the meaning given by section 89(1) of this Act.".

Amendment of article 3 of the Road Safety (Financial Penalty Deposit) Order 2009

9.—(1) Article 3 (the specified person) of the Road Safety (Financial Penalty Deposit) Order 2009(**b**) is amended as follows.

(2) For article 3, substitute—

"**3.** The specified person for the purposes of section 90A(2)(b) of the Act is the person whom the constable or vehicle examiner has reason to believe—

(a) is committing, or has on the occasion concerned, committed an offence specified in this Order relating to a motor vehicle; or

(b) has, within the period of 28 days before the day of that occasion, committed an offence relating to a motor vehicle which is a Community drivers' hours offence.".

Amendment of article 5 of the Road Safety (Financial Penalty Deposit) Order 2009

10.—(1) Article 5 (the specified circumstances) of the Road Safety (Financial Penalty Deposit) Order 2009 is amended as follows.

(**a**) Section 90F was inserted by section 11(1) of the Road Safety Act 2006.
(**b**) S.I. 2009/491, to which there are amendments not relevant to these Regulations.

(2) In paragraph (1), omit "on that occasion".

(3) For paragraph (2), substitute –

"(2) In paragraph (1) "road"—

(a) in relation to—

(i) England, Wales and Northern Ireland,

(ii) a member State (other than the United Kingdom),

(iii) a contracting third country,

means any highway and any other road to which the public has access, and includes bridges over which a road passes; and

(b) in relation to Scotland, means any road within the meaning of the Roads (Scotland) Act 1984(**a**) and any other way to which the public has access, and includes bridges over which a road passes. ".

Transitional provision

11.—(1) The amendments made by these Regulations to—

(a) sections 54, 75 and 90A of the Road Traffic Offenders Act 1988, and

(b) article 3 of the Road Safety (Financial Penalty Deposit) Order 2009,

do not apply in relation to a Community drivers' hours offence committed before the day on which these Regulations come into force.

(2) In paragraph (1), "Community drivers' hours offence" has the meaning given by section 89(3) of the Road Traffic Offenders Act 1988(**b**).

Signed by the authority of the Secretary of State

Name
Parliamentary Under Secretary of State
Date Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 6 of the Transport Act 1968 provides offences and penalties for infringements of Regulation (EC) No. 561/2006 (OJ No L 102, 11.4.2006, p. 1) and the European Agreement concerning the Work of Crews and Vehicles engaged in International Transport of 1st July 1979 (as amended) which both prescribe rules about periods of driving, rests and breaks for drivers of specified vehicles undertaking international carriage of goods and passengers.

Sections 54, 75 and 90A of the Road Traffic Offenders Act 1988 provide for the issue by vehicle examiners or constables ("enforcement officers") of fixed penalty notices, conditional offers and financial penalty deposit requirements in respect of certain offences. These sections provide that, if certain conditions are met, an enforcement officer may issue, for certain offences committed in England and Wales, fixed penalty notices, conditional offers and financial penalty deposit

(**a**) 1984 c. 54.
(**b**) Regulation 5(3) of these Regulations inserts subsection (3) into section 89.

requirements and, for certain offences committed in Scotland, conditional offers and financial penalty deposit requirements.

Regulation 2 amends sections 96(11A) and 98(4) of the Transport Act 1968 to confirm that such enforcement action may be taken in Great Britain for breaches of any of the applicable Community rules which constitute offences under sections 96(11A) and 98(4) committed in other member States or in a contracting third country.

Regulations 3, 4 and 7 of these Regulations amend, respectively, sections 54, 75 and 90A of the Road Traffic Offenders Act 1988 to provide for fixed penalties notices, conditional offers and financial penalty deposit requirements to be issued by enforcement officers in respect of four specified offences (referred to in these Regulations as Community drivers' hours offences) when committed on any occasion up to 28 days prior to day of the occasion when the enforcement officer has reason to suspect that such an offence has been committed. Regulation 4 amends section 75 in relation to Scotland only.

Regulations 9 and 10 make consequential amendments.

Regulation 11 makes transitional provision preventing fixed penalty notices, conditional offers and financial penalty deposit requirements being issued by enforcement officers for Community drivers' hours offences committed before the coming into force of these Regulations but detected by enforcement officers on a date after the Regulations come into force.

A consolidated version of the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport including relevant amendments can be obtained from Helen Grech at the Department of Transport, Great Minister House, 33 Horseferry Road, London W1P 4DR.

A full regulatory impact assessment has not been produced as the impact on the private or voluntary sectors is minimal. An Explanatory Memorandum is available alongside this instrument on www.legislation.gov.uk.

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