

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3,676 of 18th September, 2008**

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**B. 17/08**

**BILL**

**FOR**

**AN ACT** to amend the Transport Act 1998.

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1. This Act may be cited as the Transport (Amendment) Act 2008 and comes into operation on the day of publication.

**Scope.**

2. The purpose of this Act is to amend the Transport Act 1998 in order to make provision to give full effect within the laws of Gibraltar to—

- (a) 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 and amending Council Regulations (EEC) No. 3821/85 and (EC) No. 2135/98 and repealing Council Regulation (EEC) No. 3820/85, as amended; and
- (b) Council Regulation (EEC) No. 3821/85 of 20 December 1985 on recording equipment in road transport, as amended.

**Amendment of the Transport Act 1998.**

3.(1) The Transport Act 1998 is amended in accordance with the provisions of this section.

(2) Sections 36 to 41 are repealed.

(3) Schedule 2 is amended by deleting the text of Council Regulation 3820/85 and Commission Regulations 3314/90 and 3688/92 as set out in that Schedule.

(4) The following is inserted after Part IV—

**“Part IVA**

**Drivers’ Hours**

**Interpretation, supplementary provisions, etc, for Part IVA.**

66A.(1) In this Part—

“analogue recording equipment” has the meaning given by subsection 66P(7);

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

“the Community Drivers’ Hours Regulation” means Regulation (EC) No 561/2006 of the European Parliament and of the Council as amended from time to time;

“the Community Recording Equipment Regulation” means Council Regulation (EEC) No 3821/85 on recording equipment in road transport as it has effect in accordance with—

- (a) Commission Regulation (EEC) No 3314/90;
- (b) Commission Regulation (EEC) No 3688/92;
- (c) Commission Regulation (EC) No 2479/95;

- (d) Commission Regulation (EC) No 1056/97;
- (e) Article 1 of Council Regulation (EC) No 2135/98;
- (f) Commission Regulation (EC) No 1360/2002;
- (g) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded;
- (h) Regulation (EC) No 1882/2003 of the European Parliament and of the Council;
- (i) Commission Regulation (EC) No 432/2004; and
- (j) the Community Drivers' Hours Regulation,

and as read with Schedule 3;

“copying” and “copies”, in relation to data stored on a driver card or digital recording equipment, is to be construed in accordance with subsection 66O(5);

“digital recording equipment” has the meaning given by subsection 66O(6);

“driver”, “employee-driver” and “owner-driver” have the meaning assigned by subsection 66B(5);

“driver card” has the meaning given by subsection 66O(6);

“electronic copy” of data has the meaning given by subsection 66O(6);

“employer”, in relation to an employee-driver, means the employer of that driver in the employment by virtue of which that driver is an employee-driver;

“hard copy” in relation to data stored electronically has the meaning given by subsection 66O(6);

“officer” means any person authorised by the Minister for the purposes of this Part;

“recording equipment” means equipment for recording information as to the use of a vehicle;

“record sheet” includes a temporary sheet attached to a record sheet in accordance with Article 16(2) of the Community Recording Equipment Regulation;

“the relevant Annexes” to the Community Recording Equipment Regulation—

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

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

(ii) Annex II to that Regulation; and

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

(i) Annex IB to that Regulation; and

(ii) Annex II to that Regulation;

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

“transport undertaking” has the meaning given in the Community Drivers’ Hours Regulation;

“working day”, in relation to any driver, means—

- (a) any period during which he is on duty and which does not fall to be aggregated with any other such period by virtue of paragraph (b) of this definition; and
- (b) where a period during which he is on duty is not followed by an interval for rest of not less than eleven hours or (where permitted by virtue of paragraph (b) of subsection 66C(4)) of not less than nine and a half hours, the aggregate of that period and each successive such period until there is such an interval as aforesaid, together with any interval or intervals between periods so aggregated;

“working week” means, subject to subsection (5), a week beginning at midnight between Sunday and Monday;

and any expression not defined above shall be construed in accordance with the relevant Community provision.

- (2) For the purposes of this Part, a director of a company shall be deemed to be employed by it.
- (3) In this Part, references to a person driving a vehicle are references to his being at the driving controls of the vehicle for the purpose of controlling its movements, whether it is in motion or is stationary with the engine running.
- (4) In this Part, references to a driver being on duty are references—
  - (a) in the case of an employee-driver, to his being on duty (whether for the purpose of driving a vehicle to which this Part applies or for other purposes) in the employment by virtue of which he is an employee-driver, or in any other employment under the person who is his employer in the first-mentioned employment; and
  - (b) in the case of an owner-driver, to his driving a vehicle to which this Part applies for the purposes of a trade or business carried on by him or being otherwise

engaged in work for the purposes of that trade or business, being work in connection with such a vehicle or the load carried thereby.

- (5) The Minister may, on the application of an owner-driver or of the employer of an employee-driver, from time to time direct that a week beginning at midnight between two days other than Sunday and Monday shall be, or be deemed to have been, a working week in relation to that owner-driver or employee-driver; but where by virtue of any such direction a new working week begins before the expiration of a previous working week then, without prejudice to the application of the provisions of this Part in relation to the new working week, those provisions shall continue to apply in relation to the previous working week until its expiration.
- (6) In paragraph (e) of subsection 66M(2), “a small goods vehicle” means a goods vehicle which has a plated weight of the prescribed description not exceeding 3500 kilograms or (not having a plated weight) has an unladen weight not exceeding 1525 kilograms; but the Minister may by regulations direct that the foregoing provisions of this subsection shall have effect, in relation to either or both of those sections—
  - (a) with the substitution for either of the weights there specified of such other weight as may be specified in the regulations;
  - (b) with the substitution for either of those weights or for any other weight for the time being specified as aforesaid of a weight expressed in terms of the metric system, being a weight which is equivalent to that for which it is substituted or does not differ from it by more than five per cent. thereof.

**Vehicles and drivers subject to control under this Part.**

- 66B.(1) This Part shall have effect with a view to securing the observance of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road and thereby protecting the public against the risks which arise in

cases where the drivers of motor vehicles are suffering from fatigue, but the Minister may by regulations make such provision by way of substitution for or adaptation of the provisions of this Part, or supplemental or incidental to this Part, as he considers necessary or expedient to take account of the operation of any relevant Community provision.

- (2) Regulations under subsection (1) may in particular—
- (a) make such provision as the Minister may deem fit and appropriate in order to give effect to applicable Community rules;
  - (b) apply to journeys and work to which no relevant Community provision applies;
  - (c) include provision as to the circumstances in which a period of driving or duty to which a relevant Community provision applies is to be included or excluded in reckoning any period for purposes of any relevant Community provision; and
  - (d) may contain such transitional, supplemental or consequential provisions as the Minister thinks necessary or expedient.
- (3) This Part applies to—
- (a) passenger vehicles, that is to say—
    - (i) public service vehicles; and
    - (ii) motor vehicles (other than public service vehicles) constructed or adapted to carry more than twelve passengers;
  - (b) goods vehicles, that is to say—
    - (i) motor tractors and any motor vehicle so constructed that a trailer may by partial superimposition be attached to the vehicle in such a manner as to cause a substantial part of

the weight of the trailer to be borne by the vehicle; and

- (ii) motor vehicles (except those mentioned in paragraph (a) of this subsection) constructed or adapted to carry goods other than the effects of passengers;
  - (c) vehicles not falling within paragraph (a) or (b) of this subsection which are vehicles within the meaning given by Article 4 of the Community Drivers' Hours Regulation.
- (4) This Part applies to any such person as follows (in this Part referred to as “a driver”), that is to say—
- (a) a person who drives a vehicle to which this Part applies in the course of his employment (in this Part referred to as “an employee-driver”); and
  - (b) a person who drives such a vehicle for the purposes of a trade or business carried on by him (in this Part referred to as “an owner-driver”);

and in this Part references to driving by any person are references to his driving as aforesaid.

**Permitted driving time and periods of duty.**

- 66C.(1) Subject to the provisions of this section, a driver shall not on any working day drive a vehicle or vehicles to which this Part applies for periods amounting in the aggregate to more than ten hours.
- (2) Subject to the provisions of this section, if on any working day a driver has been on duty for a period of, or for periods amounting in the aggregate to, five and a half hours and—
- (a) there has not been during that period, or during or between any of those periods, an interval of not less than half an hour in which he was able to obtain rest and refreshment; and

- (b) the end of that period, or of the last of those periods, does not mark the end of that working day,

there shall at the end of that period, or of the last of those periods, be such an interval as aforesaid.

- (3) Subject to the provisions of this section, the working day of a driver—

- (a) except where paragraph (b) or (c) of this subsection applies, shall not exceed eleven hours;

- (b) if during that day he is off duty for a period which is, or periods which taken together are, not less than the time by which his working day exceeds eleven hours, shall not exceed twelve and a half hours;

- (c) if during that day—

- (i) all the time when he is driving vehicles to which this Part applies is spent in driving one or more express carriages or contract carriages; and

- (ii) he is able for a period of not less than four hours to obtain rest and refreshment,

shall not exceed fourteen hours.

- (4) Subject to the provisions of this section, there shall be, between any two successive working days of a driver, an interval for rest which—

- (a) subject to paragraph (b) of this subsection, shall not be of less than eleven hours;

- (b) if during both those days all or the greater part of the time when he is driving vehicles to which this Part applies is spent in driving one or more passenger vehicles, may, on one occasion in each working week, be of less than eleven hours but not of less than nine and a half hours;

and for the purposes of this Part a period of time shall not be treated, in the case of an employee-driver, as not being an interval for rest by reason only that he may be called upon to report for duty if required.

- (5) Subject to the provisions of this section a driver shall not be on duty in any working week for periods amounting in the aggregate to more than sixty hours.
- (6) Subject to the provisions of this section, there shall be, in the case of each working week of a driver, a period of not less than twenty-four hours for which he is off duty, being a period either falling wholly in that week or beginning in that week and ending in the next week; but—
  - (a) where the requirements of the foregoing provisions of this subsection have been satisfied in the case of any week by reference to a period ending in the next week, no part of that period (except any part after the expiration of the first twenty-four hours of it) shall be taken into account for the purpose of satisfying those requirements in the case of the next week; and
  - (b) those requirements need not be satisfied in the case of any working week of a driver who on each working day falling wholly or partly in that week drives one or more stage carriages if that week is immediately preceded by a week in the case of which those requirements have been satisfied as respects that driver or during which he has not at any time been on duty.
- (7) If in the case of the working week of any driver the following requirement is satisfied, that is to say, that, in each of the periods of twenty-four hours beginning at midnight which make up that week, the driver does not drive a vehicle to which this Part applies for a period of, or periods amounting in the aggregate to, more than four hours, the foregoing provisions of this section shall not apply to him in that week, except that the provisions of subsections (1), (2) and (3) shall nevertheless have effect in relation to the whole of any

working day falling partly in that week and partly in a working week in the case of which that requirement is not satisfied.

- (8) If on any working day a driver does not drive any vehicle to which this Part applies—
- (a) subsections (2) and (3) shall not apply to that day, and
  - (b) the period or periods of duty attributable to that day for the purposes of subsection (5) shall, if amounting to more than eleven hours, be treated as amounting to eleven hours only.
- (9) For the purpose of enabling drivers to deal with cases of emergency or otherwise to meet a special need, the Minister may by regulations—
- (a) create exemptions from all or any of the requirements of subsections (1) to (6) in such cases and subject to such conditions as may be specified in the regulations;
  - (b) empower a person designated in the regulations, subject to the provisions of the regulations—
    - (i) to dispense with the observance of all or any of those requirements (either generally or in such circumstances or to such extent as that designated person thinks fit) in any particular case for which provision is not made under paragraph (a) of this subsection;
    - (ii) to grant a certificate (which, for the purposes of any proceedings under this Part, shall be conclusive evidence of the facts therein stated) that any particular case falls or fell within any exemption created under the said paragraph (a);

and regulations under this subsection may enable any dispensation under paragraph (b)(i) to be granted

retrospectively and provide for a document purporting to be a certificate granted by virtue of paragraph (b)(ii) to be accepted in evidence without further proof.

(10) If any of the requirements of regulations referred to in this section is contravened in the case of any driver—

- (a) that driver; and
- (b) any other person (being that driver's employer or a person to whose orders that driver was subject) who caused or permitted the contravention,

shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; but a person shall not be liable to be convicted under this subsection if he proves to the court—

- (i) that the contravention was due to unavoidable delay in the completion of a journey arising out of circumstances which he could not reasonably have foreseen; or
- (ii) in the case of a person charged under paragraph (b) of this subsection, that the contravention was due to the fact that the driver had for any particular period or periods driven or been on duty otherwise than in the employment of that person or, as the case may be, otherwise than in the employment in which he is subject to the orders of that person, and that the person charged was not, and could not reasonably have become, aware of that fact.

(11) Where, in the case of a driver of a motor vehicle, there is a contravention of any requirement of the applicable Community rules as to periods of driving, or distance driven, or periods on or off duty, then the offender and the offender's employer, and any other person to whose orders the offender was subject, shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(12) But a person shall not be liable to be convicted under subsection (11) if—

- (a) he proves the matters specified in subparagraph (i) of subsection (10); or
- (b) being charged as the offender's employer or a person to whose orders the offender was subject, he proves the matters specified in subparagraph (ii) of that subsection; or
- (c) being charged as mentioned in paragraph (b), he proves—
  - (i) that at the time of the contravention he was complying with Article 10(1) (distance-related payments etc.) and Article 10(2) (organisation of drivers' work etc.) of the Community Drivers' Hours Regulation; and
  - (ii) that he took all reasonable steps to avoid the contravention.

(13) A person who—

- (a) is subject to the requirement imposed by Article 10(4) of the Community Drivers' Hours Regulation (undertakings etc to ensure that contractually agreed transport time schedules respect that Regulation); and
- (b) fails to take all reasonable steps to comply with that requirement,

shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (14) If a driver who is subject to the orders of more than one transport undertaking fails, without reasonable excuse, to provide each of them with sufficient information to enable them to avoid a contravention of Chapter 2 of the Community Drivers' Hours Regulation, he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(15) The Minister may by order in the Gazette—

- (a) direct that subsection (1) shall have effect with the substitution for the reference to ten hours of a reference to nine hours, either generally or with such exceptions as may be specified in the order;
- (b) direct that paragraph (a) of subsection (3) shall have effect with the substitution for the reference to eleven hours of a reference to any shorter period, or remove, modify or add to the provisions of that subsection containing exceptions to the said paragraph (a);
- (c) remove, modify or add to any of the requirements of subsections (2), (4), (5) or (6) or any of the exemptions provided for by subsections (7), (8) and (9);

and any order under this subsection may contain such transitional and supplementary provisions as the Minister thinks necessary or expedient, including provisions amending any definition in section 66A which is relevant to any of the provisions affected by the order.

**Installation and use of recording equipment.**

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

- (a) there is in the vehicle recording equipment which—
  - (i) has been installed in accordance with the Community Recording Equipment Regulation;
  - (ii) complies with the relevant Annexes to that Regulation; and
  - (iii) is being used as provided by Articles 13 to 15 of that Regulation; or
- (b) in which there is recording equipment which has been repaired (whether before or after installation)

otherwise than in accordance with the Community Recording Equipment Regulation;

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

- (2) A person shall not be liable to be convicted under subsection (1) if he proves to the court that he neither knew nor ought to have known that the recording equipment had not been installed or repaired, as the case may be, in accordance with the Community Recording Equipment Regulation.
- (3) A person shall not be liable to be convicted under paragraph (a) of subsection (1) if he proves to the court that the vehicle in question was proceeding to a place where recording equipment which would comply with the requirements of the relevant Annexes to the Community Recording Equipment Regulation was to be installed in the vehicle in accordance with that Regulation.
- (4) A person shall not be liable to be convicted under paragraph (a) of subsection (1) by reason of the recording equipment installed in the vehicle in question not being in working order if he proves to the court that—
  - (a) it had not become reasonably practicable for the equipment to be repaired by an approved fitter or workshop; and
  - (b) the requirements of Article 16(2) of the Community Recording Equipment Regulation were being complied with.
- (5) A person shall not be liable to be convicted under paragraph (a) of subsection (1) by reason of any seal on the recording equipment installed in the vehicle in question not being intact if he proves to the court that—
  - (a) the breaking or removal of the seal could not have been avoided;

- (b) it had not become reasonably practicable for the seal to be replaced by an approved fitter or workshop; and
  - (c) in all other respects the equipment was being used as provided by Articles 13 to 15 of the Community Recording Equipment Regulation.
- (6) A person shall not be liable to be convicted under paragraph (a) of subsection (1) by reason of the driver card not being used with the recording equipment installed in the vehicle in question if he proves to the court that—
  - (a) the driver card was damaged, malfunctioning, lost or stolen;
  - (b) the requirements of Article 16(2) and, apart from the last paragraph thereof, Article 16(3) of the Community Recording Equipment Regulation were being complied with; and
  - (c) in all other respects the recording equipment was being used as provided by Articles 13 to 15 of that Regulation.
- (7) For the purposes of this section recording equipment is used as provided by Articles 13 to 15 of the Community Recording Equipment Regulation if, and only if, the circumstances of its use are such that each requirement of those Articles is complied with.
- (8) This section applies at any time to any vehicle to which this Part applies if, at that time, Article 3 of the Community Recording Equipment Regulation requires recording equipment to be installed and used in that vehicle; and in this section and sections 66F to 66K any expression which is also used in that Regulation has the same meaning as in that Regulation.

**Forgery, etc. of seals on recording equipment.**

- 66E.(1) A person who, with intent to deceive, forges, alters or uses any seal on recording equipment installed in, or designed for

installation in, a vehicle to which section 66D applies, shall be guilty of an offence.

- (2) A person guilty of an offence under subsection (1) shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years; or
  - (b) on summary conviction, to a fine not exceeding the statutory maximum.
- (3) In this section, a person “forges” a seal if he makes a false seal in order that it may be used as genuine.

**Records etc produced by equipment may be used in evidence.**

- 66F.(1) Where recording equipment is installed in a vehicle to which this Part applies, any record produced by means of the equipment shall, in any proceedings under this Part, be evidence of the matters appearing from the record.
- (2) Any entry made on a record sheet or print out by a driver for the purposes of Article 15(2) or (5) or 16(2) of the Community Recording Equipment Regulation shall, in any proceedings under this Part, be evidence of the matters appearing from that entry.

**Delivery of record sheets and other documents.**

- 66G.(1) This section applies to the following documents—
- (a) record sheets; and
  - (b) manual records and printouts made in accordance with the Community Recording Equipment Regulation.
- (2) If such a document relates to a person in his capacity as the driver of a vehicle to which section 66D applies, he must before the end of the delivery period deliver the document to

the transport undertaking to whose orders he was subject in driving the vehicle.

- (3) The delivery period is the period of 42 days starting on the day after the latest date to which the document relates.
- (4) A person who without reasonable excuse fails to comply with subsection (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) If a transport undertaking fails without reasonable excuse to secure that each driver subject to its orders complies with subsection (2), in respect of documents relating to him in his capacity as such a driver, that undertaking is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (6) If a person is subject to the orders of two or more transport undertakings in driving a vehicle during a period to which a document relates—
  - (a) subsection (2) has effect as if it were a requirement to deliver that document to the undertaking to whose orders he was first subject in driving the vehicle during that period;
  - (b) subsection (5), in relation to that document, applies only to the undertaking to whose orders he was first subject in driving the vehicle during that period.

**Vehicle units: downloading data.**

66H.(1) This section applies where a transport undertaking is required by Article 10 of the Community Drivers' Hours Regulation to ensure that data is downloaded from a vehicle unit in a vehicle.

- (2) The undertaking must ensure that relevant data is downloaded from the unit not later than the end of the download period if—
  - (a) it controls the use of the vehicle throughout that period; and

(b) it uses the vehicle at some point during that period.

(3) The download period begins and ends as set out in the following table—

Case	Download period begins	Download period begins
1. The undertaking has not previously downloaded data from the unit under this section.	On the first day after the commencement of this section on which the undertaking— controls the use of the vehicle, and is required by article 10 to ensure that data is downloaded from the unit.	On the earlier of— the expiry of the period of 56 days starting on the first day of the download period; any downloading of the data before the expiry of that period.
2. The undertaking uses the vehicle during the period of 56 days starting on the day after the last downloading under this section.	On the day after the last downloading under this section.	
3. The undertaking does not use the vehicle during the period of 56 days starting on the day after the last downloading under this section.	On the first day of the undertaking's use of the vehicle after the last downloading under this section.	

(4) The undertaking must ensure that all relevant data is downloaded from the unit—

- (a) immediately before transferring control of the use of the vehicle to another person;
- (b) without delay upon permanently removing the unit from service in the vehicle;

- (c) without delay upon becoming aware that the unit is malfunctioning;
  - (d) without delay in any circumstances such that the imminent erasure of the data by the unit, in the normal course of its operations, is reasonably foreseeable.
- (5) But paragraph (c) of subsection (4) does not apply if, as a result of the malfunctioning of the unit, it is impossible to download the data.
  - (6) For the purposes of this section "relevant data" means any data recorded by the vehicle unit in a vehicle, other than detailed speed data.
  - (7) For the purposes of this section and section 66I an undertaking controls the use of a vehicle during any period in which it may determine when, by whom and for what purpose the vehicle may be driven.
  - (8) In this section and sections 66i to 66K, "downloaded" is to be construed in accordance with the definition of "downloading" in Annex 1B to the Community Recording Equipment Regulation.

**Driver cards: downloading data.**

- 66I.(1) This section applies where a transport undertaking is required by Article 10 of the Community Drivers' Hours Regulation to ensure that data is downloaded from a driver card issued to a driver.
- (2) The undertaking must ensure that all data is downloaded from the card not later than the end of the download period.
  - (3) The download period begins and ends as set out in the following table—

Case	Download period begins	Download period begins
1. The undertaking has not previously downloaded data from the card under this section.	On the first day after the commencement of this section on which— the driver drives for the undertaking; and the undertaking is required by Article 10 to ensure that data is downloaded from the card.	On the earlier of— the expiry of the period of 28 days starting on the first day of the download period; any downloading of the data before the expiry of that period.
2. The undertaking has previously downloaded data from the card under this section.	On the first day on which the driver drives for the undertaking after the last downloading under this section.	

- (4) The undertaking must ensure that the data is downloaded from the card—
- (a) immediately before the driver ceases to be employed by the undertaking as a driver, or otherwise to carry out work for the undertaking as a driver;
  - (b) without delay upon becoming aware that the card has been damaged or is malfunctioning;
  - (c) without delay in any circumstances such that the imminent erasure of the data, in the normal course of use of the card, is reasonably foreseeable;
  - (d) if it is not possible to do so other than by means of a vehicle unit installed in a vehicle, immediately before ceasing to control the use of that vehicle.
- (5) But paragraph (b) of subsection (4) does not apply if as a result of damage to the card or its malfunctioning it is impossible to download the data.

**Downloading data: requirement imposed by an officer.**

66J.(1) This section applies where—

- (a) an officer has reason to believe that an offence under this Part or under the Traffic Act 2005 has been committed in respect of the use of a vehicle, and
  - (b) Article 10(5) of the Community Drivers' Hours Regulation applies to a transport undertaking in respect of the vehicle unit in the vehicle or a driver card issued to a person who has driven the vehicle.
- (2) The officer may, on production if so required of his authority, require the undertaking without delay—
- (a) to download data from the vehicle unit or driver card;
  - (b) to permit him to inspect or copy the downloaded data.
- (3) In this section “download” is to be construed in accordance with the definition of “downloading” in Annex 1B to the Community Recording Equipment Regulation.

**Downloading and retaining data: offences.**

66K.(1) A transport undertaking commits an offence if, without reasonable excuse, it fails to comply with section 66H or 66I, or with a requirement imposed under section 66J.

- (2) A transport undertaking commits an offence if, without reasonable excuse, it fails to comply with any requirement imposed by Article 10 of the Community Drivers' Hours Regulation in respect of the retention of data downloaded in accordance with sections 66H to 66J.
- (3) An offence under this section is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

**Access to downloaded data.**

- 66L.(1) An officer may, on production if so required of his authority, require a person to make readily accessible to him, either on or from premises occupied or controlled by the person in question, that person's retained data.
- (2) Any person who without reasonable excuse fails to comply with a requirement under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) For the purposes of subsection (1), data is a person's "retained data" if he is required by Article 10 of the Community Drivers' Hours Regulation to retain it for at least 12 months following its recording.

**Written records.**

- 66M.(1) The Minister may make regulations—
- (a) requiring drivers to keep, and employers of employee-drivers to cause to be kept, in such books as may be specified in the regulations, records with respect to such matter relevant to the enforcement of this Part as may be so specified; and
- (b) requiring owner-drivers and the employers of employee-drivers to maintain such registers as may be so specified with respect to any such books as aforesaid which are in their possession or in that of any employee-drivers in their employment.
- (2) Regulations under this section may contain such supplementary and incidental provisions including provisions supplementary and incidental to the requirements of the applicable Community rules as to books, records or documents as the Minister thinks necessary or expedient, including in particular provisions—

- (a) specifying the person or persons from whom books and registers required for the purposes of the regulations or of the applicable Community rules are to be obtained and, if provision is made for them to be obtained from the Minister, charging a fee for their issue by him;
  - (b) as to the form and manner of making of entries in such books and registers;
  - (c) as to the issue by, and return to, the employers of employee-drivers of books required to be kept by the latter for the purposes of the regulations;
  - (d) requiring any book in current use for the purposes of the regulations to be carried on, or by the driver of, any vehicle, as to the preservation of any books and registers used for those purposes, and otherwise as to the manner in which those books and registers are to be dealt with;
  - (e) for exemptions from all or any of the requirements of the regulations in respect of drivers of small goods vehicles as defined in subsection 66A(6) and for other exemptions from all or any of those requirements.
- (3) The requirements of regulations made under this section shall not apply as respects the driving of a vehicle to which section 66D applies and which is installed with recording equipment complying with the relevant Annexes (within the meaning of that section).
- (4) Subject to the provisions of any regulations made under this section, the Minister may dispense with the observance by any employee-driver or his employer, or by any owner-driver, of any requirement imposed under this section, either generally or in such circumstances or to such extent as the Minister thinks fit, but the Minister shall not grant such a dispensation unless satisfied that it is not reasonably practicable for the requirement dispensed with to be observed.

- (5) Any person who contravenes any regulations made under this section or any requirement as to books, records or documents of the applicable Community rules shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; but the employer of an employee-driver shall not be liable to be convicted under this subsection by reason for contravening any such regulation whereby he is required to cause any records to be kept if he proves to the court that he has given proper instructions to his employees with respect to the keeping of the records and has from time to time taken reasonable steps to secure that those instructions are being carried out.
- (6) A person shall not be liable to be convicted under subsection (5) by reason of contravening any regulation made under this section if he proves to the court that, if the vehicle in question had been such a vehicle as is mentioned in subsection (3), there would have been no contravention of the provisions of this Part so far as they relate to the use of such vehicles.
- (7) Any entry made by an employee-driver for the purposes of regulations under this section or of the applicable Community rules shall, in any proceedings under this Part, be admissible in evidence against his employer.

**Inspection of records and other documents.**

66N.(1) An officer may, on production if so required of his authority, require any person to produce, and permit him to inspect and copy—

- (a) any book or register which that person is required by regulations under section 66M to carry or have in his possession for the purpose of making in it any entry required by those regulations or which is required under those regulations to be carried on any vehicle of which that person is the driver;
- (b) any book or register which that person is required by regulations under section 66M to preserve;

- (c) if that person is the owner of a vehicle to which this Part applies, any other document of that person which the officer may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part or of regulations made thereunder have been complied with;

and that book, register or document shall, if the officer so requires by notice in writing served on that person, be produced at that officer's office within such time (not being less than ten days) from the service of the notice as may be so specified.

- (2) An officer may, on production if so required of his authority—
  - (a) at any time, enter any vehicle to which this Part applies and inspect that vehicle and any recording equipment installed in it and inspect and copy any record sheet on the vehicle on which a record has been produced by means of the equipment or an entry has been made;
  - (b) at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that such a vehicle is kept or that any such record sheets, books, registers or other documents as are mentioned in subsection (1) are to be found, and inspect any such vehicle, and inspect and copy any such record sheet, book, register or document, which he finds there.
- (3) For the purpose of exercising his powers under paragraph (a) of subsection (2) and, in respect of a document carried on, or by, the driver of a vehicle under paragraph (a) of subsection (1), an officer may detain the vehicle in question during such time as is required for the exercise of that power.
- (4) Any person who—
  - (a) fails to comply with any requirement under subsection (1); or

- (b) obstructs an officer in the exercise of his powers under subsection (2) or (3),

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (5) A person shall not be liable to be convicted under subsection (4) by reason of failing to comply with any requirement under paragraphs (a) or (b) of subsection (1) if he proves to the court that, if the vehicle in question had been such a vehicle as is mentioned in subsection 66M(3), there would have been no contravention of the provisions of this Part so far as they relate to the use of such vehicles.
- (6) Any person who makes, or causes to be made, any entry in a book, register or document kept or carried for the purposes of regulations under section 66M which he knows to be false or, with intent to deceive, alters or causes to be altered any such record or entry shall be liable—
  - (a) on summary conviction, to a fine not exceeding not exceeding level 5 on the standard scale;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years.
- (7) If an officer has reason to believe that an offence under subsection (6) has been committed in respect of any record or document inspected by him under this section, he may seize that record or document; and where a record or document is seized as aforesaid and within six months of the date on which it was seized no person has been charged since that date with an offence in relation to that record or document under that subsection and the record or document has not been returned to the person from whom it was taken, the magistrates' court shall, on an application made for the purpose by that person or by an officer, make such order respecting the disposal of the record or document and award such costs as the justice of the case may require.

- (8) The powers conferred by this Part on an officer shall be exercisable also by a police officer, who shall not, if wearing uniform, be required to produce any authority.
- (9) In this section references to the inspection and copying of any record produced by means of recording equipment installed in a vehicle include references to the application to the record of any process for eliciting the information recorded thereby and to taking down the information elicited from it.
- (10) Subsections (1) to (7) and (9) do not apply in respect of vehicles to which section 66D applies.

**Inspection of records and other documents and data relating to recording equipment.**

- 66O.(1) An officer may, on production if so required of his authority, require any person to produce, and permit him to inspect, remove, retain and copy—
- (a) if that person is the owner of a vehicle to which section 66D applies, any document of that person which the officer may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part have been complied with;
  - (b) any record sheet or hard copy of electronically stored data which that person is required by the Community Recording Equipment Regulation to retain or to be able to produce;
  - (c) any book, register or other document required by the applicable Community rules or which the officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with.
- (2) An officer may, on production if so required of his authority, require any person—

- (a) to produce and permit him to inspect any driver card which that person is required by Article 15(7) of the Community Recording Equipment Regulation to be able to produce; and
  - (b) to permit the officer to copy the data stored on the driver card (and to remove temporarily the driver card for the purpose of doing so) and to remove and retain the copy.
- (3) If the officer so requires by notice in writing, anything that a person is required to produce under subsection (1) or (2) shall, instead of being produced when the requirement under those subsections is imposed, be produced at an address specified in the notice, within such time (not being less than ten days) from the service of the notice as is so specified.
- (4) Where a notice is served under subsection (3), the officer may exercise his powers under this section at the place specified in the notice.
- (5) In this Part any reference to copying data stored on a driver card or on digital recording equipment includes a reference to making a hard copy or an electronic copy of the data (and any reference to copies of data shall be construed accordingly).

(6) In this Part—

“digital recording equipment” means recording equipment that complies with Annex IB to the Community Recording Equipment Regulation;

“driver card” has the meaning given in that Annex;

“electronic copy” of data means a copy of data stored electronically together with the data's digital signature (within the meaning of that Annex);

“hard copy” in relation to data stored electronically means a printed out version of the data.

**Power of entry.**

66P.(1) An officer may, on production if so required of his authority, at any time enter any vehicle to which section 66D applies in order to inspect that vehicle and any recording equipment in or on it.

(2) Where any officer enters any vehicle under subsection (1) he may—

- (a) inspect, remove, retain and copy any record sheet that he finds there on which a record has been produced by means of analogue recording equipment or on which an entry has been made;
- (b) inspect, remove, retain and copy any hard copy of data that he finds there which was stored on any digital recording equipment or on a driver card;
- (c) inspect, remove, retain and copy any other document that he finds there which the officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with;
- (d) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment in or on the vehicle or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
- (e) copy data stored on any digital recording equipment that is in or on the vehicle and remove and retain that copy;
- (f) inspect any recording equipment that is in or on the vehicle and, if necessary for the purposes of the inspection, remove it from the vehicle;
- (g) retain the recording equipment as evidence if he finds that it has been interfered with;

- (h) inspect the vehicle for the purpose of ascertaining whether there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle;
  - (i) inspect anything in or on the vehicle which he believes is such a device and, if necessary for the purpose of the inspection, remove it from the vehicle;
  - (j) retain the device as evidence if he finds that it is capable of interfering with the proper operation of the recording equipment.
- (3) Where any officer who is a vehicle examiner appointed under section 6 of the Traffic Act 2005, or any police officer, enters any vehicle under subsection (1), he may, if he has reason to believe that—
- (a) any recording equipment in or on the vehicle has been interfered with so as to affect its proper operation; or
  - (b) there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle,
- require the driver or operator of the vehicle to take it to an address specified by the officer or police officer for the purposes of enabling an inspection of the recording equipment, the vehicle or any device in or on it to be carried out.
- (4) An officer may, on production if so required of his authority, at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that—
- (a) a vehicle to which section 66D applies is kept;
  - (b) any such document as is mentioned in subsection 66O(1) is to be found;

- (c) any driver card or copy of data previously stored on a driver card or on recording equipment is to be found;  
or
  - (d) any digital recording equipment is to be found.
- (5) Where any officer enters any premises under subsection (4) he may—
- (a) inspect any vehicle which he finds there and to which section 66D applies;
  - (b) inspect, remove, retain and copy any such document as is mentioned in subsection 66O(1) that he finds there;
  - (c) make a copy of any such copy of data as is mentioned in paragraph (c) of subsection (4) that he finds there, and remove and retain the copies he makes;
  - (d) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment on the premises or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
  - (e) copy data stored on any digital recording equipment that he finds there and remove and retain that copy;
  - (f) inspect any recording equipment that he finds there and, if necessary for the purposes of inspection, remove it from the premises;
  - (g) retain any such recording equipment as evidence if he finds that it has been interfered with;
  - (h) inspect anything that he finds there which he believes is a device capable of interfering with the proper operation of any recording equipment and, if necessary for the purpose of the inspection, remove it from the premises;

- (i) retain any such device as evidence if he finds that it is capable of interfering with the proper operation of recording equipment.
- (6) For the purposes of—
- (a) exercising any of his powers under this section in relation to a vehicle or anything found in or on a vehicle, or
  - (b) exercising any of his powers under subsections 66O(1) or (2) in respect of a document or driver card carried by the driver of a vehicle,
- an officer may detain the vehicle during such time as is required for the exercise of that power.
- (7) In this Part “analogue recording equipment” means recording equipment that complies with Annex I to the Community Recording Equipment Regulation.

**Sections 66O and 66P: supplementary.**

- 66Q.(1) Where an officer makes any hard copy of data stored on a driver card or on recording equipment under section 66O or 66P, he may require a person to sign the hard copy (if necessary with manual corrections) to confirm that it is a true and complete record of his activities during the period covered by it.
- (2) Any record sheet, book, register, other document or any electronic copy of data that is retained by an officer under section 66O or 66P may only be retained—
- (a) for six months; and
  - (b) if it is required as evidence in any proceedings, any further period during which it is so required.
- (3) In sections 66O and 66P references to the inspection and copying of any record produced by means of equipment in or

on a vehicle include references to the application to the record of any process for eliciting the information recorded by it and to taking down the information elicited from it.

**Offence of failing to comply with requirements or obstructing an officer.**

66R.(1) A person commits an offence if he—

- (a) fails without reasonable excuse to comply with any requirement imposed on him by an officer under any of sections 66O to 66Q; or
  - (b) obstructs an officer in the exercise of his powers under section 66P or 66T .
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Offences: false records and data etc.**

66S.(1) A person commits an offence—

- (a) if he makes, or causes or permits to be made, a relevant record or entry which he knows to be false;
  - (b) if, with intent to deceive, he alters, or causes or permits to be altered, a relevant record or entry;
  - (c) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, a relevant record or entry; or
  - (d) if he fails without reasonable excuse to make a relevant record or entry, or causes or permits such a failure.
- (2) For the purposes of subsection (1) a “relevant record or entry” is—

- (a) any record or entry required to be made by or for the purposes of the Community Recording Equipment Regulation or section 66D; or
  - (b) any entry in a book, register or document kept or carried for the purposes of the applicable Community rules.
- (3) A person commits an offence—
- (a) if he records or causes or permits to be recorded any data which he knows to be false on recording equipment or on a driver card;
  - (b) if he records or causes or permits to be recorded any data which he knows to be false on any hard copy of data previously stored on recording equipment or on a driver card;
  - (c) if, with intent to deceive, he alters, or causes or permits to be altered, any data stored on recording equipment or on a driver card or appearing on any copy of data previously so stored;
  - (d) if, with intent to deceive, he produces anything falsely purporting to be a hard copy of data stored on recording equipment or on a driver card;
  - (e) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, any data stored in compliance with the requirements of the applicable Community rules on recording equipment or on a driver card; or
  - (f) if he fails without reasonable excuse to record any data on recording equipment or on a driver card, or causes or permits such a failure.
- (4) A person guilty of an offence under subsection (1) or (3) consisting otherwise than in permitting an act or omission is liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) A person guilty of an offence under subsection (1) or (3) consisting in permitting an act or omission is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person commits an offence if he produces, supplies or installs any device—
  - (a) that is designed to interfere with the proper operation of any recording equipment, or
  - (b) that is designed to enable the falsification, alteration, destruction or suppression of data stored in compliance with requirements of the applicable Community rules on any recording equipment or driver's card.
- (7) A person commits an offence if without reasonable excuse he provides information which would assist other persons in producing any such device.
- (8) A person shall not be liable to be convicted under subsection (6) or (7) if he proves to the court that he produced, supplied or installed the device, or provided information to assist a person in producing a device, for use in connection with the enforcement of the provisions of this Part.
- (9) A person guilty of an offence under subsection (6) or (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) For the purposes of this section, a person shall be taken to permit an act or omission if he is, or ought reasonably to be, aware of the act or omission, or of it being a likelihood, and takes no steps to prevent it.

**Power to seize documents.**

66T.(1) If an officer has reason to believe that an offence under section 66S has been committed in respect of any document inspected by him under section 66O or 66P, he may seize that document.

(2) Where a document is so seized, the magistrates' court shall, on an application made for the purpose by that person or by an officer, make such order respecting the disposal of the document and award such costs as the justice of the case may require if—

- (a) within six months of the date on which it was seized no person has been charged since that date with an offence under section 66S in relation to that document; and
- (b) the document has not been returned to the person from whom it was taken.

**Power to prohibit driving of vehicle.**

66U.(1) If—

- (a) the driver of a Gibraltar vehicle obstructs an authorised person in the exercise of his powers under subsection 66N(2) or (3) or under section 66P or fails to comply with any requirement made by an authorised person under subsection 66N(1) or under any of sections 66O to 66Q;
- (b) it appears to an authorised person that, in relation to a Gibraltar vehicle or its driver, there has been a contravention of any of the provisions of—
  - (i) sections 66C to 66M and any orders or regulations under those sections, or
  - (ii) the applicable Community rules,

or that there will be such a contravention if the vehicle is driven on a road, or

- (c) it appears to an authorised person that an offence under subsection 66N(6) or section 66S has been committed in respect of a Gibraltar vehicle or its driver,

the authorised person may prohibit the driving of the vehicle on a road either for a specified period or without limitation of time.

- (2) Where an authorised person prohibits the driving of a vehicle under this section, he may also direct the driver to remove the vehicle (and, if it is a motor vehicle drawing a trailer, also to remove the trailer) to such place and subject to such conditions as are specified in the direction; and the prohibition shall not apply to the removal of the vehicle in accordance with that direction.
- (3) On imposing a prohibition under subsection (1), the authorised person shall give notice in writing of the prohibition to the driver of the vehicle, specifying the circumstances (as mentioned in paragraph (a), (b) or (c) of that subsection) in consequence of which the prohibition is imposed and stating whether it is imposed only for a specified period (and if so specifying the period) or without limitation of time.
- (4) Any direction under subsection (2) may be given—
  - (a) in the notice under subsection (3); or
  - (b) in a separate notice in writing given to the driver of the vehicle.
- (5) In this section—

“authorised person” means—

- (a) a vehicle examiner appointed under section 6 of the Traffic Act 2005, or

- (b) a police officer authorised to act for the purposes of this section by or on behalf of the Commissioner of Police;

“Gibraltar vehicle” means a vehicle registered under the Traffic Act 2005.

- (6) The Traffic (Immobilisation of Vehicles) (No.2) Regulations 1986 has effect with respect to the immobilisation of vehicles the driving of which has been prohibited under subsection (1).

**Duration and removal of prohibition.**

66V.(1) Subject to any exemption granted under subsection (2), a prohibition under subsection 66U(1) shall come into force as soon as notice of it has been given in accordance with subsection (3) of that section and shall continue in force—

- (a) until it is removed under subsection (3) of this section; or
  - (b) in the case of a prohibition imposed for a specified period, until it is removed under that subsection or that period expires, whichever first occurs.
- (2) Where notice of a prohibition has been given under subsection 66U(3) in respect of a vehicle, an exemption in writing for the use of the vehicle in such manner, subject to such conditions and for such purposes as may be specified in the exemption may be granted by any authorised person.
  - (3) A prohibition under subsection 66U(1) may be removed by any authorised person, if he is satisfied that appropriate action has been taken to remove or remedy the circumstances (as mentioned in paragraph (a), (b) or (c) of subsection 66U(1)) in consequence of which the prohibition was imposed; and on doing so the authorised person shall give notice in writing of the removal of the prohibition to the driver of the vehicle.
  - (4) In this section, “authorised person” has the same meaning as in section 66U.

**Failure to comply with prohibition.**

66W. Any person who—

- (a) drives a vehicle on a road in contravention of a prohibition imposed under subsection 66U(1);
- (b) causes or permits a vehicle to be driven on a road in contravention of such a prohibition; or
- (c) refuses or fails to comply within a reasonable time with a direction given under subsection 66U(2),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Power to give effect to international agreements.**

66X. The Minister may by order in the Gazette make such provision as appears to him to be requisite for enabling the extension to Gibraltar of any international agreement relating to the drivers or crews of vehicles used on international journeys, and, without prejudice to the generality of the foregoing provisions of this subsection, an order under this subsection may—

- (a) modify or exclude any of the provisions contained in or having effect under this Part or contained in or having effect under any other enactment passed before or after this Act;
- (b) provide for exemptions from all or any of the provisions of the order;
- (c) provide for the punishment of contraventions of any provision of the order;
- (d) contain such supplementary, incidental or consequential provisions as appear to the Minister to be necessary or expedient.

**Application to the Crown and exemption for police and fire brigade.**

66Y.(1) Subject to subsection (2), this Part shall apply to vehicles and persons in the public service of the Crown.

(2) This Part shall not apply in the case of motor vehicles owned by the Ministry of Defence while being driven by members of Her Majesty's armed forces.

(3) Where an offence under this Part is alleged to have been committed in connection with a vehicle in the public service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown; and, subject to subsection (4), where any such offence is committed any person so nominated shall also be guilty of the offence as well as any person actually responsible for the offence (but without prejudice to proceedings against any person so responsible).

(4) Where a person is convicted of an offence by virtue of subsection (3)–

(a) no order may be made on his conviction save an order imposing a fine;

(b) payment of any fine imposed on him in respect of that offence may not be enforced against him; and

(c) apart from the imposition of any such fine, the conviction shall be disregarded for all purposes other than any appeal (whether by way of case stated or otherwise).

(5) This Part shall not apply in the case of motor vehicles while being used for police or fire and rescue authority purposes.

**Offences by bodies corporate etc. .**

66Z.(1) If an offence under this Part committed by a body corporate is proved–

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of an officer of the body,

he, as well as the body corporate, is guilty of the offence.

- (2) In subsection (1) a reference to an officer of a body includes a reference to—

- (a) a director, manager or secretary;
- (b) a person purporting to act as an officer of the body.

- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

- (4) If an offence under this Part committed by a limited partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence.

- (5) In subsection (4) a reference to a partner includes a reference to a person purporting to act as a partner.

- (6) If an offence under this Part committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association, or
- (b) to be attributable to any neglect on the part of an officer of the association,

that officer, as well as the association, is guilty of the offence.

- (7) In subsection (6) a reference to an officer of an association includes a reference to—
- (a) a member of its governing body;
  - (b) a person purporting to act in the capacity of an officer of the association.

**Schedule 3.**

66ZA. Schedule 3 shall have effect.

**Regulations.**

66ZB. The Minister may make regulations giving effect to any Community obligations connected to the operation of this Part.

- (5) The following inserted after Schedule 2—

**“SCHEDULE 3**

Section 66ZA

**EXEMPTION LISTINGS**

**Interpretation.**

1. Any expression used in this Schedule which is used in the Community Drivers’ Hours Regulation has the same meaning as in that Regulation.

**Exemption Listings.**

2. Pursuant to Article 13(1) of the Community Drivers’ Hours Regulation, exemption is granted from Articles 6, 7, 8 and 9 of that Regulation in respect of–

2.1.(1) Any vehicle which is owned or hired without a driver by a public authority to undertake carriage by road otherwise than in competition with private transport undertakings.

(2) A vehicle does not fall within the description specified in this paragraph unless the vehicle–

(a) is being used for the provision of ambulance services–

(i) by the Gibraltar Health Authority, or

(ii) in pursuance of arrangements made by or at the request of the Gibraltar Health Authority;

(b) is being used for the transport of organs, blood, equipment, medical supplies or personnel–

(i) by the Gibraltar Health Authority, or

(ii) in pursuance of arrangements of the kind mentioned in paragraph (a)(ii);

(c) is being used by the Elderly Care Agency to provide, in the exercise of social services functions–

- (i) services for old persons; or
- (ii) services for physically and mentally handicapped persons;
- (d) is being used for purposes connected with the lighthouse at Europa Point.

2.2(1) Any vehicle which has a maximum permissible mass not exceeding 7.5 tonnes and is being used for carrying materials, equipment or machinery for the driver's use in the course of the driver's work.

(2) A vehicle does not fall within the description specified in this paragraph if—

- (i) the vehicle is being used outside Gibraltar; or
- (ii) driving the vehicle constitutes the driver's main activity.

2.3(1) Any vehicle which has a maximum permissible mass not exceeding 7.5 tonnes which is being used to deliver items as part of a universal service by a universal service provider as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council on common rules for the development of the internal market of Community postal services.

(2) A vehicle does not fall within the description specified in this paragraph if—

- (i) the vehicle is being used outside Gibraltar; or
- (ii) driving the vehicle constitutes the driver's main activity.

2.4 Any vehicle which is used by an undertaking for the carriage of goods within Gibraltar, is propelled by means of natural or liquefied gas or electricity and has a maximum permissible

mass, including the mass of any trailer or semi-trailer drawn by it, not exceeding 7.5 tonnes.

2.5(1) Any vehicle which is being used for driving instruction and examination with a view to obtaining a driving licence or certificate of professional competence.

(2) A vehicle does not fall within the description specified in this paragraph if the vehicle or any trailer or semi-trailer drawn by it is being used for the commercial carriage of goods or passengers.

2.6 Any vehicle which is being used in connection with—

- (a) sewerage, flood protection, water, gas or electricity maintenance services;
- (b) road maintenance or control;
- (c) door-to-door household refuse collection or disposal;
- (d) telegraph or telephone services;
- (e) radio or television broadcasting; or
- (f) the detection of radio or television transmitters or receivers.

2.7 Any vehicle with not more than 17 seats, including the driver's seat, used exclusively for the non-commercial carriage of passengers.

2.8 Any specialised vehicle which is being used for transporting circus or funfair equipment.

2.9 Any mobile project vehicle the primary purpose of which is use as an educational facility when stationary and which is specially fitted for that purpose.

2.10 Any specialised vehicle transporting money and/or valuables.

2.11 Any vehicle which is being used to carry animal waste or carcasses which are not intended for human consumption.

2.12(1) Any vehicle which is used exclusively on roads inside hub facilities.

(2) For the purposes of this paragraph, examples of “hub facilities” include the port and the airport.

3. For the purpose of Article 3(i) of the Community Drivers’ Hours Regulation a vehicle has a historic status if it is a vehicle which is by virtue of its construction and equipment suitable for carrying passengers or goods and which was manufactured more than 25 years before the date on which it is being driven.

4. Pursuant to Article 3(2) of the Community Recording Equipment Regulation, exemption is granted from the provisions of that Regulation in respect of any vehicle falling within a description specified in this Part of this Schedule.

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#### **EXPLANATORY MEMORANDUM**

This Bill amends the Transport Act 1998 by inserting a new Part IVA.

The purpose of Part IVA is to make provision for the implementation of -

- (a) 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 and amending Council Regulations (EEC) No. 3821/85 and (EC) No. 2135/66M and repealing Council Regulation (EEC) No. 3820/85 as amended; and
- (b) Council Regulation (EEC) No. 3821/85 of 20 December 1966M5 of recording equipment in road transport as amended.

Below is a brief explanation of the impact of this legislation.

**Regulation (EC) No 561/2006.**

Regulation (EC) No 561/2006 applies to the carriage by road of goods by vehicles with a total mass exceeding 3.5 tonnes and to the transport by road of passengers by vehicles which are adapted for carrying more than nine persons. Some vehicles which fall into these categories are, however, exempted. These are set out in Schedule 3.

The legislation applies to all cross-border transport carried out exclusively within the territory of the Community, or between the Community, Switzerland and the countries party to the Agreement on the European Economic Area, whereas the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) shall apply to international road transport operations undertaken in part outside this area.

This agreement applies to all vehicles registered in the AETR area, including the Community, for the whole journey. It applies to vehicles registered in third countries which are not contracting parties to the AETR, only for the part of the journey in the AETR area, including the Community.

Driving time is subject to a number of rules, for example–

- i. the daily driving time should not exceed nine hours;
- ii. twice a week, this may be extended to ten hours;
- iii. the weekly driving time shall not exceed 56 hours;
- iv. the total driving time during any two consecutive weeks shall not exceed 90 hours;
- v. the driver should record as other work on the tachograph any work time during which he is not driving, as well as any time spent driving a vehicle not falling within the scope of this legislation and the journey time on a ferry or train when he has no access to a bunk or couchette;
- vi. after driving for four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes or of 15 minutes followed by 30 minutes over the same period;

- vi. a driver may have at most three reduced daily rest periods between any two weekly rest periods ;
- vii. in any two consecutive weeks a driver may take only one reduced weekly rest period. In this case, the reduction shall be compensated for by an equivalent period of rest taken en bloc before the end of the third week;
- viii. where a driver chooses to do this, daily rest periods and reduced weekly rest periods may be taken in a vehicle, as long as the vehicle is stationary and has suitable sleeping facilities;
- ix. when a driver takes a rest period where the vehicle is transported by ferry or train, that period may be interrupted not more than twice for a maximum of one hour in total. The driver should also have access to a bunk or couchette.

Transport undertakings or other bodies offering the same service must ensure that their drivers are able to comply with Regulation (EEC) No 3821/85 on the tachograph. They may not award bonuses related to distances travelled or the amount of goods carried if that payment is such as to endanger road safety. They must ensure that transport time schedules are in line with this legislation and that data from digital tachographs are downloaded at the right time and kept for at least 12 months.

Transport undertakings shall be liable for infringements committed by drivers of the undertaking, except in cases where it cannot reasonably be held responsible, such as when a driver working for more than one transport undertaking has not provided sufficient information to each of these undertakings for them to be able to take the necessary measures to comply with this legislation.

**Council Regulation (EEC) No. 3821/85.**

The purpose of the EC Regulation is to complete and specify the working conditions applicable to drivers, particularly as regards driving time and rest periods, and to ensure that these are observed through the obligation to install and use recording equipment meeting strict standards in vehicles registered in Gibraltar or in a Member State which are used for the carriage of passengers or goods by road.

Under the Regulation EC component type-approval must be granted to any type of recording equipment, to any model record sheet or memory card which conforms to the requirements laid down in Annex I and Annex IB. Strict rules apply to the installation, inspection and use of such equipment.

Vehicles must be equipped with a digital tachograph of the type specified in Annex IB, making it possible to record driving times on a memory card which replaces the record sheets. The recording equipment must be so designed that the driver memory card is locked in position on its proper insertion into the card reader.

The relevant data will be automatically stored in the memory of the recording equipment. The release of the driver card may function only when the vehicle is stationary and after the relevant data have been stored on the driver card.

The memory card makes it possible to store data on the driver's activities for a period of 28 days and of the vehicle for a period of one year. Should the driver card be full, the new data replace the oldest data.

The recording equipment must be capable of recording data relating to the driver's activity for a period of at least one year (speed, distance, rest period, date).

**The Schedule.**

The Schedule gives effect to those discretionary derogations contained in the Community Drivers' Hours Regulation that have been adopted in Gibraltar. They exempt certain types of operation from the Community Drivers' Hours Regulation and, in most cases, from the application of the Community Recording Equipment Regulation (Council Regulation (EEC) No 3821/85).

The Schedule also defines "historic status" for the purpose of a new automatic exemption in the new Community Drivers' Hours Regulation for commercial vehicles which have a historic status.

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