

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4559 of 28 March, 2019

B. 13/19

BILL

FOR

AN ACT to implement in Gibraltar the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council on the International Carriage of Passengers and Goods by Road, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Swiss Carriage of Passengers and Goods by Road Act 2019.

Commencement.

2. This Act comes into operation on publication.

Interpretation.

3. In this Act, unless the context otherwise requires-

“Agreement” means Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council on the International Carriage of Passengers and Goods by Road, as it applies to Gibraltar;

“authorisation” means the authorisation, licence or concession required under the relevant national laws and regulations of Switzerland or Gibraltar to operate in Gibraltar;

“carrier” means any physical or legal person, registered in Gibraltar or in Switzerland and authorised, by being in possession of a valid operator’s licence issued in the country of registration, in that same state in accordance with the relevant national laws and regulations to engage in the international carriage of passengers and goods for hire or reward or on own account;

“competent authority” means the authority appointed under section 11;

“Switzerland” means the territory of the Swiss Confederation;

“third country” means any country that is not Gibraltar or Switzerland;

“vehicle” means any mechanically self-propelled road vehicle, referred to as any single vehicle or combination of a vehicle and semi-trailer or trailer, which is-

- (a) constructed either to carry more than nine persons including the driver (passengers vehicle), or to transport goods (goods vehicle);
- (b) registered in the territory of either Gibraltar or Switzerland (in case of an articulated vehicle, the registration of the tractor is required).

Scope.

4.(1) A carrier may transport passengers or goods by road vehicles between the territories of Gibraltar and Switzerland or in transit through their territories or to and from third countries.

(2) This Act shall not affect the rights and the obligations of the parties to the Agreement arising under other international agreements.

Passenger Transport.

5.(1) The occasional, non-regular, transport of passengers by Swiss carriers under the following conditions is exempted from requiring an authorisation in Gibraltar-

- (a) transport of the same persons by the same vehicle of which the points of origin and destination located in Switzerland, where the vehicle has been registered, with no passengers boarding or disembarking from the vehicle during the entire journey or at stops outside the said territory (closed door tours);
- (b) transport of a group of passengers from a point in Switzerland, where the vehicle has been registered, to a point in Gibraltar, provided that the vehicle leaves the territory of Gibraltar with no passengers;
- (c) transport of a group of passengers from a point in Gibraltar to a point in Switzerland, where the vehicle has been registered, provided that the service is preceded by a journey with no passengers on the outbound journey and that the passengers-
 - (i) are grouped by transport contracts concluded before their arrival in Gibraltar;
 - (ii) have been previously brought by the same carrier, in the conditions mentioned in subsection (b) in Gibraltar, where they are taken up again and transported out of Gibraltar; or

- (iii) have been invited to travel into Gibraltar, the transport costs being covered by the host: The passengers have to form a homogeneous group that must not be formed only for the purpose of the journey; or
 - (d) transit journeys through Gibraltar.
- (2) A passenger transport service by a Swiss carrier fulfilling the following conditions are exempt from an authorisation-
- (a) a shuttle service with accommodation, in transit through or direct to Gibraltar; and
 - (b) an unladen journey of a vehicle used in connection with shuttle services.
- (3) A Swiss carrier performing a transport operation under either subsection (1) or (2), must ensure and provide their vehicles with a waybill and a list of passengers relevant to the transport operation being undertaken.
- (4) The competent authority may request from the driver of a vehicle owned by a Swiss carrier who is relying on this section to provide the waybill and list of passengers referred to in subsection (3).
- (5) A driver of a vehicle owned by a Swiss carrier who fails to show a valid waybill and list of passengers for the journey when required to do so under subsection (4) commits an offence.
- (6) A driver of a vehicle owned by a Swiss carrier who commits offence under subsection (5) is liable to a fine at level 3 on the standard scale.
- (7) Forms of passenger transport other than those mentioned in subsections (1) and (2) are subject to authorisations in accordance with the law of Gibraltar.

Goods Transport.

- 6.(1) Subject to a special permit being required, a Swiss carrier shall be exempted from requiring an authorisation in Gibraltar to import an empty or laden goods vehicle temporarily into Gibraltar for the purpose of the carriage of goods, including return loads-
- (a) between any point in Gibraltar and any point in Switzerland or vice-versa;
 - (b) in transit across Gibraltar; and
 - (c) between any point in Gibraltar and any point in the territory of a third country or vice-versa.
- (2) A special permit, as referred to in subsection (1), shall be required where the goods to be transported by the Swiss carrier are indivisible and exceed the maximum weight or dimension limits permitted in Gibraltar under the Transport Act 1998.

(3) The special permit may be issued by the competent authority within Gibraltar, following a request for such a permit from a Swiss carrier.

(4) Where the competent authority in Gibraltar issues a special permit under subsection (3), it may attach a condition to it, as it sees fit, in relation to a specific route that must be taken by the Swiss carrier.

(5) Where the competent authority attaches a condition under subsection (4) to the special permit, transport of goods by the Swiss carrier for that journey shall only be permissible on that route.

(6) A Swiss carrier which-

(a) fails to obtain a special permit, where required to do so, under subsection (2); or

(b) fails to comply with the obligatory route imposed by the special permit, under subsection (4),

commits an offence.

(7) A Swiss carrier which commits offence under subsection (6) is liable to a fine at level 3 on the standard scale.

Prohibition of internal transport.

7.(1) A Swiss carrier which picks up passengers or goods at a point in Gibraltar for setting down or delivery at any point in Gibraltar commits an offence.

(2) A Swiss carrier which commits an offence under subsection (1) is liable to a fine at level 3 on the standard scale.

Weights and dimensions.

8.(1) A Swiss carrier who exceeds the guaranteed weight admitted by the manufacturer in any circumstances commits an offence.

(2) A Swiss carrier which commits an offence under subsection (1) is liable to a fine at level 3 on the standard scale.

Taxation and customs formalities.

9.(1) Subject to subsection (2), vehicles used by Swiss carriers for transport of passengers or goods in accordance with the Agreement are exempted from taxes and charges levied on the possession and circulation of vehicles in Gibraltar.

(2) The exemption, referred to in subsection (1), will not apply to taxes or charges on fuel consumption and to special charges for using roads or particular bridges and tunnels.

(3) The fuel and petrol contained in the standard tanks of the vehicles admitted temporarily, in accordance with the Agreement, are admitted free of custom duties and shall not be subject to any import restrictions.

(4) Subject to subsection (5), spare parts imported for repairing a determined vehicle of a Swiss carrier, which has already been imported temporarily, shall be admitted by the Collector of Customs under cover of a temporary duty free admission and without prohibition or restriction of importation.

(5) The spare parts imported under subsection (4), which are used to replace the parts already on the vehicle, are subject to customs duties and other taxes and are to be re-exported or destroyed under the control of the customs authorities.

Gibraltar law and regulations.

10.(1) The matters contained in this Act, in relation to Swiss carriers and the drivers of the vehicles owned by Swiss carriers, shall prevail over any other legislation relating to transport of goods and persons.

(2) Swiss carriers and drivers of the vehicles owned by Swiss carriers shall otherwise be bound by the Transport Act 1998 and the Traffic Act 2005.

Observance of the Agreement.

11.(1) The competent authority shall supervise the observance of the provisions of the Agreement by the Swiss carriers and the drivers of Swiss vehicles in Gibraltar.

(2) Where a Swiss carrier or the driver of a vehicle owned by Swiss carrier commits an offence in Gibraltar, in addition to the penalties that may be imposed, the competent authority may request that the Swiss competent authority take the following measures-

- (a) issue a warning to the carrier or driver in question;
- (b) issue such a warning together with a notification that subsequent infringement will lead to a temporary or permanent, partial or complete, exclusion of vehicles owned or operated by the carrier from Gibraltar; or
- (c) issue a notice of such exclusion.

(3) The competent authority shall, as soon as possible, inform the Swiss competent authority of any action taken in accordance with subsection (2).

Competent authority.

12. The competent authority for the purpose of implementing the Agreement within Gibraltar is the Driver, Vehicle and Licensing Department.

Order.

13. The Minister with responsibility for transport may by Order repeal or amend this Act in accordance with the Agreement or for the proper functioning of the Agreement.

EXPLANATORY MEMORANDUM

This Act ensures continuity in the road transport relationship between Gibraltar and Switzerland as the UK and Gibraltar leave the EU. The Agreement replicates the current effects of the EU-Swiss Agreement and therefore ensures continued liberalised access for road transport carriers with valid licences to operate in each other's markets.

In line with the EU-Swiss Agreement, this Agreement does not provide for cabotage rights but does provide for liberalised, permit-free international road haulage rights bilaterally, with transit and cross-trade provided for Swiss and Gibraltar hauliers. It includes provisions on: passenger and goods transport; taxation and customs formalities; application of national laws and regulations; infringement; and special permits for oversized vehicles.

The fines are set at level 3 of the standard scale; these equate to the fines under the Transport Act 1998 for equivalent offences.