

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4639 of 21 November, 2019

LEGAL NOTICE NO. 236 OF 2019

INTERPRETATION AND GENERAL CLAUSES ACT

EMPLOYMENT ACT

TRANSPORT ACT 1998

EUROPEAN UNION (WITHDRAWAL) ACT 2019

DRIVERS' HOURS AND TACHOGRAPHS (AMENDMENT) (EU EXIT) REGULATIONS 2019

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**DRIVERS' HOURS AND TACHOGRAPHS (AMENDMENT) (EU EXIT)
REGULATIONS 2019**

In exercise of the powers conferred upon him by section 86 of the Employment Act as read with section 23(g)(i) of the Interpretation and General Clauses Act, and by section 69 of the Transport Act 1998 as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act and by section 11 of, and paragraph 1(a)(i) and (b) of Schedule 3 to, the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations-

**PART 1
PRELIMINARY AND AMENDMENTS**

Preliminary

Title.

1. These Regulations may be cited as the Drivers' Hours and Tachographs (Amendment) (EU Exit) Regulations 2019.

Commencement.

- 2.(1) Part 1 and Part 3 of these Regulations come into operation on the day of publication.
- (2) Part 2 comes into operation on exit day.

Amendments

Amendments to the Transport Act 1998.

- 3.(1) The Transport Act 1998 is amended in accordance with this regulation.
- (2) In section 66A-
 - (a) after the definition of “the EU Drivers’ Hours Regulation” insert the following definition-

““Commission Implementing Regulation (EU) 2016/799” means Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing

Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components, as amended from time to time;”;
and

(b) after the definition of “copying” and “copies” insert the following definition-

““Council Regulation (EEC) 3821/85” means Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport;”.

(3) In section 66D-

(a) in subparagraph (1)(a)(i), after “Regulation” insert “, including the relevant technical specifications”;

(b) in subparagraph (1)(a)(ii), for “Annexes to it” substitute “technical specifications”;

(c) for subsection (9) substitute-

“(9) In this Part—

“the relevant technical specifications” means Annex II of Commission Implementing Regulation (EU) 2016/799, and-

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

(i) Annex I of the EU Tachographs Regulation;

(ii) Annex IB of Council Regulation (EEC) No 3821/85 for as long as preserved and applied by article 46 of the EU Tachographs Regulation; or

(iii) Annex IC to Commission Implementing Regulation (EU) 2016/799;
and

(b) in the case of a vehicle put into service for the first time on or after 1 May 2006 but before 15 June 2019-

(i) Annex IB of Council Regulation (EEC) No 3821/85 for as long as preserved and applied by article 46 of the EU Tachographs Regulation; or

(ii) Annex IC to Commission Implementing Regulation (EU) 2016/799;
and

- (c) in the case of a vehicle put into service for the first time on or after 15 June 2019, Annex IC to Commission Implementing Regulation (EU) 2016/799.”.
- (4) In section 66M(3)(a), for “Annexes” substitute “technical specifications”.
- (5) For section 66O(7)(a) substitute-
 - “(a) in relation to a vehicle to which section 66D applies-
 - (i) where the vehicle was put into service for the first time before 15 June 2019-
 - (A) Annex IB of Council Regulation (EEC) No 3821/85 for as long as preserved and applied by article 46 of the EU Tachographs Regulation; or
 - (B) Annex IC to Commission Implementing Regulation (EU) 2016/799; and
 - (ii) where the vehicle was put into service for the first time on or after 15 June 2019, Annex IC to Commission Implementing Regulation (EU) 2016/799;”.
- (6) In Schedule 2, delete from “Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport the Council of the European Communities” to “Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States”.
- (7) In paragraph 3 of Schedule 3, after “Regulation” insert “and for the purpose of Article 2(2)(k) of the AETR”.

Amendments to Road Transport (Working Time) Regulations 2005.

- 4.(1) The Road Transport (Working Time) Regulations 2005 are amended in accordance with this regulation.
- (2) In regulation 2-
 - (a) before the definition of “collective agreement” insert-
 - ““AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in the International Road Transport of 1 July 1970, as amended from time to time;”;
 - (b) for the definition of “the Community Drivers’ Hours Regulation” substitute-

“the EU Drivers’ Hours Regulation” means 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 may be amended from time to time;”;

(c) after the definition of “employment” insert-

““goods” includes goods or burden of any description;”;

(d) after the definition of “mobile worker” insert-

““motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;”;

(e) delete the definition of “passenger vehicle”;

(f) delete the definition of “motor vehicle” that appears after the definition of “night time”;

(g) after the definition of “night work” insert-

““passenger vehicle” means a motor vehicle which is contracted or adapted to carry more than eight seated passengers in addition to the driver;”;

(h) in the definition of “relevant requirements” for “4(7)” substitute “4(8)”;

(i) in the definition of “self-employed driver” for “Community legislation” substitute “EU legislation”;

(j) for the definition of “working time” substitute-

““working time” means the time from the beginning to the end of work during which-

(a) the mobile worker or self-employed driver is at his workstation;

(b) the mobile worker is at the disposal of his employer, or (as applicable) the self-employed driver is at the disposal of the client; and

(c) the mobile worker or self-employed driver is and exercising his functions or activities, being-

(i) time devoted to all road transport activities, including, in particular-

(A) driving;

(B) loading and unloading;

- (C) assisting passengers boarding and disembarking from the vehicle;
 - (D) cleaning and technical maintenance;
 - (E) all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operations under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs and immigration officers and others; or
- (ii) time during which the mobile worker or self-employed driver cannot dispose freely of his time and is required (or, in relation to a self-employed driver, chooses) to be at his workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under collective agreements or workforce agreements;

but, in relation to self-employed drivers, general administrative work that is not directly linked to the specific transport operation under way is excluded from working time;”;

- (k) in the definition of “workstation”-
- (i) in paragraph (a), before the words “the location” insert “in relation to a mobile worker”;
 - (ii) in paragraph (b), before the words “the vehicle” insert “in relation to a mobile worker or self-employed driver”;
 - (iii) in paragraph (c), before the words “any other” insert “in relation to a mobile worker or self-employed driver”.

- (3) For regulation 3 substitute-

“Application.

- 3.(1) These Regulations apply to mobile workers who are employed by, or who work for, undertakings established in a member State, and to whom paragraph (2) or paragraph (3) applies.
- (2) This paragraph applies to mobile workers who, in the course of their employment or working activities, drive or travel in or on vehicles-
- (a) which are vehicles within the meaning of Article 4(b) of the EU Drivers’ Hours Regulation;

- (b) which are not vehicles described in Article 3 of the EU Drivers' Hours Regulation; and
 - (c) which are not vehicles exempted from the provisions of the EU Drivers' Hours Regulation under paragraph 2 of Schedule 3 to the Transport Act 1998.
- (3) This paragraph applies to mobile workers who in the course of their employment or working activities drive, or travel in, vehicles-
- (a) which fall within the meaning of a "vehicle" in Article 1 of the AETR;
 - (b) which are not referred to in Article 2(2) of the AETR; and
 - (c) which are performing international transport operations.
- (4) These Regulations do not apply to any mobile worker who does work which is included in the calculation of working time-
- (a) where the reference period is shorter than 26 weeks, on fewer than 11 days in a reference period applicable to that mobile worker; or
 - (b) in any other case on fewer than 16 days in a reference period applicable to that mobile worker."
- (4) In regulation 4(3)-
- (a) in paragraph (a), delete ", or";
 - (b) after paragraph (a) insert-
 - "(aa) in a case where there is no such provision, and the employer gives written notice to the mobile worker in writing that he intends to apply this subparagraph, any period of 17 weeks in the course of the worker's employment; or"
- (5) In regulation 7(2), for "time" substitute "period".
- (6) In regulation 8(1), for "Community" insert "EU".
- (7) For regulation 11(g) substitute-
- "(g) provide to a mobile worker or an enforcement officer copies of such documentary evidence in his possession as may be requested by the mobile officer or an enforcement officer in relation to records supplied to him in accordance with paragraph (c)(e) or (d)(f) above."
- (8) In regulation 15, for "3(1)(b)" substitute "3(2) or 3(3)".

- (9) In regulation 17-
- (a) in subparagraph (3)-
- (i) in paragraph (a), for “paragraph 2” substitute “paragraph 1”;
 - (ii) in paragraph (b), for “paragraph 2(2)(e)” substitute “paragraph 1(2)(e)”;
 - (iii) in paragraph (c), for “3 and 4” substitute “2 and 3”;
 - (iv) in paragraph (e), for “paragraph 8” substitute “paragraph 7”;
- (b) in subparagraph (8), for “22” substitute “20”.

(10) In the tailpiece of paragraph 2 of Schedule 2, for “paragraph (5)” substitute “paragraph 5”.

Amendments to Transport (Recording Equipment) (Minimum Conditions) Regulations 2008.

5.(1) The Road Transport (Recording Equipment) (Minimum Conditions) Regulations 2008 are amended in accordance with this regulation.

- (2) In regulation 2-
- (a) before the definition of “competent authority” insert-
- ““AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970, as amended from time to time;”;
- (b) after the definition of “competent authority” insert-
- ““contracting third country” means a country or territory, other than a member State, which is a contracting party to the AETR or the EEA agreement;”;
- (c) in the definition of “Directive” after “88/599/EEC” insert “, as amended from time to time”;
- (d) in the definition of “EC Regulations”-
- (i) for “EC Regulations” substitute “Hours and Tachographs Regulations”;
 - (ii) in paragraph (a), after “as amended” insert “from time to time”.
- (3) In regulation 3, for “EC Regulations” substitute “Hours and Tachographs Regulations and of the AETR”.

- (4) In regulation 4-

- (a) in subregulations (1), (2) and (4), for “EC Regulations” substitute “Hours and Tachographs Regulations”;
 - (b) in subregulation (6), for “The information” substitute “The national enforcement strategy and the information”.
- (5) In regulation 6(6), after both instances of “member State” insert “or a contracting third country”.
- (6) For regulation 7 substitute-
- “Concerted checks.**
- 7.(1) The competent authority shall, at least six times per year, undertake concerted roadside checks, and may do so with the competent authority of at least one Member State, or contracting third country on drivers and vehicles falling within the scope of the Hours and Tachographs EC Regulations and of the AETR.
- (2) Checks pursuant to sub-regulation (1) shall be undertaken at the same time where done with the competent authority of a Member State or contracting third country and each competent authority shall operate in its own territory.”.
- (7) In regulation 8-
- (a) in subregulation (1), for “EC Regulations” substitute “Hours and Tachographs Regulations and of the AETR”;
 - (b) in subregulation (4), after both instances of “Member State” insert “or contracting third country”.
- (8) In regulation 9(2), in paragraphs (a) and (c), after both instances of “Member State” insert “or contracting third country”.
- (9) After regulation 10(2) insert-
- “(3) The Principle Secretary may of his own volition or following a request from a contracting third country in individual cases, exchange information-
- (a) to assist competent authorities, in Gibraltar or in a contracting third country, in applying the AETR;
 - (b) concerning infringements of the AETR by fitters and workshops, types of manipulation practices, and any penalties imposed for such infringements;

- (c) infringements of the rules set out in Chapter II of Regulation (EC) 561/2006 committed by non-residents and any penalties imposed for such infringements;
 - (d) penalties imposed on residents for infringements committed in a contracting third country.”.
- (10) In regulation 11-
 - (a) in subregulation (1), for “EC Regulations” substitute “Hours and Tachographs Regulations and of the AETR”;
 - (b) in subregulation (3), for “EC Regulations” substitute “Hours and Tachographs Regulations and of the AETR, and the gravity of such infringements”;
- (11) In regulation 12-
 - (a) in subregulation (1), after “Member States” insert “or contracting third countries”;
 - (b) in subregulation (2)(c), for “(EEC)” substitute “(EC)”.
- (12) In regulation 13, for “(EEC)” substitute “(EC)”.
- (13) In Schedule 1, Part A-
 - (a) in paragraph (1), after “in accordance with” insert “paragraph 7 of the Annex to the AETR or Article”;
 - (b) in paragraph (2), after “period referred to in” insert “paragraph 7 of the Annex to the AETR or Article”;
 - (c) in paragraph (4), after “561/2006” insert “, or equivalent paper documents”.
- (14) In Schedule 1, Part B, in the tailpiece for “EC Regulations” substitute “Hours and Tachographs Regulations and of the AETR.
- (15) For Schedule 3 substitute-

“SCHEDULE 3

(regulations 11 and 14)

INFRINGEMENTS

In accordance with regulation 11(3), the following table contains guidelines on a common range of infringements of Regulation (EC) No. 561/2006 and Regulation (EU) No. 165/2014, divided into categories according to their gravity.

1. Groups of infringements against Regulation (EC) No. 561/2006 (Hours)

No	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS ⁽¹⁾			
			MSI	VSI	SI	MI
A	Crew					
A1	Art 5.1	Not respecting minimum ages for conductors			X	
B	Driving periods					
B1	Article 6.1	Exceed daily driving time of 9h if possibilities to extend to 10h not allowed	9h < ... < 10h			X
B2			10h ... < 11h			X
B3			11h ...		X	
B4		Exceed daily driving time of 9h by 50 % or more without taking a break or without any rest of at least 4,5 hours	13h30 ... and no break/rest	X		
B5		Exceed extended daily driving time of 10h if extension allowed	10h < ... < 11h			X
B6			11h ... < 12h			X
B7			12h ...		X	
B8		Exceed daily driving time of 10h by 50 % or more without taking a break of or without any rest of at least 4,5 hours	15h ... and no break/rest	X		
B9	Article 6.2	Exceed weekly driving time	56h < ... < 60h			X
B10			60h ... < 65h			X
B11			65h ... < 70h		X	
B12		Exceed weekly driving time by	70h ...	X		

		25 % or more					
B13	Art 6.3	Exceed maximum total driving time during 2 consecutive weeks	90h < ... < 100h				X
B14			100h ... < 105h			X	
B15			105h ... < 112h30		X		
B16		Exceed maximum total driving time during 2 consecutive weeks by 25 % or more	112h30 ...	X			
C	Breaks						
C1	Article 7	Exceed uninterrupted driving time of 4,5 hours before taking the break	4h30 < ... < 5h				X
C2			5h ... < 6h			X	
C3			6h ...		X		
D	Rest Periods						
D1	Article 8.2	Insufficient daily rest period of less than 11h if reduced daily rest period not allowed	10h ... < 11h				X
D2			8h30 ... < 10h			X	
D3			... < 8h30		X		
D4		Insufficient reduced daily rest period of less than 9h if reduce allowed	8h ... < 9h				X
D5			7h ... < 8h			X	
D6			... < 7h		X		
D7	Insufficient split daily rest period of less than 3h + 9h	3h + [8h ... < 9h]				X	
D8		3h + [7h ... < 8h]			X		

D9			3h + [... < 7h]		X		
D10	Article 8.5	Insufficient daily rest period of less than 9h for multi-manning	8h ... < 9h				X
D11			7h ... < 8h			X	
D12			... < 7h		X		
D13	Article 8.6	Insufficient reduced weekly resting period of less than 24 h	22h ... < 24h				X
D14			20h ... < 22h			X	
D15			... < 20h		X		
D16		Insufficient weekly resting period of less than 45 h if reduced weekly resting period not allowed	42h ... < 45h				X
D17			36h ... < 42h			X	
D18			... < 36h		X		
D19	Article 8.6	Exceeding 6 consecutive 24- hour periods following the previous weekly rest period	... < 3h				X
D20			3h ... < 12h			X	
D21			12h ...		X		
E	12-day rule derogation						
E1	Article 8.6a.	Exceeding 12 consecutive 24- hour periods following a previous regular weekly rest	... < 3h				X
E2			3h ... < 12h			X	
E3			12h ...		X		
E4	Article 8.6a. (b)(ii)	Weekly rest period taken following 12 consecutive 24- hour periods	65h < ... 67h			X	
E5			... 65h		X		
E6	Article	Driving period, between 22.00	3h < ... <			X	

	8.6a. (d)	and 6.00, of more than 3 hours before the break, if the vehicle is not multi-manned	4,5 h				
E7			4,5 h ...		X		
F	Work organisation						
F1	Article 10.1	Link between wage and distance travelled or amount of goods carried			X		
F2	Article 10.2	No or improper organisation of driver's work, no or improper instructions given to driver enabling him to comply with the law			X		

2. Groups of infringements against Regulation (EU) No. 165/2014 of the European Parliament and of the Council ⁽²⁾ (Tachograph)

No	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS				
			MSI	VSI	SI	MI	
G	Installation of tachograph						
G1	Article 3.1 and Article 22.2	Not having type-approved tachograph installed and used (<i>e.g.: not having a tachograph installed by fitters, workshops or vehicle manufacturers approved by the competent authorities of the Member States, using a tachograph without the necessary seals placed or replaced by an approved fitter, workshop or vehicle manufacturer or using a tachograph without the installation plaque</i>)	X				
H	Use of tachograph, driver card or record sheet						
H1	Article 23.1	Using a tachograph not inspected by an approved workshop		X			
H2	Article 27	Driver holding and/or using more than one own driver card		X			
H3		Driving with a driver card that has been falsified (<i>considered as driving without driver card</i>)	X				
H4		Driving with a driver card of which the driver is not the holder (<i>considered as driving without driver card</i>)	X				

H5		Driving with a driver card which has been obtained on the basis of false declarations and/or forged documents (<i>considered as driving without driver card</i>)	X			
H6	Article 32.1	Tachograph not correctly functioning (<i>e.g.: tachograph not properly inspected, calibrated and sealed</i>)		X		
H7	Article 32.1 and Article 33.1	Tachograph improperly used (<i>e.g.: deliberate, voluntary or imposed misuse, lack of instructions on correct use, etc.</i>)		X		
H8	Article 32.3	Using a fraudulent device able to modify the records of the tachograph	X			
H9		Falsifying, concealing, suppressing or destroying data recorded on the record sheets or stored and downloaded from the tachograph and/or the driver card	X			
H10	Article 33.2	Undertaking not keeping record sheets, printouts and downloaded data		X		
H11		Recorded and stored data not available for at least a year		X		
H12	Art 34.1	Incorrect use of record sheets/driver card		X		
H13		Unauthorised withdrawal of record sheets or driver card which has an impact on the record of relevant data		X		
H14		Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost		X		
H15	Article 34.2	Use dirty or damaged record sheets or drivers card and data not legible		X		
H16	Article 34.3	Not using manual input when required to do so		X		
H17	Article 34.4	Not using correct record sheet or driver card not in the correct slot (multi-manning)			X	
H18	Article 34.5	Incorrect use of switch mechanism		X		

I Producing information						
I1	Article 36	Refusing to be checked		X		
I2	Article 36	Unable to produce records of current day and the previous 28 days		X		
I3		Unable to produce records of the driver card if the driver holds one		X		
I4	Article 36	Unable to produce manual records and printouts made during the current day and the previous 28 days		X		
I5	Article 36	Unable to produce a driver card, if the driver holds one		X		
J Malfunctioning						
J1	Article 37.1 and Article 22.1	Tachograph not repaired by an approved fitter or workshop		X		
J2	Article 37.2	Driver not marking all required information for the periods of time, which are no longer recorded while tachograph is unserviceable or malfunctioning		X'		

⁽¹⁾ MSI = most serious infringements, VSI = very serious infringement, SI = serious infringement, MI = minor infringement.

⁽²⁾ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport.”.

Amendments to Tachographs (Miscellaneous Provisions) Regulations 2015.

6.(1) The Tachographs (Miscellaneous Provisions) Regulations 2015 are amended in accordance with this regulation.

(2) For regulation 3 substitute-

“Scope.

3. These Regulations apply to tachographs that are installed and used in vehicles registered in Gibraltar which are used for the carriage of passengers or goods by road and to which-

- (a) the EU Drivers’ Hours Regulation applies, but the following are exempt–
 - (i) vehicles mentioned in Article 13(1) and (3) of the EU Drivers’ Hours Regulation; and
 - (ii) vehicles used for transport operations which have been granted an exception in accordance with Article 14(1) of the EU Drivers’ Hours Regulation; or
- (b) the AETR applies, but those vehicles falling within Article 2 of the AETR are exempt.”.

(3) In regulation 4-

(a) before the definition of “Article”, insert-

““AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970, as amended from time to time;”;

(b) in the definition of “Article” after “EU” insert “Tachographs”;

(c) after the definition of “competent authority”, insert-

““contracting third country” means a country or territory, other than a member State, which is a contracting party to the AETR or the EEA agreement;”;

(d) for the defined term “EU Regulation” substitute “EU Tachographs Regulation”;

(e) for the defined term “Regulation (EC) 561/2006” substitute “EU Drivers’ Hours Regulation”.

(4) In regulation 9-

(a) in subregulation (1)-

- (i) after “may” insert “amend,”;
 - (ii) after “EU” insert “Tachographs”;
 - (b) in subregulations (2) and (3), before the 4 instances of the word “suspension” insert “amendment,”.
- (5) In regulation 11(1)(b), before “Article 34” insert “Article 33 or”.

PART 2
EXIT DAY AMENDMENTS

Amendments to retained EU Law

Amendments to Regulation (EC) No. 561/2006.

7.(1) Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport is amended as follows.

- (2) In Article 1, delete “by Member States”;
- (3) In Article 2-
 - (a) in paragraph 2, for the words from “undertaken” to the end substitute-
“undertaken exclusively within Gibraltar.”;
 - (b) in paragraph 3-
 - (i) in the frontispiece, for “in part outside the areas mentioned in paragraph 2” substitute “wholly or partly outside Gibraltar”;
 - (ii) in points (a) and (b), for “the Community” substitute “Gibraltar”;
 - (iii) delete the tailpiece.
- (4) In Article 3(i), for the words from “which have a historic” to the end substitute “which are used for the non-commercial carriage of passengers or goods and which have a historic status according to Schedule 3, paragraph 3, to the Transport Act 1998”.
- (5) In Article 4-
 - (a) in point (e), for “working time in Article 3(a) of Directive 2002/15/EC” substitute ““working time” in regulation 2 of the Road Transport (Working Time) Regulations 2005”;

- (b) in point (j)-
 - (i) in the first indent, for the words from “Annex I” to the end substitute “Article 2(2)(a) of Regulation (EU) No 165/2014”;
 - (ii) in the second indent, for the words from “Article 16(2)” to the end substitute “Article 37(2) of Regulation (EU) No 165/2014”;
 - (c) in point (n), for the words after “international services” substitute “which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points”.
- (6) In Article 5(2) delete the words from “However” to the end.
- (7) In Article 6-
- (a) in paragraph 2, for “Directive 2002/15/EC” substitute “the Road Transport (Working Time) Regulations 2005”;
 - (b) in paragraph 4, for “on the territory of the Community or of a third country” substitute “whether in Gibraltar or outside Gibraltar”;
 - (c) in paragraph 5, delete “, as defined in Article 15(3)(c) of Regulation (EEC) No 3821/85,”;
 - (d) after paragraph 5 insert-
 - “6. In paragraph 5, “periods of availability” is to be read in accordance with the meaning attributed to it by regulation 2 of the Road Transport (Working Time) Regulations 2005.”.
- (8) Delete Article 8(6a).
- (9) In Article 10-
- (a) in paragraph 2, for both instances of “Regulation (EEC) No 3821/85” substitute “Regulation (EU) No 165/2014”;
 - (b) delete paragraph 3;
 - (c) in paragraph 5(a)-
 - (i) in the frontispiece for “Regulation (EEC) No 3821/85” substitute “Regulation (EU) No 165/2014”;
 - (ii) in point (i), for the words from “as regularly” to the end substitute “in accordance with sections 66H and 66I of the Transport Act 1998”;

(d) in paragraph 5(b), for the words from “shall” to the end substitute “means copied, together with the digital signature, from a part, or from a complete set, of data files recorded in the data memory of the vehicle unit or in the memory of a tachograph card, provided that this process does not alter or delete any stored data”;

(e) delete paragraph (c).

(10) For Article 11 substitute-

“Article 11

Articles 6 to 9 are subject to—

(a) Schedule 3, paragraph 2, to the Transport Act 1998;

(b) any provision made under Article 14(1) or (2).”.

(11) Delete Article 13.

(12) In Article 14-

(a) in paragraph 1, for “Member States may, after authorisation by the Commission” substitute “the appropriate authority may by regulations”;

(b) for paragraphs 2 and 3 substitute-

“2. In an urgent case the appropriate authority may grant a temporary exception by publishing a notice specifying:

(a) the transport operations and circumstances to which the exception relates, and

(b) the period for which the exception has effect, which may not exceed 30 days.

3. In this Article “the appropriate authority” means the Minister with responsibility for Transport.”.

(13) Delete Articles 15 to 19.

(14) In Article 20-

(a) in paragraph 1-

(i) for “evidence provided by a Member State” substitute “documentation provided by an enforcement officer or a court”;

- (ii) for “pursuant to this Regulation” substitute “by virtue of this Regulation read with Part IVA of the Transport Act 1998”;

(b) after paragraph 3 insert-

“4. In this Article “enforcement officer” means:

- (a) police officer;
- (b) transport inspector;
- (c) an officer of the Transport Commission;
- (d) an inspector appointed under section 10 of the Shop Hours Act; or
- (e) a person authorised as an “officer” under Part IVA of the Transport Act 1998.”.

(15) Delete Articles 21 to 25.

(16) After Chapter 5 insert-

“CHAPTER 5A

SUPPLEMENTARY

Article 25A

1. The Minister may make Regulations under this Regulation for the purpose of making consequential, supplementary, incidental, transitional or savings provisions.
2. Regulations made under paragraph 1 may make different provision for different purposes.”.

(17) After Article 29, delete “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

(18) 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 Regulation (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as amended, is set out in Schedule 1 for information purposes only.

Amendments to Regulation (EU) No. 165/2014.

8.(1) Regulation (EU) No 165/2014 of the European Parliament and of the Council on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European

Parliament and of the Council on the harmonisation of certain social legislation relating to road transport is amended in accordance with this regulation.

- (2) In Article 1(1) for the words from “Regulation (EC)” to the end substitute-
- “(a) Regulation (EC) No 561/2006;
 - (b) Part V of the Vehicle (Construction, Equipment and Maintenance) Regulations;
 - (c) the Road Transport (Working Time) Regulations 2005.”.
- (3) In Article 2(2)-
- (a) in point (f), for “authorities of a member State” substitute “competent authority”;
 - (b) in point (i), for “authorities of a member State” substitute “competent authority”;
 - (c) in point (j), for “authorities of a member State” substitute “competent authority”;
 - (d) in point (k)-
 - (i) for “authorities of a member State” substitute “competent authority”;
 - (ii) for “that member State” substitute “the competent authority”;
 - (e) in point (u), delete the words from “, by a Member State, in accordance with Article 13,”;
 - (f) after point (z) insert-
 - “(za) “control officer” means an officer authorised, by the Minister with responsibility for Transport under section 66A of the Transport Act 1998, to carry out functions for the purposes of Part IVA of the Transport Act 1998;
 - (zb) “equivalent EU regulation” means Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, as it has effect in EU law, as amended from time to time;
 - (zc) “competent authority” means the competent authority appointed for the purposes of the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008.”.
- (4) In Article 3-
- (a) in paragraph 1, delete “registered in a Member State”;
 - (b) For paragraphs 2 to 5 substitute-

“2. This Regulation is subject to-

- (a) paragraph 2 of Schedule 3 to the Transport Act 1998;
- (b) any provisions made under paragraph 3.

3. The Minister may by regulations except from the application of this Regulation vehicles used for transport operations which are being, or have been, granted an exception by regulations under Article 14(1) of Regulation (EC) No 561/2006. An exception granted under regulations under this Article ceases to have effect when the exception granted under regulations under Article 14(1) of Regulation (EC) No 561/2006 ceases to have effect, unless the regulations under this Article cease to have effect first.

In an urgent case Minister may grant a temporary exception in respect of vehicles which are being, or have been, granted an exception under Article 14(2) of Regulation (EC) No 561/2006 by publishing a notice specifying:

- (a) the transport operations and circumstances to which the exception relates, and
- (b) the period for which the exception has effect, which may not exceed 30 days.”.

(5) In Article 4(8)-

(a) in the first sentence-

- (i) for “the Commission shall, by means of implementing acts, adopt” substitute “the Minister may, by regulations, make”;
- (ii) delete “uniform”;

(b) delete the second sentence.

(6) In Article 6(5)-

(a) in the first sentence-

- (i) or “the Commission shall, by means of implementing acts, adopt” substitute “the Minister may, by regulations, make”;
- (ii) delete “uniform”;

(b) delete the second sentence.

(7) Delete Article 7.

- (8) In Article 9-
- (a) in paragraph 2-
 - (i) in the first sentence, for “Member States shall equip their control authorities” substitute “the competent authority must ensure that control authorities are equipped”;
 - (ii) delete the second sentence.
 - (b) in paragraph 8, for the words from “the risk” to the end substitute “a risk rating system based on the relative number and severity of infringements of Regulations (EC) 561/2006 of the European Parliament and of the Council that an individual undertaking has committed”.
- (9) In Article 11-
- (a) in the first sentence-
 - (i) for “the Commission shall, by means of implementing acts, adopt” substitute “the Minister may, by regulations, make”;
 - (ii) delete “uniform”;
 - (b) delete the second sentence.
- (10) For Chapter 3 (type-approval) substitute-

“CHAPTER III

TYPE-APPROVAL

Article 11A

Requirement for Gibraltar, UK or EU type-approval

1. A vehicle unit, motion sensor, model record sheet or tachograph card shall, where installed or used in a vehicle to which Article 3 applies, be of a type approved in accordance with:
 - (a) this Chapter and the Tachographs (Miscellaneous Provisions) Regulations 2015 (“the 2015 Regulations”); or
 - (b) Chapter III of the United Kingdom’s EU retained law for Regulation (EU) No 165/2014 and the Motor Vehicles (Type Approval) Regulations 1980; or
 - (c) Chapter 3 of the equivalent EU Regulation.

2. In this Chapter a reference to “Gibraltar type-approval” is a reference to type-approval in accordance with this Chapter and the 2015 Regulations, and related expressions are to be read accordingly.

Article 12

Applications for Gibraltar type-approval: certificates

1. An application for Gibraltar type-approval shall be made to the competent authority in such form as required for the purpose by the competent authority and shall include the information in subparagraph 3.
2. *not used.*
3. The application shall be accompanied by:
 - (a) a security certificate;
 - (b) a functionality certificate;
 - (c) an interoperability certificate;
 - (d) in the case of an application relating to a vehicle unit, information about the seals.
4. A security certificate shall be issued by a person appointed by the competent authority (which may be a person outside Gibraltar).
5. A functionality certificate shall be issued by the competent authority.
6. An interoperability certificate shall be issued by a person appointed by the competent authority (which may be a person outside the Gibraltar).
7. In respect of tachographs, their relevant components, and tachograph cards:
 - (a) the security certificate shall certify the following for the vehicle unit, tachograph cards, motion sensor, and connection to the satellite navigation system receiver when the satellite navigation system is not embedded in the vehicle units:
 - (i) compliance with security targets;
 - (ii) fulfilment of the following security functions: identification and authentication, authorisation, confidentiality, accountability, integrity, audit, accuracy and reliability of service;
 - (b) the functional certificate shall certify that the tested item fulfils the appropriate requirements in terms of functions performed, environmental

characteristics, electromagnetic compatibility characteristics, compliance with physical requirements and compliance with other applicable standards;

(c) the interoperability certificate shall certify that the tested item is fully interoperable with the necessary tachographs or tachograph card models.

8. The competent authority shall give notice to manufacturers to ensure that a manufacturer is required to give notice to the competent authority of any alterations in software or hardware of a tachograph or in the nature of materials used for its manufacture.
9. Where notice of alterations is given to the competent authority, the competent authority may require an update or a confirmation of the relevant functional, security or interoperability certificates, before confirming to the manufacturer the extension of the type-approval or taking action under regulation 9 of the 2015 Regulations.

Article 17

Approval of record sheets

1. For the purpose of an application for Gibraltar type-approval of a model record sheet, the form of information document issued by the competent authority (as mentioned in Article 12) shall require that:
 - (a) an applicant for Gibraltar type-approval of a model record sheet states on the application form the type or types of analogue tachograph on which the record sheet in question is designed to be used; and
 - (b) suitable equipment of such type or types is required in connection with the application for type-approval, for the purpose of testing the record sheet.
2. The competent authority shall indicate on the approval certificate for the model record sheet the type or types of analogue tachograph on which that model record sheet may be used.

Article 20

Security

1. Manufacturers shall design, test and review vehicle units, motion sensors and tachograph cards put into production so as to detect vulnerabilities arising in all phases of the product life-cycle, and shall prevent or mitigate their possible exploitation. The frequency of tests shall be at least every two years.

2. Manufacturers shall submit the documentation necessary for vulnerability analysis to the person who, under Article 12, is responsible for issuing security certificates.
3. If, in the course of the tests referred to in paragraph 1, vulnerabilities in system elements (vehicle units, motion sensors and tachograph cards) are detected, no security certificate is to be issued and, accordingly, no type-approval application is to be considered (see Article 12). If vulnerabilities are detected in the course of the tests referred to in paragraph 1 for elements already on the market, the manufacturer shall inform the competent authority. The competent authority shall take all measures necessary to ensure that the problem is addressed, in particular by the manufacturer (including, where necessary, the withdrawal of type-approval).

Article 21

Field test

Drivers and transport undertakings participating in a field test authorised under section 66CA of the Transport Act 1998 shall comply with the requirements of Regulation (EC) No 561/2006. In order to demonstrate such compliance, drivers shall follow the procedure set out in Article 35(2) of this Regulation.”.

(11) In Article 22-

- (a) in paragraph (1)-
 - (i) for “competent authorities of the Member States” substitute “competent authority”;
 - (ii) at the end insert “(but see Article 25A)”;
- (b) in paragraph 2 omit “referred to in Article 15”;
- (c) in paragraph 3 omit the second and third sentences;
- (d) in paragraph 5, in the second indent, for the last sentence substitute “The Minister may by regulations make provision about the form of the written statement”.

(12) In Article 23-

- (a) in paragraph 3 delete “national”;
- (b) in paragraph 4-
 - (i) after “retained” insert “by the workshop”;

- (ii) delete the second sentence;
 - (iii) in the third sentence for the words from the beginning to “upon” substitute “Upon”.
- (13) In Article 24-
- (a) in paragraph 1, for “Member States” substitute “The competent authority”;
 - (b) in paragraph 2-
 - (i) for “Member States” substitute “The competent authority”;
 - (ii) after “manufacturers” insert “approved, controlled and certified under paragraph 1”;
 - (iii) for “they” substitute “the competent authority”.
 - (c) in paragraph 3(a), for “Member States” substitute “The competent Authority”;
 - (d) in paragraph 4, for “Member States and their competent authorities” substitute “The competent authority”;
 - (e) delete paragraph 5;
 - (f) in paragraph 6 for “The competent authorities in Member States” substitute “The competent authority”.
- (14) In Article 25-
- (a) in paragraph 3-
 - (i) for “a Member State” substitute “the competent authority”;
 - (ii) for “it” substitute “the competent authority”;
 - (b) in paragraph 4, for “Member State” substitute “The competent authority”.
- (15) After Article 25, insert-

“Article 25A

**Recognition of UK and EU approved fitters, workshops
and vehicle manufacturers**

1. Fitters, workshops and vehicle manufacturers which are approved by the United Kingdom in accordance with the United Kingdom’s EU retained law for Regulation (EU) No 165/2014 and the Motor Vehicles (Type Approval)

Regulations 1980 or an EU member State in accordance with Article 24 of the equivalent EU Regulation (“EU approved fitters, workshops and vehicle manufacturers”) shall be treated for the purposes of this Regulation as if they were approved by the competent authority in accordance with Article 24 of this Regulation.

2. The competent authority is not required by Article 24(1) of this Regulation to control or certify EU approved fitters, workshops and vehicle manufacturers and the following provisions of this Regulation do not apply in relation to EU approved fitters, workshops and vehicle manufacturers:

- (a) Article 2(2)(k);
- (b) Article 24(2) to (6);
- (c) Article 25.”.

(16) In Article 26-

(a) in paragraph 1-

- (i) for the first sentence substitute “A driver card is to be issued by the competent authority on request to a person whose normal residence is in Gibraltar.”;
- (ii) in the second sentence for “They shall” substitute “A driver’s card is to”;

(b) in paragraph 2, in the second paragraph-

- (i) delete “situated in two or more Member States”;
- (ii) for “Member State” substitute “place”;

(c) in paragraph 3-

- (i) in the first sentence, before “identity card” insert “passport,”;
- (ii) in the second sentence-
 - (A) for “competent authorities of the Member State issuing the driver card have” substitute “the competent authority has”;
 - (B) for “they” substitute “the competent authority”;

(d) in paragraph 4-

- (i) in the first subparagraph-
 - (A) for “Member States” substitute “the competent authority”;

- (B) for “a Member State” substitute “Gibraltar”;
 - (C) for “the issuing Member State” substitute “Gibraltar”;
 - (ii) delete the second subparagraph;
 - (e) in paragraph 5, for “competent authorities of the issuing Member State” substitute “competent authority”;
 - (f) in paragraph 7-
 - (i) in the first sentence for “competent authorities of a Member State find” substitute “competent authority finds”;
 - (ii) delete the second and third sentences;
 - (g) in paragraph 8, for “Member States” substitute “The competent authority”;
 - (h) delete paragraph 9.
- (17) In Article 28-
- (a) in paragraph 1, for “competent authorities of the Member State of his normal residence” substitute “competent authority”;
 - (b) delete the second sentence.
- (18) In Article 29-
- (a) in paragraph 1, for “Issuing authorities” substitute “The competent authority”;
 - (b) in paragraph 2-
 - (i) delete “of the Member State of his normal residence”;
 - (ii) for “competent authorities of the State where the theft occurred” substitute “competent authority”;
 - (c) in paragraph 3, for the words from “competent authorities”, in the first place it occurs, to the end substitute “competent authority”;
 - (d) in paragraph 4-
 - (i) in the first sentence, for the words from “competent authorities” to the end substitute “competent authority”;
 - (ii) in the second sentence-

- (A) for “Those authorities” substitute “The competent authority”;
 - (B) delete “their”.
- (19) In Article 30-
- (a) for the heading substitute “Recognition of UK and EU driver cards”;
 - (b) for paragraph 1 substitute- “Driver cards issued by the United Kingdom and member States shall be recognised;
 - (c) delete paragraphs 2 to 4.
- (20) Delete Article 31.
- (21) Delete Article 32(5).
- (22) In Article 33-
- (a) in paragraph 1, in the second paragraph, for “an authorised” substitute “a”;
 - (b) in paragraph 2, delete “authorised”;
 - (c) delete paragraph 3.
- (23) In Article 34-
- (a) in paragraph 3, in the second subparagraph, for “Member States shall not impose on drivers a requirement” substitute “Drivers are not required”;
 - (b) delete paragraph 7.
- (24) In Article 36-
- (a) in paragraph 1, for “an authorised” substitute “a”;
 - (b) in paragraph 2, for “an authorised” substitute “a”;
 - (c) delete paragraph 3.
- (25) In Article 37(1) delete the third subparagraph;
- (26) In Article 38-
- (a) in paragraph 1, delete “authorised”;
 - (b) in paragraph 3, delete “national”.
- (27) In Article 39-

- (a) in paragraph 1, for “Member States” substitute “The competent authority”;
 - (b) delete paragraph 2;
 - (c) in paragraph 3-
 - (A) in the first sentence, for “The Commission shall, by means of implementing acts,” substitute “The Minister may, by regulations,”;
 - (B) in the second sentence, for “shall” substitute “may”;
 - (C) delete the third sentence;
 - (d) delete paragraph 4.
- (28) Delete Articles 40 and 41.
- (29) After Chapter VII, insert-

“CHAPTER VIIA

**REGULATIONS UNDER THIS
REGULATION**

Article 41A

**Regulations under this
Regulation**

Regulations made under this Regulation may:

- (a) make consequential, supplementary, incidental transitional, transitory or saving provision;
 - (b) make different provision for different purposes.”.
- (30) Delete Articles 42 to 44.
- (31) Delete Article 46.
- (32) After Article 48, delete “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

(33) For Annexes I and II substitute-

“ANNEX I

**REQUIREMENTS FOR CONSTRUCTION, TESTING, INSTALLATION
AND INSPECTION FOR ANALOGUE TACHOGRAPHS**

1. In this Annex-

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970;

“enactment” includes an enactment contained in subsidiary legislation within the meaning of the Interpretation and General Clauses Act.

2. Appendix 1 to the Annex to the AETR (which makes provision corresponding to Annex 1 to the equivalent EU regulation) applies for the purposes of this Regulation.

3. References in any enactment to Annex I to this Regulation are to be read as references to Appendix 1 to the Annex to the AETR as applied by paragraph 2.

ANNEX IB

**REQUIREMENTS FOR CONSTRUCTION, TESTING, INSTALLATION
AND INSPECTION FOR DIGITAL TACHOGRAPHS**

1. In this Annex-

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970;

“enactment” includes an enactment contained in subsidiary legislation within the meaning of the Interpretation and General Clauses Act.

2. Appendix 1B to the Annex to the AETR (which is an adaptation of Annex IB to Regulation (EEC) No 3821/85, as it has effect in EU law) applies for the purposes of this Regulation.

3. References in any enactment to Annex IB to this Regulation are to be read as references to Appendix 1B to the Annex to the AETR (including provisions adapted by it) as applied by paragraph 2.

ANNEX II

APPROVAL MARK AND CERTIFICATE

1. In this Annex-

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970;

“enactment” includes an enactment contained in subsidiary legislation within the meaning of the Interpretation and General Clauses Act.

2. Appendix 2 to the Annex to the AETR (which makes provision corresponding to Annex II to the equivalent EU Regulation) applies for the purposes of this Regulation.

3. References in any enactment to Annex II to this Regulation are to be read as references to Appendix 2 to the Annex to the AETR as applied by paragraph 2.”.

(34) Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, as amended, is set out in Schedule 2 for information purposes only.

Amendments to Commission Implementing Regulation (EU) 2016/799.

9.(1) Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components is amended in accordance with this regulation.

(2) In Article 1-

(a) paragraph 1, delete “uniform”;

(b) paragraph 3, for “Council Regulation (EEC) No 3821/85⁽¹⁾” substitute “Regulation (EU) No 165/2014”;

(c) for paragraph 4 substitute-

“The remote early detection facility shall also transmit the weight data provided by any internal on-board weighing system installed to aid the enforcement of requirements as to the maximum authorised weight of vehicles, for the purpose of early fraud detection.”;

(d) delete paragraph 5.

- (3) In Article 2-
- (a) in definition (4), delete “EC”;
 - (b) in definition (5), delete “EC”;
 - (c) in definition (9)-
 - (i) for “Member State” substitute “member State of the European Union, the United Kingdom or Gibraltar”;
 - (ii) delete “, acting as the contact point for the type-approval authorities of other Member States”.
- (4) In Article 4-
- (a) in paragraph 1, for “authorities designated by each Member State” substitute “authority”;
 - (b) in paragraph 2, for “A Member State” substitute “The type approval authority”;
 - (c) in paragraph 4-
 - (i) for “authorities” substitute “authority”;
 - (ii) for “entities” substitute “persons”;
 - (iii) for “12(3)” substitute “12”;
 - (d) in paragraph 5-
 - (i) for “authorities” substitute “authority”;
 - (ii) for “those authorities” substitute “the authority”.
- (5) After Article 6 delete “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.
- (6) Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components, as amended, is set out in Schedule 3 for information purposes only.

Council Regulation (EEC) No 3916/90.

10. Council Regulation (EEC) No 3916/90 on measures to be taken in the event of a crisis in the market in the carriage of goods by road is revoked.

Commission Implementing Regulation (EU) No 2016/68.

11. Commission Implementing Regulation (EU) No 2016/68 on common procedures and specifications necessary for the interconnection of electronic registers of driver cards is revoked.

Annex XIII to the EEA Agreement.

12. In Annex XIII to the EEA Agreement, delete the following (which refer to Regulations which are revoked by these Regulations)-

- (a) point 21ba;
- (b) point 26b.

Further amendments

Amendments to the Transport Act 1998.

13.(1) The Transport Act 1998, as amended by regulation 3 of these Regulations, is amended in accordance with this regulation.

(2) In section 66A-

(a) for definition of “the applicable EU rules” substitute-

““the applicable EU rules” means any directly applicable retained EU law provision being in force on exit day 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 EU Drivers' Hours Regulation;”;

(b) for the definition of “contracting third country” substitute-

““contracting country” means a country or territory which is a contracting party to the AETR”;

(c) after the definition of “employer” insert-

““the equivalent EU Regulation” means Regulation (EU) No 165/2014 of the European Parliament and of the Council on tachographs in road transport as it has effect in EU law, as amended from time to time;”;

(d) for the definition of “relevant EU provision” substitute-

““relevant EU provision” means any retained EU law provision for the time being in force on exit day about the driving of road vehicles, whether directly applicable or not;”;

(e) before the definition of “transport undertaking” insert-

““the relevant EU type-approval mark”, in relation to recording equipment, means a type-approval mark issued by a EU member State in relation to that type of recording equipment under Article 14 of the equivalent EU regulation;

“the relevant UK type-approval mark”, in relation to recording equipment, means the mark which is “the relevant type-approval mark” in relation to the marking of that equipment, for the purposes of the United Kingdom’s Motor Vehicles (Type Approval) Regulations 1980;”.

(3) In section 66B-

(a) in subsection (1), for the words from “, but the Minister” to the end substitute “.”;

(b) delete subsection (2).

(4) In section 66C(11), for “, a member State, or a contracting third country,” substitute “or another contracting country,”.

(5) In section 66CA(1)(a), for “under Article 13” substitute “as required by Article 11A”.

(6) In section 66D-

(a) in subsection (1)(i), after “specifications” insert “, or the equivalent EU Regulation”;

(b) in subsection (1)(b), after “Regulation” insert “or the equivalent EU Regulation”;

(c) in subsection (6A), for “a type-approval mark issued under Article 14 if the EU Tachographs Regulation” substitute “the relevant Gibraltar type-approval mark, the UK relevant type-approval mark or the relevant EU type-approval mark (see Article 11A of the EU Tachographs Regulation)”.

(7) In section 66DB(5), in the definition of “appropriate type-approval certificate”-

(a) in paragraph (a)(ii), for “in a member State under the EU Tachographs Regulation” substitute “under the equivalent EU Regulation”;

(b) in paragraph (b)(ii), for “a contracting third” substitute “another contracting”.

(8) In section 66M(5)(b), for “, a relevant State or in a contracting third” substitute “or another contracting”.

Amendments to the Road Transport (Working Time) Regulations 2005.

14.(1) The Road Transport (Working Time) Regulations 2005, as amended by regulation 4 of these Regulations, are amended in accordance with this regulation.

- (2) In regulation 2, in the definition of “self-employed driver”-
 - (a) for “EU legislation” substitute “retained EU law”;
 - (b) after “under a cover of a” insert “Gibraltar licence for the Community, a UK licence for the Community or a”.
- (3) In regulation 3-
 - (a) in subregulation (1), for “member State” substitute “Gibraltar”;
 - (b) in subregulation (3)(c), for “international transport operations” substitute “transport operations wholly or partly outside Gibraltar”.

Amendments to the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008.

15.(1) The Transport (Recording Equipment) (Minimum Conditions) Regulations 2008, as amended by regulation 5 of these Regulations, are amended in accordance with this regulation.

- (2) In regulation 2, for the definition of “contracting third country” substitute-

““contracting country” means a country or territory which is a contracting party to the AETR;”.
- (3) In regulation 4-
 - (a) in subregulation (3), delete “and shall ensure that the European Commission and the Member States are informed thereof”;
 - (b) in subregulation (6), delete “and the information submitted to the European Commission in accordance with Article 17(1) of Regulation (EEC) No 561/2006”.
- (4) In regulation 5(2), for “European” substitute “Transport”.
- (5) In regulation 6(6)-
 - (a) for “a Member State or a contracting third country” substitute “another contracting country”;
 - (b) for “Member State or contracting third country” substitute “contracting country”.
- (6) In regulation 8(4), for the two instances of “Member State or contracting third country” substitute “contracting country”.
- (7) In regulation 9-

- (a) in subregulation (2)-
 - (i) in paragraphs (a) and (c), for “Member State or contracting third country” substitute “contracting country”;
 - (ii) in paragraph (b), for “European Commission under Article 17(1) of Regulation (EEC) No. 561/2006” substitute “Transport Commission”;
 - (b) delete subregulation (3).
- (8) In regulation 10-
- (a) delete subregulations (1) and (2);
 - (b) in the remaining subregulation, delete the number “(3)”;
 - (c) delete the three instances of “third”.
- (9) In regulation 12-
- (a) for subregulation (1), substitute-
“(1) The competent authority may establish joint training programmes on best practice with its counter parts in contracting countries.”;
 - (b) in subregulation (2)-
 - (i) in the frontispiece, for “by the European Commission in accordance with” substitute “in the format of”;
 - (ii) in subparagraph (c), for “(EEC)” substitute “(EC)”.
- (10) Delete regulation 13.
- (11) In Schedule 1, Part A, in paragraph 4, delete “the documents referred to in Article 16(2) of Regulation (EEC) No 561/2006, or”.

Amendment to the Tachographs (Miscellaneous Provisions) Regulations 2015.

16.(1) The Tachographs (Miscellaneous Provisions) Regulations 2015, as amended by regulation 6 of these Regulations, are amended in accordance with this regulation.

- (2) For regulation 3(a), substitute-

“(a) the EU Drivers’ Hours Regulation applies, but the following are exempt, vehicles used for transport operations which have been granted an exemption in accordance with Article 14(1) of the EU Drivers’ Hours Regulation; or”.

- (3) In regulation 4, for the definition of “contracting third country” substitute-
““contracting country” means a country or territory which is a contracting party to the AETR;”.
- (4) Delete regulation 8.

PART 3
SAVING PROVISION

Saving.

17. An enactment made under any provision repealed or revoked by these Regulations continues to have effect despite the repeal or revocation.

SCHEDULE 1

(regulation 7)

REGULATION (EC) No. 561/2006

B 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

(Text with EEA relevance)

(OJ L 102, 11.4.2006, p. 1)

Amended by:

		Official Journal		
		No	page	date
<u>M1</u>	Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009	L 300	88	14.11.2009
<u>M2</u>	Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014	L 60	1	28.2.2014

Corrected by:

C1 Corrigendum, OJ L 195, 20.7.2016, p. 83 (561/2006)

**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**

(Text with EEA relevance)

CHAPTER I

INTRODUCTORY PROVISIONS

Article 1

This Regulation lays down rules on driving times, breaks and rest periods for drivers engaged in the carriage of goods and passengers by road in order to harmonise the conditions of competition between modes of inland transport, especially with regard to the road sector, and to improve working conditions and road safety. This Regulation also aims to promote improved monitoring and enforcement practices and improved working practices in the road transport industry.

Article 2

1. This Regulation shall apply to the carriage by road:
 - (a) of goods where the maximum permissible mass of the vehicle, including any trailer, or semi-trailer, exceeds 3,5 tonnes, or
 - (b) of passengers by vehicles which are constructed or permanently adapted for carrying more than nine persons including the driver, and are intended for that purpose.
2. This Regulation shall apply, irrespective of the country of registration of the vehicle, to carriage by road undertaken exclusively within Gibraltar.
3. The AETR shall apply, instead of this Regulation, to international road transport operations undertaken wholly or partly outside Gibraltar, to:
 - (a) vehicles registered in Gibraltar or in countries which are contracting parties to the AETR, for the whole journey;
 - (b) vehicles registered in a third country which is not a contracting party to the AETR, only for the part of the journey on the territory of Gibraltar or of countries which are contracting parties to the AETR.

Article 3

This Regulation shall not apply to carriage by road by:

- (a) vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;

M2

- (aa) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying materials, equipment or machinery for the

driver's use in the course of his work, and which are used only within a 100 km radius from the base of the undertaking and on the condition that driving the vehicle does not constitute the driver's main activity;

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- (b) vehicles with a maximum authorised speed not exceeding 40 kilometres per hour;
- (c) vehicles owned or hired without a driver by the armed services, civil defence services, fire services, and forces responsible for maintaining public order when the carriage is undertaken as a consequence of the tasks assigned to these services and is under their control;
- (d) vehicles, including vehicles used in the non-commercial transport of humanitarian aid, used in emergencies or rescue operations;
- (e) specialised vehicles used for medical purposes;
- (f) specialised breakdown vehicles operating within a 100 km radius of their base;
- (g) vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;
- (h) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for the non-commercial carriage of goods;
- (i) commercial vehicles, which are used for the non-commercial carriage of passengers or goods and which have a historic status according to Schedule 3, paragraph 3, to the Transport Act 1998.

Article 4

For the purposes of this Regulation the following definitions shall apply:

- (a) 'carriage by road' means any journey made entirely or in part on roads open to the public by a vehicle, whether laden or not, used for the carriage of passengers or goods;
- (b) 'vehicle' means a motor vehicle, tractor, trailer or semi-trailer or a combination of these vehicles, defined as follows:
 - 'motor vehicle': any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and normally used for carrying passengers or goods,
 - 'tractor': any self-propelled vehicle travelling on the road, other than a vehicle permanently running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines,
 - 'trailer': any vehicle designed to be coupled to a motor vehicle or tractor,
 - 'semi-trailer': a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle;
- (c) 'driver' means any person who drives the vehicle even for a short period, or who is

carried in a vehicle as part of his duties to be available for driving if necessary;

- (d) 'break' means any period during which a driver may not carry out any driving or any other work and which is used exclusively for recuperation;
- (e) 'other work' means all activities which are defined as "working time" in regulation 2 of the Road Transport (Working Time) Regulations 2005 except 'driving', including any work for the same or another employer, within or outside of the transport sector.
- (f) 'rest' means any uninterrupted period during which a driver may freely dispose of his time;
- (g) 'daily rest period' means the daily period during which a driver may freely dispose of his time and covers a 'regular daily rest period' and a 'reduced daily rest period':
 - 'regular daily rest period' means any period of rest of at least 11 hours. Alternatively, this regular daily rest period may be taken in two periods, the first of which must be an uninterrupted period of at least 3 hours and the second an uninterrupted period of at least nine hours,
 - 'reduced daily rest period' means any period of rest of at least nine hours but less than 11 hours;
- (h) 'weekly rest period' means the weekly period during which a driver may freely dispose of his time and covers a 'regular weekly rest period' and a 'reduced weekly rest period':
 - 'regular weekly rest period' means any period of rest of at least 45 hours,
 - 'reduced weekly rest period' means any period of rest of less than 45 hours, which may, subject to the conditions laid down in Article 8(6), be shortened to a minimum of 24 consecutive hours;
- (i) 'a week' means the period of time between 00.00 on Monday and 24.00 on Sunday;
- (j) 'driving time' means the duration of driving activity recorded:
 - automatically or semi-automatically by the recording equipment as defined in Article 2(2)(a) of Regulation (EU) No 165/2014, or
 - manually as required by Article 37(2) of Regulation (EU) No 165/2014;
- (k) 'daily driving time' means the total accumulated driving time between the end of one daily rest period and the beginning of the following daily rest period or between a daily rest period and a weekly rest period;
- (l) 'weekly driving time' means the total accumulated driving time during a week;
- (m) 'maximum permissible mass' means the maximum authorised operating mass of a vehicle when fully laden;

- (n) 'regular passenger services' means national and international services which provide for the carriage of passengers at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;
- (o) 'multi-manning' means the situation where, during each period of driving between any two consecutive daily rest periods, or between a daily rest period and a weekly rest period, there are at least two drivers in the vehicle to do the driving. For the first hour of multi-manning the presence of another driver or drivers is optional but for the remainder of the period it is compulsory;
- (p) 'transport undertaking' means any natural person, any legal person, any association or group of persons without legal personality, whether profit-making or not, or any official body, whether having its own legal personality or being dependent upon an authority having such a personality, which engages in carriage by road, whether for hire or reward or for own account;
- (q) 'driving period' means the accumulated driving time from when a driver commences driving following a rest period or a break until he takes a rest period or a break. The driving period may be continuous or broken.

CHAPTER II

CREWS, DRIVING TIMES, BREAKS AND REST PERIODS

Article 5

1. The minimum age for conductors shall be 18 years.
2. The minimum age for drivers' mates shall be 18 years.

Article 6

1. The daily driving time shall not exceed nine hours.

However, the daily driving time may be extended to at most 10 hours not more than twice during the week.

2. The weekly driving time shall not exceed 56 hours and shall not result in the maximum weekly working time laid down in the Road Transport (Working Time) Regulations 2005 being exceeded.
3. The total accumulated driving time during any two consecutive weeks shall not exceed 90 hours.
4. Daily and weekly driving times shall include all driving time whether within or outside Gibraltar.
5. A driver shall record as other work any time spent as described in Article 4(e) as well as any time spent driving a vehicle used for commercial operations not falling within the scope of this Regulation, and shall record any periods of availability since his last daily or weekly rest period. This record shall be entered either manually on a record

sheet, a printout or by use of manual input facilities on recording equipment.

6. In paragraph 5, “periods of availability” is to be read in accordance with the meaning attributed to it by regulation 2 of the Road Transport (Working Time) Regulations 2005.

Article 7

After a driving period of four and a half hours a driver shall take an uninterrupted break of not less than 45 minutes, unless he takes a rest period.

This break may be replaced by a break of at least 15 minutes followed by a break of at least 30 minutes each distributed over the period in such a way as to comply with the provisions of the first paragraph.

Article 8

1. A driver shall take daily and weekly rest periods.

2. Within each period of 24 hours after the end of the previous daily rest period or weekly rest period a driver shall have taken a new daily rest period.

If the portion of the daily rest period which falls within that 24 hour period is at least nine hours but less than 11 hours, then the daily rest period in question shall be regarded as a reduced daily rest period.

3. A daily rest period may be extended to make a regular weekly rest period or a reduced weekly rest period.

4. A driver may have at most three reduced daily rest periods between any two weekly rest periods.

5. By way of derogation from paragraph 2, within 30 hours of the end of a daily or weekly rest period, a driver engaged in multi-manning must have taken a new daily rest period of at least nine hours.

6. In any two consecutive weeks a driver shall take at least:

— two regular weekly rest periods, or

— one regular weekly rest period and one reduced weekly rest period of at least 24 hours. However, the reduction shall be compensated by an equivalent period of rest taken en bloc before the end of the third week following the week in question.

A weekly rest period shall start no later than at the end of six 24-hour periods from the end of the previous weekly rest period.

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7. Any rest taken as compensation for a reduced weekly rest period shall be attached to another rest period of at least nine hours.

8. Where a driver chooses to do this, daily rest periods and reduced weekly rest periods away from base may be taken in a vehicle, as long as it has suitable sleeping facilities for each driver and the vehicle is stationary.

9. A weekly rest period that falls in two weeks may be counted in either week, but not in both.

Article 9

1. By way of derogation from Article 8, where a driver accompanies a vehicle which is transported by ferry or train, and takes a regular daily rest period, that period may be interrupted not more than twice by other activities not exceeding one hour in total. During that regular daily rest period the driver shall have access to a bunk or couchette.

2. Any time spent travelling to a location to take charge of a vehicle falling within the scope of this Regulation, or to return from that location, when the vehicle is neither at the driver's home nor at the employer's operational centre where the driver is normally based, shall not be counted as a rest or break unless the driver is on a ferry or train and has access to a bunk or couchette.

3. Any time spent by a driver driving a vehicle which falls outside the scope of this Regulation to or from a vehicle which falls within the scope of this Regulation, which is not at the driver's home or at the employer's operational centre where the driver is normally based, shall count as other work.

CHAPTER III

LIABILITY OF TRANSPORT UNDERTAKINGS

Article 10

1. A transport undertaking shall not give drivers it employs or who are put at its disposal any payment, even in the form of a bonus or wage supplement, related to distances travelled and/or the amount of goods carried if that payment is of such a kind as to endanger road safety and/or encourages infringement of this Regulation.

2. A transport undertaking shall organise the work of drivers referred to in paragraph 1 in such a way that the drivers are able to comply with Regulation (EU) No 165/2014 and Chapter II of this Regulation. The transport undertaking shall properly instruct the driver and shall make regular checks to ensure that Regulation (EU) No 165/2014 and Chapter II of this Regulation are complied with.

3. *Not used.*

4. Undertakings, consignors, freight forwarders, tour operators, principal contractors, subcontractors and driver employment agencies shall ensure that contractually agreed transport time schedules respect this Regulation.

5. (a) A transport undertaking which uses vehicles that are fitted with recording equipment complying with Annex IB of Regulation (EU) No 165/2014 and that fall within the scope of this Regulation, shall:
- (i) ensure that all data are downloaded from the vehicle unit and driver card in accordance with sections 66H and 66I of the Transport Act 1998;
 - (ii) ensure that all data downloaded from both the vehicle unit and driver card are kept for at least 12 months following recording and, should an inspecting officer request it, such data are accessible, either directly or remotely, from the premises of the undertaking;
- (b) for the purposes of this paragraph ‘downloaded’ means copied, together with the digital signature, from a part, or from a complete set, of data files recorded in the data memory of the vehicle unit or in the memory of a tachograph card, provided that this process does not alter or delete any stored data.

CHAPTER IV

EXCEPTIONS

Article 11

Articles 6 to 9 are subject to—

- (a) Schedule 3, paragraph 2, to the Transport Act 1998;
- (b) any provision made under Article 14(1) or (2).

Article 12

Provided that road safety is not thereby jeopardised and to enable the vehicle to reach a suitable stopping place, the driver may depart from Articles 6 to 9 to the extent necessary to ensure the safety of persons, of the vehicle or its load. The driver shall indicate the reason for such departure manually on the record sheet of the recording equipment or on a printout from the recording equipment or in the duty roster, at the latest on arrival at the suitable stopping place.

Article 13

Not used.

Article 14

1. Provided that the objectives set out in Article 1 are not prejudiced, the appropriate authority may by regulations, grant exceptions from the application of Articles 6 to 9 to transport operations carried out in exceptional circumstances.
2. In an urgent case the appropriate authority may grant a temporary exception by publishing a notice specifying:

- (a) the transport operations and circumstances to which the exception relates, and
- (b) the period for which the exception has effect, which may not exceed 30 days.

3. In this Article “the appropriate authority” means the Minister with responsibility for Transport.

Article 15

Not used.

CHAPTER V

CONTROL PROCEDURES AND SANCTIONS

Articles 16 to 19

Not used.

Article 20

1. The driver shall keep any documentation provided by an enforcement officer or a court concerning penalties imposed or the initiation of proceedings until such time as the same infringement of this Regulation can no longer lead to a second proceeding or penalty by virtue of this Regulation read with Part IVA of the Transport Act 1998.
2. The driver shall produce the evidence referred to in paragraph 1 upon request.
3. A driver who is employed or at the disposal of more than one transport undertaking shall provide sufficient information to each undertaking to enable it to comply with Chapter II.
4. In this Article “enforcement officer” means:
 - (a) police officer;
 - (b) transport inspector;
 - (c) an officer of the Transport Commission;
 - (d) an inspector appointed under section 10 of the Shop Hours Act; or
 - (e) a person authorised as an “officer” under Part IVA of the Transport Act 1998.

Articles 21 to 25

Not used.

CHAPTER 5A

SUPPLEMENTARY

Article 25

1. The Minister may make Regulations under this Regulation for the purpose of making consequential, supplementary, incidental, transitional or savings provisions.
2. Regulations made under paragraph 1 may make different provision for different purposes.

CHAPTER VI

FINAL PROVISIONS

Article 26

Regulation (EEC) No 3821/85 is hereby amended as follows:

1. Article 2 shall be replaced by the following:

'Article 2

For the purpose of this Regulation the definitions set out in Article 4 of 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 (*) shall apply.

(*) OJ L 102, 11.4.2006, p. 1',

2. Article 3(1), (2) and (3) shall be replaced as follows:

'1. Recording equipment shall be installed and used in vehicles registered in a Member State which are used for the carriage of passengers or goods by road, except the vehicles referred to in Article 3 of Regulation (EC) No 561/2006. Vehicles referred to in Article 16(1) of Regulation (EC) No 561/2006 and vehicles, which were exempt from the scope of application of Regulation (EEC) No 3820/85, but which are no longer exempt under Regulation (EC) No 561/2006 shall have until 31 December 2007 to comply with this requirement.

2. Member States may exempt vehicles mentioned in Articles 13(1) and (3) of Regulation (EC) No 561/2006 from application of this Regulation.

3. Member States may, after authorisation by the Commission, exempt from application of this Regulation vehicles used for the transport operations referred to in Article 14 of Regulation (EC) No 561/2006.;

3. Article 14(2) shall be replaced as follows:

'2. The undertaking shall keep record sheets and printouts, whenever printouts have been made to comply with Article 15(1), in chronological order and in a legible form for at least a year after their use and shall give copies to the drivers concerned who

request them. The undertaking shall also give copies of downloaded data from the driver cards to the drivers concerned who request them and the printed papers of these copies. The record sheets, printouts and downloaded data shall be produced or handed over at the request of any authorised inspecting officer.’;

4. Article 15 shall be amended as follows:

— in paragraph 1, the following subparagraph shall be added:

‘Where a driver card is damaged, malfunctions, or is not in the possession of the driver, the driver shall:

(a) at the start of his journey, print out the details of the vehicle the driver is driving, and shall enter onto that printout:

(i) details that enable the driver to be identified (name, driver card or driver’s licence number), including his signature;

(ii) the periods referred to in paragraph 3, second indent (b), (c) and (d);

(b) at the end of his journey, print out the information relating to periods of time recorded by the recording equipment, record any periods of other work, availability and rest undertaken since the printout that was made at the start of the journey, where not recorded by the tachograph, and mark on that document details that enable the driver to be identified (name, driver card or driver’s licence number), including the driver’s signature.’,

— paragraph 2, second subparagraph shall be replaced by the following:

‘When as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the periods of time referred to in paragraph 3, second indent (b), (c) and (d) shall:

(a) if the vehicle is fitted with recording equipment in conformity with Annex I, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet; or

(b) if the vehicle is fitted with recording equipment in conformity with Annex IB, be entered onto the driver card using the manual entry facility provided in the recording equipment.

Where there is more than one driver on board the vehicle fitted with recording equipment in conformity with Annex IB, each driver shall ensure that his driver card is inserted into the correct slot in the tachograph.’,

— paragraph 3(b) and (c) shall be replaced by the following:

‘(b) “other work” means any activity other than driving, as defined in Article 3(a) of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities (*), and also any work for the same or another employer within or outside of the transport sector, and must be recorded under

this sign ;

- (c) “availability” defined in Article 3(b) of Directive 2002/15/EC must be recorded under this sign .

(*) OJ L 80, 23.3.2002, p. 35.’

- paragraph 4 shall be deleted,
- paragraph 7 shall be replaced by the following:

‘7. (a) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex I, the driver must be able to produce, whenever an inspecting officer so requests:

- (i) the record sheets for the current week and those used by the driver in the previous 15 days;
- (ii) the driver card if he holds one, and
- (iii) any manual record and printout made during the current week and the previous 15 days as required under this Regulation and Regulation (EC) No 561/2006.

However, after 1 January 2008, the time periods referred to under (i) and (iii) shall cover the current day and the previous 28 days.

(b) Where the driver drives a vehicle fitted with recording equipment in conformity with Annex IB, the driver must be able to produce, whenever an inspecting officer so requests:

- (i) the driver card of which he is holder;
- (ii) any manual record and printout made during the current week and the previous 15 days as required under this Regulation and Regulation (EC) No 561/2006, and
- (iii) the record sheets corresponding to the same period as the one referred to in the previous subparagraph during which he drove a vehicle fitted with recording equipment in conformity with Annex I.

However, after 1 January 2008, the time periods referred to under (ii) shall cover the current day and the previous 28 days.

(c) An authorised inspecting officer may check compliance with Regulation (EC) No 561/2006 by analysis of the record sheets, of the displayed or printed data which have been recorded by the recording equipment or by the driver card or, failing this, by analysis of any other supporting document that justifies non-compliance with a provision, such as those laid down in Article 16(2) and (3).’

Article 27

Regulation (EC) No 2135/98 is hereby amended as follows:

1. Article 2(1)(a) shall be replaced by the following:

‘1. (a) From the 20th day following the day of publication of 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 (*) vehicles put into service for the first time shall be fitted with recording equipment in accordance with the requirements of Annex IB to Regulation (EEC) No 3821/85.

(*) OJ L 102, 11.4.2006, p. 1’;

2. Article 2(2) shall be replaced by the following:

‘2. Member States shall take the necessary measures to ensure that they are able to issue driver cards at the latest on the 20th day following the day of publication of Regulation (EC) No 561/2006.’

Article 28

Regulation (EEC) No 3820/85 is hereby repealed and replaced by this Regulation.

Notwithstanding, paragraphs 1, 2 and 4 of Article 5 of Regulation (EEC) No 3820/85 shall continue to apply until the dates set out in Article 15(1) of Directive 2003/59/EC.

Article 29

This Regulation shall enter into force on 11 April 2007, with the exception of Articles 10(5), 26(3) and (4) and 27, which shall enter into force on 1 May 2006.

SCHEDULE 2

(regulation 8)

**REGULATION (EU) No 165/2014 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL**

of 4 February 2014

on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

amended on several occasions. In order to ensure greater clarity, its main provisions should therefore be simplified and re-structured.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

- (2) Experience has shown that, in order to ensure the effectiveness and efficiency of the tachograph system, certain technical elements and control procedures should be improved.

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

- (3) Certain vehicles are subject to an exemption from the provisions of Regulation (EC) No 561/2006 of the European Parliament and of the Council ⁽⁴⁾. In order to ensure coherence, it should also be possible to exempt such vehicles from the scope of this Regulation.

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

- (4) Tachographs should be installed in vehicles to which Regulation (EC) No 561/2006 applies. Certain vehicles should be excluded from the scope of that Regulation in order to introduce some flexibility, namely vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying materials, equipment or machinery for the driver's use in the course of his work, and which are used only within a 100 km radius from the base of the undertaking, on condition that driving such vehicles does not constitute the driver's main activity. In order to ensure coherence between the relevant exemptions set out in Regulation (EC) No 561/2006, and to reduce the administrative burden on transport undertakings whilst respecting the objectives of that Regulation, certain maximum permissible distances set out in those exemptions should be revised.

Acting in accordance with the ordinary legislative

procedure ⁽²⁾, Whereas:

- (1) Council Regulation (EEC) No 3821/85 ⁽³⁾ lays down provisions concerning the construction, installation, use and testing of tachographs. It has been substantially

⁽¹⁾ OJ C 43, 15.2.2012, p. 79.

⁽²⁾ Position of the European Parliament of 3 July 2012 (OJ C 349 E, 29.11.2013, p. 105) and position of the Council at first reading of 15 November 2013 (OJ C 360, 10.12.2013, p. 66). Position of the European Parliament of 15 January 2014

⁽³⁾ Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8).

⁽⁴⁾ 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 (OJ L 102, 11.4.2006, p. 1).

- (5) The Commission will consider extending the period of validity of the adaptor for M1 and N1 vehicles until 2015 and give further consideration to a long-term solution for M1 and N1 vehicles before 2015.
- (6) The Commission should consider the inclusion of weight sensors in heavy goods vehicles and should assess the potential for weight sensors to contribute to improved compliance with road transport legislation.
- (7) The use of tachographs connected to a global navigation satellite system is an appropriate and cost-efficient means of recording automatically the position of a vehicle at certain points during the daily working period in order to support control officers during controls, and should therefore be provided for.
- (8) In its judgment in Case C-394/92 *Michielsen and Geybels Transport Service* ⁽¹⁾, the Court of Justice provided a definition of the term 'daily working period', and the control authorities should read the provisions of this Regulation in the light of that definition. The 'daily working period commences at the time when the driver switches on the tachograph following a weekly or daily rest period, or, if the daily rest is divided into separate periods, following a rest period of at least nine hours duration. It ends at the beginning of a daily rest period or, if the daily rest is divided into separate periods, at the beginning of a rest period extending over a minimum of nine consecutive hours.
- (9) Directive 2006/22/EC of the European Parliament and of the Council ⁽²⁾ requires Member States to carry out a minimum number of checks at the roadside. Remote communication between the tachograph and control authorities for roadside control purposes facilitates targeted roadside checks, making it possible to reduce the administrative burden created by random checks on transport undertakings, and should therefore be provided for.
- (10) Intelligent transport systems (ITS) can help to meet the challenges faced by the European transport policy, such as increasing road transport volumes and congestion, and rising energy consumption. Standardised interfaces should therefore be provided in tachographs in order to ensure their interoperability with ITS applications.
- (11) Priority should be given to the development of applications which help drivers to interpret the data recorded in the tachograph in order to enable them to comply with social legislation.
- (12) The security of the tachograph and its system is essential to ensure that trustworthy data is produced. Manufacturers should therefore design, test and continuously review the tachograph throughout its life cycle in order to prevent, detect and mitigate security vulnerabilities.
- (13) Field tests of a tachograph that has not yet been type-approved allow equipment to be tested in real-life situations before it is widely introduced, thereby allowing faster improvements. Field tests should therefore be permitted, on condition that participation in such tests and compliance with Regulation (EC) No 561/2006 is effectively monitored and controlled.
- (14) Given the importance of maintaining the highest possible security level, security certificates should be issued by a certification body recognised by the Management Committee within the framework of the 'Mutual Recognition Agreement of Information Technology Security Evaluation Certificates of the Senior Officials Group on Information Systems Security (SOG-IS).
- In the context of international relations with third countries, the Commission should not recognise any certification body for the purposes of this Regulation unless that body provides equivalent conditions of security evaluation as envisaged by the Mutual Recognition Agreement. In this respect, the advice of the Management Committee should be relied upon.
- (15) Fitters and workshops play an important role in the security of tachographs. It is therefore appropriate to lay down certain minimum requirements for their reliability and for approving and auditing them. Moreover, Member States should take appropriate measures to ensure that conflicts of interest between fitters or workshops and transport undertakings are prevented. Nothing in this Regulation prevents Member States from ensuring their approval, control and certification through the procedures laid down in Regulation (EC) No 765/2008 of the European Parliament and of the Council ⁽³⁾, provided that the minimum criteria set out in this Regulation are fulfilled.
- (16) In order to ensure more effective scrutiny and control of driver cards, and to facilitate the tasks of control officers, national electronic registers should be established, and provision should be made for the interconnection of those registers.

⁽¹⁾ [1994] ECR I-2497.

⁽²⁾ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

⁽³⁾ Regulation No (EC) 765/2008 of the European and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (17) When checking the uniqueness of driver cards, Member States should use the procedures included in Commission Recommendation 2010/19/EU⁽¹⁾.
- (18) Consideration should be given to the special situation in which a Member State should be able to provide a driver who does not have his normal residence in a Member State or in a country which is a contracting party to the European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport of 1 July 1970 ('the AETR Agreement') with a temporary, non-renewable driver card. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.
- (19) In addition, it should be possible for a Member State to issue driver cards to drivers resident on its territory even when the Treaties do not apply to certain parts thereof. In such cases, the Member States concerned are to fully apply the relevant provisions of this Regulation.
- (20) Control officers face continuous challenges as a result of changes to the tachograph and new manipulation techniques. In order to ensure more effective control, and to enhance the harmonisation of control approaches throughout the Union, a common methodology should be adopted for the initial and continuing training of control officers.
- (21) The recording of data by the tachograph, as well as developing technologies for the recording of position data, remote communication and the interface with ITS, will entail the processing of personal data. Therefore, the relevant Union rules, in particular those laid down in Directive 95/46/EC of the European Parliament and of the Council⁽²⁾ and Directive 2002/58/EC of the European Parliament and of the Council⁽³⁾, apply.
- (22) In order to allow for fair competition in the development of applications related to the tachograph, intellectual property rights and patents related to the transmission of data in or out of the tachograph should be available to all on a royalty-free basis.
- (23) Where applicable, the data exchanged during communication with the control authorities in the Member States should comply with relevant international standards, such as the suite of standards related to Dedicated Short-Range Communication established by the European Committee for Standardisation.
- (24) To ensure fair competition in the internal road transport market and to send a clear signal to drivers and transport undertakings, Member States should impose, in compliance with the categories of infringements defined in Directive 2006/22/EC, effective, proportionate, dissuasive and non-discriminatory penalties, without prejudice to the principle of subsidiarity.
- (25) Member States should ensure that the selection of vehicles for inspection is carried out without discrimination on grounds of the nationality of the driver, or of the country of registration or entry into service of the commercial vehicle.
- (26) In the interests of the clear, effective, proportionate and uniform implementation of social rules in road transport, Member States' authorities should apply the rules in a uniform manner.
- (27) Each Member State should inform the Commission of any discoveries it makes regarding the availability of fraudulent devices or installations to manipulate the tachograph, including those offered through the internet, and the Commission should inform all other Member States of those discoveries.
- (28) The Commission should continue to maintain its internet-based helpdesk, which allows drivers, transport undertakings, control authorities and approved fitters, workshops and vehicle manufacturers to submit questions and concerns related to the digital tachograph, including regarding new types of manipulations or fraud.
- (29) Through the adaptations of the AETR Agreement, the use of the digital tachograph has been made mandatory as regards vehicles registered in third countries which are signatories to the AETR Agreement. As those countries are directly affected by changes to the tachograph introduced by this Regulation, they should be able to participate in a dialogue on technical matters, including regarding the system for the exchange of information on driver cards and workshop cards. A Tachograph Forum should therefore be set up.

(1) Commission Recommendation 2010/19/EU of 13 January 2010 on the secure exchange of electronic data between Member States to check the uniqueness of driver cards that they issue (OJ L 9, 14.1.2010, p. 10).

(2) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

(3) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

- (30) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to requirements, display and warning functions and type-approval of tachographs, as well as to detailed provisions for smart tachographs; the procedures to be followed for carrying out field tests and the forms to be used in order to monitor those field tests; the standard form for the written statement giving reasons for seal removal; the common procedures and specifications necessary for the interconnection of electronic registers; and the methodology specifying the content of the initial and continuing training of control officers. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾.
- (31) The implementing acts adopted for the purpose of this Regulation, which will replace the provisions in Annex I B to Regulation (EEC) No 3821/85 and other implementing measures, should be adopted by 2 March 2016. However, if for some reason those implementing acts have not been adopted in time, transitional measures should safeguard the necessary continuity.
- (32) Implementing acts referred to in this Regulation should not be adopted by the Commission where the committee referred to in this Regulation delivers no opinion on the draft implementing act presented by the Commission.
- (33) In the context of the application of the AETR Agreement, references to Regulation (EEC) No 3821/85 should be understood as references to this Regulation. The Union will consider the appropriate steps to be taken within the United Nations Economic Commission for Europe to ensure the necessary coherence between this Regulation and the AETR Agreement.
- (34) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾ and delivered an opinion on 5 October 2011 ⁽³⁾.
- (35) Regulation (EEC) No 3821/85 should therefore be repealed,

(1) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(2) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

(3) OJ C 37, 10.2.2012, p. 6.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

PRINCIPLES, SCOPE AND REQUIREMENTS

Article 1

Subject-matter and principles

1. This Regulation sets out obligations and requirements in relation to the construction, installation, use, testing and control of tachographs used in road transport, in order to verify compliance with:

- (a) Regulation (EC) No 561/2006;
- (b) Part V of the Vehicle (Construction, Equipment and Maintenance) Regulations;
- (c) the Road Transport (Working Time) Regulations 2005.

Tachographs shall, as regards their construction, installation, use and testing, comply with the requirements of this Regulation.

This Regulation sets out the conditions and requirements under which the information and data, other than personal data, recorded, processed or stored by tachographs may be used for purposes other than the verification of compliance with the acts referred to in paragraph 1.

Article 2

Definitions

1. For the purposes of this Regulation, the definitions set out in Article 4 of Regulation (EC) No 561/2006 shall apply.

2. In addition to the definitions referred to in paragraph 1, for the purposes of this Regulation the following definitions shall apply:

- (a) 'tachograph or recording equipment means the equipment intended for installation in road vehicles to display, record, print, store and output automatically or semi-automatically details of the movement, including the speed, of such vehicles, in accordance with Article 4(3), and details of certain periods of activity of their drivers;
- (b) 'vehicle unit' means the tachograph excluding the motion sensor and the cables connecting the motion sensor. The vehicle unit may be a single unit or several units distributed in the vehicle, provided that it complies with the security requirements of this Regulation; the vehicle unit includes, among other things, a processing unit, a data memory, a time measurement function, two smart card interface devices for driver and co-driver, a printer, a display, connectors and facilities for entering the user's inputs;

- (c) 'motion sensor' means a part of the tachograph providing a signal representative of vehicle speed and/or distance travelled;
- (d) 'tachograph card means a smart card, intended for use with the tachograph, which allows identification by the tachograph of the role of the cardholder and allows data transfer and storage;
- (e) 'record sheet' means a sheet designed to accept and retain recorded data, to be placed in an analogue tachograph, and on which the marking devices of the analogue tachograph continuously inscribe the information to be recorded;
- (f) 'driver card means a tachograph card, issued by the competent authority to a particular driver, which identifies the driver and allows for the storage of driver activity data;
- (g) 'analogue tachograph' means a tachograph using a record sheet in accordance with this Regulation;
- (h) 'digital tachograph' means a tachograph using a tachograph card in accordance with this Regulation;
- (i) 'control card means a tachograph card issued by the competent authority to a national competent control authority which identifies the control body and, optionally, the control officer, and which allows access to the data stored in the data memory or in the driver cards and, optionally, in the workshop cards for reading, printing and/or downloading;
- (j) 'company card means a tachograph card issued by the competent authority to a transport undertaking needing to operate vehicles fitted with a tachograph, which identifies the transport undertaking and allows for the displaying, downloading and printing of the data, stored in the tachograph, which have been locked by that transport undertaking;
- (k) 'workshop card' means a tachograph card issued by the competent authority to designated staff of a tachograph manufacturer, a fitter, a vehicle manufacturer or a workshop, approved by the competent authority, which identifies the cardholder and allows for the testing, calibration and activation of tachographs, and/or downloading from them;
- (l) 'activation' means the phase in which the tachograph becomes fully operational and implements all functions, including security functions, through the use of a workshop card;
- (m) 'calibration' of a digital tachograph means updating or confirming vehicle parameters, including vehicle identification and vehicle characteristics, to be held in the data memory through the use of a workshop card;
- (n) 'downloading' from a digital tachograph means the copying, together with the digital signature, of a part, or of a complete set, of data files recorded in the data memory of the vehicle unit or in the memory of a tachograph card, provided that this process does not alter or delete any stored data;
- (o) 'event' means an abnormal operation detected by the digital tachograph which may result from a fraud attempt;
- (p) 'fault' means an abnormal operation detected by the digital tachograph which may result from an equipment malfunction or failure;
- (q) 'installation' means the mounting of a tachograph in a vehicle;
- (r) 'non-valid card means a card detected as faulty, or whose initial authentication failed, or whose start of validity date is not yet reached, or whose expiry date has passed;
- (s) 'periodic inspection' means a set of operations performed to check that the tachograph works properly, that its settings correspond to the vehicle parameters, and that no manipulation devices are attached to the tachograph;
- (t) 'repair' means any repair of a motion sensor or of a vehicle unit that requires the disconnection of its power supply, or its disconnection from other tachograph components, or the opening of the motion sensor or vehicle unit;
- (u) 'type-approval means a process to certify that the tachograph, its relevant components or the tachograph card to be introduced to market fulfil the requirements of this Regulation;
- (v) 'interoperability' means the capacity of systems and the underlying business processes to exchange data and to share information;
- (w) 'interface' means a facility between systems which provides the media through which they can connect and interact;
- (x) 'time measurement' means a permanent digital record of the coordinated universal date and time (UTC);
- (y) 'time adjustment' means an automatic adjustment of current time at regular intervals and within a maximum tolerance of one minute, or an adjustment performed during calibration;

(z) 'open standard' means a standard set out in a standard specification document available freely or at a nominal charge which it is permissible to copy, distribute or use for no fee or for a nominal fee;

(za) "control officer" means an officer authorised, by the Minister with responsibility for Transport under section 66A of the Transport Act 1998, to carry out functions for the purposes of Part IVA of the Transport Act 1998;

(zb) "equivalent EU regulation" means Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, as it has effect in EU law, as amended from time to time;

(zc) "competent authority" means the competent authority appointed for the purposes of the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008.

Article 3

Scope

1. Tachographs shall be installed and used in vehicles which are used for the carriage of passengers or goods by road and to which Regulation (EC) No 561/2006 applies.

2. This Regulation is subject to-

(a) paragraph 2 of Schedule 3 to the Transport Act 1998;

(b) any provision made under paragraph 3.

3. The Minister may by regulations except from the application of this Regulation vehicles used for transport operations which are being, or have been, granted an exception by regulations under Article 14(1) of Regulation (EC) No 561/2006. An exception granted under regulations under this Article ceases to have effect when the exception granted under regulations under Article 14(1) of Regulation (EC) No 561/2006 ceases to have effect, unless the regulations under this Article cease to have effect first.

In an urgent case Minister may grant a temporary exception in respect of vehicles which are being, or have been, granted an exception under Article 14(2) of Regulation (EC) No 561/2006 by publishing a notice specifying:

(a) the transport operations and circumstances to which the exception relates, and

(b) the period for which the exception has effect, which may not exceed 30 days.

Article 4

Requirements and data to be recorded

1. Tachographs, including external components, tachograph cards and record sheets shall fulfil stringent technical and other requirements such as to permit the proper implementation of this Regulation.

2. Tachographs and tachograph cards shall comply with the following requirements.

They shall:

— record data related to the driver, driver activity

and the vehicle which shall be accurate and reliable;

— be secure, in particular guaranteeing the integrity and the origin of the source of data recorded by and retrieved from vehicle units and motion sensors;

— be interoperable as between the various generations of vehicle units and tachograph cards;

— allow for efficient verification of compliance with this Regulation and other applicable legal acts;

— be user-friendly.

3. Digital tachographs shall record the following data:

(a) the distance travelled, and the speed of the vehicle;

(b) time measurement;

(c) position points as referred to in Article 8(1);

(d) the identity of the driver;

(e) the activity of the driver;

(f) control, calibration and tachograph repair data, including the identity of the workshop;

(g) events and faults.

4. Analogue tachographs shall record at least the data referred to in points (a), (b) and (e) of paragraph 3.

5. Access to the data stored in the tachograph and the tachograph card may be granted at all times to:

(a) the competent control authorities;

(b) the relevant transport undertaking so that it can comply with its legal obligations, in particular as set out in Articles 32 and 33.

6. The downloading of data shall be performed with the minimum of delay to transport undertakings or drivers.

7. Data recorded by the tachograph which may be transmitted in or out of the tachograph, whether wirelessly or electronically, shall be in the form of publicly available protocols as defined in open standards.

8. To ensure that tachographs and tachograph cards comply with the principles and requirements of this Regulation, and in particular of this Article, the Minister may, by regulations, make detailed provisions necessary for the application of this Article, in particular provisions which provide for the technical means of how to fulfil those requirements.

9. The detailed provisions referred to in paragraph 8 shall, where appropriate, be based on standards and shall guarantee interoperability and compatibility between the various generations of vehicle units and all tachograph cards.

Article 5

Functions of the digital tachograph

Digital tachographs shall ensure the following functions:

- speed and distance measurement;
- monitoring driver activities and driving status;
- monitoring the insertion and withdrawal of tachograph cards;
- recording of drivers' manual entries;
- calibration;
- automatic recording of the position points referred to in Article 8(1);
- monitoring control activities;
- detection and recording of events and faults;
- reading from data memory and recording and storing in data memory;
- reading from tachograph cards and recording and storing in tachograph cards;
- displaying, warning, printing and downloading data to external devices;
- time adjustment and measurement;
- remote communication;
- company locks management;
- built-in and self-tests.

Article 6

Display and warning

1. Information contained in digital tachographs and tachograph cards relating to vehicle activities and to drivers' and co-drivers shall be displayed in a clear, unambiguous and ergonomic way.

2. The following information shall be displayed:

- (a) time;
- (b) mode of operation;
- (c) driver activity:
 - if the current activity is driving, the driver's current continuous driving time and the current cumulative break time,
 - if the current activity is availability/other work/rest or break, the current duration of that activity (since it was selected) and the current cumulative break time;
- (d) data related to warnings;
- (e) data related to menu access.

Additional information may be displayed, provided that it is clearly distinguishable from the information required in this paragraph.

- 3. Digital tachographs shall warn drivers when detecting any event and/or fault, and before and at the time of exceeding the maximum allowed continuous driving time, in order to facilitate compliance with the relevant legislation.
- 4. Warnings shall be visual and may also be audible. Warnings shall have a duration of at least 30 seconds, unless they are acknowledged by the user by pushing any key of the tachograph. The reason for the warning shall be displayed and shall remain visible until acknowledged by the user using a specific key or command of the tachographs
- 5. To ensure that tachographs comply with the requirements of this Article concerning display and warnings, the Minister may, by regulations, make detailed provisions necessary for the application of this Article.
- 6.

Article 7

Not used.

CHAPTER II
SMART TACHOGRAPH

Article 8

Recording of the position of the vehicle at certain points during the daily working period

1. In order to facilitate the verification of compliance with the relevant legislation, the position of the vehicle shall be recorded automatically at the following points, or at the closest point to such places where the satellite signal is available:

the starting place of the daily working period;

every three hours of accumulated driving time; the ending place of the daily working period.

For that purpose, vehicles registered for the first time 36 months after the entry into force of the detailed provisions referred to in Article 11 shall be fitted with a tachograph connected to a positioning service based on a satellite navigation system.

2. As regards the connection of the tachograph to a positioning service based on a satellite navigation system, as referred to in paragraph 1, use shall be made only of service connections that exploit a positioning service free of charge. No position data other than those expressed, wherever possible, in geographical coordinates for determining the points referred to in paragraph 1, shall be permanently stored in the tachograph. Position data which need to be temporarily stored in order to allow for the automatic recording of the points referred to in paragraph 1 or to corroborate the motion sensor shall not be accessible to any user and shall automatically be deleted once they are no longer required for those purposes.

Article 9

Remote early detection of possible manipulation or misuse

1. In order to facilitate targeted roadside checks by the competent control authorities, tachographs installed in vehicles registered for the first time 36 months after the entry into force of the detailed provisions referred to in Article 11 shall be able to communicate to those authorities while the vehicle is in motion.

2. 15 years after newly registered vehicles are required to have a tachograph as provided for in this Article and in Articles 8 and 10, the competent authority must ensure that control authorities are equipped to an appropriate extent with remote early detection equipment necessary to permit the data communication referred to in this Article, taking into account their specific enforcement requirements and strategies.

3. The communication referred to in paragraph 1 shall be established with the tachograph only when so requested by the equipment of the control authorities. It shall be secured to ensure data integrity and authentication of the recording and control equipment. Access to the data communicated shall be restricted to control authorities authorised to check infringements of Regulation (EC) No 561/2006 and of this Regulation and to workshops in so far as it is necessary to verify the correct functioning of the tachograph.

4. The data exchanged during communication shall be limited to the data necessary for the purpose of targeted roadside checks of vehicles with a potentially manipulated or misused tachograph. Such data shall relate to the following events or data recorded by the tachograph:

- the latest security breach attempt,
- the longest power supply interruption,
- sensor fault,
- motion data error,
- vehicle motion conflict,
- driving without a valid card,
- card insertion while driving,
- time adjustment data,
- calibration data including the dates of the two latest calibrations,
- vehicle registration number,
- speed recorded by the tachograph.

5. The data exchanged shall be used for the sole purpose of verifying compliance with this Regulation. They shall not be transmitted to entities other than authorities controlling driving and rest periods and to judicial bodies, in the framework of an ongoing judicial procedure.

6. The data may only be stored by the control authorities for the duration of a roadside check, and shall be deleted at the latest three hours after their communication, unless the data indicate a possible manipulation or misuse of the tachograph. If, in the course of the ensuing roadside check, the manipulation or misuse is not confirmed, the data transmitted shall be deleted.

7. Transport undertakings which operate vehicles shall be responsible for informing drivers of the possibility of remote communication for the purpose of early detection of possible manipulation or misuse of tachographs.

8. In no case shall a remote early detection communication of the type described in this Article lead to automatic fines or penalties for the driver or transport undertaking. The competent control authority, on the basis of the data exchanged, may decide to carry out a check on the vehicle and the tachograph. The result of the remote communication shall not prevent control authorities from carrying out random roadside checks based on a risk rating system based on the relative number and severity of infringements of Regulations (EC) 561/2006 of the European Parliament and of the Council that an individual undertaking has committed.

Article 10

Interface with Intelligent Transport Systems

The tachographs of vehicles registered for the first time 36 months after the entry into force of the detailed provisions referred to in Article 11 may be equipped with standardised interfaces allowing the data recorded or produced by tachograph to be used in operational mode, by an external device, provided that the following conditions are met:

- (a) the interface does not affect the authenticity and the integrity of the data of the tachograph;
- (b) the interface complies with the detailed provisions of Article 11;
- (c) the external device connected to the interface has access to personal data, including geolocation data, only after the verifiable consent of the driver to whom the data relates.

Article 11

Detailed provisions for smart tachographs

In order to ensure that smart tachographs comply with the principles and requirements set out in this Regulation, the Minister may, by regulations, make detailed provisions necessary for the application of Articles 8, 9 and 10, excluding any provisions which would provide for the recording of additional data by the tachograph.

The detailed provisions referred to in the first paragraph shall:

(a) in relation to the performance of the functions of the smart tachograph as referred to in this Chapter, include the necessary requirements to guarantee the security, accuracy and reliability of data as provided to the tachograph by the satellite positioning service and the remote communication technology referred to in Articles 8 and 9;

(b) specify the various conditions and requirements for the satellite positioning service and the remote communication technology referred to in Articles 8 and 9 to be either outside or embedded in the tachograph and, when outside, specify the conditions for the use of the satellite positioning signal as a second motion sensor;

(c) specify the necessary standards for the interface referred to in Article 10. Such standards may include a provision on the distribution of access rights for drivers, workshops and transport undertakings, and control roles for the data recorded by the tachograph, which control roles shall be based on an authentication/authorisation mechanism defined for the interface, such as a certificate for each level of access and subject to the technical feasibility thereof.

CHAPTER
III

TYPE-APPROVAL

*Article
11A*

Requirement for Gibraltar, UK or EU type-approval

1. A vehicle unit, motion sensor, model record sheet or tachograph card shall, where installed or used in a vehicle to which Article 3 applies, be of a type approved in accordance with:

- (a) this Chapter and the Tachographs (Miscellaneous Provisions) Regulations 2015 (“the 2015 Regulations”); or
- (b) Chapter III of the United Kingdom’s EU retained law for Regulation (EU) No 165/2014 and the Motor Vehicles (Type Approval) Regulations 1980; or
- (c) Chapter 3 of the equivalent EU Regulation.

2. In this Chapter a reference to “Gibraltar type-approval” is a reference to type-approval in accordance with this Chapter and the 2015 Regulations, and related expressions are to be read accordingly.

Article
12

Applications for Gibraltar type-approval: certificates

1. An application for Gibraltar type-approval shall be made to the competent authority in such form as required for the purpose by the competent authority and shall include the information in subparagraph 3.

2. *not used.*

3. The application shall be accompanied by:

(a) a security certificate;

(b) a functionality certificate;

(c) an interoperability certificate;

(d) in the case of an application relating to a vehicle unit, information about the seals.

4. A security certificate shall be issued by a person appointed by the competent authority (which may be a person outside Gibraltar).

5. A functionality certificate shall be issued by the competent authority.

6. An interoperability certificate shall be issued by a person appointed by the competent authority (which may be a person outside the Gibraltar).

7. In respect of tachographs, their relevant components, and tachograph cards:

(a) the security certificate shall certify the following for the vehicle unit, tachograph cards, motion sensor, and connection to the satellite navigation system receiver when the satellite navigation system is not embedded in the vehicle units:

(i) compliance with security targets;

(ii) fulfilment of the following security functions: identification and authentication, authorisation, confidentiality, accountability, integrity, audit, accuracy and reliability of service;

(b) the functional certificate shall certify that the tested item fulfils the appropriate requirements in terms of functions performed, environmental characteristics, electromagnetic compatibility characteristics, compliance with physical requirements and compliance with other applicable standards;

(c) the interoperability certificate shall certify that the tested item is fully interoperable with the necessary tachographs or tachograph card models.

8. The competent authority shall give notice to manufacturers to ensure that a manufacturer is required to give notice to the competent authority of any alterations in software or hardware of a tachograph or in the nature of materials used for its manufacture.

9. Where notice of alterations is given to the competent authority, the competent authority may require an update or a confirmation of the relevant functional, security or interoperability certificates, before confirming to the manufacturer the extension of the type-approval or taking action under regulation 9 of the 2015 Regulations.

Article 17

Approval of record sheets

1. For the purpose of an application for Gibraltar type-approval of a model record sheet, the form of information document issued by the competent authority (as mentioned in Article 12) shall require that:

(a) an applicant for Gibraltar type-approval of a model record sheet states on the application form the type or types of analogue tachograph on which the record sheet in question is designed to be used; and

(b) suitable equipment of such type or types is required in connection with the application for type-approval, for the purpose of testing the record sheet.

2. The competent authority shall indicate on the approval certificate for the model record sheet the type or types of analogue tachograph on which that model record sheet may be used.

Article 20

Security

1. Manufacturers shall design, test and review vehicle units, motion sensors and tachograph cards put into production so as to detect vulnerabilities arising in all phases of the product life-cycle, and shall prevent or mitigate their possible exploitation. The frequency of tests shall be at least every two years.

2. Manufacturers shall submit the documentation necessary for vulnerability analysis to the person who, under Article 12, is responsible for issuing security certificates.

3. If, in the course of the tests referred to in paragraph 1, vulnerabilities in system elements (vehicle units, motion sensors and tachograph cards) are detected, no security certificate is to be issued and, accordingly, no type-approval application is to be considered (see Article 12). If vulnerabilities are detected in the course of the tests referred to in paragraph 1 for elements already on the market, the manufacturer shall inform the competent authority. The competent authority shall take all measures necessary to ensure that the problem is addressed, in particular by the manufacturer (including, where necessary, the withdrawal of type-approval).

*Article
21*

Field test

Drivers and transport undertakings participating in a field test authorised under section 66CA of the Transport Act 1998 shall comply with the requirements of Regulation (EC) No 561/2006. In order to demonstrate such compliance, drivers shall follow the procedure set out in Article 35(2) of this Regulation.

CHAPTER IV
**INSTALLATION AND
INSPECTION**

Article 22

Installation and repair

1. Tachographs may be installed or repaired only by fitters, workshops or vehicle manufacturers approved by the competent authority for that purpose in accordance with Article 24 (but see Article 25A).

2. Approved fitters, workshops or vehicle manufacturers shall, in accordance with the specifications included in the type-approval certificate, seal the tachograph after having verified that it is functioning properly, and, in particular, in such a way as to ensure that no manipulation device can tamper with or alter the data recorded.

3. The approved fitter, workshop or vehicle manufacturer shall place a special mark on the seals which it affixes and, in addition, for digital tachographs, shall enter the electronic security data for carrying out authentication checks.

4. For the purpose of certifying that the installation of the tachograph took place in accordance with the requirements of this Regulation, an installation plaque shall be affixed in such a way as to be clearly visible and easily accessible.

5. Tachograph components shall be sealed as specified in the type-approval certificate. Any connections to the tachograph which are potentially vulnerable to tampering, including the connection between the motion sensor and the gearbox, and the installation plaque where relevant, shall be sealed.

A seal shall be removed or broken only:

- by fitters or workshops approved by the competent authorities under Article 24 for repair, maintenance or recalibration purposes of the tachograph, or by control officers properly trained and, where required authorised, for control purposes;
- for the purpose of vehicle repair or modification which affects the seal. In such cases, a written statement stating the date and time at which the seal was broken and giving the reasons for the seal removal shall be kept on board the vehicle. The Minister may by regulations make provision about the form of the written statement.

In all cases, the seals shall be replaced by an approved fitter or workshop without undue delay and at the latest within seven days of their removal.

Before replacing seals, a check and calibration of the tachograph shall be performed by an approved workshop.

Article 23

Inspections of tachographs

1. Tachographs shall be subject to regular inspection by approved workshops. Regular inspections shall be carried out at least every two years.

2. The inspections referred to in paragraph 1 shall check at least the following:

- the tachograph is correctly fitted and appropriate for the vehicle;
- the tachograph is working properly;
- the tachograph carries the type-approval mark;
- the installation plaque is affixed;
- all seals are intact and effective;
- there are no manipulation devices attached to the tachograph or traces of the use of such devices;
- the tyre size and the actual circumference of the tyres.

3. Workshops shall draw up an inspection report in cases where irregularities in the functioning of the tachograph had to be remedied, whether as a result of

a periodic inspection or of an inspection carried out at the specific request of the competent authority. They shall keep a list of all inspection reports drawn up.

4. Inspection reports shall be retained by the workshop for a minimum period of two years from the time the report was made. Upon request from the competent authority, the workshop shall make available the reports of inspections and calibrations carried out during that period.

Article 24

Approval of fitters, workshops and vehicle manufacturers

1. The competent authority shall approve, regularly control and certify the fitters, workshops and vehicle manufacturers which may carry out installations, checks, inspections and repairs of tachographs.

2. The competent authority shall ensure that fitters, workshops and vehicle manufacturers approved controlled and certified under paragraph 1 are competent and reliable. For that purpose, the competent authority shall establish and publish a set of clear national procedures and shall ensure that the following minimum criteria are met:

- (a) the staff are properly trained;
- (b) the equipment necessary to carry out the relevant tests and tasks is available;
- (c) the fitters, workshops and vehicle manufacturers are of good repute.

3. Audits of approved fitters or workshops shall be carried out as follows:

- (a) approved fitters or workshops shall be subject, at least every two years, to an audit of the procedures they apply when handling tachographs. The audit shall focus in particular on the security measures taken and the handling of workshop cards. The competent authority may carry out these audits without conducting a site visit;
- (b) unannounced technical audits of approved fitters or workshops shall also take place in order to check the calibrations, inspections and installations carried out. Those audits shall cover at least 10 % of the approved fitters and workshops annually.

4. The competent authority shall take appropriate measures to prevent conflicts of interests between fitters or workshops and transport undertakings. In particular, where there is a serious risk of a conflict of interests, additional specific measures shall be taken to ensure that the fitter or workshop complies with this Regulation.

5. *Not used.*

6. The competent authority shall withdraw approvals, either temporarily or permanently, from fitters, workshops and vehicle manufacturers which fail to meet their obligations under this Regulation.

Article

25

Workshop cards

1. The period of validity of workshop cards shall not exceed one year. When renewing the workshop card, the competent authority shall ensure that the criteria listed in Article 24(2) are met by the fitter, workshop or vehicle manufacturer.

2. The competent authority shall renew a workshop card within 15 working days after receipt of a valid renewal request and all the necessary documentation. If a workshop card is damaged, malfunctions, or is lost or stolen, the competent authority shall supply a replacement card within five working days of receiving a detailed request to that effect. Competent authority shall maintain a register of lost, stolen or defective cards.

3. If the competent authority withdraws the approval of a fitter, workshop or vehicle manufacturer as provided for in Article 24, the competent authority shall also withdraw the workshop cards issued thereto.

4. The competent authority shall take all necessary measures to prevent the workshop cards distributed to approved fitters, workshops and vehicle manufacturers from being falsified.

Article 25A

Recognition of UK and EU approved fitters, workshops and vehicle manufacturers

1. Fitters, workshops and vehicle manufacturers which are approved by the United Kingdom in accordance with the United Kingdom's EU retained law for Regulation (EU) No 165/2014 and the Motor Vehicles (Type Approval) Regulations 1980 or an EU member

State in accordance with Article 24 of the equivalent EU Regulation ("EU approved fitters, workshops and vehicle manufacturers") shall be treated for the purposes of this Regulation as if they were approved by the competent authority in accordance with Article 24 of this Regulation.

2. The competent authority is not required by Article 24(1) of this Regulation to control or certify EU approved fitters, workshops and vehicle manufacturers and the following provisions of this Regulation do not apply in relation to EU approved fitters, workshops and vehicle manufacturers:

- (a) Article 2(2)(k);
- (b) Article 24(2) to (6);
- (c) Article 25.

CHAPTER V
DRIVER CARDS

Article 26

Issuing of driver cards

1. A driver card is to be issued by the competent authority on request to a person whose normal residence is in Gibraltar. A driver's card is to be issued within one month of the receipt by the competent authority of the request and all necessary documentation.

2. For the purposes of this Article, 'normal residence' means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a place different from their personal ties and who consequently lives in turn in different places shall be regarded as being the place of their personal ties, provided that such person returns there regularly. This last condition need not be complied with where the person is living in a place in order to carry out a fixed-term assignment.

3. Drivers shall give proof of their normal residence by any appropriate means, such as their passport, identity card or any other valid document. Where the competent authority has doubts as to the validity of a statement as to normal residence, or for the purpose of certain specific controls, the competent authority may request any additional information or evidence.

4. In duly justified and exceptional cases, the competent authority may issue a temporary and non-renewable driver card valid for a maximum period of 185 days to a driver who does not have his normal residence in Gibraltar or in a State which is a Contracting Party to the AETR Agreement, provided that such driver is in a labour law relationship with an undertaking established in Gibraltar and, in so far as Regulation (EC) No 1072/2009 of the European Parliament and of the Council ⁽¹⁾ applies, presents a driver attestation as referred to in that Regulation.

5. The competent authority shall take appropriate measures to ensure that an applicant does not already hold a valid driver card and shall personalise the driver card, ensuring that its data are visible and secure.

6. The driver card shall not be valid for more than five years.

7. A valid driver card shall not be withdrawn or suspended unless the competent authority finds that the card has been falsified, or the driver is using a card of which he is not the holder, or the card held has been obtained on the basis of false declarations and/or forged documents.

8. The competent authority shall take all necessary measures to prevent driver cards from being falsified.

9. *Not used.*

(1) Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market (OJ L 300, 14.11.2009, p. 72).

Article 27

Use of driver cards

1. The driver card is personal.
2. A driver may hold no more than one valid driver card, and is only authorised to use his own personalised driver card. A driver shall not use a driver card which is defective or which has expired.

Article 28

Renewal of driver cards

1. Where a driver wishes to renew his driver card, he shall apply to the competent authority not later than 15 working days before the expiry date of the card.
2. Not used.
3. In the event of a request for the renewal of a card which is imminently about to expire, the competent authority shall supply a new card before the expiry date, provided that the request was sent within the time-limits laid down in paragraph 1.

Article 29

Stolen, lost or defective driver cards

1. The competent authority shall keep records of issued, stolen, lost or defective driver cards for a period at least equivalent to their period of validity.
2. If a driver card is damaged or if it malfunctions, the driver shall return it to the competent authority. Theft of the driver card shall be formally declared to the competent authority.
3. Any loss of the driver card shall be reported in a formal declaration to the competent authority.
4. If the driver card is damaged, malfunctions or is lost or stolen, the driver shall, within seven calendar days, apply for its replacement to the competent authority. The competent authority shall supply a replacement card within eight working days after receipt of a detailed request to that effect.
5. In the circumstances set out in paragraph 4, the driver may continue to drive without a driver card for a maximum period of 15 calendar days or for a longer period if this is necessary for the vehicle to return to the premises where it is based, provided that the driver can prove the impossibility of producing or using the card during that period.

Article 30

Recognition of UK and EU driver cards

Driver cards issued by the United Kingdom and member States shall be recognised.

Article 31

Not used

CHAPTER VI

USE OF EQUIPMENT

Article 32

Correct use of tachographs

1. Transport undertakings and drivers shall ensure the correct functioning and proper use of digital tachographs and driver cards. Transport undertakings and drivers using analogue tachographs shall ensure their correct functioning and the proper use of record sheets.

2. Digital tachographs shall not be set in such a way that they automatically switch to a specific category of activity when the vehicle's engine or ignition is switched off, unless the driver remains able to choose manually the appropriate category of activity.

3. It shall be forbidden to falsify, conceal, suppress or destroy data recorded on the record sheet or stored in the tachograph or on the driver card, or print-outs from the tachograph. Any manipulation of the tachograph, record sheet or driver card which could result in data and/or printed information being falsified, suppressed or destroyed shall also be prohibited. No device which could be used to this effect shall be present on the vehicle.

4. Vehicles shall not be fitted with more than one tachograph, except for the purposes of the field tests referred to in Article 21.

Article 33

Responsibility of transport undertakings

1. Transport undertakings shall be responsible for ensuring that their drivers are properly trained and instructed as regards the correct functioning of tachographs, whether digital or analogue, shall make regular checks to ensure that their drivers make correct use thereof, and shall not give to their drivers any direct or indirect incentives that could encourage the misuse of tachographs.

Transport undertakings shall issue a sufficient number of record sheets to drivers of vehicles fitted with analogue tachographs, taking into account the fact that record sheets are personal in character, the length of the period of service and the possible need to replace record sheets which are damaged or have been taken by a control officer. Transport undertakings shall issue to drivers only record sheets of an approved model suitable for use in the equipment installed in the vehicle.

Where a vehicle is fitted with a digital tachograph, the transport undertaking and the driver shall ensure that, taking into account the length of the period of service, the printing of data from the tachograph at the request of a control officer can be carried out correctly in the event of an inspection.

2. Transport undertakings shall keep record sheets and printouts, whenever printouts have been made to comply with Article 35, in chronological order and in a legible form, for at least a year after their use, and shall give copies to the drivers concerned who request them. Transport undertakings shall also give copies of data downloaded from driver cards to the drivers concerned who request them, together with printed paper versions of those copies. Record sheets, printouts and downloaded data shall be produced or handed over at the request of any control officer.

Article 34

Use of driver cards and record sheets

1. Drivers shall use record sheets or driver cards every day on which they are driving, starting from the moment they take over the vehicle. The record sheet or driver card shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised. No record sheet or driver card may be used to cover a period longer than that for which it is intended.

2. Drivers shall adequately protect the record sheets or driver cards, and shall not use dirty or damaged record sheets or driver cards.

3. When, as a result of being away from the vehicle, a driver is unable to use the tachograph fitted to the vehicle, the periods of time referred to in points (ii), (iii) and (iv) of paragraph 5(b) shall:





- (a) if the vehicle is fitted with an analogue tachograph, be entered on the record sheet, either manually, by automatic recording or other means, legibly and without dirtying the record sheet; or
- (b) if the vehicle is fitted with a digital tachograph, be entered onto the driver card using the manual entry facility provided for in the tachograph.

Drivers are not required to present forms attesting to their activities while away from the vehicle.

4. Where there is more than one driver on board a vehicle fitted with a digital tachograph, each driver shall ensure that his driver card is inserted into the correct slot in the tachograph.

Where there is more than one driver on board a vehicle fitted with an analogue tachograph, the drivers shall amend the record sheets as necessary, so that the relevant information is recorded on the record sheet of the driver who is actually driving.

5. Drivers shall:

- (a) ensure that the time recorded on the record sheet corresponds to the official time in the country of registration of the vehicle;
- (b) operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:
 - (i) under the sign : driving time,
 - (ii) under the sign  'other work', which means any activity other than driving, as defined in point (a) of Article 3 of Directive 2002/15/EC, and also any work for the same or another employer within or outside of the transport sector,
 - (iii) under the sign : 'availability', as defined in point (b) of Article 3 of Directive 2002/15/EC,
 - (iv) under the sign : breaks or rest.

6. Each driver of a vehicle fitted with an analogue tachograph shall enter the following information on his record sheet:

- (a) on beginning to use the record sheet — his surname and first name;
- (b) the date and place where use of the record sheet begins and the date and place where such use ends;
- (c) the registration number of each vehicle to which the driver is assigned, both at the start of the first journey recorded on the record sheet and then, in the event of a change of vehicle, during use of the record sheet;
- (d) the odometer reading:
 - (i) at the start of the first journey recorded on the record sheet,
 - (ii) at the end of the last journey recorded on the record sheet,
 - (iii) in the event of a change of vehicle during a working day, the reading on the first vehicle to which the driver was assigned and the reading on the next vehicle;
- (e) the time of any change of vehicle.

Article 35

Damaged driver cards and record sheets

1. In the event of damage to a record sheet bearing recordings or to a driver card, drivers shall keep the damaged record sheet or driver card together with any spare record sheet used to replace it.

2. Where a driver card is damaged, malfunctions, or is lost or stolen, the driver shall:

- (a) at the start of his journey, print out the details of the vehicle he is driving, and enter on that printout:
 - (i) details that enable the driver to be identified (name, driver card or driving licence number), including his signature;
 - (ii) the periods referred to in points (ii), (iii) and (iv) of Article 34(5)(b);
- (b) at the end of the journey, print out the information relating to periods of time recorded by the tachograph, record any periods of other work, availability and rest taken since the printout made at the start of the journey, where not recorded by the tachograph, and mark on that document details enabling the driver to be identified (name, driver card or driving licence number), including the driver's signature.

Article 36

Records to be carried by the driver

1. Where a driver drives a vehicle fitted with an analogue tachograph, he shall be able to produce, whenever a control officer so requests:

- (i) the record sheets for the current day and those used by the driver in the previous 28 days,
- (ii) the driver card, if one is held, and
- (iii) any manual records and printouts made during the current day and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006.

2. Where the driver drives a vehicle fitted with a digital tachograph, he shall be able to produce, whenever a control officer so requests:

- (i) his driver card,
- (ii) any manual records and printouts made during the current day and the previous 28 days as required under this Regulation and Regulation (EC) No 561/2006,

- (iii) the record sheets corresponding to the same period as that referred to in point (ii) during which he drove a vehicle fitted with an analogue tachograph.

Article 37

Procedures in the event of malfunctioning equipment

1. In the event of the breakdown or faulty operation of a tachograph, the transport undertaking shall have it repaired by an approved fitter or workshop, as soon as circumstances permit.

If the vehicle is unable to return to the transport undertaking's premises within a period of one week calculated from the day of the breakdown or of the discovery of defective operation, the repair shall be carried out en route.

2. While the tachograph is unserviceable or malfunctioning, the driver shall mark data enabling him to be identified (name, driver card or driving licence number), including a signature, as well as the information for the various periods of time which are no longer recorded or printed out correctly by the tachograph:

- (a) on the record sheet or sheets, or
- (b) on a temporary sheet to be attached to the record sheet or to be kept together with the driver card.

CHAPTER VII

ENFORCEMENT AND SANCTIONS

Article 38

Control officers

1. In order to monitor effectively compliance with this Regulation, sufficient equipment and appropriate legal powers shall be made available to control officers to enable them to carry out their duties in accordance with this Regulation. That equipment shall include, in particular:

- (a) control cards allowing access to data recorded in tachographs and in tachograph cards, and optionally in workshop cards;
- (b) the tools necessary to download data files from vehicle units and tachograph cards and to be able to analyse such data files and printouts from digital tachographs in combination with record sheets or charts from analogue tachographs.

2. If, after having carried out a check, control officers find sufficient evidence leading to reasonable suspicion of fraud, they shall be empowered to direct

the vehicle to an authorised workshop to perform further tests in order to check, in particular, that the tachograph:

- (a) works properly;
- (b) records and stores data correctly, and that the calibration parameters are correct.

3. Control officers shall be empowered to request authorised workshops to perform the tests referred to in paragraph 2 and specific tests designed to detect the presence of manipulation devices. If manipulation devices are detected, the equipment, including the device itself, the vehicle unit or its components, and the driver card, may be removed from the vehicle and may be used as evidence in accordance with rules of procedure relating to the handling of such evidence.

4. Control officers shall, where appropriate, make use of the possibility to check tachographs and driver cards which are on site during a check of the premises of undertakings.

Article 39

Training of control officers

1. The competent authority shall ensure that control officers are appropriately trained for the analysis of the data recorded and the checking of tachographs in order to achieve efficient and harmonised control and enforcement.

2. *Not used.*

3. The Minister may, by regulations, adopt measures specifying the content of the initial and continuing training of control officers, including training in relation to techniques to target controls and to detect manipulation devices and fraud. Those measures may include guidelines to facilitate the implementation of the relevant provisions of this Regulation and of Regulation (EC) No 561/2006.

Article 40

Not used

Article 41

Not used

CHAPTER VIIIA

REGULATIONS UNDER THIS REGULATION

Article 41A

Regulations under this Regulation

Regulations made under this Regulation may:

- (a) make consequential, supplementary, incidental transitional, transitory or saving provision;
- (b) make different provision for different purposes.

Articles 42 to 44

Not used

Article 45

Amendment of Regulation (EC) No 561/2006

Regulation (EC) No 561/2006 is hereby amended as follows:

(1) in Article 3, the following point is inserted after point (a):

‘(aa) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used for carrying materials, equipment or machinery for the driver’s use in the course of his work, and which are used only within a 100 km radius from the base of the undertaking and on the condition that driving the vehicle does not constitute the drivers main activity;’

(2) Article 13(1) is amended as follows:

(a) in points (d), (f) and (p), the words ‘50 kilometre or ‘50 km’ are replaced by the words ‘100 km’;

(b) the first subparagraph of point (d) is replaced by the following:

‘(d) vehicles or combinations of vehicles with a maximum permissible mass not exceeding 7,5 tonnes used by universal service providers as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (*) to deliver items as part of the universal service.

(*) OJ L 15, 21.1.1998, p. 14.’

Article 46
Not used

Done at Strasbourg, 4 February 2014.

For the European Parliament
The President
M. SCHULZ

Article 47

Repeal

Regulation (EEC) No 3821/85 is hereby repealed. References to the repealed Regulation shall be construed as references to this Regulation.

Article 48

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

It shall subject to the transitional measures in Article 46, apply with effect from 2 March 2016. However, Articles 24, 34 and 45 shall apply with effect from 2 March 2015.

For the Council
The President

E. VENIZELOS

ANNEX I

**REQUIREMENTS FOR CONSTRUCTION, TESTING, INSTALLATION AND INSPECTION FOR
ANALOGUE TACHOGRAPHS**

1. In this Annex-

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970;

“enactment” includes an enactment contained in subsidiary legislation within the meaning of the Interpretation and General Clauses Act.

2. Appendix 1 to the Annex to the AETR (which makes provision corresponding to Annex 1 to the equivalent EU regulation) applies for the purposes of this Regulation.

3. References in any enactment to Annex I to this Regulation are to be read as references to Appendix 1 to the Annex to the AETR as applied by paragraph 2.

ANNEX IB

**REQUIREMENTS FOR CONSTRUCTION, TESTING, INSTALLATION AND INSPECTION FOR
DIGITAL TACHOGRAPHS**

1. In this Annex-

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970;

“enactment” includes an enactment contained in subsidiary legislation within the meaning of the Interpretation and General Clauses Act.

2. Appendix 1B to the Annex to the AETR (which is an adaptation of Annex IB to Regulation (EEC) No 3821/85, as it has effect in EU law) applies for the purposes of this Regulation.

3. References in any enactment to Annex IB to this Regulation are to be read as references to Appendix 1B to the Annex to the AETR (including provisions adapted by it) as applied by paragraph 2.

ANNEX II

APPROVAL MARK AND CERTIFICATE

1. In this Annex-

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970;

“enactment” includes an enactment contained in subsidiary legislation within the meaning of the Interpretation and General Clauses Act.

2. Appendix 2 to the Annex to the AETR (which makes provision corresponding to Annex II to the equivalent EU Regulation) applies for the purposes of this Regulation.

3. References in any enactment to Annex II to this Regulation are to be read as references to Appendix 2 to the Annex to the AETR as applied by paragraph 2.

SCHEDULE 3

(regulation 9)

COMMISSION IMPLEMENTING REGULATION (EC) No. 2016/799

**B COMMISSION IMPLEMENTING REGULATION (EU) 2016/799
of 18 March 2016**

**implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council
laying down the requirements for the construction, testing, installation, operation and
repair of tachographs and their components**

(Text with EEA relevance)

(OJ L 139, 26.5.2016, p. 1)

Amended by:

		Official Journal	
	No	page	date
M1 Commission Implementing Regulation (EU) 2018/502 of 28 February 2018	L 85	1	28.3.2018

Corrected by:

C1 Corrigendum, OJ L 146, 3.6.2016, p. 31 (2016/799)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/799

of 18 March 2016

implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components

(Text with EEA relevance)

Article 1

Subject matter and scope

1. This Regulation lays down the provisions necessary for the application of the following aspects regarding tachographs:
 - (a) recording of the position of the vehicle at certain points during the daily working period of the driver;
 - (b) remote early detection of possible manipulation or misuse of smart tachographs;
 - (c) interface with intelligent transport systems;
 - (d) the administrative and technical requirements for the type-approval procedures of tachographs, including the security mechanisms.

M1

2. The construction, testing, installation, inspection, operation and repair of smart tachographs and their components, shall comply with the technical requirements set out in Annex IC to this Regulation.
3. Tachographs other than smart tachographs shall continue, as regards construction, testing, installation, inspection, operation and repair, to comply with the requirements of either Annex I to Regulation (EU) No 165/2014 or Annex IB to Regulation (EU) No 165/2014, as applicable.

B

4. The remote early detection facility shall also transmit the weight data provided by any internal on-board weighing system installed to aid the enforcement of requirements as to the maximum authorised weight of vehicles, for the purpose of early fraud detection.

B

Article 2

Definitions

For the purposes of this Regulation, the definitions laid down in Article 2 of Regulation (EU) No 165/2014 shall apply.

In addition, the following definitions shall apply:

- (1) 'digital tachograph' or 'first generation tachograph' means a digital tachograph other than a smart tachograph;
- (2) 'external GNSS facility' means a facility which contains the GNSS receiver when the vehicle unit is not a single unit, as well as other components needed to protect the communication of data about position to the rest of the vehicle unit;

M1

(3) 'information folder' means the complete folder, in electronic or paper form, containing all the information supplied by the manufacturer or its agent to the type-approval authority for the purpose of the type-approval of a tachograph or a component thereof, including the certificates referred to in Article 12(3) of Regulation (EU) No 165/2014, the performance of the tests defined in Annex IC to this Regulation, as well as drawings, photographs, and other relevant documents;

B

(4) 'information package' means the information folder, in electronic or paper form, accompanied by any other documents added by the type-approval authority to the information folder in the course of carrying out their functions including, at the end of the type-approval process, the type-approval certificate of the tachograph or a component thereof;

(5) 'index to the information package' means the document listing the numbered contents of the information package identifying all the relevant parts of this package. The format of that document shall distinguish the successive steps in the type-approval process, including the dates of any revisions and updating of that package;

(6) 'remote early detection facility' means the equipment of the vehicle unit which is used to perform targeted roadside checks;

M1

(7) 'smart tachograph' or 'second generation tachograph' means a digital tachograph complying with Articles 8, 9 and 10 of Regulation (EU) No 165/2014 as well as with Annex IC to this Regulation;

(8) 'tachograph component' means any of the following elements: the vehicle unit, the motion sensor, the record sheet, the external GNSS facility and the external remote early detection facility;

B

(9) 'type-approval authority' means the authority of a member State of the European Union, the United Kingdom or Gibraltar competent to carry out the type-approval of the tachograph or of its components, the authorisation process, the issuing and, if appropriate, withdrawing of type-approval certificates and ensuring that the manufacturers meet their obligations relating to the conformity with the requirement of this Regulation;

M1

(10) 'vehicle unit' means the tachograph excluding the motion sensor and the cables connecting the motion sensor.

It may be a single unit or several units distributed in the vehicles and includes a processing unit, a data memory, a time measurement function, two smart cards interface devices for driver and co-driver, a printer, a display, connectors and facilities for entering the user's inputs, a GNSS receiver and a remote communication facility.

The vehicle unit may be composed of the following components subject to type-approval:

- vehicle unit, as a single component (including GNSS receiver and remote communication facility),
- vehicle unit main body (including remote communication facility), and external GNSS facility,
- vehicle unit main body (including GNSS receiver), and external remote communication facility,
- vehicle unit main body, external GNSS facility, and external remote communication facility.

If the vehicle unit is composed of several units distributed in the vehicle, the vehicle unit main body is the unit containing the processing unit, the data memory, and the time measurement function.

'vehicle unit (VU)' is used for 'vehicle unit' or 'vehicle unit main body'.

B

Article 3

Location-based services

1. Manufacturers shall ensure that smart tachographs are compatible with the positioning services provided by the Galileo and the European Geostationary Navigation Overlay Service ('EGNOS') systems.
2. In addition to the systems referred to in paragraph 1, manufacturers may also choose to ensure compatibility with other satellite navigation systems.

Article 4

Procedure for type-approval of a tachograph and tachograph components

1. A manufacturer or its agent shall submit an application for type-approval of a tachograph or any of its components, or group of components, to the type-approval authority. It shall consist of an information folder containing the information for each of the components concerned including, where applicable, the type-approval certificates of other components necessary to complete the tachograph, as well as any other relevant documents.
2. The type approval authority shall grant type-approval to any tachograph, component or group of components that conforms to the administrative and technical requirements referred to in Article 1(2) or (3), as applicable. In that case, the type-approval authority shall issue to the applicant a type-approval certificate that shall conform to the model laid down in Annex II to this Regulation.
3. The type-approval authority may request the manufacturer or its agent to supply any additional information.
4. The manufacturer or its agent shall make available to the type-approval authority, as well as to the person responsible for issuing the certificates referred to in Article 12 of Regulation (EU) No 165/2014, as many tachographs or tachograph components as are necessary to enable the type-approval procedure to be conducted satisfactorily.
5. Where the manufacturer or its agent seeks a type-approval of certain components or groups of components of a tachograph, he shall provide the type-approval authority with the other components, already type-approved, as well as other parts necessary for the construction of the complete tachograph, in order for the authority to conduct the necessary tests.

Article 5

Modifications to type-approvals

1. The manufacturer or its agent shall inform without delay the type-approval authorities that granted the original type-approval, about any modification in software or hardware of the tachograph or in the nature of the materials used for its manufacture which are recorded in the information package and shall submit an application for the modification of the type-approval.
2. The type-approval authorities may revise or extend an existing type-approval, or issue a new type-approval according to the nature and characteristics of the modifications.

A 'revision' shall be made where the type-approval authority considers that the modifications in software or hardware of the tachograph or in the nature of materials used for its manufacture are minor. In such cases, the type-approval authority shall issue the revised documents of the information package, indicating the nature of the modifications made and the date of their approval. An updated version of the information package in a consolidated form, accompanied by a detailed description of the modifications made, shall be sufficient to meet this requirement.

An 'extension' shall be made where the type-approval authority considers that the modifications in software or hardware of the tachograph or in the nature of materials used for its manufacture are substantial. In such cases, it may request that new tests be conducted and inform the manufacturer or its agent accordingly. If those tests prove satisfactory, the type-approval authority shall issue a revised type-approval certificate containing a number referring to the extension granted. The type-approval certificate shall mention the reason of the extension and its date of issue.

3. The index to the information package shall indicate the date of the most recent extension or revision of the type-approval, or the date of the most recent consolidation of the updated version of the type-approval.

4. A new type-approval shall be necessary when the requested modifications to the type-approved tachograph or its components would lead to the issuance of a new security or interoperability certificate.

Article 6

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 2 March 2016.

M1

However, Annex IC shall apply from 15 June 2019 with the exception of Appendix 16 which shall apply from 2 March 2016.

ANNEX I C

Requirements for construction, testing, installation, and inspection

No amendments have been made to Annex IC, due to its length it has not been reproduced.

Dated 21st November, 2019.

V. DARYANANI,
Minister with responsibility for Transport.

EXPLANATORY MEMORANDUM

Part 1 of the Regulations amends the Transport Act 1998 in order to implement Commission Implementing Regulation (EU) 2016/799 and amends the Road Transport (Working Time) Regulations 2005 so as to better transpose Directive 2002/15/EC on working time in relation to drivers' hours. It updates pre-existing references to the two EU Regulations and the AETR, and includes references to the EU Tachographs Regulation as amended from time to time and the AETR.

Schedule 3 to the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008, is amended to implement Regulation (EU) No 2016/403 of 18 March 2016 supplementing Regulation (EC) No 1071/2009 of the European Parliament and of the Council with regard to the classification of serious infringements of the Union rules, which may lead to the loss of good repute by the road transport operator, and amending Annex III to Directive 2006/22/EC of the European Parliament and of the Council.

Part 2 - Provides prospective amendments to legislation in the event of a no deal Brexit. It contains amendments made under the European Union (Withdrawal) Act 2019 to correct deficiencies in existing domestic legislation and EU retained law resulting from the withdrawal from the European Union.

Part 3 - is a saving provision.

The Schedules reproduce consolidated versions of the retained EU Regulations, on exit day, in the event of no deal exit from the European Union, the Schedules are for information purposes only and may not be relied on as law.