

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4640 of 28 November, 2019

LEGAL NOTICE NO. 237 OF 2019.

INTERPRETATION AND GENERAL CLAUSES ACT

TRANSPORT ACT 1998

EUROPEAN UNION (WITHDRAWAL) ACT 2019

LICENSING OF OPERATORS AND INTERNATIONAL ROAD HAULAGE (AMENDMENT) (EU EXIT) REGULATIONS 2019

In exercise of the powers conferred upon him and the Government by section 69 of the Transport Act 1998, as read with section 23(g)(ii) and 27 of the Interpretation and General Clauses Act, and section 11 of, and paragraph 1(a)(i) and (b) of Schedule 3 to, the European Union (Withdrawal) Act 2019, the Minister and the Government have made the following Regulations-

PART 1

Title.

1. These Regulations may be cited as the Licensing of Operators and International Road Haulage (Amendment) (EU Exit) Regulations 2019.

Commencement.

2.(1) Part 1 of these Regulations comes into operation on publication.

(2) Part 2 of these Regulations comes into operation on exit day.

Amendment of the Transport Act 1998.

3.(1) The Transport Act 1998 is amended in accordance with this regulation.

(2) In section 2,

(a) after the definition of “driver” insert the following definition-

““EEA State” means a State party to the EEA Agreement;”;

(b) after the definition of “public service vehicle” insert the following definitions-

““Regulation (EC) No 1071/2009” means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common

rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, as amended from time to time;

“Regulation (EC) No 1072/2009” means 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, as amended from time to time;

“Regulation (EC) No 1073/2009” means Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006, as amended from time to time;

“relevant State” means a member State of the European Union and an EEA State;”;

(c) in the definition of “road transport operator”, for “in a member State of the European Communities” substitute “of a relevant State”;

(d) after the definition of “road transport operator”, insert the following definition-

““road transport undertaking” means an undertaking which involves the use of goods or passenger vehicles under a licence, or in accordance with the law of any territory of a member State: and “road transport business” shall be construed accordingly;”.

(3) In section 25,

(a) in subsection (1)(a), after “(4)” insert “or (5)”;

(b) in subsection (1)(b), after “thereof” insert “unless the vehicle is exempted by virtue of subsection (5)”;

(c) in subsection (2), for “a person or workshop nominated under the Traffic Act as approved to install or repair recording equipment in accordance with Article 12 of Council Regulation (EEC) 3821/85” substitute “a person authorised by the Minister under Part IVA to carry out checks and inspections of recording equipment”;

(d) for subsection (5), substitute-

“(5) Subsection (1) shall not apply to the use of a motor vehicle falling within-

(a) category C or category C1; or

(b) category D,

where the person that owns the vehicle holds a certificate of professional competence to pursue the occupation of road transport operator under Regulation (EU) No 1071/2009 (in the format of Annex III of such Regulation) for international carriage by a road transport operator established in the territory of a relevant State and not established in Gibraltar, and the road transport operator further holds-

(c) in the case of category C or category C1 vehicles-

(i) a community licence;

(ii) a driver attestation, if required,

under Regulation (EU) No 1072/2009 (in the formats of Annex II and Annex III of such Regulation); or

(d) in the case of category D vehicles, a community licence under Regulation (EU) No 1073/2009 (in the format of Annex II of such Regulation).”;

(e) for subsection (6)(a)(iv), for “Directive 84/697 of the European Economic Communities on the use of vehicles hired without drivers for the carriage of goods” substitute “Directive 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on the use of vehicles hired without drivers for the carriage of goods by road, as amended from time to time”;

(f) for subsection (7) substitute-

“In subsection (5)-

“established” means the relevant State in which an undertaking is established, regardless of whether its transport manager originates from another country;

“international carriage” has the same meaning as in Article 2(2) of Regulation (EC) No 1072/2009 for category C and category C1 vehicles

and has the same meaning as in Article 2(1) of Regulation (EC) No 1073/2009 for category D vehicles.”.

(4) For section 29(1)(d) substitute-

“(d) where the operator has failed to comply with the provisions of-

(i) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as amended from time to time;

(ii) Regulation (EC) 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 from time to time;

as applied by-

(iii) Part VIA of this Act;

(iv) Road Transport (Working Time) Regulations 2005;

(v) Tachographs (Miscellaneous Provisions) Regulations 2015;

(iv) Transport (Recording Equipment) (Minimum conditions) Regulations 2008; or”.

(5) For section 31 substitute-

“Issue of certificate of professional competence for relevant States.

31.(1) Subject to the provisions of this section, on an application by a person who wishes to engage in a road transport undertaking in the territory of a relevant State other than Gibraltar, the Commission shall issue to the applicant a certificate of professional competence as to such matters relating to the applicant’s; effective and stable establishment in Gibraltar, the applicant’s good repute, professional

competence and his financial standing within the meaning of Regulation (EC) No 1071/2009 as–

- (a) the Commission is satisfied that it may properly certify; and
- (b) appear to the Commission to be of assistance to the applicant in satisfying the requirements of Regulation (EC) No 1071/2009.

(2) A certificate of professional competence shall be in the form set out in Annex III of Regulation (EC) No 1071/2009.

(3) A person who makes an application to the Commission for a certificate of professional competence falling within this section, shall provide to the Commission such evidence as the Commission may require for the purpose of establishing the facts to be stated in such document or certificate.

(4) The Commission shall, within one month of being provided with the evidence in subsection (3) and–

- (a) if it is satisfied that the evidence is sufficient for the purpose; and
- (b) the prescribed fee (if any) has been paid,

issue the certificate of professional competence for which application was made under that subsection.

(5) Any person having made an application under this section who is aggrieved by a failure by the Commission to issue a certificate of professional competence, may appeal on a point of law to a judge of the Supreme Court against such a decision, praying such leave as the case may require.”.

(6) After section 31, insert-

“Issue of other documents and certificates for relevant States.

31A.(1) Subject to the provisions of this section, on an application by a person who wishes to engage in a road transport undertaking in the territory of a relevant State other than Gibraltar, the Commission shall issue to the applicant-

- (a) in the case of category C, or category C1, vehicles-

- (i) a community licence; or
- (ii) a driver attestation, if required,

under Regulation (EU) No 1072/2009 (in the formats of Annex II and Annex III of such Regulation); or

- (b) in the case of category D vehicles, a community licence under Regulation (EU) No 1073/2009 (in the format of Annex II of such Regulation),

where the Commission is satisfied that it may properly certify and grant the community licence or driver attestation.

(2) A person who makes an application to the Commission for a community licence or driver attestation under this section, shall provide to the Commission such evidence as the Commission may require for the purpose of establishing the facts to be stated in such document or certificate.

(3) The Commission shall, within one month of being provided with the evidence in subsection (2) and—

- (a) if it is satisfied that the evidence is sufficient for the purpose, and
- (b) the prescribed fee (if any) has been paid,

issue the community licence or driver attestation for which application was made under that subsection.

(4) Any person having made an application under this section who is aggrieved by a failure by the Commission to issue a community licence or driver attestation, may appeal on a point of law to a judge of the Supreme Court against such a decision, praying such leave as the case may require.”.

(7) In the heading under “**PART IV**”, for “**COMMUNITY AUTHORISATIONS**” substitute “**COMMUNITY LICENCES**”.

(8) In section 57-

- (a) in subsection (1), for the words after “implements” substitute “Regulation (EC) No 1072/2009”;
- (b) in subsection (2),
 - (i) for the definition of “Community authorisation” substitute-

“Community Licence” means a Community Licence issued under Regulation (EC) No 1072/2009;”;
 - (ii) in the definition of “competent authority” for “Commission” substitute “Transport Commission constituted under section 3”;
 - (iii) delete the definitions of “the Council Regulation”, “the first Council Directive” and “operating centre”;
 - (iv) in the tailpiece, for “Council Regulation” insert “Regulation (EC) No 1072/2009”.
- (9) In section 58-
 - (a) in the section heading for “authorisation” substitute “Licence”;
 - (b) for “Article 3.1 of the Council Regulation” substitute “Article 3 of Regulation (EC) No 1072/2009”.
- (10) In section 59-
 - (a) in the section heading for “authorisation” substitute “Licence”;
 - (b) in subsection (1), for the words after “Community” substitute “Licence under Article 4 of Regulation (EC) No 1072/2009 if he holds a road haulage operator licence covering international carriage.”;
 - (c) in subsection (2), for the words after “of” substitute “subsection (1), “international carriage” has the meaning which it bears in Articles 2(2) of Regulation(EC) No 1072/2009.”.
- (11) In section 60-

- (a) in paragraph (a), for the first instance of “authorisation” insert “Licence” and for the second instance of “authorisation” insert “licence”;
- (b) in paragraph (b), for “authorisation” insert “Licence”.

(12) In section 61-

- (a) in the section heading, for “authorisation” substitute “Licence”;
- (b) for the first instance of “authorisation” substitute “Licence” and for the second instance of “authorisation” insert “licence”;
- (c) for “the Council Regulation” substitute “Regulation (EC) No 1072/2009”.

(13) In section 62-

- (a) for “the Council Regulation” substitute “Regulation (EC) No 1072/2009”;
- (b) for “Commission. a person nominated under section 37(1)(b)” substitute “a person authorised by the Minister under Part IVA to carry out checks and inspections of recording equipment”.

(14) In section 63-

- (a) in subsection (1)-
 - (i) for the first instance of “authorisation” substitute “Licence” and for the second instance of “authorisation” insert “licence”;
 - (ii) for “Article 8.2” substitute “Article 7.2”;
 - (iii) for “the Council Regulation” substitute “Regulation (EC) No 1072/2009”;
- (b) in subsection (2)-
 - (i) for the first instance of “authorisation” substitute “Licence” and for the subsequent two instances of “authorisation” insert “licence”;
 - (ii) for “Article 8.3” substitute “Article 12.1”;

- (iii) for “the Council Regulation” substitute “Regulation (EC) No 1072/2009”;
 - (c) in subsection (3) for “sub-section” substitute “subsection”.
- (15) In section 65-
- (a) in the section heading, for “authorisation” substitute “Licence”;
 - (b) for “authorisation” substitute “Licence”.
- (16) In paragraph 1(1) of Schedule 1-
- (a) in the definition of “company” after “Companies Act” insert “2014”;
 - (b) for the definition of “international transport operation” substitute-
 - ““international carriage” has the same meaning as in Article 2.2 of Regulation (EC) No 1072/2009, and the expression “national carriage” shall be construed accordingly;”
 - (c) delete the definitions of “road transport undertaking”, “the 1974 Council Directive” and “the 1977 Council Directive”.
- (17) In paragraph 2 of Schedule 1-
- (a) for subparagraph (1), substitute-
 - “(1) Licences may authorise vehicles to be used-
 - (a) on both international and national carriage; or
 - (b) on national carriage only.”;
 - (b) in subparagraph 2, for both instances of “transport operations” substitute “carriage”.
 - (c) after subparagraph 2, insert-
 - “(3) Where the Commission issues a certificate or licence in accordance with Regulation (EC) No 1071/2009, Regulation (EC) No 1072/2009 or

Regulation (EC) No 1073/2009 such certificate or licence shall accord with the format of such certificate or licence as provided for in the respective Regulation.

- (4) Where the Commission issues a driver attestation in accordance with Regulation (EC) No 1072/2009 the driver attestation shall accord with the format of Annex III of that Regulation.”.

(18) In paragraph 3 of Schedule 1-

(a) in subparagraph (1)(c)-

- (i) for both instances of “transport operations” substitute “carriage”;
- (ii) for “international operations” substitute “international carriage”;

(b) in subparagraph (2)-

- (i) for “Council Directive 77/796” substitute “Regulation (EC) No 1071/2009”;
- (ii) for “another member” substitute “relevant”;
- (iii) for “Directive” substitute “Regulation”.

(19) For paragraph 10(2) of Schedule 1, substitute-

“(2) An applicant for, or holder of, a licence authorising the use of vehicles for international carriage shall not be considered to be of appropriate financial standing unless he has available capital and reserves of an amount equal to at least £8,000 for a single vehicle and £4,500 for each additional vehicle.”.

(20) For paragraph 11(7) of Schedule 1, substitute-

“(7) In subparagraph (6) “approved body” means—

- (a) a body approved by the Government for the purposes of that subparagraph; or

(b) a body or authority designated by a relevant State for the purposes of Article 8.3 of Regulation (EC) No 1071/2009,

and “the requisite skills” means skills in the subjects listed in Part I of Annex I of Regulation (EC) No 1071/2009 and, in the case of a licence to cover international operations, also skills in the subjects listed in Part II of Annex I to the said Regulation.”.

(21) In paragraph 12(7) of Schedule 1, for “transport operations” substitute “carriage”.

(22) In paragraph 17(2) of Schedule 1, for the three instances of “transport operations” substitute “carriage”.

(23) In paragraph 21(2) of Schedule 1, for the two instances of “transport operations” substitute “carriage”.

(24) For paragraph 24(1)(c) of Schedule 1, substitute “a person authorised by the Minister under Part IVA to carry out checks and inspections of recording equipment;”.

(25) In paragraph 31(2) of Schedule 1, for the two instances of “transport operations” substitute “carriage”.

(26) In paragraph 33 of Schedule 1-

(a) delete “, before the consultations referred to in Article 2 (2) of the 1974 Council Directive are completed”;

(b) for “transport operations” substitute “carriage”.

(27) In paragraph 35 of Schedule 1, for “another member” substitute “a relevant”.

(28) Delete Schedule 2.

Amendment of the Transport Regulations 2000.

4.(1) The Transport Regulations 2000 are amended in accordance with this regulation.

(2) In regulation 81(3), delete “pesetas or”.

(3) In Schedule 1-

- (a) in form 1, delete the title “APPLICATION FOR OPERATOR’S LICENCE”;
- (b) in form 2, for “apply for a road service operator’s licence.” substitute “apply for an operator’s licence.”.

Amendment of the Transport (Combined Operations) Regulations 2003.

5.(1) The Transport (Combined Operations) Regulations 2003 are amended in accordance with this regulation.

(2) In regulation 2-

- (a) in the definition of “combined transport”, for “Member States” substitute “Gibraltar and a relevant State”;
- (b) in the definition of “Directive”, after “States” insert “as may be amended from time to time”;
- (c) in the definition of “foreign goods vehicle”-
 - (i) in paragraph (b), for “Member State other than Gibraltar” substitute “relevant State”;
 - (ii) in paragraph (d), for “under a Community cabotage authorisation” substitute “in a cabotage operation permitted under Regulation (EC) No 1072/2009”;
- (d) in the definition of “international carriage”, for “Council Regulation No. 881/92” substitute “Article 2 of Regulation (EC) No. 1072/2009”;

(e) after the definition of “loading” insert the following definition-

““relevant State” means the United Kingdom or a member State of the European Union; and”.

(3) In regulation 3-

- (a) for the first instance of “Member” substitute “Gibraltar and relevant”;

(b) for the second instance of “Member” substitute “relevant”.

(4) In regulation 4, for the three instances of “Member” substitute “relevant”.

Revocation of the Transport (Transfer of Operator Licences) Regulations 2004.

6. The Transport (Transfer of Operator Licences) Regulations 2004 are revoked.

PART 2

Amendment of Regulation (EC) No 1071/2009.

7.(1) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC is amended in accordance with this regulation.

(2) In Article 1-

(a) in paragraph 2, for “Community” substitute “Gibraltar”;

(b) delete paragraph 3;

(c) in paragraph 4, in point (a) delete “Member States may, however, lower this limit for all or some categories of road transport operations”;

(d) in paragraph 5, for “Member States may” substitute “The Minister may by Order”.

(3) In Article 2-

(a) for paragraph 7, substitute-

“7. ‘competent authority’ within Gibraltar means the Driver and Vehicle Licensing Department;”;

(b) delete paragraph 8;

(c) after paragraph 8, insert-

“9. ‘Community licence’ means a licence issued under Article 4 of 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 and includes a UK licence for the Community;

10. ‘relevant State’ means the United Kingdom, a member State of the European Union and includes an EEA State;

11. ‘Minister’ means the Minister with responsibility for transport.”.

(4) In Article 3-

(a) in paragraph 1, point (a) for “a Member State” substitute “Gibraltar”;

(b) delete paragraph 2.

(5) In Article 4-

(a) in paragraph 1, point (c) and in paragraph 2, point (a) for “the Community” substitute “Gibraltar or in a relevant State”;

(b) in paragraph 2, point (c) delete “Member States may decide to lower the number of undertakings and/or the size of the total fleet of vehicles which that person may manage”;

(c) in paragraph 3, for “Member States” substitute “The competent authority”.

(6) In Article 5-

(a) in the frontispiece delete “, in the Member State concerned”;

(b) in point (a)-

(i) for “that Member State” substitute “Gibraltar”;

(ii) for “Member States” substitute “The Minister”;

- (iii) delete “on their territory”;
 - (c) in point (b), delete “in conformity with the legislation of that Member State”;
 - (d) in point (c), for “that Member State” substitute “Gibraltar”.
- (7) In Article 6-
- (a) in paragraph 1-
 - (i) in the first subparagraph, for “Member States” substitute “the Minister”;
 - (ii) in the second subparagraph-
 - (A) for “Member States shall” substitute “the competent authority may”;
 - (B) for the two instances of “Member State” substitute “competent authority”;
 - (iii) in the third subparagraph, in point (b), delete “in one or more Member States” and “of Community rules”;
 - (b) in paragraph 2-
 - (i) in point (a)-
 - (A) for the first subparagraph, substitute-

“(a) where the transport manager or the transport undertaking has, in Gibraltar or in one or more relevant States, been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of rules as set out in Annex IV, the competent authority must carry out in an appropriate and timely manner a duly completed administrative procedure, which may include, if appropriate, a check at the premises of the undertaking concerned.”;
 - (B) in the third subparagraph, for “the report referred to in Article 26(1)” substitute “an annual report which the competent authority must compile and send to the Minister”;

(ii) in point (b)-

(A) for the first and second subparagraphs, substitute-

“(b) the competent authorities must take into account any information on the categories, types and degrees of seriousness of any infringements referred to in Annex IV and Commission Regulation (EU) 2016/403, including information received from relevant States, when setting the priorities for checks pursuant to Article 12(1).

Additional measures, designed to amend non-essential elements of this Regulation by supplementing it and which relate to this list, may be adopted by the Minister.”;

(B) in the third subparagraph, for “Commission shall” substitute “Minister may make regulations which”.

(8) In Article 7-

(a) in paragraph 1-

(i) in the first subparagraph, for “EUR 9000” substitute “£8,000” and for “EUR 5000” substitute “£4,500”;

(ii) delete the second subparagraph;

(b) in paragraph 3, for “the Member State in which an authorisation has been applied for and not those of any other entity established in any other Member State” substitute “Gibraltar and not those of any entity established in any other country”.

(9) In Article 8-

(a) in paragraph 1-

(i) delete “if a Member State so decides,”;

(ii) for “To this end, Member States may decide to impose” substitute “The person concerned may require”;

(b) in paragraph 2-

(i) for the first subparagraph, substitute-

“2. The person concerned must sit the examination in Gibraltar if this is where they have their normal residence when working.”;

(ii) in the third subparagraph-

(A) for “two or more Member States” substitute “Gibraltar and one or more relevant States”;

(B) for “a Member State” substitute “Gibraltar or a relevant State”;

(c) for paragraph 3 substitute-

“3. Only the competent authority in Gibraltar, in accordance with defined criteria, may organise and certify the written and oral examinations referred to in paragraph 1. The competent authority must ensure that the conditions under which the examinations are conducted are in accordance with Annex I.”;

(d) in paragraph 4-

(i) for “Member States may duly authorise, in accordance with criteria defined by them” substitute “The competent authority may duly authorise, in accordance with criteria defined by it”;

(ii) for “Such Member States” substitute “The competent authority”;

(e) in paragraphs 5 and 6 for “Member States” substitute “The competent authority”;

(f) in paragraph 7-

(i) in the first subparagraph, for “Member States” substitute “The competent authority” and for “that Member State” substitute “Gibraltar”;

(ii) in the second subparagraph, for “A Member State” substitute “The competent authority” and for “that Member State” substitute “Gibraltar”;

(g) for paragraph 9 substitute-

“9. The Minister may make regulations which adapt Annexes I, II and III due to technical progress.”;

(h) delete paragraph 10.

(10) Delete Article 9.

(11) In Article 10-

(a) in paragraph 1, for the frontispiece substitute-

“1. The competent authority may.”;

(b) in paragraph 2, for “authorities” substitute “authority”.

(12) In Article 11-

(a) in paragraph 3, for “a” substitute “the”;

(b) in paragraph 4-

(i) delete the first subparagraph;

(ii) in the second subparagraph, for “From 1 January 2013, when” substitute “When” and for “, in one of the Member States,” substitute “as”;

(iii) delete the third subparagraph;

(b) in paragraph 5, delete “as determined by the Member State of establishment,”.

(13) In Article 12-

(a) for paragraph 1, substitute-

“The competent authority must monitor whether undertakings which it has authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3. To that end, the competent authority must carry

out checks targeting those undertakings which are classed as posing an increased risk.”;

(b) delete paragraph 2;

(c) in paragraph 3, for “Member States” substitute “The competent authority” and for both instances of “Commission” substitute “Minister”.

(14) In Article 13, for the first instance of “a competent” substitute “the competent”.

(15) In Article 14, in paragraph 2, delete “in accordance with the relevant provisions of national law” and “in any Member State”.

(16) In Article 15-

(a) in paragraph 1, for “authorities of the Member States” substitute “authority”;

(b) in paragraph 2-

(i) for, “Member States shall take steps to ensure that undertakings” substitute “Undertakings”;

(ii) for, “to at least one independent and impartial body or a court of law” substitute “as provided for in domestic legislation”.

(17) In Article 16-

(a) for the heading substitute “**National electronic register**”;

(b) for paragraph 1 substitute-

“For the purposes of the implementation of this Regulation, and in particular Articles 11 to 14 thereof, the competent authority must keep a national electronic register of road transport undertakings which have been authorised to engage in the occupation of road transport operator. The data contained in that register must be processed under the supervision of the Minister. The relevant data contained in the national electronic register must be accessible to any competent authority.”;

(c) in paragraph 2-

- (i) in the frontispiece, for “National electronic registers” substitute “The national electronic register”;
 - (ii) in point (d), for “Community licence and of the certified copies” substitute “Gibraltar licence for the Community or the Community licence and of their certified copies”;
 - (iii) delete the second subparagraph;
 - (iv) in the third subparagraph-
 - (A) for “Member States” substitute “The Minister”;
 - (B) delete “all”;
 - (C) for “of the Member State in question” substitute “of relevant States”;
 - (c) in paragraph 4, for “Member States” substitute “The competent authority”;
 - (d) delete paragraphs 5, 6 and 7.
- (18) In Article 17, in the frontispiece, for “Directive 95/46/EC, Member States” substitute-
“Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the competent authority”.
- (19) Delete Article 18.
- (20) In Article 19-
- (a) in paragraph 1-
 - (i) for “Without prejudice to Article 11(4), the Member State of establishment” substitute “The competent authority”;
 - (ii) for “the Member State” substitute “a relevant State”;
 - (b) for paragraph 2, substitute-

“Where the Minister imposes on Gibraltar nationals certain conditions relating to good repute, and proof that these conditions are met cannot be provided by means of the document referred to in paragraph 1, the competent authority must accept as sufficient proof for nationals of relevant States a certificate issued by a competent judicial or administrative authority in the relevant State(s) where the transport manager or any other relevant person used to reside stating that these conditions have been met. Such certificate must relate to the specific information taken into consideration in Gibraltar.”;

(c) in paragraph 3, for both instances of “Member” substitute “relevant”;

(d) after paragraph 4, insert-

“5. In this Article and in Article 20, ‘competent administrative authority’ means a national, regional or local authority in a relevant State which, for the purpose of authorising the pursuit of the occupation of road transport operator, verifies whether an undertaking satisfies the conditions laid down in Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time, and which is empowered to grant, suspend or withdraw an authorisation to pursue the occupation of road transport operator.”.

(21) For the paragraph in Article 20, substitute-

“Where the Minister imposes on Gibraltar nationals certain conditions relating to financial standing in addition to those set out in Article 7, the competent authority must accept as sufficient proof for nationals of relevant States a certificate issued by a competent administrative authority in the relevant State(s) where the transport manager or any other relevant person used to reside stating that these conditions have been met. Such certificate must relate to the specific information taken into consideration in Gibraltar.”.

(22) In Article 21-

(a) in the heading, after “competence” insert “issued in a relevant State”;

(b) for paragraph 1, substitute-

“1. The competent authority shall recognise as sufficient proof of professional competence a certificate which complies with the model certificate set out in Annex

III of Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time and which is issued by the authority or body duly authorised in a relevant State for that purpose.”;

(c) for paragraph 2, substitute-

“2. A certificate issued before 4 December 2011 as proof of professional competence pursuant to the provisions in force until that date shall be deemed to be equivalent to a certificate which complies with the model certificate set out in Annex III of Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time and shall be recognised as proof of professional competence in Gibraltar. Holders of certificates of professional competence valid only for national transport may be required to pass the examinations, or parts of examinations, referred to in Article 8(1).”.

(23) In Article 22-

(a) delete paragraph 1;

(b) in paragraph 2, “referred to in paragraph 1 shall include, in particular,” substitute “for infringement of this Regulation shall include, in particular provision in relation to,”.

(24) Delete Articles 23, 24, 25, 26, 27, 28 and 30.

(25) In Annex I-

(a) in part I-

(i) in the first paragraph, for “Member States” substitute “the competent authority”;

(ii) in the section headed “C. Social law”, for points 4 and 5 substitute-

“4. the rules applicable to driving time, rest periods and working time, and in particular the provisions of:

(a) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations

- (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85;
- (b) 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;
- (c) the Transport Act 1998;
- (d) Road Transport (Working Time) Regulations 2005;
- (e) the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008;
- (f) the Tachographs (Miscellaneous Provisions) Regulations 2015;
- (g) the practical measures for applying the provisions in paragraphs (a) to (f); and
5. the rules applicable to the initial qualification and continuous training of drivers as set out in the Traffic (Drivers' Qualification and Training) Regulations 2008.”;
- (iii) in the section headed “D. Fiscal law”, after point 4 insert-
- “5. Gibraltar import duty taxes;”;
- (iv) in the section headed “G. Technical standards and technical aspects of operation”-
- (A) in point 1, for “the Member” substitute “Gibraltar and in the relevant”;
- (B) in point 8, for “from Directive 2008/68/EC and Regulation (EC) No 1013/2006” substitute-
- “from:

- (a) Transport (Carriage of Dangerous Goods by Road) Regulations 2010;
- (b) Transportable Pressure Equipment Regulations 2011;
- (c) Public Health Act;
- (d) Pollution Prevention and Control Regulations 2013; and
- (e) Regulation (EC) No 1013/2006 (2);”;
- (v) in the section headed “H. Road safety”-
 - (A) in point 2, for “different Member” substitute “Gibraltar and relevant”;
 - (B) in point 6, for “the Member” substitute “Gibraltar and relevant”;
- (b) in part II-
 - (i) in paragraph 1, for “Member States will organise a compulsory written examination which they may supplement by” substitute “The competent authority shall organise a compulsory written examination which it may supplement with”;
 - (ii) in point (b) of paragraph 1, for “Member States” substitute “the competent authority”;
 - (iii) in paragraphs 2 and 3 for all instances of “Member States” substitute “the competent authority”;

(26) For Annex III substitute the following-

“

Annex III

Model of the certificate of professional competence

UNITED KINGDOM

GIBRALTAR

(Colour Pantone stout fawn 467, or as close as possible to this colour, format DIN A4 cellulose paper 100 g/m 2 or more.)

(Text in English)

UK

**DRIVER AND VEHICLE LICENSING DEPARTMENT
GIBRALTAR⁽¹⁾**

GIBRALTAR

**CERTIFICATE OF PROFESSIONAL COMPETENCE IN ROAD HAULAGE/ PASSENGER
TRANSPORT⁽²⁾**

No
We
hereby certify that⁽³⁾
born on in
has successfully passed the tests for the examination (year:; session:)⁽⁴⁾
necessary for the award of the certificate of professional competence in road haulage/passenger
transport⁽⁵⁾ in accordance with Regulation (EC) No 1071/2009 establishing common rules concerning the
conditions to be complied with to pursue the occupation of road transport operator.

This certificate constitutes the sufficient proof of professional competence referred to in Article 21 of
Regulation (EC) No 1071/2009.

Issued by, on⁽⁵⁾



⁽¹⁾ Competent authority in Gibraltar.

⁽²⁾ Delete as appropriate.

⁽³⁾ Surname and forename; place and date of birth.

⁽⁴⁾ Identification of the examination.

⁽⁵⁾ Signature of the authority issuing the certificate and date of issue.

”

(27) Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, as amended, is set out in Schedule 1 for information purposes only.

Amendment of Regulation (EC) No 1072/2009.

8.(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 is amended in accordance with the provisions of this Regulation.

(2) In Article 1-

(a) for paragraph 1 and 2 substitute-

“1. This Regulation applies to the international carriage of goods by road for hire or reward for journeys carried out partly within Gibraltar.

2. In the event of carriage from Gibraltar to a relevant State or to a third country and vice versa, this Regulation applies to any part of the journey within Gibraltar.”;

(b) delete paragraph 3;

(c) in the frontispiece of paragraph 5 after “not require a” insert “Gibraltar licence for the Community or a”; and

(d) in paragraph 6, for “a Member State authorises its nationals to” substitute “Gibraltar nationals may”.

(3) In Article 2-

(a) in paragraph 1, for both instances of “a Member” substitute “Gibraltar or in a relevant”;

(b) in paragraph 2, for subparagraphs (a) to (d) substitute-

“(a) a laden journey undertaken by a vehicle where the point of departure is in Gibraltar and the point of arrival is in a relevant State, or vice versa, with or without transit through Gibraltar or one or more relevant States or third countries;

(b) a laden journey undertaken by a vehicle from Gibraltar to a third country or vice versa with or without transit through Gibraltar or one or more relevant States or third countries;

(c) a laden journey undertaken by a vehicle where the point of departure is a relevant State and the point of arrival is a third country, or vice versa, with transit through Gibraltar;

(d) a laden journey undertaken by a vehicle between third countries, with transit through Gibraltar;

(e) a laden journey undertaken by a vehicle between two member States, with transit through Gibraltar;

(f) an unladen journey in conjunction with the carriage referred to in points (a) to (e);”.

(c) for paragraph 3 substitute-

“3. ‘host relevant State’ means a relevant State in which a haulier operates other than the haulier’s State of establishment;”;

(d) in paragraphs 4 and 6 delete “Member”;

(e) in paragraph 7-

(i) for the first instance of “Community” substitute “retained EU law on”;

(ii) delete “legislation”;

(iii) after “withdrawal of a” insert “Gibraltar licence for the Community or a”;

(iv) for “.” substitute “;”;

(f) after paragraph 7, insert the following paragraphs-

“8. ‘relevant State’ means an EEA State and includes the United Kingdom, and Gibraltar where the definition permits;

9. ‘Community licence’ means a licence issued under Article 4 of 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 as it applies in EU law as amended from time to time, and includes a UK licence for the Community as

issued under the retained EU law of the United Kingdom as amended from time to time;

10. ‘competent authority’ means within Gibraltar, the Driver and Vehicle Licensing Department;

11. ‘EU driver attestation’ means a driver attestation issued under Article 5 of 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 as it has effect in EU law as amended from time to time;

12. ‘Regulation (EC) No 1071/2009’ means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;

13. ‘Minister’ means the Minister with responsibility for transport in Gibraltar.”.

(4) For the paragraph in Article 3 substitute-

“International carriage shall be carried out subject to possession of a Gibraltar licence for the Community or a Community licence issued by a relevant State and, if the driver is a national of a third country, in conjunction with a driver attestation issued in accordance with this Regulation or an EU driver attestation.”.

(5) In Article 4-

(a) in the heading, for “Community licence” substitute “Gibraltar licence for the Community”;

(b) for paragraphs 1 to 3, substitute-

“1. The Gibraltar licence for the Community shall be issued by the competent authority, in accordance with this Regulation, to any haulier carrying goods by road for hire or reward who:

(a) is established in Gibraltar in accordance with Gibraltar law; and

(b) is entitled, in accordance with Gibraltar law concerning admission to the occupation of road haulage operator, to carry out the international carriage of goods by road.

2. A Gibraltar licence for the Community shall be issued by the competent authority for renewable periods of up to 5 years.

Community licences and certified copies issued to hauliers established in Gibraltar and in the United Kingdom under Regulation (EC) 1071/2009 and valid before exit day will remain valid and treated as a Gibraltar licence for the Community until the date of their expiry.

The Minister may by regulations adjust the period of validity of the Gibraltar licence for the Community to take account of technical progress, in particular, in the national electronic registers of road transport undertakings as provided for in Article 16 of Regulation (EC) No 1071/2009.

3. The competent authority shall issue the holder with the original of the Gibraltar licence for the Community, which shall be kept by the haulier, and the number of certified true copies corresponding to the number of vehicles at the disposal of the holder of the Gibraltar licence for the Community, whether those vehicles are wholly owned or, for example, held under a hire purchase, hire or leasing contract.”;

(c) in paragraph 4-

(i) in the first subparagraph, for “Community licence” substitute “Gibraltar licence for the Community”;

(ii) for the second subparagraph substitute-

“The Minister may by regulations adapt Annexes I and II to take account of technical progress.”;

(d) in paragraph 5-

(i) for both instances of “Community licence” substitute “Gibraltar licence for the Community”;

(ii) for “issuing” substitute “competent”;

(e) in paragraph 6, for both instances of “Community licence” substitute “Gibraltar licence for the Community”;

(f) after paragraph 6, insert-

“7. Regulations under this Article may—

(a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and

(b) make different provision for different cases.”.

(6) In Article 5-

(a) for paragraphs 1 and 2, substitute-

“1. A driver attestation must be issued by the competent authority in accordance with this Regulation to any haulier who:

(a) is the holder of a Gibraltar licence for the Community;

(b) employs a driver who is lawfully permitted to seek employment in Gibraltar; and

(c) has employed that driver in compliance with any conditions of employment and vocational training laid down in Gibraltar.

2. The driver attestation must be issued, at the request of the holder of the Gibraltar licence for the Community, for each driver who is not a national of Gibraltar or of a relevant State, nor a person lawfully in Gibraltar who has a right to work in Gibraltar whom that haulier lawfully employs, or who is put at the disposal of the haulier. Each driver attestation must certify that the driver named therein is employed in accordance with the conditions laid down in paragraph 1.”;

(b) for paragraph 4, substitute-

“4. The Minister may by regulation adapt Annex III to take account of technical progress.”;

(c) in paragraph 6-

- (i) for “Community licence” substitute “Gibraltar licence for the Community”;
 - (ii) for “authorities of the haulier’s Member State of establishment” substitute “authority”;
 - (iii) for “The driver” substitute “An EU driver”;
- (d) for paragraph 7, substitute-

“7. The Minister must determine the period of validity of a driver attestation, subject to a maximum validity of 5 years.

The driver attestation must be valid only as long as the conditions under which it was issued are satisfied. If those conditions are no longer satisfied, the Minister may require the haulier to return the driver attestation immediately.”;

- (e) after paragraph 7, insert-

“8. Regulations under this Article may—

- (a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and
- (b) make different provision for different cases.”.

- (7) In Article 6-

- (a) in paragraph 1-

- (i) for both instances of “Community licence” substitute “Gibraltar licence for the Community”;
- (ii) for “competent authorities of the Member State of establishment” substitute “competent authority”;

- (b) in paragraph 2-

- (i) for “competent authorities of the Member State of establishment” substitute “competent authority”; and
 - (ii) delete “in that Member State”.
- (8) In Article 7-
 - (a) in the heading, for “Community licence” substitute “UK licence for the Community”;
 - (b) for paragraph 1, substitute-

“1. If the conditions laid down in Article 4(1) are not satisfied, the competent authority must reject an application for the issue or renewal of a Gibraltar licence for the Community by means of a reasoned decision in each case. If the conditions referred to in Article 5(1) are not satisfied, the Minister must reject an application to issue a driver attestation by means of a reasoned decision in each case.”;
 - (c) in paragraph 2-
 - (i) in the frontispiece, for “authorities” substitute “authority” and for “Community licence” substitute “Gibraltar licence for the Community”; and
 - (ii) for “Community licence” substitute “Gibraltar licence for the Community”.
- (9) In Article 8-
 - (a) in paragraph 1, after “operations” insert “within Gibraltar”;
 - (b) in paragraph 2-
 - (i) in the first subparagraph, for “another Member State” substitute “relevant” and for the three instances of “the host Member State” substitute “Gibraltar”;
 - (ii) for the second subparagraph, substitute-

“Within the time limit referred to in the first subparagraph, hauliers are limited to carrying out one cabotage operation out of the three cabotage operations permitted in Gibraltar within 3 days of the unladen entry into Gibraltar.”;

(c) in the first subparagraph of paragraph 3, for “the host Member State” substitute “Gibraltar”; and

(d) in paragraph 5, for both instances of “Member” substitute “relevant”.

(10) In Article 9-

(a) in paragraph 1-

(i) in the frontispiece of the first subparagraph, for “Community legislation” substitute “retained EU law” and for “the host Member State” substitute “Gibraltar”;

(ii) in point (e) of first subparagraph, for “value added tax (VAT)” substitute “import duty”;

(iii) for the second subparagraph, substitute-

“The weights and dimensions referred to in point (b) of the first subparagraph may, where appropriate, exceed those applicable in the haulier’s relevant State of establishment, but they may under no circumstances exceed the limits set by Gibraltar.”;

(b) in paragraph 2, for “the host Member State” substitute “Gibraltar”.

(11) In Article 10-

(a) for paragraph 1, substitute-

“1. In the event of serious disturbance of the national transport market in a given geographical area due to, or aggravated by, cabotage, the Minister may consider whether or not safeguard measures are necessary and may by Order provide for measures as regards operations carried on by resident or non-resident hauliers.”;

(b) for the definition of “geographical area” in paragraph 2, substitute-

“‘geographical area’ means area covering all or part of Gibraltar.”;

(c) in paragraph 3-

(i) for the first subparagraph, substitute-

“3. The Minister may consider whether or not safeguard measures are necessary with a view to adopting them if they are necessary.”;

(ii) delete the fourth subparagraph;

(d) for paragraph 4, substitute-

“4. The Minister must consult the competent authority and such other persons as he thinks fit before making any Order under paragraph 1.”;

(e) for paragraph 5, substitute-

“5. Where the Minister considers that the measures adopted by Order pursuant to paragraph 1 need to be prolonged beyond the period provided for in the third subparagraph of paragraph 3, the Minister must publish a document relating to the proposal to so extend the measures. The proposals must set out:

(a) the reasons why it is necessary to extend the measures;

(b) the forecasted economic impact of the measures on hauliers;

(c) the expected time after which the need for measures to continue must be reviewed.”;

(f) delete paragraph 6;

(g) after paragraph 5, insert-

“7. If after considering the responses to the consultation carried out in accordance with paragraph 5, the Minister decides that it is appropriate to continue the safeguard measures beyond the period provided in paragraph 3, or to institute alternative measures, the Minister may by regulations continue those measures or adopt alternative measures.

8. Any Order or regulations under this Article may—

(a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and

(b) make different provision for different cases.”.

(12) Delete Article 11.

(13) In Article 12-

(a) in the heading delete “by the Member State of establishment”;

(b) in paragraph 1-

(i) for the frontispiece, substitute-

“1. In the event that the competent authority is notified of a serious infringement of this Regulation, or Regulation (EC) 1072/2009 as it applies in the EU and amended from time to time, by any haulier who is established in Gibraltar, the appropriate competent authority for that haulier must take appropriate action which may include a warning to pursue the matter which may lead, inter alia, to the imposition of the following administrative penalties:”;

(ii) from point (a) to the end of paragraph 1, for each reference to “Community licence” substitute “Gibraltar licence for the Community”;

(c) in paragraph 2-

(i) for the frontispiece, substitute-

“2. In the event that the competent authority is notified of a serious infringement regarding any misuse whatsoever of driver attestations by a haulier who is established in Gibraltar, the competent authority shall impose penalties, such as:”;

(ii) from point (d) to the end of paragraph 2, for each reference to “Community licence” substitute “Gibraltar licence for the Community”;

(d) in paragraph 3-

- (i) in the first subparagraph, for “authorities of the Member State of establishment shall communicate to the competent authorities of the Member” substitute “authority must communicate to the competent authorities of the relevant”;
- (ii) in the second subparagraph, for “authorities of the Member State of establishment shall” substitute “authority”;

(e) in paragraph 4, for “authorities” substitute “authority” and for “Member” substitute “relevant”;

(f) for paragraph 5, substitute-

“5. The competent authority may also bring proceedings against the haulier before the magistrates’ court or a tribunal. They shall inform the competent authority of the host Member State of any decisions taken to this effect.”;

(g) in paragraph 6, for “Member States shall ensure that hauliers” substitute “Hauliers”;

(14) In Article 13-

(a) in paragraph 1, for the frontispiece substitute-

“1. Where the competent authority is aware of a serious infringement of this Regulation or of any retained direct EU legislation attributable to a non-resident haulier, the competent authority must transmit to the relevant authorities of the haulier’s relevant State of establishment, as soon as possible and at the latest within 6 weeks of the competent authority’s final decision on the matter, the following information:”;

(b) in paragraph 1, for the tailpiece substitute-

“The competent authority may request the relevant authorities of the relevant State of establishment to impose administrative penalties in accordance with Article 12 of Regulation (EC) 1072/2009 as it has effect in EU law.”;

(c) delete paragraphs 2 and 3.

(15) For the paragraph in Article 14, substitute-

“The competent authority must ensure that serious infringements of Gibraltar, United Kingdom or EU road transport legislation committed by hauliers established in Gibraltar, which have led to the imposition of a penalty by the competent authority or by a relevant State, as well as any temporary or permanent withdrawal of a Gibraltar licence for the Community or of a certified true copy thereof, are recorded in the national electronic register of road transport undertakings. Entries in the register which concern a temporary or permanent withdrawal of a Gibraltar licence for the Community must remain in the database for 2 years from the time of the expiry of the period of withdrawal, in the case of temporary withdrawal, or from the date of withdrawal, in the case of permanent withdrawal.”.

(16) Delete Articles 15, 16, 17 and 19.

(17) In the heading to Annex I and in Annex I, for each instance of “Community licence” substitute “Gibraltar licence for the Community”.

(18) For Annex II and Annex III, substitute the following-

“

Annex II

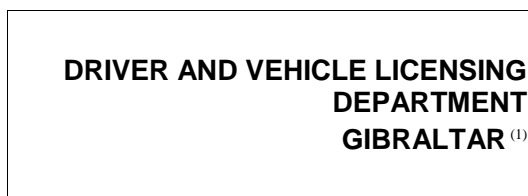
Gibraltar licence for the Community model

(a)

(Colour Pantone light blue, format DIN A4 cellulose paper 100 g/m² or more)

(First page of the licence)

(Text in English)



LICENCE No:

or

1823

CERTIFIED TRUE COPY No:

for the international carriage of goods by road for hire or reward

This licence entitles ⁽²⁾ _____

to engage in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys carried out for hire or reward within Gibraltar, the UK or a relevant State as laid down in Regulation (EC) 1072/2009.

| | |
|--|------------------------|
| Particular remarks: | |
| This licence is valid from | To..... |
| Issued by | on..... ⁽³⁾ |
| | |
| | |

⁽¹⁾ Competent authority in Gibraltar.

⁽²⁾ Name or business name and full address of the haulier.

⁽³⁾ Signature of the authority issuing the certificate and date of issue.

(b)

(Second page of the licence)

(Text in English)

GENERAL PROVISIONS

This licence is issued under Regulation (EC) No 1072/2009.

“relevant State” herein means the United Kingdom or a Member State of the European Union

It entitles the holder to engage in the international carriage of goods by road for hire or reward by any

route for journeys or parts of journeys carried out within Gibraltar or a relevant State and, where appropriate, subject to the conditions laid down herein:

- where the point of departure and the point of arrival are situated in;
 - two different countries, one of which is Gibraltar and the other is a relevant State with or without transit through one or more other relevant States or third countries; or
 - two different relevant States, with or without transit through Gibraltar or one or more other relevant States or third countries,
- from Gibraltar or a relevant State to a third country or vice versa, with or without transit through one or more relevant States or third countries,
- between third countries with transit through Gibraltar or one or more relevant States, and unladen journeys in connection with such carriage.

In the case of carriage from Gibraltar or a relevant State to a third country or vice versa, this licence is valid for that part of the journey carried out within the territory of any relevant State.

The licence is personal to the holder and is non-transferable.

It may be withdrawn by the Driver and Vehicle Licensing Department, for example, where the holder has:

- not complied with all the conditions for using the licence,
- supplied incorrect information with regard to the data needed for the issue or extension of the licence.

The original of the licence must be kept by the haulage undertaking.

A certified copy of the licence must be kept in the vehicle⁽¹⁾. In the case of a coupled combination of vehicles it must accompany the motor vehicle. It covers the coupled combination of vehicles even if the trailer or semi-trailer is not registered or authorised to use the roads in the name of the licence holder or if it is registered or authorised to use the roads in another State.

The licence must be presented at the request of any authorised inspecting officer.

Within Gibraltar or each relevant State, the holder must comply with the laws, regulations and administrative provisions in force in that State, in particular with regard to transport and traffic.

⁽¹⁾ ‘Vehicle’ means a motor vehicle registered in Gibraltar or a relevant State, or a coupled combination of motor vehicles the motor vehicle of which at least is registered in Gibraltar or a relevant State, used exclusively for the carriage of goods.

Annex III

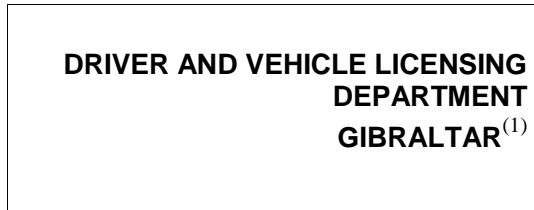
Driver attestation model

(a)

(Colour Pantone pink, format DIN A4 cellulose paper 100 g/m² or more)

(First page of the attestation)

(Text in English)



DRIVER ATTESTATION No:

for the carriage of goods by road for hire or reward under a Gibraltar licence for the Community Regulation (EC) No 1072/2009

This attestation certifies that on the basis of the documents presented by:

..... (2)

The following driver

| | |
|---|----------------------|
| Name and forename | |
| Date and place of birth | Nationality |
| Type and reference number of identity paper | |
| Date of issue | Place of issue |
| Driving licence number | |
| Date of issue | Place of issue |
| Social security number | |

is employed, in accordance with the laws, regulations or administrative provisions and rules applicable in Gibraltar on the conditions of employment and of vocational training of drivers that must be met in order to carry out road transport operations.

Particular remarks:

.....

.....

| | |
|---|-------------------------|
| This attestation is valid from | to |
| Issued by..... | on ⁽³⁾ |

⁽¹⁾ Competent authority in Gibraltar.

⁽²⁾ Name or business name and full address of the haulier.

⁽³⁾ Signature of the authority issuing the certificate and date of issue.

(b)

(Second page of the licence)

(Text in English)

GENERAL PROVISIONS

This licence is issued under Regulation (EC) No 1072/2009.

It certifies that the driver named therein is employed, in accordance with the laws, regulations or administrative provisions and rules applicable in Gibraltar on the conditions of employment and of vocational training of drivers that must be met in order to carry out road transport operations.

The driver attestation shall belong to the haulier, who puts it at the disposal of the driver designated therein when that driver drives a vehicle ⁽¹⁾ engaged in carriage using a Gibraltar licence for the Community issued to that haulier. The driver attestation is not transferable. The driver attestation shall be valid only as long as the conditions under which it was issued are still satisfied and must be returned immediately by the haulier to the issuing authorities if these conditions are no longer met.

It may be withdrawn by the Driver and Vehicle Licensing Department, for example, where the holder has:

- not complied with all the conditions for using the attestation,
- supplied incorrect information with regard to the data needed for the issue or extension of the attestation.

A certified true copy of the attestation must be kept by the haulage undertaking.

An original attestation must be kept in the vehicle and must be presented by the driver at the request of any authorised inspecting officer.

⁽¹⁾ ‘Vehicle’ means a motor vehicle registered in Gibraltar, or a coupled combination of motor vehicles the motor vehicle of which at least is registered in Gibraltar, the United Kingdom or a Member State, used exclusively for the carriage of goods.

”

(19) 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, as amended, is set out in Schedule 2 for information purposes only.

Amendments to Regulation (EU) 2016/403.

9.(1) Commission Regulation (EU) 2016/403 of 18 March 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, is amended in accordance with this regulation.

(2) In Article 1, subparagraph 1-

(a) delete “Union”;

(b) delete the instance of “the” before “commercial”.

(3) In Article 1, subparagraph 3, for “Member States” substitute “The Transport Commission”.

(4) Delete Articles 2 and 3.

(5) In Annex I-

(a) in the frontispiece, delete “Union”;

(b) in the title of point 3, after “(Working time rules” insert “ - Road Transport (Working Time) Regulations 2005 and Part IVA of the Transport Act 1998”;

(c) in the title of point 4, after “(Weight and dimension rules” insert “- Vehicles (Construction, Equipment and Maintenance) Regulations”;

(d) in point 5-

- (i) in the title, after “(Periodic roadworthiness tests” insert “- Motor Vehicle Test Regulations 1987”;
- (ii) in the title, after “(Technical roadside inspection” insert “- Transport (Roadside Test) Regulations 2003”;
- (iii) after the table in point 5-
 - (A) for “Directive 2014/47/EU on technical roadside inspection of the roadworthiness of commercial vehicles contains in its Annex II” substitute “Transport (Roadside Test) Regulations 2003 contains in Schedule 2”;
 - (B) for “Article 12.2 of this Directive provides for the following definitions” substitute “Defined as follows”;
 - (C) for “Annex II of Directive 2014/47/EU” substitute “Schedule 2 of the Transport (Roadside Test) Regulations 2003”;
- (e) in the title of point 6, after “(Speed limitation devices” insert “- Vehicles (construction, Equipment and Maintenance) Regulations”;
- (f) in the title of point 7, after “(Initial qualification and periodic training of drivers” insert “- Traffic (Drivers’ Qualification and Training) Regulations 2008”;
- (g) in the title of point 8, after “(Driving licences requirements” insert “- Traffic (Licensing and Registration) Regulations”;
- (h) in point 9-
 - (A) in the title, after “(Transport of dangerous goods by road” insert “- Transport (Carriage of Dangerous Goods by Road) Regulations 2010 and the Transportable Pressure Equipment Regulations 2011”;
 - (B) in the text after the table, delete “the Member State’s”.
- (6) In Annex II-
 - (a) in point 1-

- (i) delete “of a Member State of establishment”;
 - (ii) for “Member States” substitute “the competent authority”;
- (b) in point 3-
- (i) for “Member States” substitute “The Transport Commission”;
 - (ii) for “their national” substitute “its national”.

(7) Delete Annex III.

(8) Commission Regulation (EU) 2016/403 of 18 March 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, as amended, is set out in Schedule 3 for information purposes only.

Amendments to the Transport Act 1998.

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

(2) For the definition of “relevant State” substitute-

““relevant State” means the United Kingdom, a member State of the European Union, an EEA State and where the definition permits includes Gibraltar;”.

(3) For section 69(1)(u) substitute-

“(u) for the purpose of implementing in Gibraltar international agreements and conventions;”.

SCHEDULE 1

(regulation 4)

REGULATION (EC) No 1071/2009

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

B REGULATION (EC) No 1071/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 21 October 2009

establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC

(Text with EEA relevance)

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**REGULATION (EC) No 1071/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71(1) thereof,

Having regard to the proposal from the Commission,

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

Having regard to the opinion of the European Data Protection Supervisor⁽²⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾,

Whereas:

- (1) The completion of an internal market in road transport with fair conditions of competition requires the uniform application of common rules on admission to the occupation of road haulage operator or road passenger transport operator (the occupation of road transport operator). Such common rules will contribute to the achievement of a higher level of professional qualification for road transport operators, the rationalisation of the market and an improved quality of service, in the interests of road transport operators, their customers and the economy as a whole, together with improvements in road safety. They will also facilitate the effective exercise of the right of establishment by road transport operators.
- (2) Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations ⁽⁴⁾ lays down minimum conditions governing admission to the occupation of road transport operator and the mutual recognition of the documents required in this connection. However, experience, an impact assessment and various studies show that that Directive is being applied inconsistently by Member States. Such disparities have several adverse consequences, in particular a distortion of competition and a lack of market transparency and of uniform monitoring, as well as the risk that undertakings employing staff with a low level of professional qualification may be negligent in respect of, or less compliant with, the rules on road safety and social welfare, which may harm the image of the sector.

⁽¹⁾ OJ C 151, 17.6.2008, p. 16.

⁽²⁾ OJ C 14, 19.1.2008, p. 1.

⁽³⁾ Opinion of the European Parliament of 21 May 2008 (not yet published in the Official Journal), Council Common Position of 9 January 2009 (OJ C 62 E, 17.3.2009, p. 1), Position of the European Parliament of 23 April 2009 (not yet published in the Official Journal) and Council Decision of 24 September 2009.

⁽⁴⁾ OJ L 124, 23.5.1996, p. 1.

- (3) These consequences are all the more detrimental as they are liable to disturb the smooth functioning of the internal market in road transport, since the market in the transport of international goods and certain cabotage operations is accessible to undertakings throughout the Community. The only condition imposed on such undertakings is that they have a Community licence, which can be obtained provided they satisfy the conditions governing admission to the occupation of road transport operator laid down in 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 ⁽¹⁾ and Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services ⁽²⁾.
- (4) It is therefore appropriate to modernise the existing rules on admission to the occupation of road transport operator in order to ensure that those rules are applied more uniformly and effectively. Since compliance with those rules constitutes the main condition governing access to the Community market, and the applicable Community instruments in this field are Regulations, a Regulation would appear to be the most appropriate instrument to govern admission to the occupation of road transport operator.
- (5) Member States should be allowed to adapt the conditions with which to comply in order to pursue the occupation of road transport operator in the outermost regions referred to in Article 299(2) of the Treaty because of the special characteristics of, and constraints in, those regions. However, the undertakings established in those regions which comply with the conditions to pursue the occupation of road transport operator only as a result of such adaptation should not be able to obtain a Community licence. The adaptation of the conditions to pursue the occupation of road transport operator should not hinder undertakings which would have been admitted to the occupation of road transport operator and which comply with the general conditions laid down in this Regulation from carrying out transport operations in the outermost regions.
- (6) In the interests of fair competition, the common rules governing the exercise of the occupation of road transport operator should apply as widely as possible to all undertakings. However, it is unnecessary to include within the scope of this Regulation undertakings which only perform transport operations with a very small impact on the transport market.
- (7) It should be the responsibility of the Member State of establishment to verify that an undertaking satisfies at all times the conditions laid down in this Regulation so that the competent authorities of that Member State are able, if necessary, to decide to suspend or withdraw the authorisations which allow that undertaking to operate on the market. Proper compliance with, and reliable monitoring of, the conditions governing admission to the occupation of road transport operator presuppose that undertakings have an effective and stable establishment.
- (8) Natural persons with the requisite good repute and professional competence should be clearly identified and designated to the competent authorities. Such persons (transport managers), should be resident in a Member State and effectively and continuously manage the transport activities of road transport undertakings. It is therefore appropriate to specify the conditions under which a person is considered to effectively and continuously manage the transport activities of an undertaking.
- (9) The good repute of transport managers is conditional on their not having been convicted of a serious criminal offence or not having incurred a penalty, for a serious infringement, in particular, of Community rules relating to road transport. A conviction or penalty incurred by a transport manager or a road transport undertaking in one or more Member States for the most serious infringements of Community rules should result in the loss of good repute provided that the competent authority has ascertained that a duly completed and documented investigation procedure granting essential procedural rights took place before its final decision and that appropriate rights of appeal were respected.
- (10) It is necessary for road transport undertakings to have a minimum financial standing to ensure their proper

launching and administration. A bank guarantee or a professional liability insurance may constitute a simple and cost-efficient method of demonstrating the financial standing of undertakings.

(1) See page 72 of this Official Journal.

(2) See page 88 of this Official Journal.

- (11) A high level of professional qualification should increase the socioeconomic efficiency of the road transport sector. It is therefore appropriate that applicants for the post of transport manager should possess high-quality professional knowledge. In order to ensure greater uniformity of examinations and to promote a high quality of training, it is appropriate to provide that Member States may authorise examination and training centres according to criteria to be defined by them. Transport managers should possess the requisite knowledge for managing both national and international transport operations. The list of subjects of which knowledge is required in order to obtain a certificate of professional competence and the procedures for the organisation of examinations are likely to evolve with technical progress, and provision should be made for updating them. It should be possible for Member States to exempt from the examinations persons who can provide proof of continuous experience in managing transport activities.
- (12) Fair competition and road transport that is fully compliant with the rules call for a uniform level of monitoring by Member States. The national authorities responsible for monitoring undertakings and the validity of their authorisations have a crucial role to play in this respect, and it is appropriate to ensure that they take suitable measures if necessary, in particular in the most serious cases by suspending or withdrawing authorisations or declaring as unsuitable transport managers who are repeatedly negligent or who act in bad faith. This must be preceded by due consideration of the measure with respect to the proportionality principle. An undertaking should, however, be warned in advance and should have a reasonable period of time within which to rectify the situation before incurring such penalties.
- (13) Better organised administrative cooperation between Member States would improve the effectiveness of the monitoring of undertakings operating in several Member States and would reduce administrative costs in the future. Electronic registers of undertakings interconnected throughout the Community, which comply with the Community rules on the protection of personal data, would facilitate such cooperation and reduce the costs involved in checks for both undertakings and administrations. National registers already exist in several Member States. Infrastructure has also been set up with a view to promoting interconnection between Member States. A more systematic use of electronic registers could therefore make a significant contribution to reducing the administrative costs of checks and to improving their effectiveness.
- (14) Some data contained in national electronic registers concerning infringements and penalties are personal. Member States should therefore take the measures necessary to ensure compliance with 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 (1), in particular with regard to the monitoring of the processing of personal data by public authorities, the right of data subjects to be provided with information, their right of access and their right to object. For the purposes of this Regulation, it would appear to be necessary to retain such data for at least 2 years to ensure that disqualified undertakings do not establish themselves in other Member States.
- (15) In order to improve transparency and to allow the client of a transport undertaking to verify whether that undertaking is in possession of the appropriate authorisation, certain data contained in the national electronic register should be made publicly accessible, in so far as the relevant provisions on data protection are complied with.

(1) OJ L 281, 23.11.1995, p. 31.

- (16) It is essential to gradually interconnect national electronic registers so as to enable information to be exchanged rapidly and efficiently between Member States and to guarantee that road transport operators are not tempted to commit, or to take the risk of committing, serious infringements in Member States other than their Member State of establishment. Interconnection of this kind entails the joint definition of the precise format of the data to be exchanged and the technical procedures for the exchange of that data.
- (17) In order to ensure the efficient exchange of information between Member States, national contact points should be designated and certain common procedures relating as a minimum to time limits and the nature of the information to be forwarded, should be specified.
- (18) In order to facilitate freedom of establishment, the production of appropriate documents issued by a competent authority in the Member State where the transport manager used to reside should be accepted as sufficient proof of good repute for admission to the occupation of road transport operator in the Member State of establishment, provided that the persons concerned have not been declared unfit to pursue that occupation in other Member States.
- (19) With regard to professional competence, in order to facilitate freedom of establishment, a single model certificate issued in accordance with this Regulation should be regarded as sufficient proof by the Member State of establishment.
- (20) Closer monitoring of the application of this Regulation at Community level is required. This presupposes the forwarding to the Commission of regular reports, drawn up on the basis of national registers, on the good repute, financial standing and professional competence of undertakings in the road transport sector.
- (21) Member States should provide for penalties applicable to infringements of this Regulation. Such penalties should be effective, proportionate and dissuasive.
- (22) Since the objective of this Regulation, namely the modernisation of the rules governing admission to the occupation of road transport operator in order to ensure that those rules are applied more uniformly and effectively in the Member States, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale and effects of the action be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (23) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1).

(1) OJ L 184, 17.7.1999, p. 23.

- (24) In particular, the Commission should be empowered to draw up a list of categories, types and degrees of seriousness of infringements leading to the loss of good repute of road transport operators, to adapt to technical progress Annexes I, II and III to this Regulation concerning the knowledge to be taken into consideration for the recognition of professional competence by the Member States and the model certificate of professional competence, and to draw up a list of infringements which in addition to those set out in Annex IV to this Regulation may lead to the loss of good repute. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, inter alia, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (25) Directive 96/26/EC should be repealed,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1. This Regulation governs admission to, and the pursuit of, the occupation of road transport operator.
2. This Regulation shall apply to all undertakings established in the Gibraltar which are engaged in the occupation of road transport operator. It shall also apply to undertakings which intend to engage in the occupation of road transport operator. References to undertakings engaged in the occupation of road transport operator shall, as appropriate, be considered to include a reference to undertakings intending to engage in such occupation.
3. *Not used.*
4. By way of derogation from paragraph 2, this Regulation shall, unless otherwise provided for in national law, not apply to:
 - (a) undertakings engaged in the occupation of road haulage operator solely by means of

motor vehicles or combinations of vehicles the permissible laden mass of which does not exceed 3,5 tonnes;

- (b) undertakings engaged in road passenger transport services exclusively for non-commercial purposes or which have a main occupation other than that of road passenger transport operator;
- (c) undertakings engaged in the occupation of road transport operator solely by means of motor vehicles with a maximum authorised speed not exceeding 40 km/h.

5. The Minister may by Order exempt from the application of all or some of the provisions of this Regulation only those road transport operators engaged exclusively in national transport operations having only a minor impact on the transport market because of:

- (a) the nature of the goods carried; or
- (b) the short distances involved.

Article 2

Definitions

For the purposes of this Regulation:

1. 'the occupation of road haulage operator' means the activity of any undertaking transporting goods for hire or reward by means either of motor vehicles or combinations of vehicles;
2. 'the occupation of road passenger transport operator' means the activity of any undertaking operating, by means of motor vehicles so constructed and equipped as to be suitable for carrying more than nine persons, including the driver, and intended for that purpose, passenger transport services for the public or for specific categories of users in return for payment by the person transported or by the transport organiser;
3. 'the occupation of road transport operator' means the occupation of road passenger transport operator or the occupation of road haulage operator;
4. 'undertaking' means any natural person, any legal person, whether profit-making or not, 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 personality, engaged in the transport of passengers, or any natural or legal person engaged in the transport of freight with a commercial purpose;

5. 'transport manager' means a natural person employed by an undertaking or, if that undertaking is a natural person, that person or, where provided for, another natural person designated by that undertaking by means of a contract, who effectively and continuously manages the transport activities of that undertaking;
6. 'authorisation to pursue the occupation of road transport operator' means an administrative decision which authorises an undertaking which satisfies the conditions laid down in this Regulation to pursue the occupation of road transport operator;
7. 'competent authority' within Gibraltar means the Driver and Vehicle Licensing Department;
8. *Not used.*
9. 'Community licence' means a licence issued under Article 4 of 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 and includes a UK licence for the Community;
10. 'relevant State' means the United Kingdom, a member State of the European Union and includes an EEA State;
11. 'Minister' means the Minister with responsibility for transport.

Article 3

Requirements for engagement in the occupation of road transport operator

1. Undertakings engaged in the occupation of road transport operator shall:
 - (a) have an effective and stable establishment in Gibraltar;
 - (b) be of good repute;
 - (c) have appropriate financial standing; and
 - (d) have the requisite professional competence.
2. *Not used.*

Article 4

Transport manager

1. An undertaking which engages in the occupation of road transport operator shall designate at least one natural person, the transport manager, who satisfies the requirements set out in Article 3(1)(b) and (d) and who:
 - (a) effectively and continuously manages the transport activities of the undertaking;
 - (b) has a genuine link to the undertaking, such as being an employee, director, owner or shareholder or administering it, or, if the undertaking is a natural person, is that person; and
 - (c) is resident in Gibraltar or in a relevant State.
2. If an undertaking does not satisfy the requirement of professional competence laid down in Article 3(1)(d), the competent authority may authorise it to engage in the occupation of road transport operator without a transport manager designated in accordance with paragraph 1 of this Article, provided that:
 - (a) the undertaking designates a natural person residing in Gibraltar or in a relevant State who satisfies the requirements laid down in Article 3(1)(b) and (d), and who is entitled under contract to carry out duties as transport manager on behalf of the undertaking;
 - (b) the contract linking the undertaking with the person referred to in point (a) specifies the tasks to be performed on an effective and continuous basis by that person, and indicates his or her responsibilities as transport manager. The tasks to be specified shall comprise, in particular, those relating to vehicle maintenance management, verification of transport contracts and documents, basic accounting, the assignment of loads or services to drivers and vehicles, and the verification of safety procedures;
 - (c) in his or her capacity as transport manager, the person referred to in point (a) may manage the transport activities of up to four different undertakings carried out with a combined maximum total fleet of 50 vehicles; and
 - (d) the person referred to in point (a) performs the specified tasks solely in the interests of the undertaking and his or her responsibilities are exercised independently of any undertakings for which the undertaking carries out transport operations.
3. The competent authority may decide that a transport manager designated in accordance with paragraph 1 may not in addition be designated in accordance with paragraph 2, or may only be so designated in respect of a limited number of undertakings or a fleet of vehicles that is smaller than that referred to in paragraph 2(c).
4. The undertaking shall notify the competent authority of the transport manager or

managers designated.

CHAPTER II

**CONDITIONS TO BE MET TO SATISFY THE REQUIREMENTS LAID DOWN IN
ARTICLE 3**

Article 5

Conditions relating to the requirement of establishment

In order to satisfy the requirement laid down in Article 3(1)(a), an undertaking shall:

- (a) have an establishment situated in Gibraltar with premises in which it keeps its core business documents, in particular its accounting documents, personnel management documents, documents containing data relating to driving time and rest and any other document to which the competent authority must have access in order to verify compliance with the conditions laid down in this Regulation. The Minister may require that establishments also have other documents available at their premises at any time;
- (b) once an authorisation is granted, have at its disposal one or more vehicles which are registered or otherwise put into circulation, whether those vehicles are wholly owned or, for example, held under a hire-purchase agreement or a hire or leasing contract;
- (c) conduct effectively and continuously with the necessary administrative equipment its operations concerning the vehicles mentioned in point (b) and with the appropriate technical equipment and facilities at an operating centre situated in Gibraltar.

Article 6

Conditions relating to the requirement of good repute

1. Subject to paragraph 2 of this Article, the Minister shall determine the conditions to be met by undertakings and transport managers in order to satisfy the requirement of good repute laid down in Article 3(1)(b).

In determining whether an undertaking has satisfied that requirement, the competent authority may consider the conduct of the undertaking, its transport managers and any other relevant person as may be determined by the competent authority. Any reference in this Article to convictions, penalties or infringements shall include convictions, penalties or infringements of the undertaking itself, its transport managers and any other relevant person as may be determined by the competent authority.

The conditions referred to in the first subparagraph shall include at least the following:

- (a) that there be no compelling grounds for doubting the good repute of the transport manager or the transport undertaking, such as convictions or penalties for any serious

infringement of national rules in force in the fields of:

- (i) commercial law;
 - (ii) insolvency law;
 - (iii) pay and employment conditions in the profession;
 - (iv) road traffic;
 - (v) professional liability;
 - (vi) trafficking in human beings or drugs; and
- (b) that the transport manager or the transport undertaking have not been convicted of a serious criminal offence or incurred a penalty for a serious infringement relating in particular to:
- (i) the driving time and rest periods of drivers, working time and the installation and use of recording equipment;
 - (ii) the maximum weights and dimensions of commercial vehicles used in international traffic;
 - (iii) the initial qualification and continuous training of drivers;
 - (iv) the roadworthiness of commercial vehicles, including the compulsory technical inspection of motor vehicles;
 - (v) access to the market in international road haulage or, as appropriate, access to the market in road passenger transport;
 - (vi) safety in the carriage of dangerous goods by road;
 - (vii) the installation and use of speed-limiting devices in certain categories of vehicle;
 - (viii) driving licences;
 - (ix) admission to the occupation;
 - (x) animal transport.

2. For the purposes of point (b) of the third subparagraph of paragraph 1:

- (a) where the transport manager or the transport undertaking has, in Gibraltar or in one or more relevant States, been convicted of a serious criminal offence or incurred a penalty for one of the most serious infringements of rules as set out in Annex IV, the competent authority must carry out in an appropriate and timely manner a duly completed administrative procedure, which may include, if appropriate, a check at the

premises of the undertaking concerned.

The procedure shall determine whether, due to specific circumstances, the loss of good repute would constitute a disproportionate response in the individual case. Any such finding shall be duly reasoned and justified.

If the competent authority finds that the loss of good repute would constitute a disproportionate response, it may decide that good repute is unaffected. In such case, the reasons shall be recorded in the national register. The number of such decisions shall be indicated in an annual report which the competent authority must compile and send to the Minister.

If the competent authority does not find that the loss of good repute would constitute a disproportionate response, the conviction or penalty shall lead to the loss of good repute;

- (b) the competent authorities must take into account any information on the categories, types and degrees of seriousness of any infringements referred to in Annex IV and Commission Regulation (EU) 2016/403, including information received from relevant States, when setting the priorities for checks pursuant to Article 12(1).

Additional measures, designed to amend non-essential elements of this Regulation by supplementing it and which relate to this list, may be adopted by the Minister.

To this end, the Minister may make Regulations which:

- (i) lay down the categories and types of infringement which are most frequently encountered;
- (ii) define the degree of seriousness of infringements according to their potential to create a risk of fatalities or serious injuries; and
- (iii) provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager.

3. The requirement laid down in Article 3(1)(b) shall not be satisfied until a rehabilitation measure or any other measure having an equivalent effect has been taken pursuant to the relevant provisions of national law.

Article 7

Conditions relating to the requirement of financial standing

1. In order to satisfy the requirement laid down in Article 3(1)(c), an undertaking shall at all times be able to meet its financial obligations in the course of the annual accounting year. To this end, the undertaking shall demonstrate, on the basis of annual accounts

certified by an auditor or a duly accredited person, that, every year, it has at its disposal capital and reserves totalling at least £8,000 when only one vehicle is used and £4,500 for each additional vehicle used.

The accounting items referred to in the first subparagraph shall be understood as those defined in Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies ⁽¹⁾.

2. By way of derogation from paragraph 1, the competent authority may agree or require that an undertaking demonstrate its financial standing by means of a certificate such as a bank guarantee or an insurance, including a professional liability insurance from one or more banks or other financial institutions, including insurance companies, providing a joint and several guarantee for the undertaking in respect of the amounts specified in the first subparagraph of paragraph 1.

3. The annual accounts referred to in paragraph 1, and the guarantee referred to in paragraph 2, which are to be verified, are those of the economic entity established in Gibraltar and not those of any entity established in any other country

⁽¹⁾ OJ L 222, 14.8.1978, p. 11.

Article 8

Conditions relating to the requirement of professional competence

1. In order to satisfy the requirement laid down in Article 3(1)(d), the person or persons concerned shall possess knowledge corresponding to the level provided for in Part I of Annex I in the subjects listed therein. That knowledge shall be demonstrated by means of a compulsory written examination which, may be supplemented by an oral examination. Those examinations shall be organised in accordance with Part II of Annex I. The person concerned may require training prior to the examination.

2. The person concerned must sit the examination in Gibraltar if this is where they have their normal residence when working.

‘Normal residence’ shall mean the place where a person usually lives, that is for at least 185 days in each calendar year, 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 different

place from his personal ties and who, consequently, lives in turn in different places situated in Gibraltar and one or more relevant States, shall be regarded as being in the place of his personal ties, provided that such person returns there regularly. This last condition shall not be required where the person is living in Gibraltar or a relevant State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

3. Only the competent authority in Gibraltar, in accordance with defined criteria, may organise and certify the written and oral examinations referred to in paragraph 1. The competent authority must ensure that the conditions under which the examinations are conducted are in accordance with Annex I.

4. The competent authority may duly authorise, in accordance with criteria defined by it, bodies to provide applicants with high-quality training to prepare them for the examinations and transport managers with continuous training to update their knowledge if they wish to do so. The competent authority shall regularly verify that these bodies at all times fulfil the criteria on the basis of which they were authorised.

5. The competent authority may promote periodic training on the subjects listed in Annex I at 10-year intervals to ensure that transport managers are aware of developments in the sector.

6. The competent authority may require persons who possess a certificate of professional competence, but who have not managed a road haulage undertaking or a road passenger transport undertaking in the last 5 years, to undertake retraining in order to update their knowledge regarding the current developments of the legislation referred to in Part I of Annex I.

7. The competent authority may exempt the holders of certain higher education qualifications or technical education qualifications issued in Gibraltar, specifically designated to this end and entailing knowledge of all the subjects listed in Annex I from the examination in the subjects covered by those qualifications. The exemption shall only apply to those sections of Part I of Annex I for which the qualification covers all subjects listed under the heading of each section.

The competent authority may exempt from specified parts of the examinations holders of certificates of professional competence valid for national transport operations in Gibraltar.

8. A certificate issued by the authority or body referred to in paragraph 3 shall be produced as proof of professional competence. That certificate shall not be transferable to any other person. It shall be drawn up in accordance with the security features and the model certificate set out in Annexes II and III and shall bear the seal of the duly

authorised authority or body which issued it.

9. The Minister may make regulations which adapt Annexes I, II and III due to technical progress.

Article 9

Not used

CHAPTER III

AUTHORISATION AND MONITORING

Article 10

Competent authorities

1. The competent authority may:
 - (a) examine applications made by undertakings;
 - (b) grant authorisations to engage in the occupation of road transport operator, and suspend or withdraw such authorisations;
 - (c) declare a natural person to be unfit to manage the transport activities of an undertaking in the capacity of transport manager;
 - (d) carry out the requisite checks to verify whether an undertaking satisfies the requirements laid down in Article 3.

2. The competent authority shall publish all the conditions laid down pursuant to this Regulation, any other national provisions, the procedures to be followed by interested applicants and the corresponding explanations.

Article 11

Examination and registration of applications

1. A transport undertaking which complies with the requirements laid down in Article 3 shall, upon application, be authorised to engage in the occupation of road transport operator. The competent authority shall ascertain that an undertaking which submits an application satisfies the requirements laid down in that Article.
2. The competent authority shall record in the national electronic register referred to in Article 16 the data relating to undertakings which it authorises and which are referred to in points (a) to (d) of the first subparagraph of Article 16(2).
3. The time limit for the examination of an application for authorisation by the competent authority shall be as short as possible and shall not exceed 3 months from the date on which the competent authority receives all documents necessary to assess the application. The competent authority may extend this time limit for one additional month in duly justified cases.
4. When assessing the good repute of an undertaking, the competent authority shall verify, by accessing the data referred to in point (f) of the first subparagraph of Article 16(2), either by direct secure access to the relevant part of the national registers or by request, whether at the time of the application the designated transport manager or managers are declared as unfit to manage the transport activities of an undertaking pursuant to Article 14.
5. Undertakings with an authorisation to engage in the occupation of road transport operator shall, within a period of 28 days or less, notify the competent authority which granted the authorisation of any changes to the data referred to in paragraph 2.

Article 12

Checks

1. The competent authority must monitor whether undertakings which it has authorised to engage in the occupation of road transport operator continue to fulfil the requirements laid down in Article 3. To that end, the competent authority must carry out checks targeting those undertakings which are classed as posing an increased risk.
2. *Not used.*
3. The competent authority shall carry out individual checks to verify whether an undertaking meets the conditions governing admission to the occupation of road transport operator whenever the Minister so requests in duly motivated cases. It shall inform the Minister of the results of such checks and of the measures taken if it is established that the undertaking no longer fulfils the requirements laid down in this Regulation.

Article 13

Procedure for the suspension and withdrawal of authorisations

1. Where the competent authority establishes that an undertaking runs the risk of no longer fulfilling the requirements laid down in Article 3, it shall notify the undertaking thereof. Where a competent authority establishes that one or more of those requirements is no longer satisfied, it may set one of the following time limits for the undertaking to rectify the situation:

- (a) a time limit not exceeding 6 months, which may be extended by 3 months in the event of the death or physical incapacity of the transport manager, for the recruitment of a replacement transport manager where the transport manager no longer satisfies the requirement as to good repute or professional competence
- (b) a time limit not exceeding 6 months where the undertaking has to rectify the situation by demonstrating that it has an effective and stable establishment;
- (c) a time limit not exceeding 6 months where the requirement of financial standing is not satisfied, in order to demonstrate that that requirement will again be satisfied on a permanent basis.

2. The competent authority may require an undertaking whose authorisation has been suspended or withdrawn to ensure that its transport managers have passed the examinations referred to in Article 8(1) prior to any rehabilitation measure being taken.

3. If the competent authority establishes that the undertaking no longer satisfies one or more of the requirements laid down in Article 3, it shall suspend or withdraw the authorisation to engage in the occupation of road transport operator within the time limits referred to in paragraph 1 of this Article.

Article 14

Declaration of unfitness of the transport manager

1. Where a transport manager loses good repute in accordance with Article 6, the competent authority shall declare that transport manager unfit to manage the transport activities of an undertaking.

2. Unless and until a rehabilitation measure is taken, the certificate of professional competence, referred to in Article 8(8), of the transport manager declared to be unfit, shall no longer be valid.

Article 15

Decisions of the competent authorities and appeals

1. Negative decisions taken by the competent authority pursuant to this Regulation,

including the rejection of an application, the suspension or withdrawal of an existing authorisation and a declaration of unfitness of a transport manager, shall state the reasons on which they are based.

Such decisions shall take account of available information concerning infringements committed by the undertaking or the transport manager which are such as to detract from the good repute of the undertaking and of any other information at the disposal of the competent authority. They shall specify the rehabilitation measures applicable in the event of the suspension of an authorisation or a declaration of unfitness.

2. Undertakings and persons concerned have the possibility of appealing the decisions referred to in paragraph 1 as provided for in domestic legislation.

CHAPTER IV

SIMPLIFICATION AND ADMINISTRATIVE COOPERATION

Article 16

National electronic register

1. For the purposes of the implementation of this Regulation, and in particular Articles 11 to 14 thereof, the competent authority must keep a national electronic register of road transport undertakings which have been authorised to engage in the occupation of road transport operator. The data contained in that register must be processed under the supervision of the Minister. The relevant data contained in the national electronic register must be accessible to any competent authority.

2. The national electronic register shall contain at least the following data:

- (a) the name and legal form of the undertaking;
- (b) the address of its establishment;
- (c) the names of the transport managers designated to meet the conditions as to good repute and professional competence or, as appropriate, the name of a legal representative;
- (d) the type of authorisation, the number of vehicles it covers and, where appropriate, the serial number of the Gibraltar licence for the Community or the Community licence and of their certified copies;
- (e) the number, category and type of serious infringements, as referred to in Article

6(1)(b), which have resulted in a conviction or penalty during the last 2 years;

- (f) the name of any person declared to be unfit to manage the transport activities of an undertaking, as long as the good repute of that person has not been re-established pursuant to Article 6(3), and the rehabilitation measures applicable.

The Minister may choose to keep the data referred to in points (e) and (f) of the first subparagraph in separate registers. In such a case, the relevant data shall be available upon request or directly accessible to the competent authorities of relevant States. The requested information shall be provided within 30 working days of receipt of the request. The data referred to in points (a) to (d) of the first subparagraph shall be publicly accessible, in accordance with the relevant provisions on personal data protection.

In any case, the data referred to in points (e) and (f) of the first subparagraph shall only be accessible to authorities other than the competent authorities where they are duly endowed with powers relating to supervision and the imposition of penalties in the road transport sector and their officials are sworn to, or otherwise are under a formal obligation of, secrecy.

3. Data concerning an undertaking whose authorisation has been suspended or withdrawn shall remain in the national electronic register for 2 years from the expiry of the suspension or the withdrawal of the licence, and shall thereafter be immediately removed.

Data concerning any person declared to be unfit for the occupation of road transport operator shall remain in the national electronic register as long as the good repute of that person has not been re-established pursuant to Article 6(3). Where such a rehabilitation measure or any other measure having an equivalent effect is taken, the data shall be immediately removed.

The data referred to in the first and second subparagraphs shall specify the reasons for the suspension or withdrawal of the authorisation or the declaration of unfitness, as appropriate, and the corresponding duration.

4. The competent authority shall take all necessary measures to ensure that all the data contained in the national electronic register is kept up to date and is accurate, in particular the data referred to in points (e) and (f) of the first subparagraph of paragraph 2.

Article 17

Protection of personal data

With regard to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the competent authority shall ensure in particular that:

- (a) all persons are informed when data relating to them is recorded or is planned to be forwarded to third parties. The information provided shall specify the identity of the authority responsible for processing the data, the type of data processed and the reasons for such action;
- (b) all persons have a right of access to data relating to them held by the authority responsible for processing those data. That right shall be exercisable without constraint, at reasonable intervals and without excessive delay or cost for the applicant;
- (c) all persons whose data are incomplete or inaccurate have the right to have those data rectified, erased or blocked;
- (d) all persons have the right to oppose, on compelling legitimate grounds, the processing of data relating to them. Where there is justified opposition, the processing may no longer involve those data;
- (e) undertakings comply, where applicable, with the relevant provisions on the protection of personal data.

Article 18

Not used

CHAPTER V

MUTUAL RECOGNITION OF CERTIFICATES AND OTHER DOCUMENTS

Article 19

Certificates of good repute and equivalent documents

1. The competent authority shall accept as sufficient proof of good repute for admission to the occupation of road transport operator the production of an extract from a judicial record or, failing that, an equivalent document issued by a competent judicial or administrative authority in a relevant State where the transport manager or any other relevant person used to reside.

2. Where the Minister imposes on Gibraltar nationals certain conditions relating to good repute, and proof that these conditions are met cannot be provided by means of the document referred to in paragraph 1, the competent authority must accept as sufficient proof for nationals of relevant States a certificate issued by a competent judicial or administrative authority in the relevant State(s) where the transport manager or any other relevant person used to reside stating that these conditions have been met. Such certificate must relate to the specific information taken into consideration in Gibraltar.

3. If the document referred to in paragraph 1 or the certificate referred to in paragraph 2 has not been issued by the relevant State(s) where the transport manager or any other relevant person used to reside, that document or certificate may be replaced by a declaration on oath or by a solemn declaration made by the transport manager or any other relevant person before a competent judicial or administrative authority or, where appropriate, before a notary in the relevant State where the transport manager or any other relevant person used to reside. Such authority or notary shall issue a certificate authenticating the declaration on oath or the solemn declaration.

4. A document referred to in paragraph 1 and a certificate referred to in paragraph 2 shall not be accepted if produced more than 3 months after their date of issue. This condition shall also apply to a declaration made in accordance with paragraph 3.

5. In this Article and in Article 20, 'competent administrative authority' means a national, regional or local authority in a relevant State which, for the purpose of authorising the pursuit of the occupation of road transport operator, verifies whether an undertaking satisfies the conditions laid down in Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time, and which is empowered to grant, suspend or withdraw an authorisation to pursue the occupation of road transport operator.

Article 20

Certificates relating to financial standing

Where the Minister imposes on Gibraltar nationals certain conditions relating to financial standing in addition to those set out in Article 7, the competent authority must accept as sufficient proof for nationals of relevant States a certificate issued by a competent administrative authority in the relevant State(s) where the transport manager or any other relevant person used to reside stating that these conditions have been met. Such certificate must relate to the specific information taken into consideration in Gibraltar.

Article 21

Certificates of professional competence issued in a relevant State

1. The competent authority shall recognise as sufficient proof of professional competence a certificate which complies with the model certificate set out in Annex III of Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time and which is issued by the authority or body duly authorised in a relevant State for that purpose.

2. A certificate issued before 4 December 2011 as proof of professional competence pursuant to the provisions in force until that date shall be deemed to be equivalent to a certificate which complies with the model certificate set out in Annex III of Regulation (EC) No 1071/2009 as it has effect in EU law as amended from time to time and shall be recognised as proof of professional competence in Gibraltar. Holders of certificates of professional competence valid only for national transport may be required to pass the examinations, or parts of examinations, referred to in Article 8(1).

CHAPTER VI

FINAL PROVISIONS

Article 22

Penalties

1. *Not used.*

2. The penalties for infringement of this Regulation shall include, in particular provision in relation to, suspension of the authorisation to engage in the occupation of road transport operator, withdrawal of such authorisation and a declaration of unfitness of the transport manager.

Articles 23 to 28

Not used

Article 29

Repeal

Directive 96/26/EC is hereby repealed.

Article 30

Not used

ANNEX I

I. LIST OF SUBJECTS REFERRED TO IN ARTICLE 8

The knowledge to be taken into consideration for the official recognition of professional competence by the competent authority must cover at least the subjects listed below for road haulage and road passenger transport respectively. In relation to these subjects, applicant road haulage and road passenger transport operators must have the levels of knowledge and practical aptitude necessary for the management of a transport undertaking.

The minimum level of knowledge, as indicated below, may not be below level 3 of the training-level structure laid down in the Annex to Council Decision 85/368/EEC ⁽¹⁾, namely the level of knowledge acquired during the course of compulsory education, which is supplemented either by vocational training and supplementary technical training or by secondary school or other technical training.

A. Civil law

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the main types of contract used in road transport and with the rights and obligations arising therefrom;
2. be capable of negotiating a legally valid transport contract, notably with regard to conditions of carriage;

in relation to road haulage:

3. be able to consider a claim by his principal regarding compensation for loss of or damage to goods during transportation or for their late delivery, and to understand how such a claim affects his contractual liability;
4. be familiar with the rules and obligations arising from the CMR Convention on the Contract for the International Carriage of Goods by Road;

in relation to road passenger transport:

5. be able to consider a claim by his principal regarding compensation for injury to passengers or damage to their baggage caused by an accident during transportation, or regarding compensation for delays, and to understand how such a claim affects his contractual liability.

B. Commercial law

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the conditions and formalities laid down for plying the trade, the general obligations incumbent upon transport operators (registration, record keeping, etc.) and the

consequences of bankruptcy;

2. have appropriate knowledge of the various forms of commercial companies and the rules governing their constitution and operation.

⁽¹⁾ Council Decision 85/368/EEC of 16 July 1985 on the comparability of vocational training qualifications between the Member States of the European Community (OJ L 199, 31.7.1985, p. 56).

C. Social law

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the following:

1. the role and function of the various social institutions which are concerned with road transport (trade unions, works councils, shop stewards, labour inspectors, etc.);
2. the employers' social security obligations;
3. the rules governing work contracts for the various categories of worker employed by road transport undertakings (form of the contracts, obligations of the parties, working conditions and working hours, paid leave, remuneration, breach of contract, etc.);
4. the rules applicable to driving time, rest periods and working time, and in particular the provisions of:
 - (a) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85;
 - (b) 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;
 - (c) the Transport Act 1998;
 - (d) Road Transport (Working Time) Regulations 2005;
 - (e) the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008;
 - (f) the Tachographs (Miscellaneous Provisions) Regulations 2015;
 - (g) the practical measures for applying the provisions in paragraphs (a) to (f); and
5. the rules applicable to the initial qualification and continuous training of drivers as set out in the Traffic (Drivers' Qualification and Training) Regulations 2008.

D. Fiscal law

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the rules governing:

1. value added tax (VAT) on transport services;
2. motor-vehicle tax;
3. the taxes on certain road haulage vehicles and tolls and infrastructure user charges;
4. income tax;
5. Gibraltar import duty taxes.

E. Business and financial management of the undertaking

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the laws and practices regarding the use of cheques, bills of exchange, promissory notes, credit cards and other means or methods of payment;
2. be familiar with the various forms of credit (bank credit, documentary credit, guarantee deposits, mortgages, leasing, renting, factoring, etc.) and the charges and obligations arising therefrom;
3. know what a balance sheet is, how it is set out and how to interpret it;
4. be able to read and interpret a profit and loss account;
5. be able to assess the undertaking's profitability and financial position, in particular on the basis of financial ratios;
6. be able to prepare a budget;
7. be familiar with the cost elements of the undertaking (fixed costs, variable costs, working capital, depreciation, etc.), and be able to calculate costs per vehicle, per kilometre, per journey or per tonne;
8. be able to draw up an organisation chart relating to the undertaking's personnel as a whole and to organise work plans, etc.;
9. be familiar with the principles of marketing, publicity and public relations, including transport services, sales promotion and the preparation of customer files, etc.;
10. be familiar with the different types of insurance relating to road transport (liability, accidental injury/life insurance, non-life and luggage insurance) and the guarantees and obligations arising therefrom;
11. be familiar with the applications of electronic data transmission in road transport;

in relation to road haulage:

12. be able to apply the rules governing the invoicing of road haulage services and know the meaning and implications of Incoterms;
13. be familiar with the different categories of transport auxiliaries, their role, their functions and, where appropriate, their status;

in relation to road passenger transport:
14. be able to apply the rules governing fares and pricing in public and private passenger transport;
15. be able to apply the rules governing the invoicing of road passenger transport services.

(1) 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 (OJ L 80, 23.3.2002, p. 35).

(2) Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (OJ L 226, 10.9.2003, p. 4).

F. Access to the market

The applicant must, in particular, in relation to road haulage and passenger transport, be familiar with the following:

1. the occupational regulations governing road transport for hire or reward, industrial vehicle rental and subcontracting, and in particular the rules governing the official organisation of the occupation, admission to the occupation, authorisations for intra-Community and extra-Community road transport operations, inspections and penalties;
2. the rules for setting up a road transport undertaking;
3. the various documents required for operating road transport services and the introduction of checking procedures to ensure that the approved documents relating to each transport operation, and in particular those relating to the vehicle, the driver, the goods and luggage are kept both in the vehicle and on the premises of the undertaking;

in relation to road haulage:

4. the rules on the organisation of the market in road haulage services, as well as the rules on freight handling and logistics;
5. border formalities, the role and scope of T documents and TIR carnets, and the obligations and responsibilities arising from their use;

in relation to road passenger transport:

6. the rules on the organisation of the market in road passenger transport;
7. the rules for introducing road passenger transport services and the drawing up of transport plans.

G. Technical standards and technical aspects of operation

The applicant must, in particular, in relation to road haulage and passenger transport:

1. be familiar with the rules concerning the weights and dimensions of vehicles in Gibraltar and in the relevant States and the procedures to be followed in the case of abnormal loads which constitute an exception to these rules;
2. be able to choose vehicles and their components (chassis, engine, transmission system, braking system, etc.) in accordance with the needs of the undertaking;
3. be familiar with the formalities relating to the type approval, registration and technical inspection of these vehicles;
4. understand what measures must be taken to reduce noise and to combat air pollution by motor vehicle exhaust emissions;
5. be able to draw up periodic maintenance plans for the vehicles and their equipment;

in relation to road haulage:

6. be familiar with the different types of cargo-handling and loading devices (tailboards, containers, pallets, etc.) and be able to introduce procedures and issue instructions for loading and unloading goods (load distribution, stacking, stowing, blocking and chocking, etc.);
7. be familiar with the various techniques of 'piggy-back' and roll-on roll-off combined transport;
8. be able to implement procedures to comply with the rules on the carriage of dangerous goods and waste, notably those arising from:
 - (a) Transport (Carriage of Dangerous Goods by Road) Regulations 2010;
 - (b) Transportable Pressure Equipment Regulations 2011;
 - (c) Public Health Act;
 - (d) Pollution Prevention and Control Regulations 2013; and

(e) Regulation (EC) No 1013/2006 ⁽²⁾;

9. be able to implement procedures to comply with the rules on the carriage of perishable foodstuffs, notably those arising from the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be used for such Carriage (ATP);
10. be able to implement procedures to comply with the rules on the transport of live animals.

H. Road safety

The applicant must, in particular, in relation to road haulage and passenger transport:

1. know what qualifications are required for drivers (driving licence, medical certificates, certificates of fitness, etc.);
2. be able to take the necessary steps to ensure that drivers comply with the traffic rules, prohibitions and restrictions in force in Gibraltar and relevant States (speed limits, priorities, waiting and parking restrictions, use of lights, road signs, etc.);
3. be able to draw up instructions for drivers to check their compliance with the safety requirements concerning the condition of the vehicles, their equipment and cargo, and concerning preventive measures to be taken;
4. be able to lay down procedures to be followed in the event of an accident and to implement appropriate procedures to prevent the recurrence of accidents or serious traffic offences;
5. be able to implement procedures to properly secure goods and be familiar with the corresponding techniques;
in relation to road passenger transport:
6. have elementary knowledge of the layout of the road network in Gibraltar and relevant States.

II. ORGANISATION OF THE EXAMINATION

1. The competent authority shall organise a compulsory written examination which it may supplement with an optional oral examination to establish whether applicant road transport operators have achieved the required level of knowledge in the subjects listed in Part I and in particular their capacity to use the instruments and techniques relating to those subjects and to fulfil the corresponding executive and coordination duties.
 - (a) The compulsory written examination will involve two tests, namely:
 - (i) written questions consisting of either multiple choice questions (each with four possible answers), questions requiring direct answers or a combination of both systems;
 - (ii) written exercises/case studies.The minimum duration of each test will be two hours.
 - (b) Where an oral examination is organised, the competent authority may stipulate that participation is subject to the successful completion of the written examination.
2. Where the competent authority also organise an oral examination, they must provide, in respect of each of the three tests, for a weighting of marks of a minimum of 25 % and a maximum of 40 % of the total number of marks to be given.

Where the competent authority organise only a written examination, they must provide, in respect of each test, for a weighting of marks of a minimum of 40 % and a maximum of 60 % of the total number of marks to be given.

3. With regard to all the tests, applicants must obtain an average of at least 60 % of the total number of marks to be given, achieving in any given test not less than 50 % of the total number of marks possible. In one test only, the competent authority may reduce that mark from 50 % to 40 %.

(1) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

(2) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

ANNEX II

Security features of the certificate of professional competence

The certificate must have at least two of the following security features:

- a hologram,
- special fibres in the paper which become visible under UV light,
- at least one microprint line (printing visible only with a magnifying glass and not reproduced by photocopying machines),
- tactile characters, symbols or patterns,
- double numbering: serial number and issue number,
- a security design background with fine guilloche patterns and rainbow printing.

Annex III

Model of the certificate of professional competence

UNITED KINGDOM

GIBRALTAR

(Colour Pantone stout fawn 467, or as close as possible to this colour, format DIN A4 cellulose paper 100 g/m 2 or more.)

(Text in English)

UK

**DRIVER AND VEHICLE LICENSING
DEPARTMENT
GIBRALTAR⁽¹⁾**

GIBRALTAR

**CERTIFICATE OF PROFESSIONAL COMPETENCE IN ROAD HAULAGE/ PASSENGER
TRANSPORT⁽²⁾**

No
We
hereby certify that⁽³⁾
born on in
has successfully passed the tests for the examination (year:; session:)⁽⁴⁾
necessary for the award of the certificate of professional competence in road haulage/passenger
transport⁽⁵⁾ in accordance with Regulation (EC) No 1071/2009 establishing common rules concerning the
conditions to be complied with to pursue the occupation of road transport operator.

This certificate constitutes the sufficient proof of professional competence referred to in Article 21 of
Regulation (EC) No 1071/2009.

Issued by, on⁽⁵⁾



⁽¹⁾ Competent Authority in Gibraltar.

⁽²⁾ Delete as appropriate.

⁽³⁾ Surname and forename; place and date of birth.

⁽⁴⁾ Identification of the examination.

⁽⁵⁾ Signature of the authority issuing the certificate and date of issue.

ANNEX IV

Most serious infringements for the purposes of Article 6(2)(a)

1. (a) Exceeding the maximum 6-day or fortnightly driving time limits by margins of 25 % or more.
(b) Exceeding, during a daily working period, the maximum daily driving time limit by a margin of 50 % or more without taking a break or without an uninterrupted rest period of at least 4,5 hours.
2. Not having a tachograph and/or speed limiter, or using a fraudulent device able to modify the records of the recording equipment and/or the speed limiter or falsifying record sheets or data downloaded from the tachograph and/or the driver card.
3. Driving without a valid roadworthiness certificate if such a document is required under Community law and/or driving with a very serious deficiency of, inter alia, the braking system, the steering linkages, the wheels/tyres, the suspension or chassis that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle.
4. Transporting dangerous goods that are prohibited for transport or transporting such goods in a prohibited or non-approved means of containment or without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle.
5. Carrying passengers or goods without holding a valid driving licence or carrying by an undertaking not holding a valid Community licence.
6. Driving with a driver card that has been falsified, or with a card of which the driver is not the holder, or which has been obtained on the basis of false declarations and/or forged documents.
7. Carrying goods exceeding the maximum permissible laden mass by 20 % or more for vehicles the permissible laden weight of which exceeds 12 tonnes, and by 25 % or more for vehicles the permissible laden weight of which does not exceed 12 tonnes.

SCHEDULE 2
REGULATION (EC) No 1072/2009

(regulation 5)

This document is meant purely as a documentation tool and the institutions do not assume any liability for its contents

B 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 (recast)

(Text with EEA relevance)

(OJ L 300, 14.11.2009, p. 72)

Amended by:

| | | Official Journal | | |
|------------------|---|------------------|------|-----------|
| | | No | page | date |
| <u>M1</u> | Commission Regulation (EU) No 612/2012 of 9 July 2012 | L 178 | 5 | 10.7.2012 |
| <u>M2</u> | Council Regulation (EU) No 517/2013 of 13 May 2013 | L 158 | 1 | 10.6.2013 |

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
(recast)
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 71 thereof,

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) A number of substantial changes are to be made 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 ⁽³⁾, to Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State ⁽⁴⁾, and to Directive 2006/94/EC of the European Parliament and of the Council of 12 December 2006 on the establishment of common rules for certain types of carriage of goods by road ⁽⁵⁾. In the interests of clarity and simplification, those legal acts should be recast and incorporated into one single regulation.
- (2) The establishment of a common transport policy entails, *inter alia*, laying down common rules applicable to access to the market in the international carriage of goods by road within the territory of the Community, as well as laying down the conditions under which non-resident hauliers may operate transport services within a Member State. Those rules must be laid down in such a way as to contribute to the smooth operation of the internal transport market.

(¹) OJ C 204, 9.8.2008, p. 31.

(²) Opinion of the European Parliament of 21 May 2008 (not yet published in the Official Journal), Council Common Position of 9 January 2009 (OJ C 62 E, 17.3.2009, p. 46), Position of the European Parliament of 23 April 2009 (not yet published in the Official Journal) and Council Decision of 24 September 2009.

(³) OJ L 95, 9.4.1992, p. 1.

(⁴) OJ L 279, 12.11.1993, p. 1.

(⁵) OJ L 374, 27.12.2006, p. 5.

- (3) To ensure a coherent framework for international road haulage throughout the Community, this Regulation should apply to all international carriage on Community territory. Carriage from Member States to third countries is still largely covered by bilateral agreements between the Member States and those third countries. Therefore, this Regulation should not apply to that part of the journey within the territory of the Member State of loading or unloading as long as the necessary agreements between the Community and the third countries concerned have not been concluded. It should, however, apply to the territory of a Member State crossed in transit.
- (4) The establishment of a common transport policy implies the removal of all restrictions against the person providing transport services on the grounds of nationality or the fact that he is established in a different Member State from the one in which the services are to be provided.
- (5) In order to achieve this smoothly and flexibly, provision should be made for a transitional cabotage regime as long as harmonisation of the road haulage market has not yet been completed.
- (6) The gradual completion of the single European market should lead to the elimination of restrictions on access to the domestic markets of Member States. Nevertheless, this should take into account the effectiveness of controls and the evolution of employment conditions in the profession, the harmonisation of the rules in the fields of, inter alia, enforcement and road user charges, and social and safety legislation. The Commission should closely monitor the market situation as well as the harmonisation mentioned above and propose, if appropriate, the further opening of domestic road transport markets, including cabotage
- (7) Under Directive 2006/94/EC, a certain number of types of carriage are exempt from Community authorisation and from any other carriage authorisation. Within the framework of the organisation of the market provided for by this Regulation, a system of exemption from the Community licence and from any other carriage authorisation should be maintained for some of those types of carriage, because of their special nature.
- (8) Under Directive 2006/94/EC, the carriage of goods with vehicles of a maximum laden weight of between 3,5 tonnes and 6 tonnes was exempt from the requirement for a Community licence. Community rules in the field of road transport of goods, however, apply in general to vehicles with a maximum laden mass of more than 3,5 tonnes. Thus, the provisions of this Regulation should be aligned with the general scope of application of Community road transport rules and should only provide for an exemption for vehicles with a maximum laden mass of up to 3,5 tonnes.
- (9) The international carriage of goods by road should be conditional on the possession of a Community licence. Hauliers should be required to carry a certified true copy of the Community licence aboard each of their vehicles in order to facilitate effective controls by enforcement

authorities, especially those outside the Member State in which the haulier is established. To this end, it is necessary to lay down more detailed specifications as regards the layout and other features of the Community licence and the certified copies.

- (10) Roadside checks should be carried out without direct or indirect discrimination on grounds of the nationality of the road transport operator or the country of establishment of the road transport operator or of registration of the vehicle.
- (11) The conditions governing the issue and withdrawal of Community licences and the types of carriage to which they apply, their periods of validity and the detailed rules for their use should be determined.
- (12) A driver attestation should also be established in order to allow Member States to check effectively whether drivers from third countries are lawfully employed or at the disposal of the haulier responsible for a given transport operation.
- (13) Hauliers who are holders of Community licences provided for in this Regulation and hauliers authorised to operate certain categories of international haulage service should be permitted to carry out national transport services within a Member State on a temporary basis in conformity with this Regulation, without having a registered office or other establishment therein. When such cabotage operations are performed, they should be subject to Community legislation such as 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 ⁽¹⁾ and to national law in force in specified areas in the host Member State.
- (14) Provisions should be adopted to allow action to be taken in the event of serious disturbance of the transport markets affected. For that purpose it is necessary to introduce a suitable decision-making procedure and for the required statistical data to be collected.
- (15) Without prejudice to the provisions of the Treaty on the right of establishment, cabotage operations consist of the provision of services by hauliers within a Member State in which they are not established and should not be prohibited as long as they are not carried out in a way that creates a permanent or continuous activity within that Member State. To assist the enforcement of this requirement, the frequency of cabotage operations and the period in which they can be performed should be more clearly defined. In the past, such national transport services were permitted on a temporary basis. In practice, it has been difficult to ascertain which services are permitted. Clear and easily enforceable rules are thus needed.
- (16) This Regulation is without prejudice to the provisions concerning the incoming or outgoing carriage of goods by road as one leg of a

combined transport journey as laid down in Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States ⁽¹⁾. National journeys by road within a host Member State which are not part of a combined transport operation as laid down in Directive 92/106/EEC fall within the definition of cabotage operations and should accordingly be subject to the requirements of this Regulation.

⁽¹⁾ OJ L 102, 11.4.2006, p. 1.

- (17) The provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ⁽²⁾ apply to transport undertakings performing a cabotage operation.
- (18) In order to perform efficient controls of cabotage operations, the enforcement authorities of the host Member States should, at least, have access to data from consignment notes and from recording equipment, in accordance with Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport ⁽³⁾.
- (19) Member States should grant each other mutual assistance with a view to the sound application of this Regulation.
- (20) Administrative formalities should be reduced as far as possible without abandoning the controls and penalties that guarantee the correct application and effective enforcement of this Regulation. To this end, the existing rules on the withdrawal of the Community licence should be clarified and strengthened. The current rules should be adapted to allow the effective sanctioning of serious infringements committed in a host Member State. Penalties should be non-discriminatory and proportionate to the seriousness of the infringements. It should be possible to lodge an appeal in respect of any penalties imposed.
- (21) Member States should enter in their national electronic register of road transport undertakings all serious infringements committed by hauliers which have led to the imposition of a penalty.
- (22) In order to facilitate and strengthen the exchange of information between national authorities, Member States should exchange the relevant information through the national contact points set up pursuant to Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator ⁽⁴⁾.

⁽¹⁾ OJ L 368, 17.12.1992, p. 38.

⁽²⁾ OJ L 18, 21.1.1997, p. 1.

⁽³⁾ OJ L 370, 31.12.1985, p. 8.

⁽⁴⁾ See page 51 of this Official Journal

- (23) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (1).
- (24) In particular, the Commission should be empowered to adapt Annexes I, II and III to this Regulation to technical progress. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (25) Member States should take the necessary measures to implement this Regulation, in particular as regards effective, proportionate and dissuasive penalties.
- (26) Since the objective of this Regulation, namely to ensure a coherent framework for international road haulage throughout the Community, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. This Regulation applies to the international carriage of goods by road for hire or reward for journeys carried out partly within Gibraltar.
2. In the event of carriage from Gibraltar to a relevant State or to a third country and vice versa, this Regulation applies to any part of the journey within Gibraltar.
3. *Not used.*

4. This Regulation shall apply to the national carriage of goods by road undertaken on a temporary basis by a non-resident haulier as provided for in Chapter III.

5. The following types of carriage and unladen journeys made in conjunction with such carriage shall not require a Gibraltar licence for the Community or a Community licence and shall be exempt from any carriage authorisation:

- (a) carriage of mail as a universal service;
- (b) carriage of vehicles which have suffered damage or breakdown;
- (c) carriage of goods in motor vehicles the permissible laden mass of which, including that of trailers, does not exceed 3,5 tonnes;
- (d) carriage of goods in motor vehicles provided the following conditions are fulfilled:
 - (i) the goods carried are the property of the undertaking or have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the undertaking;
 - (ii) the purpose of the journey is to carry the goods to or from the undertaking or to move them, either inside or outside the undertaking for its own requirements;
 - (iii) motor vehicles used for such carriage are driven by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation;
 - (iv) the vehicles carrying the goods are owned by the undertaking, have been bought by it on deferred terms or have been hired provided that in the latter case they meet the conditions of Directive 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on the use of vehicles hired without drivers for the carriage of goods by road ⁽¹⁾; and

- (v) such carriage is no more than ancillary to the overall activities of the undertaking;
- (e) carriage of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters.

(¹) OJ L 33, 4.2.2006, p. 82

Point (d)(iv) of the first subparagraph shall not apply to the use of a replacement vehicle during a short breakdown of the vehicle normally used.

6. The provisions of paragraph 5 shall not affect the conditions under which Gibraltar nationals may engage in the activities referred to in that paragraph.

Article 2

Definitions

For the purposes of this Regulation:

1. 'vehicle' means a motor vehicle registered in Gibraltar or in a relevant State, or a coupled combination of vehicles the motor vehicle of which at least is registered in a Gibraltar or in a relevant State, used exclusively for the carriage of goods;
2. 'international carriage' means:
 - (a) a laden journey undertaken by a vehicle where the point of departure is in Gibraltar and the point of arrival is in a relevant State, or vice versa, with or without transit through Gibraltar or one or more relevant States or third countries;
 - (b) a laden journey undertaken by a vehicle from Gibraltar to a third country or vice versa with or without transit through Gibraltar or one or more relevant States or third countries;
 - (c) a laden journey undertaken by a vehicle where the point of departure is a relevant State and the point of arrival is a third country, or vice versa, with transit through Gibraltar;
 - (d) a laden journey undertaken by a vehicle between third countries, with transit through Gibraltar;
 - (e) a laden journey undertaken by a vehicle between two member States, with transit

through Gibraltar;

- (f) an unladen journey in conjunction with the carriage referred to in points (a) to (e);
3. 'host relevant State' means a relevant State in which a haulier operates other than the haulier's State of establishment;
4. 'non-resident haulier' means a road haulage undertaking which operates in a host State;
5. '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;
6. 'cabotage operations' means national carriage for hire or reward carried out on a temporary basis in a host State, in conformity with this Regulation;
7. 'serious infringement of retained EU law on road transport' means an infringement which may lead to the loss of good repute in accordance with Article 6(1) and (2) of Regulation (EC) No 1071/2009 and/or to the temporary or permanent withdrawal of a Gibraltar licence for the Community or a Community licence;
8. 'relevant State' means an EEA State and includes the United Kingdom, and Gibraltar where the definition permits;
9. 'Community licence' means a licence issued under Article 4 of 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 as it applies in EU law as amended from time to time, and includes a UK licence for the Community as issued under the retained EU law of the United Kingdom as amended from time to time;
10. 'competent authority' means within Gibraltar, the Driver and Vehicle Licensing Department;
11. 'EU driver attestation' means a driver attestation issued under Article 5 of 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 as it has effect in EU law as amended from time to time;
12. 'Regulation (EC) No 1071/2009' means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC;
13. 'Minister' means the Minister with responsibility for transport.

CHAPTER II

INTERNATIONAL CARRIAGE

Article 3

General principle

International carriage shall be carried out subject to possession of a Gibraltar licence for the Community or a Community licence issued by a relevant State and, if the driver is a national of a third country, in conjunction with a driver attestation issued in accordance with this Regulation or an EU driver attestation.

Article 4

Gibraltar licence for the Community

1. The Gibraltar licence for the Community shall be issued by the competent authority, in accordance with this Regulation, to any haulier carrying goods by road for hire or reward who:

- (a) is established in Gibraltar in accordance with Gibraltar law; and
- (b) is entitled, in accordance with Gibraltar law concerning admission to the occupation of road haulage operator, to carry out the international carriage of goods by road.

2. A Gibraltar licence for the Community shall be issued by the competent authority for renewable periods of up to 5 years.

Community licences and certified copies issued to hauliers established in Gibraltar and in the United Kingdom under Regulation (EC) 1071/2009 and valid before exit day will remain valid and treated as a Gibraltar licence for the Community until the date of their expiry.

The Minister may by regulations adjust the period of validity of the Gibraltar licence for the Community to take account of technical progress, in particular, in the national electronic registers of road transport undertakings as provided for in Article 16 of Regulation (EC) No 1071/2009.

3. The competent authority shall issue the holder with the original of the Gibraltar licence for the Community, which shall be kept by the haulier, and the number of certified true copies corresponding to the number of vehicles at the disposal of the holder of the Gibraltar licence for the Community, whether those vehicles are wholly owned or, for example, held under a hire purchase, hire or leasing contract.

4. The Gibraltar licence for the Community and the certified true copies shall correspond to the model set out in Annex II, which also lays down the conditions governing its use. They shall contain at least two of the security features listed in Annex I.

The Minister may by regulations adapt Annexes I and II to take account of technical progress.

5. The Gibraltar licence for the Community and the certified true copies thereof shall bear the seal of the competent authority as well as a signature and a serial number. The serial numbers of the Gibraltar licence for the Community and of the certified true copies shall be recorded in the national electronic register of road transport undertakings as part of the data relating to the haulier.

6. The Gibraltar licence for the Community and shall be issued in the name of the haulier and shall be non-transferable. A certified true copy of the Gibraltar licence for the Community and shall be kept in each of the haulier's vehicles and shall be presented at the request of any authorised inspecting officer.

In the case of a coupled combination of vehicles, the certified true copy shall accompany the motor vehicle. It shall cover the coupled combination of vehicles even where the trailer or semi-trailer is not registered or authorised to use the roads in the name of the licence holder or where it is registered or authorised to use the roads in another State.

7. Regulations under this Article may—

- (a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and
- (b) make different provision for different cases.

Article 5

Driver attestation

1. A driver attestation must be issued by the competent authority in accordance with this Regulation to any haulier who:

- (a) is the holder of a Gibraltar licence for the Community;
- (b) employs a driver who is lawfully permitted to seek employment in Gibraltar; and
- (c) has employed that driver in compliance with any conditions of employment and vocational training laid down in Gibraltar.

2. The driver attestation must be issued, at the request of the holder of the Gibraltar licence for the Community, for each driver who is not a national of Gibraltar or of a relevant State, nor a person lawfully in Gibraltar who has a right to work in Gibraltar whom that haulier lawfully employs, or who is put at the disposal of the haulier. Each driver attestation must certify that the driver named therein is employed in accordance with the conditions laid down in paragraph 1.

3. The driver attestation shall correspond to the model set out in Annex III. It shall contain at least two of the security features listed in Annex I.
4. The Minister may by regulation adapt Annex III to take account of technical progress.
5. The driver attestation shall bear the seal of the issuing authority as well as a signature and a serial number. The serial number of the driver attestation may be recorded in the national electronic register of road transport undertakings as part of the data relating to the haulier who puts it at the disposal of the driver designated therein.
6. The driver attestation shall belong to the haulier, who puts it at the disposal of the driver designated therein when that driver drives a vehicle using a Gibraltar licence for the Community issued to that haulier. A certified true copy of the driver attestation issued by the competent authority shall be kept at the haulier's premises. An EU driver attestation shall be presented at the request of any authorised inspecting officer.
7. The Minister must determine the period of validity of a driver attestation, subject to a maximum validity of 5 years.

The driver attestation must be valid only as long as the conditions under which it was issued are satisfied. If those conditions are no longer satisfied, the Minister may require the haulier to return the driver attestation immediately.

8. Regulations under this Article may—
 - (a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and
 - (b) make different provision for different cases.

Article 6

Verification of conditions

1. Whenever an application for a Gibraltar licence for the Community or an application for renewal of a Gibraltar licence for the Community in accordance with Article 4(2) is lodged, the competent authority shall verify whether the haulier satisfies or continues to satisfy the conditions laid down in Article 4(1).
2. The competent authority shall regularly verify, by carrying out checks each year covering at least 20 % of the valid driver attestations issued, whether the conditions,

referred to in Article 5(1), under which a driver attestation has been issued are still satisfied.

Article 7

Refusal to issue and withdrawal of UK licence for the Community and driver attestation

1. If the conditions laid down in Article 4(1) are not satisfied, the competent authority must reject an application for the issue or renewal of a Gibraltar licence for the Community by means of a reasoned decision in each case. If the conditions referred to in Article 5(1) are not satisfied, the Minister must reject an application to issue a driver attestation by means of a reasoned decision in each case.
2. The competent authority shall withdraw a Gibraltar licence for the Community or a driver attestation where the holder:
 - (a) no longer satisfies the conditions laid down in Article 4(1) or those referred to in Article 5(1); or
 - (b) has supplied incorrect information in relation to an application for a Gibraltar licence for the Community or for a driver attestation.

CHAPTER III

CABOTAGE

Article 8

General principle

1. Any haulier for hire or reward who is a holder of a Community licence and whose driver, if he is a national of a third country, holds a driver attestation, shall be entitled, under the conditions laid down in this Chapter, to carry out cabotage operations within Gibraltar.
2. Once the goods carried in the course of an incoming international carriage have been delivered, hauliers referred to in paragraph 1 shall be permitted to carry out, with the same vehicle, or, in the case of a coupled combination, the motor vehicle of that same vehicle, up to three cabotage operations following the international carriage from relevant State or from a third country to Gibraltar. The last unloading in the course of a cabotage operation before leaving Gibraltar shall take place within 7 days from the last unloading in Gibraltar in the course of the incoming international carriage.

Within the time limit referred to in the first subparagraph, hauliers are limited to carrying

out one cabotage operation out of the three cabotage operations permitted in Gibraltar within 3 days of the unladen entry into Gibraltar.

3. National road haulage services carried out in Gibraltar by a non-resident haulier shall only be deemed to conform with this Regulation if the haulier can produce clear evidence of the incoming international carriage and of each consecutive cabotage operation carried out.

Evidence referred to in the first subparagraph shall comprise the following details for each operation:

- (a) the name, address and signature of the sender;
- (b) the name, address and signature of the haulier;
- (c) the name and address of the consignee as well as his signature and the date of delivery once the goods have been delivered;
- (d) the place and the date of taking over of the goods and the place designated for delivery;
- (e) the description in common use of the nature of the goods and the method of packing, and, in the case of dangerous goods, their generally recognised description, as well as the number of packages and their special marks and numbers;
- (f) the gross mass of the goods or their quantity otherwise expressed;
- (g) the number plates of the motor vehicle and trailer.

4. No additional document shall be required in order to prove that the conditions laid down in this Article have been met.

5. Any haulier entitled in the relevant State of establishment, in accordance with that relevant State's legislation, to carry out the road haulage operations for hire or reward specified in Article 1(5)(a), (b) and (c) shall be permitted, under the conditions set out in this Chapter, to carry out, as the case may be, cabotage operations of the same kind or cabotage operations with vehicles in the same category.

6. Permission to carry out cabotage operations, within the framework of the types of carriage referred to in Article 1(5)(d) and (e), shall be unrestricted.

Article 9

Rules applicable to cabotage operations

1. The performance of cabotage operations shall be subject, save as otherwise provided in retained EU law, to the laws, regulations and administrative provisions in force in Gibraltar with regard to the following:

- (a) the conditions governing the transport contract;
- (b) the weights and dimensions of road vehicles;
- (c) the requirements relating to the carriage of certain categories of goods, in particular dangerous goods, perishable foodstuffs and live animals;
- (d) the driving time and rest periods;
- (e) the import duty on transport services.

The weights and dimensions referred to in point (b) of the first subparagraph may, where appropriate, exceed those applicable in the haulier's relevant State of establishment, but they may under no circumstances exceed the limits set by Gibraltar

2. The laws, regulations and administrative provisions referred to in paragraph 1 shall be applied to non-resident hauliers under the same conditions as those imposed on hauliers established in Gibraltar, so as to prevent any discrimination on grounds of nationality or place of establishment.

Article 10

Safeguard procedure

1. In the event of serious disturbance of the national transport market in a given geographical area due to, or aggravated by, cabotage, the Minister may consider whether or not safeguard measures are necessary and may by Order provide for measures as regards operations carried on by resident or non-resident hauliers.

2. For the purposes of paragraph 1:

‘serious disturbance of the national transport market in a given geographical area’ means the existence on the market of problems specific to it, such that there is a serious and potentially enduring excess of supply over demand, implying a threat to the financial stability and survival of a significant number of hauliers,

‘geographical area’ means an area covering all or part of Gibraltar.

3. The Minister may consider whether or not safeguard measures are necessary with a view to adopting them if they are necessary.

Such measures may involve the temporary exclusion of the area concerned from the scope of this Regulation.

Measures adopted in accordance with this Article shall remain in force for a period not exceeding 6 months, renewable once within the same limits of validity.

4. The Minister must consult the competent authority and such other persons as he thinks fit before making any Order under paragraph 1.

5. Where the Minister considers that the measures adopted by Order pursuant to paragraph 1 need to be prolonged beyond the period provided for in the third subparagraph of paragraph 3, the Minister must publish a document relating to the proposal to so extend the measures. The proposals must set out:

- (a) the reasons why it is necessary to extend the measures;
- (b) the forecasted economic impact of the measures on hauliers;
- (c) the expected time after which the need for measures to continue must be reviewed.

6. Not used.

7. If after considering the responses to the consultation carried out in accordance with paragraph 5, the Minister decides that it is appropriate to continue the safeguard measures beyond the period provided in paragraph 3, or to institute alternative measures, the Minister may by regulations continue those measures or adopt alternative measures.

8. Any Order or regulations under this Article may—

- (a) include supplementary, incidental, consequential, transitional, transitory or saving provision: and
- (b) make different provision for different cases.

CHAPTER IV

MUTUAL ASSISTANCE AND PENALTIES

Article 11

Not used.

Article 12

Sanctioning of infringements

1. In the event that the competent authority is notified of a serious infringement of this Regulation, or Regulation (EC) 1072/2009 as it applies in the EU and amended from time to time, by any haulier who is established in Gibraltar, the appropriate competent authority for that haulier must take appropriate action which may include a warning to pursue the matter which may lead, inter alia, to the imposition of the following administrative penalties:
 - (a) temporary or permanent withdrawal of some or all of the certified true copies of the Gibraltar licence for the Community;
 - (b) temporary or permanent withdrawal of the Gibraltar licence for the Community.

These penalties may be determined after the final decision on the matter has been taken and shall have regard to the seriousness of the infringement committed by the holder of the Gibraltar licence for the Community and to the total number of certified true copies of that licence that he holds in respect of international traffic.

2. In the event that the competent authority is notified of a serious infringement regarding any misuse whatsoever of driver attestations by a haulier who is established in Gibraltar, the competent authority shall impose penalties, such as:
 - (a) suspending the issue of driver attestations;
 - (b) withdrawing driver attestations;
 - (c) making the issue of driver attestations subject to additional conditions in order to prevent misuse;
 - (d) withdrawing, temporarily or permanently, some or all of the certified true copies of the Gibraltar licence for the Community;

(e) withdrawing, temporarily or permanently, the Gibraltar licence for the Community.

These penalties may be determined after the final decision on the matter has been taken and shall have regard to the seriousness of the infringement committed by the holder of the Gibraltar licence for the Community.

2. The competent authority must communicate to the competent authorities of the relevant State in which the infringement was ascertained, as soon as possible and at the latest within 6 weeks of their final decision on the matter, which, if any, of the penalties provided for in paragraphs 1 and 2 have been imposed.

If such penalties are not imposed, the competent authority state the reasons therefor.

3. The competent authority shall ensure that the penalties imposed on the haulier concerned are, as a whole, proportionate to the infringement or infringements which gave rise to such penalties, taking into account any penalty for the same infringement imposed in the relevant State in which the infringement was ascertained.

4. The competent authority may also bring proceedings against the haulier before the magistrates' court or a tribunal. They shall inform the competent authority of the host Member State of any decisions taken to this effect.

5. Hauliers have the right to appeal against any administrative penalty imposed on them pursuant to this Article.

Article 13

Sanctioning of infringements by the host Member State

1. Where the competent authority is aware of a serious infringement of this Regulation or of any retained direct EU legislation attributable to a non-resident haulier, the competent authority must transmit to the relevant authorities of the haulier's relevant State of establishment, as soon as possible and at the latest within 6 weeks of the competent authority's final decision on the matter, the following information:

(a) a description of the infringement and the date and time when it was committed;

(b) the category, type and seriousness of the infringement; and

(c) the penalties imposed and the penalties executed.

The competent authority may request the relevant authorities of the relevant State of

establishment to impose administrative penalties in accordance with Article 12 of Regulation (EC) 1072/2009 as it has effect in EU law.

Article 14

Entry in the national electronic registers

The competent authority must ensure that serious infringements of Gibraltar, United Kingdom or EU road transport legislation committed by hauliers established in Gibraltar, which have led to the imposition of a penalty by the competent authority or by a relevant State, as well as any temporary or permanent withdrawal of a Gibraltar licence for the Community or of a certified true copy thereof, are recorded in the national electronic register of road transport undertakings. Entries in the register which concern a temporary or permanent withdrawal of a Gibraltar licence for the Community must remain in the database for 2 years from the time of the expiry of the period of withdrawal, in the case of temporary withdrawal, or from the date of withdrawal, in the case of permanent withdrawal.

CHAPTER V

IMPLEMENTATION

Articles 15 to 17

Not used

CHAPTER VI

FINAL PROVISIONS

Article 18

Repeals

Regulations (EEC) No 881/92 and (EEC) No 3118/93 and Directive 2006/94/EC are hereby repealed.

References to the repealed Regulations and Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IV.

Article 19
Not used

ANNEX I

Security features of the Gibraltar licence for the Community and the driver attestation

The Gibraltar licence for the Community and the driver attestation must have at least two of the following security features:

- a hologram,
- special fibres in the paper which become visible under UV-light,
- at least one microprint line (printing visible only with a magnifying glass and not reproduced by photocopying machines),
- tactile characters, symbols or patterns,
- double numbering: serial number of the Gibraltar licence for the Community, of the certified copy thereof or of the driver attestation as well as, in each case, the issue number,
- a security design background with fine guilloche patterns and rainbow printing.

Annex II

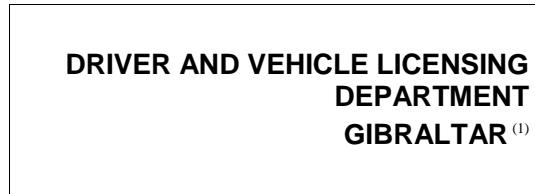
Gibraltar licence for the Community model

(a)

(Colour Pantone light blue, format DIN A4 cellulose paper 100 g/m² or more)

(First page of the licence)

(Text in English)



LICENCE No:

or

CERTIFIED TRUE COPY No:

for the international carriage of goods by road for hire or reward

This licence entitles ⁽²⁾ _____

to engage in the international carriage of goods by road for hire or reward by any route, for journeys or parts of journeys carried out for hire or reward within Gibraltar, the UK or a relevant State as laid down in Regulation (EC) 1072/2009.

| | |
|--|------------------------|
| Particular remarks: | |
| This licence is valid from | To..... |
| Issued by | on..... ⁽³⁾ |
| | |

⁽¹⁾ Competent authority in Gibraltar.

⁽²⁾ Name or business name and full address of the haulier.

⁽³⁾ Signature of the authority issuing the certificate and date of issue.

(b)

(Second page of the licence)

(Text in English)

GENERAL PROVISIONS

This licence is issued under Regulation (EC) No 1072/2009.

“relevant State” herein means the United Kingdom or a Member State of the European Union

It entitles the holder to engage in the international carriage of goods by road for hire or reward by any route for journeys or parts of journeys carried out within Gibraltar or a relevant State and, where appropriate, subject to the conditions laid down herein:

- where the point of departure and the point of arrival are situated in;
 - two different countries, one of which is Gibraltar and the other is a relevant State with or without transit through one or more other relevant States or third countries; or
 - two different relevant States, with or without transit through Gibraltar or one or more other relevant States or third countries,
- from Gibraltar or a relevant State to a third country or vice versa, with or without transit through one or more relevant States or third countries,
- between third countries with transit through Gibraltar or one or more relevant States, and unladen journeys in connection with such carriage.

In the case of carriage from Gibraltar or a relevant State to a third country or vice versa, this licence is valid for that part of the journey carried out within the territory of any relevant State.

The licence is personal to the holder and is non-transferable.

It may be withdrawn by the Driver and Vehicle Licensing Department, for example, where the holder has:

- not complied with all the conditions for using the licence,
- supplied incorrect information with regard to the data needed for the issue or extension of the licence.

The original of the licence must be kept by the haulage undertaking.

A certified copy of the licence must be kept in the vehicle⁽¹⁾. In the case of a coupled combination of vehicles it must accompany the motor vehicle. It covers the coupled combination of vehicles even if the trailer or semi-trailer is not registered or authorised to use the roads in the name of the licence holder or if it is registered or authorised to use the roads in another State.

The licence must be presented at the request of any authorised inspecting officer.

Within Gibraltar or each relevant State, the holder must comply with the laws, regulations and

administrative provisions in force in that State, in particular with regard to transport and traffic.

⁽¹⁾ 'Vehicle' means a motor vehicle registered in Gibraltar or a relevant State, or a coupled combination of motor vehicles the motor vehicle of which at least is registered in Gibraltar or a relevant State, used exclusively for the carriage of goods.

Annex III

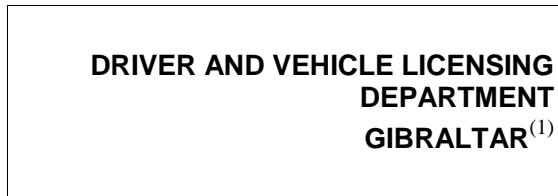
Driver attestation model

(a)

(Colour Pantone pink, format DIN A4 cellulose paper 100 g/m2 or more)

(First page of the attestation)

(Text in English)



DRIVER ATTESTATION No:

for the carriage of goods by road for hire or reward under a Gibraltar licence for the Community Regulation (EC) No 1072/2009

This attestation certifies that on the basis of the documents presented by:

..... (2)

The following driver

| | |
|---|----------------------|
| Name and forename | |
| Date and place of birth | Nationality |
| Type and reference number of identity paper | |
| Date of issue | Place of issue |
| Driving licence number | |
| Date of issue | Place of issue |
| Social security number | |

is employed, in accordance with the laws, regulations or administrative provisions and rules applicable in Gibraltar on the conditions of employment and of vocational training of drivers that must be met in order to carry out road transport operations.

Particular remarks:

.....

| | |
|---|-------------------------|
| This attestation is valid from | to |
| Issued by..... | on ⁽³⁾ |

⁽¹⁾ Competent authority in Gibraltar.

⁽²⁾ Name or business name and full address of the haulier.

⁽³⁾ Signature of the authority issuing the certificate and date of issue..

(b)

(Second page of the licence)

(Text in English)

GENERAL PROVISIONS

This licence is issued under Regulation (EC) No 1072/2009.

It certifies that the driver named therein is employed, in accordance with the laws, regulations or administrative provisions and rules applicable in Gibraltar on the conditions of employment and of vocational training of drivers that must be met in order to carry out road transport operations.

The driver attestation shall belong to the haulier, who puts it at the disposal of the driver designated therein when that driver drives a vehicle ⁽¹⁾ engaged in carriage using a Gibraltar licence for the Community issued to that haulier. The driver attestation is not transferable. The driver attestation shall be valid only as long as the conditions under which it was issued are still satisfied and must be returned immediately by the haulier to the issuing authorities if these conditions are no longer met.

It may be withdrawn by the Driver and Vehicle Licensing Department, for example, where the holder has:

- not complied with all the conditions for using the attestation,
- supplied incorrect information with regard to the data needed for the issue or extension of the attestation.

A certified true copy of the attestation must be kept by the haulage undertaking.

An original attestation must be kept in the vehicle and must be presented by the driver at the request of any authorised inspecting officer.

⁽¹⁾ 'Vehicle' means a motor vehicle registered in Gibraltar, or a coupled combination of motor vehicles the motor vehicle of which at least is registered in Gibraltar, the United Kingdom or a Member State, used exclusively for the carriage of goods.

ANNEX IV

Correlation Table

| Regulation (EEC) No 881/92 | Regulation (EEC) No 3118/93 | Directive 2006/94/EC | This Regulation |
|----------------------------|-----------------------------|---|-----------------|
| Article 1(1) | | | Article 1(1) |
| Article 1(2) | | | Article 1(2) |
| Article 1(3) | | | Article 1(3) |
| Annex II | | Article 1(1) and (2), Annex I; Article 2 | Article 1(5) |
| | | Article 2 | Article 1(6) |
| Article 2 | | | Article 2 |
| Article 3(1) | | | Article 3 |
| Article 3(2) | | | Article 4(1) |
| Article 3(3) | | | Article 5(1) |
| Article 4 | | | |
| Article 5(1) | | | Article 4(2) |
| Article 5(2) | | | Article 4(3) |
| Article 5(3) | | | Article 4(4) |
| | | | Article 4(5) |
| Article 5(4), Annex I | | | Article 4(6) |
| Article 5(5) | | | Article 4(2) |
| Article 6(1) | | | Article 5(2) |
| Article 6(2) | | | Article 5(2) |
| Article 6(3) | | | Article 5(3) |
| Article 6(4) | | | Article 5(6) |
| Article 6(5) | | | Article 5(7) |

| | | | |
|----------------------|----------------------|--|---------------|
| Article 7 | | | Article 6 |
| Article 8(1) | | | Article 7(1) |
| Article 8(2) | | | Article 7(2) |
| Article 8(3) | | | Article 12(1) |
| Article 8(4) | | | Article 12(2) |
| Article 9(1) and (2) | | | Article 12(6) |
| | Article 1(1) | | Article 8(1) |
| | Article 1(2) | | Article 8(5) |
| | Article 1(3) and (4) | | Article 8(6) |
| | Article 2 | | |
| | Article 3 | | |
| | Article 4 | | |
| | Article 5 | | |
| | Article 6(1) | | Article 9(1) |
| | Article 6(2) | | |
| | Article 6(3) | | Article 9(2) |
| | Article 6(4) | | |
| | Article 7 | | Article 10 |
| Article 10 | | | Article 17(1) |
| Article 11(1) | Article 8(1) | | Article 11 |
| Article 11(2) | | | Article 13(1) |
| Article 11(3) | | | Article 12(4) |
| Article 11a | | | |
| | Article 8(2) and (3) | | Article 13(2) |

| | | | |
|------------|--|---------------|---------------|
| | Article 8(4), first and third subparagraphs | | |
| | Article 8(4), second subparagraph | | Article 12(4) |
| | Article 8(4), fourth and fifth subparagraphs | | Article 12(5) |
| | Article 9 | | Article 13(3) |
| Article 12 | | | Article 18 |
| Article 13 | | | |
| Article 14 | Article 10 | | |
| | Article 11 | | |
| Article 15 | Article 12 | Article 4 | Article 19 |
| | | Article 3 | |
| | | Article 5 | |
| | | Annex II, III | |
| Annex I | | | Annex II |
| Annex III | | | Annex III |
| | Annex I | | |
| | Annex II | | |
| | Annex III | | |
| | Annex IV | | |

SCHEDULE 3

(regulation 9)

COMMISSION REGULATION (EU) 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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC ⁽¹⁾, and in particular Article 6(2) thereof,

Having regard to 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 ⁽²⁾, and in particular Article 9(3) thereof,

Whereas:

- (1) The Commission is required by Article 6(2)(b) of Regulation (EC) No 1071/2009 to draw up a list of categories, types and degrees of seriousness of serious infringements of Union rules, which in addition to those set out in Annex IV to that Regulation, may lead to the loss of good repute of the road transport undertaking or the transport manager.
- (2) To this end, the Commission should define the degree of seriousness of infringements by reference to the risk of fatalities or serious injuries and should provide the frequency of occurrence beyond which repeated infringements shall be regarded as more serious.
- (3) The list of categories, types and degrees of seriousness of serious infringements to be established should contain infringements of the Union rules relating to the areas

outlined in Article 6(1)(b) of Regulation (EC) No 1071/2009.

⁽¹⁾ OJ L 300, 14.11.2009, p. 51.

⁽²⁾ OJ L 102, 11.4.2006, p. 35.

- (4) Member States should take into account information on those infringements when setting priorities for the checks targeting undertakings which are classified as posing increased risk, as required by Article 12(1) of Regulation (EC) No 1071/2009.
- (5) The measures to be adopted are necessary to ensure transparency, fairness and legal certainty in appraising the seriousness of infringements and their implications for good repute of the transport undertaking or the transport manager.
- (6) However, it is the responsibility of the Member State's competent authority to carry out a complete national administrative procedure to determine whether a loss of good repute would constitute a proportionate response in an individual case. Such a national examination procedure should include, where appropriate, checks at the premises of the undertaking concerned. In assessing the good repute Member States should consider the conduct of the undertaking, of its managers and of any other relevant person.
- (7) The harmonised categorisation of serious infringements should provide the basis for extending the national risk rating system established by each Member State pursuant to Article 9 of Directive 2006/22/EC, in order to cover all serious infringements of the Union road transport rules, indicated in Article 6(1)(b) of Regulation (EC) No 1071/2009, which may affect the good repute of the transport undertaking or the transport manager.
- (8) Article 16(2) of Regulation (EC) No 1071/2009 also provides that Member States should include those serious infringements in the national electronic register of road transport undertakings on 1 January 2016 at the latest. The harmonised categorisation of infringements is thus an important step forward ensuring fair competition between undertakings, more harmonised enforcement and an effective functioning of the European Register of Road Transport Undertaking system of exchange of information.
- (9) In the interest of transparency and fair competition a common method should be established for the calculation of a frequency of occurrence beyond which repeated infringements shall be regarded as more serious by the competent authority of the Member State of establishment. Such repeated infringements may lead to launching the national administrative procedure, which, subject to the discretion of the competent authority, may result in the loss of good repute by a transport operator.
- (10) As a general rule, the frequency should be determined by taking into account the seriousness of the infringement, the time and the average number of drivers. It shall be seen as the maximum threshold, whilst leaving Member States a possibility to apply lower thresholds, as envisaged in their national administrative procedure for assessing good repute.
- (11) To ensure the legal consistency and transparency it is also necessary to amend Annex III to Directive 2006/22/EC by changing the level of seriousness of certain infringements set out therein in accordance with the list of most serious infringements set out in Annex IV to Regulation (EC) No 1071/2009.

- (12) The list of categories, types and degrees of seriousness of serious infringements has been determined in consultation with Member States and the Union stakeholders, where the assessment of the level of seriousness has been based on best practice and experience in the enforcement of the relevant legislative provisions in Member States. The most serious infringements established in Annex IV to Regulation (EC) No 1071/2009 constituted the reference upper threshold for the assessment of the level of seriousness of other relevant infringements.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Road Transport set up by Article 18(1) of Council Regulation (EEC) No 3821/85 ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation establishes a common list of categories, types and degrees of serious infringements of the rules in commercial road transport, as laid down in Annex I to this Regulation, which, in addition to those set out in Annex IV to Regulation (EC) No 1071/2009, may lead to the loss of good repute of a road transport operator.
2. This Regulation provides for the maximum frequency of occurrence beyond which repeated serious infringements shall be regarded as more serious, by taking into account the number of drivers used for the transport activities managed by the transport manager, as laid down in Annex II.
3. The Transport Commission shall take into account information on the serious infringements referred to in paragraphs 1 and 2 when carrying out the national administrative procedure on assessing good repute.

⁽¹⁾ Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8).

ANNEX I

Categorisation of serious infringements

(referred to in Article 1)

The following tables contain categories and types of serious infringements against the rules in commercial road transport, divided into three categories of seriousness according to their potential to create a risk of fatalities or serious injuries.

1. Groups of infringements against Regulation (EC) No 561/2006 of the European Parliament and of the Council ⁽¹⁾ (Driving and resting time)

| No | LEGAL BASIS | TYPE OF INFRINGEMENT | LEVEL OF SERIOUSNESS ⁽¹⁾ | | | |
|------------------------|----------------|--|-------------------------------------|-----------------|----|---|
| | | | MSI | VSI | SI | |
| Crew | | | | | | |
| 1. | Article 5.1 | Not respecting minimum ages for conductors | | | X | |
| Driving periods | | | | | | |
| 2. | Article 6.1 | Exceed daily driving time of 9h if possibilities to extend to 10h not allowed | 10h ≤ ... < 11h | | | X |
| 3. | | | 11h ≤ ... | | X | |
| 4. | | 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 | | |
| 5. | | Exceed extended daily driving time of 10h if extension allowed | 11h ≤ ... < 12h | | | X |
| 6. | | | 12h ≤ ... | | X | |
| 7. | | 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 | | |
| 8. | | Article 6.2 | Exceed weekly driving time | 60h ≤ ... < 65h | | |
| 9. | 65h ≤ ... < 70 | | | | X | |

| | | | | | | |
|-----|--|--|-----------|---|--|--|
| 10. | | Exceed weekly driving time by 25 % or more | 70h ≤ ... | X | | |
|-----|--|--|-----------|---|--|--|

(¹) 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).

| No | LEGAL BASIS | TYPE OF INFRINGEMENT | LEVEL OF SERIOUSNESS (¹) | | | |
|-----|-------------|---|---------------------------------------|-----|----|---|
| | | | MSI | VSI | SI | |
| 11. | Article 6.3 | Exceed maximum total driving time during 2 con-secutive weeks | 100h ≤ ... < 105h | | | X |
| 12. | | | 105h ≤ ... < 112h30 | | X | |
| 13. | | Exceed maximum total driving time during 2 con-secutive weeks by 25 % or more | 112h30 ≤ ... | X | | |

Breaks

| | | | | | | |
|-----|-----------|--|-------------|--|---|---|
| 14. | Article 7 | Exceed uninterrupted driving time of 4,5 hours before taking the break | 5h ... < 6h | | | X |
| 15. | | | 6h ... | | X | |

Rest Periods

| | | | | | | |
|-----|-------------|--|--------------------|--|---|---|
| 16. | Article 8.2 | Insufficient daily rest period of less than 11h if reduced daily rest period not allowed | 8h30 ... < 10h | | | X |
| 17. | | | ... < 8h30 | | X | |
| 18. | | Insufficient reduced daily rest period of less than 9h if reduce allowed | 7h ... < 8h | | | X |
| 19. | | | ... < 7h | | X | |
| 20. | | Insufficient split daily rest period of less than 3h + 9h | 3h + [7h ... < 8h] | | | X |
| 21. | | | 3h + [... < 7h] | | X | |

| No | LEGAL BASIS | TYPE OF INFRINGEMENT | LEVEL OF SERIOUSNESS (1) | | | |
|-------------------------------|-----------------------|---|--------------------------|-----|----|---|
| | | | MSI | VSI | SI | |
| 22. | Article 8.5 | Insufficient daily rest period of less than 9h for multi-manning | 7h ... < 8h | | | X |
| 23. | | | ... < 7h | | X | |
| 24. | Article 8.6 | Insufficient reduced weekly resting period of less than 24 h | 20h ... < 22h | | | X |
| 25. | | | ... < 20h | | X | |
| 26. | | Insufficient weekly resting period of less than 45 h if reduced weekly resting period not allowed | 36h ... < 42h | | | X |
| 27. | | | ... < 36h | | X | |
| 28 | Article 8.6 | Exceeding 6 consecutive 24-hour periods following the previous weekly rest period | 3h ... < 12h | | | X |
| | | | 12h ... | | X | |
| 12-day rule derogation | | | | | | |
| 29. | Article 8.6a. | Exceeding 12 consecutive 24-hour periods following a previous regular weekly rest | 3h ... < 12h | | | X |
| | | | 12h ... | | X | |
| 30. | Article 8.6a. (b)(ii) | Weekly rest period taken following 12 consecutive 24-hour periods | 65h < ... 67h | | | X |
| | | | ... 65h | | X | |
| 31. | Article 8.6a. (d) | Driving period, between 22.00 and 6.00, of more than 3 hours before the break, if the vehicle is not multi-manned | 3h < ... < 4,5 h | | | X |
| | | | 4,5 h ... | | X | |

| No | LEGAL BASIS | TYPE OF INFRINGEMENT | LEVEL OF SERIOUSNESS ⁽¹⁾ | | |
|----|-------------|----------------------|-------------------------------------|-----|----|
| | | | MSI | VSI | SI |

Work organisation

| | | | | | |
|-----|--------------|---|--|---|--|
| 32. | Article 10.1 | Link between wage and distance travelled or amount of goods carried | | X | |
| 33. | 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 | |

⁽¹⁾ MSI = most serious infringements/VSI = very serious infringement/SI = serious infringement.

2. Groups of infringements against Regulation (EU) No 165/2014 of the European Parliament and of the Council⁽¹⁾ (Tachograph)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|---|----------------------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| Installation of tachograph | | | | | |
| 1. | Article 3.1 and Article 22 | 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 | | |
| Use of tachograph, driver card or record sheet | | | | | |
| 2. | Article 23.1 | Using a tachograph not inspected by an approved workshop | | X | |
| 3. | Article 27 | Driver holding and/or using more than one own driver card | | X | |
| 4. | | Driving with a driver card that has been falsified (<i>considered as driving without driver card</i>) | X | | |
| 5. | | Driving with a driver card of which the driver is not the holder (<i>considered as driving without driver card</i>) | X | | |
| 6. | | 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 | | |
| 7. | Article 32.1 | Tachograph not correctly functioning (<i>e.g.: tachograph not properly inspected, calibrated and sealed</i>) | | X | |

⁽¹⁾ 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 (OJ L 60, 28.2.2014, p. 1).

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|-----|-------------------------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| 8. | 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 | |
| 9. | Article 32.3 | Using a fraudulent device able to modify the records of the tachograph | X | | |
| 10. | | Falsifying, concealing, suppressing or destroying data recorded on the record sheets or stored and downloaded from the tachograph and/or the driver card | X | | |
| 11. | Article 33.2 | Undertaking not keeping record sheets, printouts and downloaded data | | X | |
| 12. | | Recorded and stored data not available for at least a year | | X | |
| 13. | Article 34.1 | Incorrect use of record sheets/driver card | | X | |
| 14. | | Unauthorised withdrawal of record sheets or driver card which has an impact on the record of relevant data | | X | |
| 15. | | Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost | | X | |
| 16. | Article 34.2 | Use dirty or damaged record sheets or drivers card and data not legible | | X | |
| 17. | Article 34.3 | Not using manual input when required to do so | | X | |
| 18. | Article 34.4 | Not using correct record sheet or driver card not in the correct slot (multi-manning) | | | X |
| 19. | Article 34.5 | Incorrect use of switch mechanism | | X | |

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|----|-------------|-----------------------|----------------------|-----|----|
| | | | MSI | VSI | SI |

Producing information

| | | | | | |
|-----|------------|---|--|---|--|
| 20. | Article 36 | Refusing to be checked | | X | |
| 21. | Article 36 | Unable to produce records of current day and the previous 28 days | | X | |
| 22. | | Unable to produce records of the driver card if the driver holds one | | X | |
| 23. | Article 36 | Unable to produce manual records and printouts made during the current day and the previous 28 days | | X | |
| 24. | Article 36 | Unable to produce a driver card, if the driver holds one | | X | |

Malfunctioning

| | | | | | |
|-----|-------------------------------|--|--|---|--|
| 25. | Article 37.1 and Article 22.1 | Tachograph not repaired by an approved fitter or workshop | | X | |
| 26. | 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 | |

3. Groups of infringements against Directive 2002/15/EC of the European Parliament and of the Council ⁽¹⁾ (Working time rules - Road Transport (Working Time) Regulations 2005 and Part IVA of the Transport Act 1998)

| No | LEGAL BASIS | TYPE OF INFRINGEMENT | LEVEL OF SERIOUSNESS | | | |
|------------------------------------|-------------|---|----------------------|-----|----|---|
| | | | MSI | VSI | SI | |
| Maximum weekly working time | | | | | | |
| 1. | Article 4 | Exceeding maximum weekly working time of 48h if possibilities to extend to 60h already consumed | 56h ... 60h | | | X |
| 2. | | | 60h ... | | X | |
| 3. | | Exceeding maximum weekly working time of 60h if no derogation under Article 8 granted | 65 ... < 70h | | | X |
| 4. | | | 70h ... | | X | |
| Breaks | | | | | | |
| 5. | Article 5.1 | Insufficient obligatory break taken when working time between 6 and 9 hours | 10 < ... 20 min | | | X |
| 6. | | | ... 10 min | | X | |
| 7. | | Insufficient obligatory break taken when working time over 9 hours | 20 < ... 30min | | | X |
| 8. | | | ... 20 min | | X | |
| Night work | | | | | | |
| 9. | Article 7.1 | Daily working time in each 24h when night work performed if no derogation under Article 8 granted | 11h ... < 13h | | | X |
| 10. | | | 13h ... | | X | |
| Records | | | | | | |
| 11. | Article 9 | Employers falsifying working time records or refusing to provide records to inspection officer | | X | | |

| | | | | |
|-----|--|--|---|--|
| 12. | Employed/self-employed drivers falsifying records or refusing to provide records to inspection officer | | X | |
|-----|--|--|---|--|

(¹) 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 (OJ L 80, 23.3.2002, p. 35).

4. Groups of infringements against Council Directive 96/53/EC (¹) (Weight and dimension rules - Vehicles (Construction, Equipment and Maintenance) Regulations)

| No | LEGAL BASIS | TYPE OF INFRINGEMENT | LEVEL OF SERIOUSNESS | | | |
|----------------|-------------|---|------------------------|-----|----|---|
| | | | MSI | VSI | SI | |
| Weights | | | | | | |
| 1. | Article 1 | Exceed maximum permissible weight for N3 vehicles | 5 % ... < 10 % | | | X |
| 2. | | | 10 % ... < 20 % | | X | |
| 3. | | | 20 % ... | X | | |
| 4. | | Exceed maximum permissible weight for N2 vehicles | 5 % ... < 15 % | | | X |
| 5. | | | 15 % ... < 25 % | | X | |
| 6. | | | 25 % ... | X | | |
| Lengths | | | | | | |
| 7. | Article 1 | Exceed maximum permissible length | 2 % < ... < 20 % | | | X |
| 8. | | | 20 % ... | | X | |
| Width | | | | | | |
| 9. | Article 1 | Exceed maximum permissible width | 2,65 ... < 3,10 metres | | | X |
| 10. | | | 3,10 metres ... | | X | |

5. Groups of infringements against Directive 2014/45/EU of the European Parliament and of the Council ⁽²⁾ (Periodic roadworthiness tests - Motor Vehicle Test Regulations 1987) and Directive 2014/47/EU of the European Parliament and of the Council ⁽³⁾ (Technical roadside inspection - Transport (Roadside Test) Regulations 2003)

| No | LEGAL BASIS | TYPE OF INFRINGEMENT | LEVEL OF SERIOUSNESS | | |
|-----------------------|---|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| Roadworthiness | | | | | |
| 1. | Article 8 and 10 Directive 2014/45/EU and Article 7.1 of Directive 2014/47/EU | Driving without a valid proof of roadworthiness tests passed, as required by the EU law | X | | |
| 2. | Article 12.2 of Directive 2014/47/EU | Not keeping a vehicle in a safe and roadworthy condition resulting in a very serious deficiency of the braking system, the steering linkages, the wheels/tires, the suspension or chassis or other equipment that would create such an immediate risk to road safety that it leads to a decision to immobilise the vehicle | X | | |

(1) Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic (OJ L 235, 17.9.1996, p. 59). The Directive has been amended by Directive (EU) 2015/719 of the European Parliament and of the Council (OJ L 115, 6.5.2015, p. 1), which shall be transposed by Member States by 7 May 2017.

(2) Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC (OJ L 127, 29.4.2014, p. 51).

(3) Directive 2014/47/EU of the European Parliament and of the Council of 3 April 2014 on the technical roadside inspection of the roadworthiness of commercial vehicles circulating in the Union and repealing Directive 2000/30/EC (OJ L 127, 29.4.2014, p. 134)

Transport (Roadside Test) Regulations 2003 contains in Schedule 2 a detailed classification of technical deficiencies divided, according to their level of severity, into minor, major and dangerous deficiencies. Defined as follows:

- (a) **minor** deficiencies having no significant effect on the safety of the vehicle or impact on the environment, and other minor non-compliances;
- (b) **major** deficiencies that may prejudice the safety of the vehicle or have an impact on the environment or put other road users at risk, or other more significant non-compliances;
- (c) **dangerous** deficiencies constituting a direct and immediate risk to road safety or having an impact on the environment.

The level of infringements against the provisions of the roadworthiness directives shall reflect the classification of deficiencies contained in Schedule 2 of the Transport (Roadside Test) Regulations 2003, namely: SI = major deficiencies; VSI = dangerous deficiencies; MSI = driving with deficiencies,

which creates immediate risk to road safety. Minor deficiencies would be equal to the level of minor infringements.

6. Groups of infringements against Council Directive 92/6/EEC ⁽¹⁾ (Speed limitation devices - Vehicles (construction, Equipment and Maintenance) Regulations)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|----|-----------------|---|----------------------|-----|----|
| | | | MSI | VSI | SI |
| 1. | Article 2 and 3 | Speed limitation device not fitted | X | | |
| 2. | Article 5 | Speed limitation device not satisfying the applicable technical requirements | | X | |
| 3. | Article 5 | Speed limitation device not fitted by an approved workshop | | | X |
| 4. | | Using a fraudulent device able to falsify data of speed limitation device or using a fraudulent speed limitation device | X | | |

7. Groups of infringements against Directive 2003/59/EC of the European Parliament and of the Council ⁽²⁾ (Initial qualification and periodic training of drivers - Traffic (Drivers' Qualification and Training) Regulations 2008)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|-----------------------------|-------------------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| Training and licence | | | | | |
| 1. | Article 3 | Carrying goods or passengers without a compulsory initial qualification and/or compulsory periodic training | | X | |
| 2. | Article 10 and Annex II | Driver unable to present the valid qualification card or the driving licence with the marking, as required by the national law (<i>e.g.: lost, for- gotten, damaged, unreadable</i>) | | | X |

(1) Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 2.3.1992, p. 27).

(2) Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC (OJ L 226, 10.9.2003, p. 4).

8. Groups of infringements against Directive 2006/126/EC of the European Parliament and of the Council ⁽¹⁾ (Driving licences requirements - Traffic (Licensing and Registration) Regulations)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|----|---|---|----------------------|-----|----|
| | | | MSI | VSI | SI |
| 1. | Articles 1 and 4 of Directive 2006/126/EC | Carrying passengers or goods without holding a valid driving licence | X | | |
| 2. | Article 1 Annex I | Using a driving licence which is damaged or unreadable or not in line with common model | | | X |

9. Groups of infringements against Directive 2008/68/EC of the European Parliament and of the Council ⁽²⁾ (Transport of dangerous goods by road - Transport (Carriage of Dangerous Goods by Road) Regulations 2010 and the Transportable Pressure Equipment Regulations 2011)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|----|--|---|----------------------|-----|----|
| | | | MSI | VSI | SI |
| 1. | Annex I, Section I.1 to Directive 2008/68/EC | Transporting dangerous goods that are prohibited for transport | X | | |
| 2. | | Transporting dangerous goods in a prohibited or non-approved means of containment, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle | X | | |
| 3. | | Transporting dangerous goods without identifying them on the vehicle as dangerous goods, thus endangering lives or the environment to such extent that it leads to a decision to immobilise the vehicle | X | | |
| 4. | | Leakage of dangerous substances | | X | |
| 5. | | Carriage in bulk in a container which is not structurally serviceable | | X | |
| 6. | | Carriage in a vehicle without an appropriate certificate of approval | | X | |
| 7. | | Vehicle no longer complies with the approval standards and presents an immediate danger | | X | |

(1) Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ L

403, 30.12.2006, p. 18)

(2) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ L 260, 30.9.2008, p. 13).

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|-----|-------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| 8. | | The rules governing the securing and stowage of the load have not been complied with | | X | |
| 9. | | The rules governing mixed loading of packages have not been complied with | | X | |
| 10. | | The provisions limiting the quantities carried in one transport unit have not been complied with, including permissible degrees of filling tanks or packages; | | X | |
| 11. | | Information relevant to the substance being carried enabling determination of level of seriousness of offence is missing (e.g. <i>UN number, proper shipping name, packing group</i>) | | X | |
| 12. | | Driver does not hold a valid vocational training certificate | | X | |
| 13. | | Fire or an unprotected light is being used | | X | |
| 14. | | The ban on smoking is not being observed. | | X | |
| 15. | | The vehicle is not properly supervised or parked | | | X |
| 16. | | The transport unit comprises more than one trailer/semi-trailer | | | X |
| 17. | | Vehicle no longer complies with the approval standards but does not present an immediate danger | | | X |
| 18. | | The vehicle is not carrying operational fire extinguishers as required | | | X |
| 19. | | The vehicle does not carry the equipment required in the ADR or in the instructions in writing | | | X |
| 20. | | Packages with damaged packaging, IBCs or large packaging or damaged uncleaned empty packaging are being carried | | | X |

| | | | | |
|-----|---|--|--|---|
| 21. | Carriage of packaged goods in a container which is not structurally serviceable | | | X |
|-----|---|--|--|---|

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|-----|-------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| 22. | | Tanks/tank containers (including ones that are empty and uncleaned) have not been closed properly | | | X |
| 23. | | Incorrect labelling, marking or placarding on the vehicle and/or containment | | | X |
| 24. | | There are no instructions in writing conforming to the ADR, or the instructions in writing are not relevant to the goods carried | | | X |

Commission Directive 2004/112/EC ⁽¹⁾, adapting Council Directive 95/50/EC ⁽²⁾ on uniform procedures for checks on the transport of dangerous goods by road, contains in its Annex II a detailed classification of infringements against the relevant provisions, divided, according to their level of severity, into three risk categories: risk category I, risk category II, risk category III.

The level of infringements against the provisions shall reflect the risk categories provided in Annex II to Directive 2004/112/EC, in such a way that **risk category I = VSI** (except those infringements which are already defined as MSI in Annex IV to Regulation (EC) No 1071/2009); **risk category II = SI**. Risk category III is equal to the level of minor infringement.

This table covers only those infringements for which a carrier shall be held fully or partially liable. The level of liability of a carrier for the infringement shall be assessed in accordance with national enforcement procedure.

(1) Commission Directive 2004/112/EC of 13 December 2004 adapting to technical progress Council Directive 95/50/EC on uniform procedures for checks on the transport of dangerous goods by road (OJ L 367, 14.12.2004, p. 23).

(2) Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road (OJ L 249, 17.10.1995, p.35).

10. Groups of infringements against Regulation (EC) No 1072/2009 of the European Parliament and of the Council ⁽¹⁾ (Access to the international road haulage market)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|---------------------------|-----------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| Community licence | | | | | |
| 1. | Article 3 | Carrying goods without holding a valid Community licence (<i>i.e.: a licence is nonexistent, falsified, withdrawn, expired, etc.</i>) | X | | |
| 2. | Article 4 | The haulage undertaking or the driver unable to present a valid Community licence or a valid certified true copy of the Community licence to the inspecting officer (<i>i.e.: Community licence or certified true copy of the Community licence lost, forgotten, damaged, etc.</i>) | | X | |
| Driver attestation | | | | | |
| 3. | Article 3 and 5 | Carrying goods without holding a valid driver attestation (<i>i.e. driver's attestation is nonexistent, falsified; withdrawn, expired, etc.</i>) | | X | |
| 4. | | The driver or the haulage undertaking unable to present a valid driver attestation or a valid certified true copy of the driver attestation to the inspecting officer (<i>i.e. driver attestation or certified true copy of the driver attestation lost, forgotten, damaged, etc.</i>) | | | X |

11. Groups of infringements against Regulation (EC) No 1073/2009 of the European Parliament and of the Council ⁽²⁾ (Access to the market for coach and bus services)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|---|-----------------|---|----------------------|-----|----|
| | | | MSI | VSI | SI |
| Community licence | | | | | |
| 1. | Article 4 | Carrying passengers without holding a valid Community licence (<i>i.e.: a licence is non-existent, falsified, withdrawn, expired, etc.</i>) | X | | |
| 2. | Article 4.3 | The carrier or the driver unable to present a valid Community licence or a valid certified true copy of the Community licence to the inspecting officer (<i>i.e. licence or certified true copy lost, forgotten, damaged, etc.</i>) | | X | |
| Authorisation for regular services | | | | | |
| 3. | Article 5 and 6 | Regular services without a valid authorisation (<i>i.e.: authorisation is non-existent, falsified, withdrawn, expired, misused, etc.</i>) | | X | |
| 4. | Article 19 | The driver unable to present the authorisation to the inspecting officer (<i>i.e. authorisation is lost, forgotten, damaged, etc.</i>) | | | X |
| 5. | Article 5 and 6 | Stops of regular services in a Member State do not correspond to the issued authorisation | | | X |

(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).

(2) Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006 (OJ L 300, 14.11.2009, p. 88).

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|--|-------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| Journey form for occasional services and other services exempt from authorisation | | | | | |
| 6. | Article 12 | Driving without holding a required journey form (<i>i.e. journey form is non-existent, falsified, not containing the required information, etc.</i>) | | | X |

12. Groups of infringements against Council Regulation (EC) No 1/2005 ⁽¹⁾ (Animal transport)

| No | LEGAL BASIS | TYPE OF INFRINGEMENTS | LEVEL OF SERIOUSNESS | | |
|----|----------------------|--|----------------------|-----|----|
| | | | MSI | VSI | SI |
| 1. | Annex I, Chapter II, | Partitions are not strong enough to withstand the weight of animals | | X | |
| 2. | Annex I, Chapter III | Using loading or unloading ramps that has slippery surfaces, that lack lateral protections or that are too steep | | | X |
| 3. | | Using lifting platforms or upper floors that do not have safety barriers preventing animals from falling or escaping during loading and unloading operations | | | X |
| 4. | Article 7 | Means of transport not approved for long journeys, or not approved for the type of animals being transported. | | | X |
| 5. | Article 4, 5 and 6 | Transporting without valid required documentation, journey log or transporter authorisation or certificate of competence | | | X |

⁽¹⁾ Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p. 1).

ANNEX II

Frequency of occurrence of serious infringements

1. The serious (SI) and very serious (VSI) infringements listed in Annex I, when committed repeatedly shall be regarded as more serious by the competent authority. When calculating the frequency of occurrence of repeated infringements the competent authority shall take into account the following factors:
 - (a) seriousness of infringement (SI or VSI);
 - (b) time (at least one rolling year from the date of a control);
 - (c) number of drivers used for the transport activities managed by the transport manager (average per year)
2. Taking into account the potential of creating a risk to road safety the maximum frequency of serious infringements beyond which they should be considered as more serious shall be established as follows:

3 SI/per driver/per year = 1 VSI

3 VSI/per driver/per year = launch of a national procedure on good repute
3. The number of infringements per driver per year is an average figure calculated by dividing the total number of all in- fringements of the same level of seriousness (SI or VSI) by the average number of drivers employed during the year. The frequency formula provides for a maximum threshold for occurrence of serious infringements beyond which they shall be considered more serious. The Transport Commission may establish stricter thresholds if envisaged in its national administrative procedure for assessing good repute.

Dated: 28th November, 2019.

V. DARYANANI,
Minister with responsibility for Traffic,
and for the Government.

EXPLANATORY MEMORANDUM

These Regulations relate to the licensing of operators and to international road haulage.

These Regulations are made in exercise of the powers conferred by section 69 of the Transport Act 1998, as read with section 23(g)(ii) and 27 of the Interpretation and General Clauses Act, in order to update Gibraltar's legislation in line with EU measures.

These Regulations are also made in exercise of the powers conferred by section 11(1) of, and paragraph 1(a)(i) and (b) of Schedule 3 to, the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal from the European Union.

They amend directly applicable EU retained law, namely Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC and 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. Regulation (EC) No 1071/2009 created a framework for operator licences (transport managers) and Regulation (EC) No 1072/2009 created a framework for the licensing of road haulage operators and public transport operators, both EU Regulations set out the conditions under which national licensing authorities could issue and withdraw licences.

These Regulations make amendments to legislation in the field of transportation of passengers and goods between Gibraltar and the Member States of the EU, EEA and the United Kingdom. In particular, they amend legislation relating to the standards and requirements to be complied with by road transport operators engaging in the international transportation.

The Regulations set out the procedures for hauliers to follow for applications for a Gibraltar licence for the Community, and clarifies that UK, EU and EEA hauliers who operate in Gibraltar under a Community licence (definition including a "UK licence for the Community") are exempted in domestic legislation from the obligation to hold an operator's licence (section 25 of the Transport Act 1998).