

Subsidiary Legislation made under s. 23(g)(ii).

Transport (Carriage of Dangerous Goods by Road) Regulations 2010

LN.2010/122

Commencement **2.7.2010**

Transposing:
Directive 2008/68/EC

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Interpretation.
3. Applicability of the ADR and these Regulations.
4. Prohibition and control over the carriage of dangerous goods.
5. Exemptions.
6. Authorisations.
7. Derogations and transitional provisions.
8. Additional security requirements.
9. Application of the ADR to carriage by private individuals.
10. Application of the ADR to carriage by certain enterprises.
11. Random inspections.
12. Record of inspection and place of inspection.
13. Keeping and provision of information.
14. Appointments by the competent authority.
15. Appointment of dangerous goods safety advisers.
16. Safety adviser examination and certification.
17. Application to the Crown.
18. Offences.
19. Repeal.
20. Transitional provisions.
21. Savings.

SCHEDULE 1 DUTIES OF A SAFETY ADVISER

1962-08

Interpretation and General Clauses

2010/122

**Transport (Carriage of Dangerous Goods by Road)
Regulations 2010**

SCHEDULE 2

DEPARTMENT OF TRANSPORT CERTIFICATE

SCHEDULE 3

DEPARTMENT OF TRANSPORT CERTIFICATE OF TRAINING AS A SAFETY
ADVISER FOR THE CARRIAGE OF DANGEROUS GOODS

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act and all other enabling powers, and in order to transpose into the law of Gibraltar Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Transport (Carriage of Dangerous Goods by Road) Regulations 2010 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“ADR” means the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded at Geneva on the 30 September 1957, as amended from time to time;

“carriage” means any carriage operation performed by a vehicle wholly or partly on the public highway, as covered by Annexes A and B of the ADR, but shall not include carriage wholly performed within the perimeter of an enclosed area, and “carry” shall be construed accordingly;

“carriage operation” means the transport of dangerous goods by road and shall include any necessary loading, mixed loading and unloading, the transfer to or from another mode of transport and the stops necessitated by the circumstances of the transport;

“carrier” means any undertaking involved in carriage operations;

“competent authority” means the Minister with responsibility for transport;

“dangerous goods” means those substances and articles listed in chapter 3.2 of Annex A of the ADR, the carriage of which by road is prohibited by Annexes A and B of the ADR or is authorised by the relevant competent authority only in certain circumstances;

“Dangerous Goods Directive” means Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, as amended from time to time;

“international carriage” means carriage between two or more State Parties, including carriage to or from Gibraltar;

1962-08

Interpretation and General Clauses

2010/122

Transport (Carriage of Dangerous Goods by Road) Regulations 2010

“Minister” means the Minister with responsibility for transport;

“safety adviser” means any person appointed by a carrier to carry out the tasks and fulfil the functions defined in regulation 15;

“State Party” means a State which is a party to the ADR;

“vehicle” means any motor vehicle which is intended for use on the road, having at least four wheels and a maximum design speed exceeding 25 km/hour and any trailer, tractors and mobile machinery which do not travel at a speed exceeding 40 km/hour when carrying dangerous goods.

(2) Where an expression is defined in the Dangerous Goods Directive or in the ADR and that expression is not defined in these Regulations, that expression shall have the same meaning in these Regulations as it has in the Dangerous Goods Directive or in the ADR.

Applicability of the ADR and these Regulations.

3.(1) Save as otherwise provided in these Regulations, Annexes A and B of the ADR shall form an integral part of these Regulations and shall apply to any carriage of dangerous goods by road to, from or within Gibraltar.

(2) All exemptions granted by Annexes A and B of the ADR shall be applicable to any carriage of dangerous goods by road to, from or within Gibraltar.

(3) These Regulations shall not apply to any carriage of dangerous goods by the armed forces.

Prohibition and control over the carriage of dangerous goods.

4.(1) No person shall carry dangerous goods on any vehicle or cause or permit dangerous goods to be carried on any vehicle where that carriage is prohibited by the ADR, as applicable at that time, including where that carriage does not comply with the applicable requirements of the ADR.

(2) A person participating in or involved with any stage of a carriage operation shall conform to the requirements of the ADR and fulfill all the obligations required by the ADR appertaining to his participation or involvement.

(3) A person involved with any stage of a carriage operation shall take all reasonable steps to ensure that unauthorised access to the dangerous goods involved in the operation is prevented.

Exemptions.

5.(1) Dangerous goods classified, packaged and labeled in accordance with the international requirements for maritime or air transport may, whenever a carriage operation involves a subsequent sea or air voyage, be carried without compliance with any of the requirements of the ADR subject to the vehicle being appropriately placarded.

(2) Any provisions in the ADR concerning the use of languages in relevant markings or documentation shall not apply to any carriage operations within Gibraltar.

(3) Vehicles and tanks constructed before 1 January 1997 but constructed in accordance with requirements in force on 31 December 1996, and maintained to the safety level required, may continue to be used within Gibraltar even if they do not comply with Annexes A and B of the ADR.

Authorisations.

6.(1) The competent authority may issue an authorisation to a person to carry dangerous goods within Gibraltar under conditions which are different from those laid down in these Regulations.

(2) The competent authority may issue an authorisation to a person to carry other dangerous goods listed in Annex A of the ADR where that carriage is within Gibraltar and complies with the conditions imposed by the ADR in relation to—

- (a) the packaging and labelling of such goods;
- (b) the construction, equipment and proper operation of the vehicle;
- (c) the placarding and marking of the vehicle and the tank, containers and receptacles carrying such goods; and
- (d) the documentation, fire-fighting appliances and other safety and first-aid equipment to be carried on board vehicles.

(3) The competent authority may issue authorisations for every single carriage operation within Gibraltar which is either prohibited by Annexes A and B of the ADR or which are to be performed under conditions different from those laid down in those Annexes.

(4) All authorisations under this regulation shall be in writing and shall set out—

- (a) the carriage that is covered by the authorisation;

- (b) the reason that the authorisation is being issued; and
 - (c) the documentation, fire-fighting appliances and other safety and first-aid equipment to be carried on board vehicles.
- (5) Authorisations under this regulation may be–
- (a) made subject to conditions; and
 - (b) withdrawn at any time by a notice in writing to that effect to the person authorised and that notice shall set out whether the withdrawal of the authorisation has effect immediately or whether the withdrawal has effect from a specified date.

Derogations and transitional provisions.

7.(1) The competent authority may exempt the carriage of dangerous goods from the requirements and prohibitions arising under regulations 4, 8, 9 and 10 but only for the purposes of–

- (a) implementing a derogation authorised under article 6 (2) to 6 (4) of the Dangerous Goods Directive;
- (b) maintaining a transitional provision permitted by article 7 of the Dangerous Goods Directive; or
- (c) ensuring that carriage to which these Regulations apply, but the Dangerous Goods Directive or the ADR does not apply, is carried out in a manner consistent with a derogation or transitional provision referred to at sub-paragraph (a) or (b).

(2) Where any exemption is granted under sub-regulation (1), that exemption is to be set out in a document to be called “Dangerous Goods: Approved Derogations and Transitional Provisions”.

- (3) In the document the competent authority shall set out–
- (a) the types of carriage to which the exemption applies;
 - (b) the circumstances in which the exemption applies;
 - (c) the requirements and prohibitions that do not apply pursuant to sub-regulation (1);
 - (d) any requirements and prohibitions that apply instead; and

Interpretation and General Clauses
**Transport (Carriage of Dangerous Goods by Road)
Regulations 2010**

**1962-08
2010/122**

- (e) the duration of the exemption which shall be for a period not exceeding six years from the date on which the document is issued.
- (4) The document may be revised in whole or in part from time to time.
- (5) The competent authority may not bring to an end, or substantially alter, an exemption unless those who might be affected have been consulted.
- (6) This regulation does not limit the power to issue an authorisation under regulation 6(1).

Additional security requirements.

8.(1) For the purposes of regulation 4(1), the requirements set out in sub-regulations (2) to (4) are deemed to be the security requirements of Chapter 1.10 of the ADR.

(2) The carrier and the driver of a vehicle which is being used for the carriage of dangerous goods shall ensure that—

- (a) the carriage is completed within a reasonable length of time having regard to the distance involved;
 - (b) the goods are delivered to-
 - (i) the consignee or the consignee's agent; or
 - (ii) a person who is authorised by the consignee to accept custody of the dangerous goods—
 - (aa) for onward despatch; or
 - (bb) in circumstances where the consignee has compelling reasons not to accept the goods in accordance with sub-section 1.4.2.3 of the ADR, provided they are delivered to qualifying premises;
 - (c) the goods are unloaded from the vehicle as soon as is reasonably practicable after it arrives at its place of delivery; and
 - (d) any trailer or container containing the goods is not detached, or removed, from the vehicle unless it is in qualifying premises.
- (3) Sub-regulation (2)(d) shall not apply in an emergency.

(4) A carrier shall not remove any dangerous goods from the consignor's premises unless ready immediately to despatch them to the consignee or a person authorised by the consignee to accept custody of the goods in the circumstances referred to in sub-regulation (2)(b)(ii)(aa).

(5) In this regulation "qualifying premises" means a safe and secure place for the storage of dangerous goods or a transshipment depot or transit shed in the airport, the port or harbour area allocated by the occupier as an area for parking vehicles carrying dangerous goods.

Application of the ADR to carriage by private individuals.

9.(1) For the purposes of regulation 4(1), the exemption from the prohibitions and requirements of the ADR provided for by sub-section 1.1.3.1(a) of the ADR shall be disregarded.

(2) But sub-regulation (1) does not apply if the conditions specified in sub-regulations (3) and (4) are satisfied.

(3) The condition specified in this sub-regulation is that the net mass of explosive substance being carried does not exceed—

- (a) in the case of fireworks, 50 kilograms; and
- (b) in the case of other explosives or a combination of fireworks and other explosives, 30 kilograms.

(4) The condition specified in this sub-regulation is that the individual has taken all reasonable steps to ensure that—

- (a) the manner in which the dangerous goods are loaded, stowed, carried or unloaded will not create a significant risk or significantly increase any existing risk to the health or safety of any person; and
- (b) there is no unauthorised access to the dangerous goods.

Application of the ADR to carriage by certain enterprises.

10.(1) For the purposes of regulation 4(1), the requirements referred to in sub-regulation (2) shall apply to carriage that would, but for this regulation, be exempt from those requirements because of the exemption set out in sub-section 1.1.3.1(c) of the ADR in relation to carriage by enterprises which is ancillary to their main activity.

(2) The requirements are—

Interpretation and General Clauses
Transport (Carriage of Dangerous Goods by Road)
Regulations 2010

1962-08
2010/122

- (a) the requirements of ADR in—
 - (i) section 7.5;
 - (ii) section 8.3.5; and
 - (iii) special provisions S1:(3) and S1:(6) of Chapter 8.5; and
- (b) the requirements deemed to be part of ADR in consequence of regulations 4(3) and 8.

Random inspections.

11.(1) The competent authority may at any time carry out inspections on vehicles, including non-State Party registered vehicles, carrying or designed to carry dangerous goods in order to ensure compliance with these Regulations.

(2) The checks to be carried out may vary depending on the goods being carried.

(3) Checks may be carried out at any vehicular entry point into Gibraltar and throughout Gibraltar.

(4) The place chosen for an inspection has to permit a defaulting vehicle to rectify any deficiencies on the spot before continuing its journey or may be detained there if the competent authority considers it necessary or appropriate to immobilise the vehicle at the roadside provided such immobilisation does not cause a safety hazard.

(5) Depending on the circumstances and safety requirements, all vehicles so immobilised may be refused to enter or leave Gibraltar.

(6) Inspections may also be carried out at the premises of carriers as a preventive measure prior to a carriage operation and where any infringements have been established the vehicle shall not be allowed to leave the premises until all deficiencies are rectified to the satisfaction of the competent authority.

(7) Where appropriate, and provided that this does not constitute a safety hazard, samples of the goods transported may be taken for testing to laboratories approved by the competent authority.

Record of inspection and place of inspection.

12. The competent authority shall maintain a record of the results of an inspection under regulation 11 and a copy of this record shall be given to the carrier and the driver of the vehicle on request.

Keeping and provision of information.

13.(1) Whenever an accident affects any person, property or the environment or results in damage to property or the environment during carriage operations, the safety adviser shall, after collecting all the relevant information, prepare an accident report of the kind mentioned in sub-section 1.8.3.6 of the ADR for the management of the carrier.

(2) An accident report shall be provided to the competent authority whenever the competent authority so requests.

(3) A written record of the information contained in the transport document described in chapters 5.4 and 5.5 of the ADR shall be kept for a period of three months after the completion of the carriage in question.

Appointments by the competent authority.

14.(1) The competent authority may appoint any person to carry out a function of the competent authority under these Regulations and a reference in these Regulations to the performance of the function by the competent authority is to be treated as including a reference to the performance of the function by the person who has been so appointed.

(2) A person appointed under sub-regulation (1) may be appointed to carry out the function in particular circumstances or generally.

Appointment of dangerous goods safety advisers.

15.(1) Every carrier conducting a carriage operation to, from or within Gibraltar shall appoint one or more dangerous goods safety advisers for their carriage operations and that person may be the managing director, senior manager or a person employed or not directly employed by the carrier.

(2) A safety adviser shall carry out the duties listed in Schedule 1.

(3) A safety adviser shall assist the carrier in taking all steps necessary to prevent the risks inherent in carriage operations with regard to persons, property and the environment.

(4) A safety adviser shall, under the responsibility of the directors and managers of the carrier and within the limits of such operations, take the necessary actions to facilitate the conduct of the operations in the safest possible way.

(5) A carrier shall, when requested by the competent authority to do so, provide the identity and qualifications of the safety adviser.

(6) Without prejudice to any provisions for the time being in force in relation to health and safety of workers at the workplace, this regulation shall not apply to carriers involved in carriage operations having in each carriage unit quantities smaller than those specified in Annexes A and B of the ADR.

Safety adviser examination and certification.

16.(1) A person may only be appointed as a safety adviser if he holds a Department of Transport certificate or a similar certificate issued by the competent authority of a State Party.

(2) Candidates wishing to obtain a Department of Transport certificate shall undergo training and pass an examination approved by the competent authority.

(3) Training shall be such as to provide candidates with sufficient knowledge of the risks inherent in the carriage of dangerous goods, of the laws, regulations and administrative provisions applicable to such carriage and of the duties set out in Schedule 1.

(4) The competent authority shall organise a compulsory written examination which it may supplement with an oral examination to assess whether candidates possess the necessary level of knowledge required to carry out the tasks of safety adviser in order to obtain the Department of Transport certificate.

(5) The examination shall, as a minimum, cover the subjects listed in Schedule 2.

(6) The competent authority may, by notice in the Gazette, designate one or more persons or bodies to conduct the examination.

(7) The Department of Transport certificate shall be in the form as set out in Schedule 3.

(8) The Department of Transport certificate shall be valid for a period not exceeding five years but shall be extended automatically for five years at a time where, during the final year before each expiry, its holder shall have followed refresher courses or passed an examination both of which must be approved by the competent authority.

Application to the Crown.

17. These Regulations bind the Crown.

1962-08

Interpretation and General Clauses

2010/122

Transport (Carriage of Dangerous Goods by Road) Regulations 2010

Offences.

18.(1) A person who carries dangerous goods otherwise than in accordance with the conditions laid down in these Regulations and in Annexes A and B of the ADR or whose carriage is prohibited shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any negligence on the part of any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Repeal.

19. The Transport of Dangerous Act 2001 is hereby repealed.

Transitional provisions.

20.(1) In this regulation and in regulation 21 “the Act” means the Transport of Dangerous Goods Act 2001, repealed by regulation 19.

(2) The substitution of the Regulations for the Act shall not affect the continuity of the law.

(3) An application for a certificate, authorisation or permission made under the Act shall be deemed to have been made under the corresponding provisions in these Regulations and shall be determined accordingly.

Savings.

21. Notwithstanding the repeal of the Act-

- (a) a certificate, an authorisation or a permission issued or granted under the Act continues to have effect as if made, issued or granted under these Regulations; and
- (b) proceedings for an offence under the Act that had not been concluded before the commencement of these Regulations must continue as if the Act had not been repealed.

SCHEDULE 1

Regulation 15

DUTIES OF A SAFETY ADVISER

1. A safety adviser shall have the following duties—
 - (a) monitoring compliance with the rules governing the carriage of dangerous goods;
 - (b) advising the carrier on the carriage of dangerous goods;
 - (c) preparing an annual report to the management of his undertaking or a public authority, as appropriate, on the undertaking's activities in the transport of dangerous goods. Such annual reports shall be presented for five years and made available to the competent authority at its request.

2. A safety adviser's duties shall also include monitoring the following practices and procedures relating to the relevant carriage operation of the carrier—
 - (a) the procedures for compliance with the rules governing the identification of dangerous goods being transported;
 - (b) the carrier's practice in taking account, when purchasing vehicles, of any special requirements in connection with the dangerous goods being carried;
 - (c) the procedures for checking the equipment used in connection with the carriage, loading or unloading of dangerous goods;
 - (d) the proper training of the carrier's employees and the maintenance of records of such training;
 - (e) the implementation of proper emergency procedures in the event of any accident or incident that may affect safety during the carriage, loading or unloading of dangerous goods;
 - (f) investigating and, where appropriate, preparing reports on serious accidents, incidents or serious infringements recorded during the carriage, loading or unloading of dangerous goods;
 - (g) the implementation of appropriate measures to avoid the recurrence of accidents, incidents or serious infringements;

1962-08

Interpretation and General Clauses

2010/122

Transport (Carriage of Dangerous Goods by Road) Regulations 2010

- (h) the account taken of the legal prescriptions and special requirements associated with the carriage of dangerous goods in the choice and use of sub-contractors or third parties;
- (i) verification that employees involved in the carriage, loading or unloading of dangerous goods have detailed operational procedures and instructions;
- (j) the introduction of measures to increase awareness of the risks inherent in the carriage, loading and unloading of dangerous goods;
- (k) the implementation of verification procedures to ensure the presence on board vehicles of the documents and safety equipment which must accompany them and the compliance of such documents and equipment with these Regulations;
- (l) the implementation of verification procedures to ensure compliance with the rules governing loading and unloading.

SCHEDULE 2

Regulation 16

DEPARTMENT OF TRANSPORT CERTIFICATE

1. The knowledge required to qualify for a certificate shall include at least the following—
 - (1) General preventive and safety measures—
 - (a) knowledge of the types of consequences which may be caused by an accident involving dangerous goods; and
 - (b) knowledge of the main causes of accidents.
 - (2) Provisions relating to the mode of transport used under national law, Community standards, international conventions and agreements, with regard to the following in particular—
 - (a) the classification of dangerous goods—
 - (i) the procedure for classifying solutions and mixtures;
 - (ii) the structure of the description of substances;
 - (iii) the classes of dangerous goods and the principles of their classification;
 - (iv) the nature of the dangerous substances and articles transported; and
 - (v) their physical, chemical and toxicological properties;
 - (b) general packaging requirements, to include tankers, tank-containers, MEGC's and pressurized equipment—
 - (i) types of packaging, codification and marking;
 - (ii) packaging requirements and prescriptions for testing packaging;
 - (iii) the state of packaging and periodic checks;
 - (iv) danger markings and labels;

1962-08

Interpretation and General Clauses

2010/122

Transport (Carriage of Dangerous Goods by Road) Regulations 2010

- (v) the markings on danger labels;
- (vi) the placing and removal of danger labels; and
- (vii) placarding and labelling;
- (c) references in transport documents—
 - (i) information in the transport document; and
 - (ii) the consignor's declaration of conformity;
- (d) the method of consignment and restrictions on dispatch—
 - (i) full load;
 - (ii) bulk transport;
 - (iii) transport in large bulk containers;
 - (iv) container transport;
 - (v) transport in fixed and removable tanks;
- (e) the transport of passengers;
- (f) prohibitions and precautions relating to mixed loading;
- (g) the segregation of substances;
- (h) limits on the quantities carried and quantities exempt;
- (i) handling and stowage—
 - (i) loading and unloading (filling ratios);
 - (ii) stowage and segregation;
- (j) cleaning and/or degassing before loading and after unloading;
- (k) crews: vocational training;

- (l) vehicle papers–
 - (i) the transport document,
 - (ii) written instructions,
 - (iii) the vehicle-approval certificate,
 - (iv) the vehicle driver’s training certificate,
 - (v) copies of any derogations,
 - (vi) other documents,
- (m) safety instructions: implementation of the instructions and driver protection equipment;
- (n) surveillance obligations: parking;
- (o) traffic regulations and restrictions;
- (p) operational and accidental discharges of pollutants;
- (q) requirements relating to transport equipment.

1962-08

Interpretation and General Clauses

2010/122

**Transport (Carriage of Dangerous Goods by Road)
Regulations 2010**

SCHEDULE 3

Regulation 16

**Department of Transport Certificate of training as a safety adviser for the carriage of
dangerous goods**

Certificate Number...

Distinguishing sign of the State issuing the certificate

Surname.....

Forename(s).....

Date and place of birth.....

Nationality.....

Signature of holder.....

Valid until..... for carriers which carry dangerous goods and for enterprises which carry
out related loading and loading operations.

Issued by.....

Date.....

Signature of issuer.....

Extended until.....

Date.....

Signature.....