

Subsidiary Legislation made under s.61B(1) & (2).

Traffic (Penalty Points) Regulations 2022

LN.2022/293

Commencement **01.01.2023**

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OFFENCES INCURRING PENALTY POINTS

2005-26

Traffic

2022/293

Traffic (Penalty Points) Regulations 2022

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In exercise of the powers conferred on him by sections 61B(1) and 61B(2) of the Traffic Act 2005, and all other enabling powers, the Minister has made the following Regulations-

Title.

1. These Regulations may be cited as the Traffic (Penalty Points) Regulations 2022.

Commencement.

2. These Regulations come into operation on 1 January 2023.

Interpretation.

- 3.(1) In these Regulations-

“the Act” means the Traffic Act 2005;

“appropriate date” shall be construed in accordance with the meaning given to it in regulation 9(1);

“clerk of the court” shall have the meaning assigned to it by section 2(1) of the Magistrates’ Court Act;

“entry” in relation to a person, means the entry in the licence record relating to the person;

“licence” means a driving licence issued to a person by the licensing authority;

“penalty point” means a point specified in column (5) or (6) of the Schedule as the case may be;

“penalty point offence” means an offence specified in column (3) of the Schedule.

Endorsement of penalty points.

4.(1) Where a person makes a payment under section 94H(2) or section 94I(2) of the Act in respect of an alleged penalty point offence, the number of penalty points specified in column (5) of the Schedule opposite the mention of the offence shall, subject to and in accordance with the provisions of these regulations, be endorsed on the entry relating to the person in respect of the alleged offence.

(2) Where a person is convicted of a penalty point offence, the number of penalty points specified in column (6) of the Schedule opposite the mention of the offence shall, subject to

and in accordance with the provisions of these regulations, be endorsed on the entry relating to the person in respect of the offence.

(3) Where a person is convicted of 2 or more penalty point offences committed on the same occasion, penalty points in respect of only one of the alleged offences, determined, where appropriate, in accordance with subregulation (5), shall be endorsed on the entry relating to the person.

(4) Where a person makes one or more payments referred to in subregulation (1) and is convicted of one or more penalty point offences and the alleged penalty point offences concerned and the penalty point offences were committed on the same occasion, penalty points in respect only of any one of the alleged offences and offences, determined in accordance with subregulation (5), shall be endorsed on the entry relating to the person.

(5) In a case referred to in subregulation (3) or (4) –

- (a) if the number of penalty points to be endorsed on the entry concerned in respect of one of the alleged offence, or offences concerned, differs from that or those in respect of the other or others, the number which is the greater or greatest shall, subject to paragraph (b) of this subregulation (5), be endorsed on the entry; and
- (b) if 2 or more of the numbers aforesaid are greater than the other or others, or are the greatest of the numbers, and are equal, one only of them shall be so endorsed.

(6) Upon the making of a payment referred to in subregulation (1) to an authorised person, the authorised person shall, as soon as may be after the payment is made, cause the licensing authority to be notified of the payment so made and, thereupon, subject to subregulations (4), (10) and (11), the licensing authority shall cause the appropriate number of penalty points to be endorsed on the entry concerned.

(7) When a person is convicted of a penalty point offence, the registrar or clerk of the court concerned or such other member of the staff of the court as may be designated, shall notify the licensing authority of the conviction—

- (a) in case an appeal is brought against the conviction and it is determined against the person, as soon as may be after such determination;
- (b) in case an appeal is not brought against the conviction, as soon as may be after the expiration of the ordinary time for bringing such an appeal.

(8) Where the conviction of a person of a penalty point offence is reversed on appeal, it shall not be necessary to notify the licensing authority of the conviction.

(9) Upon the receipt by the licensing authority of a notification under subregulation (7), the licensing authority shall, subject to subregulations (4), (10) and (11), cause the appropriate number of penalty points to be endorsed on the entry concerned.

(10) If an entry in relation to a person does not exist at a time when, if there were such an entry, penalty points would fall to be endorsed on it, pursuant to subregulation (6) or (9), and, subsequently, such an entry is made, thereupon, the points shall be so endorsed.

(11) Where, upon conviction of a person of a penalty point offence, an ancillary disqualification order is made in respect of the person, penalty points in respect of the offence shall not be endorsed on the entry of the person.

Disqualification by reason of penalty points.

5.(1) When penalty points are endorsed on the entry of a person and, in consequence, the total number of penalty points standing so endorsed equals or exceeds 12, the person shall stand disqualified for a period of 6 months beginning on the appropriate date from holding a licence, and a licence held by him or her at the beginning of the period shall stand suspended correspondingly.

(2) At the end of a period of disqualification pursuant to subregulation (1), the licensing authority shall—

- (a) cause to be removed from the entry concerned, the penalty points standing endorsed on it on the date of the notice under regulation 7 relating to the disqualification; and
- (b) cause a notice to be given or sent, by post or otherwise, to the person to whom the entry relates—
 - (i) of the ending of the period and its date; and
 - (ii) of the removal and particulars of the penalty points the subject of the removal.

(3) Where 7 or more penalty points have been endorsed on the entry relating to a person within two years of that person passing a driving test, that person shall stand disqualified until he or she –

- (a) makes an application for a learners' licence; and

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- (b) successfully undertakes the theoretical and practical driving tests in accordance with the Traffic (Licensing and Registration) Regulations.

(4) A previous disqualification imposed on a person by virtue of subregulation (1), is to be taken into account, if it was imposed within the three years immediately preceding the commission of the latest offence in respect of which penalty points are endorsed and, in consequence, the total number of penalty points standing so endorsed equals or exceeds 12, that person shall stand disqualified-

- (a) for a period of 12 months, following one previous disqualification; or
- (b) for a period of 24 months, following more than one such previous disqualification;

beginning on the appropriate date from holding a licence, and a licence held by him or her at the beginning of the period shall stand suspended correspondingly.

Period of endorsement of penalty points.

6. Penalty points endorsed on the entry of a person shall, subject to regulation 5(2), remain on the entry for a period of 3 years beginning on the appropriate date, and the licensing authority shall —

- (a) cause the penalty points to be removed from the entry at the end of that period; and
- (b) cause a notice to be given or sent, by post or otherwise, to the person—
 - (i) of the ending of the period and its date; and
 - (ii) of the removal and particulars of the penalty points the subject of the removal.

Notification to licence holder of endorsement of penalty points.

7.(1) When penalty points are endorsed on the entry of a person, the licensing authority shall, as soon as may be thereafter, cause a notice to be given or sent, by post or otherwise, to the person—

- (a) to the effect that the number of penalty points specified in the notice has been endorsed on the entry relating to the person following—
 - (i) the making by the person of a payment referred to in regulation 4(1); or

- (ii) the conviction of the person of a penalty point offence,

and that, subject to regulation 6, shall remain on the entry for a period of 3 years beginning on the appropriate date; and

- (b) specifying the total number of penalty points that, following the endorsement aforesaid, stand so endorsed and, if that number equals or exceeds 12, specifying that the person will be disqualified under regulation 5(1) for holding a licence for a period of 6 months beginning on the appropriate date and directing the person to submit the licence held by him or her to the licensing authority not later than 14 days from that date.

(2) A notice issued under this regulation to the holder of a licence shall include a statement relating to –

- (a) the person’s name, address, date, time and location of occurrence offence concerned; and
- (b) the date of issue of the notice.

(3) The notice referred to in subregulation (2) shall disclose if-

- (a) any fixed penalty has been paid; or
- (b) the person has been convicted in the court and the points endorsed on the basis of that conviction.

(4) When a notice is given or sent to a person under subregulation (1), the licensing authority shall cause particulars of the notice, including its date, to be entered on the entry relating to the person.

(5) A person who does not comply with a direction under subregulation (1)(b) in a notice under that subregulation shall be guilty of an offence.

Interruption of period of endorsement of penalty points or disqualifications under regulation 5.

8. Where, during the period of 3 years for which penalty points stand endorsed on the entry of a person or the period of 6 months for which a person stands disqualified for holding a licence, the person -

- (a) becomes disqualified pursuant to section 39 of the Act from holding a licence; or

(b) ceases to be the holder of a licence,

no part of the period of the disqualification referred to in paragraph (a) or the cessation referred to in paragraph (b), as the case may be, shall be recognised as part of the period of 3 years or part of the period of 6 months, and the date of the ending of the two latter periods shall be determined accordingly.

The appropriate date.

9.(1) Subject to the provisions of this regulation, the appropriate date, in relation to penalty points, is the date that is 28 days from the date of the notice under regulation 7 relating to the penalty points.

(2) For the purposes of the application of this regulation to regulation 5(1), the notice under regulation 7 is that relating to the penalty points concerned that are the latest to be endorsed on an entry before a disqualification occurs under regulation 5(1) of the person to whom the entry relates.

(3) Where, but for this subregulation, the appropriate date would fall on a day in a period when the person concerned stands disqualified pursuant to section 36, section 39 or section 43 of the Act from holding a licence, or is otherwise not the holder of a licence, the appropriate date shall fall on the day immediately after the end of the period aforesaid or, as the case may be, the day on which the person becomes such a holder.

(4) If a court enlarges the time for instituting an appeal against a conviction for a penalty point offence, it may, if it thinks it is appropriate and in the interests of justice to do so, by order provide that, in relation to the penalty points concerned—

- (a) (i) the period of 6 months specified in regulation 5(1); or
- (ii) the period of 3 years specified in regulation 6,

or both such periods shall begin on such date or dates other than that or those specified in subregulation (1) as may be stated in the order; or

- (b) such a period shall consist of 2 discontinuous periods stated in the order or each such period shall consist of 2 discontinuous periods so stated.

(5) Where an order is made under subregulation (4), the clerk of the court or the Registrar of the Supreme Court, shall notify the licensing authority of the order.

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(6) In relation to a case in which an order is made under subregulation (4), subregulations (1) and (2), as may be appropriate, shall be construed in accordance with the order.

(7) In any proceedings, a certificate signed by the licensing authority stating—

- (a) that the authority has examined the entry relating to a person;
- (b) that a penalty point was endorsed on the entry on a specified date; and
- (c) the date of the notice under regulation 7(2) relating to the penalty point,

shall be admissible as evidence of those facts.

Inspection of driving licences of persons charged with certain offences.

10.(1) A person charged with a penalty point offence on conviction of which the court is required to make a disqualification order shall, not later than the day on which the hearing by a court of the proceedings in relation to the charge commences, give or send his or her driving licence to such officer of the court as may be designated by the Chief Executive Officer of the Gibraltar Court Services.

(2) The officer of the court designated under subregulation (1)-

- (a) may inspect and make a copy of the licence or of extracts from it; and
- (b) shall then return it to the person referred to in sub regulation (1).

(3) Subregulations (1) and (2) do not apply to a person charged with an offence if the person produces, on or after the date of its commission, and before the hearing by a court of the proceedings in relation to the charge, his or her licence to a police officer or duly authorised officer who is or was acting in connection with the alleged offence or the court proceedings concerned.

(4) A person who fails to comply with subregulation (1) shall be guilty of an offence.

Application to court against disqualification.

11.(1) Where a driver of a motor vehicle has been disqualified by virtue of regulation 5(1), that person may apply to the Magistrates' Court within a period of 14 days to review the disqualification on the ground of his or her exceptional hardship.

(2) Upon an application made under subregulation (1), the court shall –

- (a) take into account the applicant's current economic hardship; and
 - (b) if it is satisfied on evidence or otherwise that the applicant has been or would be under exceptional hardship due to the disqualification which may not necessarily be as a result of the applicant's loss of employment or business, postpone the effect of disqualification for such period as it may think appropriate.
- (3) Where the court has postponed the effect of disqualification under subregulation (2) and the driver of the motor vehicle has again committed another penalty point offence within the period of such postponement, the court may disqualify the driver of the motor vehicle for such period as it may think appropriate.

Schedule.

12. The Minister with responsibility for traffic may by order published in the Gazette amend the Schedule as regards offences and points to be added or removed from the Schedule.

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Regulation 4

OFFENCES INCURRING PENALTY POINTS

Ref No (1)	Legislation (2)	Offences (3)	General description of the offence (4)	Penalty Points on Payment (5)	Penalty Points on Conviction (6)
1.	Traffic Act 2005	Section 62	Driving or attempting to drive whilst unfit through drink or drugs	-	3 to 11(if exceptionally not disqualified)
2.	Traffic Act 2005	Section 63	Driving or attempting to drive whilst over prescribed limit of alcohol	-	3 to 11(if exceptionally not disqualified)
3.	Traffic Act 2005	Section 63A	Driving or attempting to drive whilst over the specified limit of drug	-	3 to 11(if exceptionally not disqualified)
4.	Traffic Act 2005	Section 63B(6)	Driving or attempting to drive and fails to co-operate with preliminary test	-	6
5.	Traffic Act 2005	Section 65(5)	Failure to provide breath, blood or urine specimen for analysis	-	10
6.	Traffic Act 2005	Section 62	In charge of vehicle whilst unfit through drink or drugs	-	10
7.	Traffic Act 2005	Section 63	In charge of vehicle whilst over the prescribed limit of alcohol	-	10
8.	Traffic Act 2005	Section 63A	In charge of vehicle whilst over the specified limit of drug	-	10
9.	Traffic Act 2005	Section 45B	Causing death by careless driving whilst under influence of drink or drugs	-	6 to 11
10.	Traffic Act 2005	Section 47	Dangerous Driving	-	6 to 11
11.	Traffic Act 2005	Section 45	Causing death by Dangerous Driving	-	6 to 11

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12.	Traffic Act 2005	Section 46	Careless driving	-	6
13.	Traffic Act 2005	Section 45A	Causing death by Careless Driving	-	6 to 11
14.	Crimes Act 2011	Section 174	Furious Driving	-	3 to 9
15.	Traffic Act 2005	Section 44(1)	Excessive Speed	3	6
16.	Insurance (Motor Vehicles)(Third Party Risk) Act	Section 3(1)	No Valid Policy of Insurance	-	5
17.	Traffic Act 2005	Section 85(1)(a)	Failing to comply with the traffic directions of a Police Officer in uniform	-	4
18.	Traffic Act 2005	Section 85(1)(b)	Contravening Traffic Sign	2	4
19.	Traffic (Traffic Light) Regulations 1986	Regulation 4(1)(a)	Contravening Traffic Light	2	4
20.	Traffic (Pelican Pedestrian Crossings) Regulations 1986	Regulation 8	Contravening Traffic Light (Pelican Crossing)	2	4
21.	Traffic (Wearing of Safety Belt) Regulations 2008	Regulation 4(2)(a)	Driver not wearing Seat Belt	3	5
22.	Traffic (Wearing of Safety Belt) Regulations 2008	Regulation 4(2)(b)	Driver carrying unbelted child under 14 years / under 12 & 135 cms w/out proper restraint	3	5
23.	Control of Traffic Regulations	Regulation 3(2)	Overtaking traffic other than on the left	2	4
24.	Control of Traffic Regulations	Regulation 15(1)	Failing to indicate change of direction	2	4

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25.	Control of Traffic Regulations	Regulation 22	Excessive Noise (Exhaust)	3	5
26.	Control of Traffic Regulations	Regulation 23	Inefficient/Defective Exhaust	3	5
27.	Control of Traffic Regulations	Regulation 32(1) / 32(2)(c)	Driver motorcycle not wearing / properly fastened protective headgear	2	4
28.	Control of Traffic Regulations	Regulation 45(2)	Driving against the flow of traffic	3	6
29.	Prohibition of Use of Mobile Telephones While Driving Regulations 2010	Regulation 2(1)(b)	Using mobile telephone while driving	4	8
30.	Traffic Act 2005	Section 24	Driving without a valid driving licence	-	6
31.	Motor Vehicles Test Regulations 1987	Regulation 44	Using vehicle without valid motor vehicle test certificate	-	5
32.	Traffic Act 2005	Section 54(1)	Failing to stop after an accident	-	5 to 10
33.	Traffic Act 2005	Section 54(2)	Failing to provide particulars or to report an accident	-	5 to 10
34.	Traffic Act 2005	Section 53	Refusing to provide name and address when required	-	5 to 10
35.	Traffic Act 2005	Section 87	Leaving a vehicle in a dangerous position	-	3