

**TRANSPORT ACT 1998****Principal Act**

<b>Act. No. 1998-44</b>	<i>Commencement</i> s 69	4.8.1999
		7.9.2000
	s 76(3)	22.9.2000
	<i>Assent</i>	3.9.1998

Amending enactments	Relevant current provisions	Commencement date
Acts. 2002-23	ss. 2, 10A, 11 17(4)(b)(ii), 22, 27(1), 32(1), 46, 47(3), 47A, 50(1), 50(1A), 50(2), 67, Sch. 1 12(3)(b)(i) and 12(3)(c)(v).	21.1.2003
2003-17	ss. 17(4), 17(8) and 17(9)	1.8.2003
2008-19	ss. 36-41, 66A-66ZB, Schs.2 & 3	13.11.2008

English sources

None cited

**EU legislation/International Agreements involved:**

Regulation (EC) No. 561/2006

Regulation (EU) No 165/2014

Regulation (EC) No 1071/2009

Regulation (EC) No 1072/2009

Regulation (EC) No 1073/2009

Regulation (EU) 2016/799

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## PART I

### PRELIMINARY

#### **Title and commencement.**

1. This Act may be cited as the Transport Act 1998 and shall come into force on such day as the Government shall appoint by notice in the Gazette, and different provision may be made for different sections and different purposes.

#### **Interpretation.**

2.(1) In this Act, and unless the context otherwise provides–

“category B” means a motor vehicle with a maximum authorised mass not exceeding 3,500 kilograms and having not more than eight seats in addition to the driver’s seat: motor vehicles in this category may be combined with a trailer having a maximum authorised mass which does not exceed 750 kilograms:

combinations of a tractor vehicle in category B and a trailer, where the maximum authorised mass of the combination does not exceed 3,500 kilograms and maximum authorised mass of the trailer does not exceed the unladen mass of the tractor vehicle;

“category C” means motor vehicles other than those in category D and whose maximum authorised mass is over 3,500 kilograms: motor vehicles in this category may be combined with a trailer having a maximum authorised mass which does not exceed 750 kilograms:

“category C1” means motor vehicles other than in category D and whose maximum authorised mass is over 3,500 kilograms but not more than 7,500 kilograms: motor vehicles in this sub-category may be combined with a trailer having a maximum authorised mass which does not exceed 750 kilograms;

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“category D” means motor vehicles used for the carriage of persons and having more than eight seats in addition to the driver’s seat: motor vehicles in this category may be combined with a trailer having a maximum authorised mass which does not exceed 750 kilograms;

“certificate of fitness” shall be construed in accordance with the provisions of section 8;

“chauffeur” means a person licensed under this Act as a chauffeur;

“chauffeur-driven hire car ” means a private motor vehicle falling within category B which is let out for hire or reward, on terms that a chauffeur shall be responsible for driving it, but does not include a private motor vehicle let out for hire where the true intention of the parties is that it shall or may be purchased by the hirer;

“chauffeur-driven hire car operator” means a person to whom a chauffeur-driven hire car operator’s licence has been granted under this Act;

“Commission” means the Transport Commission constituted under section 3;

“company” means a body corporate;

“contravention”, in relation to any condition or provision, includes a failure to comply with the condition or provision, and “contravene” shall be construed accordingly;

“driver” includes a person in control of a vehicle which is being towed and where a separate person acts as steersman of a vehicle includes that person as well as any other person engaged in the driving of the vehicle and the expression “to drive” shall be construed accordingly;

“horse” includes mule or donkey or any cattle when used for transport purposes;

“horse drawn vehicle” means a horse-drawn vehicle used for the conveyance of passengers for hire or reward ;

“highway” includes every place over which the public have a right of way, or to which the public or any part of the public are granted access, and every place where the motor traffic thereon is regulated by a police officer;

“international” operation means a road passenger transport operation or a road haulage operation starting or terminating in Gibraltar and involving an international journey by the vehicle concerned, whether or not any driver leaves or enters Gibraltar with that vehicle;

“load” includes passenger;

“medical practitioner” means a medical practitioner entitled to practice medicine in Gibraltar under the provisions of the Medical and Health Act 1997;

“Minister” means the Minister charged with responsibility for transport;

“motor vehicle” means any vehicle propelled by mechanical power and constructed for use on roads and not on rails or specially prepared ways and any other vehicle of a class declared by regulations under this Act to be motor vehicles;

“omnibus” means a public service vehicle constructed to carry more than eight passengers exclusive of the driver;

“operator licence” means a road haulage operator licence or a road passenger transport operator licence;

“owner”, in relation to a vehicle which is the subject of a hiring agreement or a hire purchase agreement or a bill of sale, means a person in possession of the vehicle under that agreement or in apparent possession of the vehicle under that bill of sale;

“private motor vehicle” means a motor vehicle other than a goods vehicle, motor tractor or public service vehicle;

“public service vehicle” means a motor vehicle used for carrying passengers for hire or reward;

“road” means any highway and any other road to which the public has access and includes bridges over which a road passes and (without restricting the meaning of the foregoing definition for the purposes of any other section or any subsidiary legislation) for the purposes of this Act, includes any road belonging to the Crown to which the public have or are permitted access;

“road service licence” means a licence to operate as a public service vehicle a motor vehicle falling within category B;



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“road transport operator” means a person to whom a road haulage operator licence or a road passenger transport operator licence has been granted by the competent authority in a member State of the European Communities;

“self-drive car” means a private motor vehicle or goods vehicle falling within Category B which is let out for hire or reward, on terms that the hirer shall drive it or be responsible for supplying the driver, but does not include a private motor or good vehicle let out for hire where the true intention of the parties is that it shall or may be purchased by the hirer;

“self-drive car operator” means a person to whom a self-drive operator’s licence has been granted under this Act;

“trailer” means a vehicle without motive power other than a side-car attached to a motor cycle designed solely or principally for the carriage of persons or goods and drawn by a motor vehicle;

“transport inspector” means a person appointed under the provisions of section 7 below;

“transport manager”, in relation to a business, means an individual who, either alone or jointly with one or more other persons, has continuous and effective responsibility for the management of the road passenger transport operations or road haulage operations of the business as the case may be.

(2) This Act shall, subject as hereinafter provided, apply to vehicles and persons in the service of the Crown, and for the purpose of proceedings for an offence in connection with any such vehicle against any person other than the driver of the vehicle, the person nominated in that behalf by the department in whose service the vehicle is used shall be deemed to be the person actually responsible unless it is shown to the satisfaction of the court that the driver only was responsible.

(3) “Relevant conviction” for the purposes of this Act means-

- (a) a conviction of any of the offences specified in paragraph (b) below—
  - (i) of the holder of a licence, or the applicant for a licence;
  - (ii) where the holder of a licence, or the applicant for a licence, is a partnership, of a partner in that partnership;

- (iii) of any transport manager whom the holder of a licence employs or proposes to employ, and of any transport manager whom an applicant for a licence employs or proposes to employ; and
  - (iv) of any person appointed or otherwise engaged as an officer, employee or agent of the holder of, or of an applicant for, a licence in relation to any business which such holder or applicant carries on, or proposes to carry on;
- (b) the offences referred to in paragraph (a) above are offences in relation to a vehicle—
- (i) the commission of which, under the provisions of the Traffic Act or otherwise by order of the court, will make a person liable to have his driving licence suspended or be disqualified from obtaining or holding a driving licence,
  - (ii) and relating to—
    - (aa) the speed at which such vehicles may be driven,
    - (bb) the number of hours such vehicles may be driven without having a rest period,
    - (cc) any duty by the driver of a said vehicle to keep records of his journey, or any other offences which are serious offences as defined in paragraph 9(4) of Schedule 1 or road transport offences as defined in paragraph 9(3)(c) of Schedule 1.
- (4) For the purposes of this Act, the person who is to be regarded as the operator of a vehicle to which section 25(1) below applies—
- (a) which is made available by one road passenger transport operator, to another under a hiring arrangement shall be the holder from whom is hired the vehicle, but only in the following cases, namely, where—

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- (i) the holder to whom the vehicle is hired is not, under the hiring arrangement, entitled to keep the vehicle in his possession for a total period of more than 14 days;
  - (ii) not less than 14 days have elapsed between the finish of any previous period (of whatever duration) during which the hirer of the vehicle became entitled to the use of the vehicle under a hiring arrangement with the holder from whom the vehicle was hired, and the start of the next period of hire falling within paragraph (i) above; and
  - (iii) at all times when the vehicle is being used for carrying passengers for hire or reward during the period mentioned in paragraph (a) above, there is affixed to the vehicle such identification disc as may have been prescribed under this Act or under the Traffic Act, and which have been issued to the holder from whom the vehicle is hired;
- (b) in circumstances other than those specified in paragraph (a) above, the operator of the said vehicle shall be—
- (i) the driver, if he owns the vehicle; and
  - (ii) in any other case, the person for whom the driver works (whether under a contract of employment or any other description of contract personally to do the work).

(5) In this Act, “road haulage operator licence” means a licence to undertake the activity of transporting goods for hire or reward by means of either—

- (a) a self contained motor vehicle; or
- (b) a combination of coupled vehicles,

having a pay load in excess of 3,500 kilograms or a total laden weight in excess of 6 metric tonnes.

(6) In this Act “road passenger transport operator licence” means a licence to undertake the activity of operating passenger transport services for the public or any specific category of passengers for which payment is made by the passenger or by the person who has organised the provision of the transport, by means of a motor vehicle falling within category D.

(7) In this Act, terms used but not defined shall be construed in accordance with the provisions of the Traffic Act as amended from time to time.

## PART II

### TRANSPORT COMMISSION AND TRANSPORT INSPECTORS

#### **Transport Commission.**

3.(1) There is hereby established a Transport Commission which shall consist of the Minister, who shall exercise the functions of chairman, a Secretary and such other members, not being less than four, as may be appointed by the Minister, from time to time, by Notice in the Gazette.\*

(2) Three members shall constitute a quorum at any meeting of the Commission.

(3) Meetings of the Commission shall be presided by the chairman, or, in his absence, such other member as the chairman shall designate, or, in default of such designation, such other member as the members present shall appoint.

(4) All acts and decisions of the Commission shall be decided by a majority vote of the members present at any meeting, and in the case of an equal number of votes the person presiding at the meeting shall have a second or casting vote.

(5) No act or decision of the Commission shall be rendered invalid by reason solely of there being a vacancy for the post of Secretary or there being less than four members appointed.

#### **Functions of Commission.**

4. The Commission shall –

- (a) consider applications for such licences as may be forwarded to it under the provisions of this Act and deal with such applications in accordance with the provisions of this Act;
- (b) consider and determine any matter which may be referred to it under the provisions of this Act;
- (c) advise the Government on matters related to public transport;

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\* LN 2000/067 Minister under section 3 appoints Transport Commission from 7.9.2000

- (d) exercise such further and additional functions as may be prescribed.

**Procedural powers of Commission.**

5.(1) The chairman of the Commission may, by notice in writing, summon any person to appear before the Commission to produce any document or to give evidence.

(2) The Commission may receive such evidence as it thinks fit, and neither the provisions of the Evidence Act nor any other rule of law relating to the admissibility of evidence in court shall apply to proceedings before the Commission.

(3) Any person who, being summoned to appear before the Commission, refuses or fails without reasonable excuse to appear or to answer any question put to him by or with the consent of the Commission shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale and to imprisonment for one month:

Provided that no person shall be bound to incriminate himself, and every witness shall, in respect of any evidence given by him before the Commission, be entitled to the privileges to which he would be entitled if giving evidence before a court of law.

(4) In proceedings before the Commission, any person may appear in person or be represented by counsel, solicitor or agent.

(5) Any person who behaves in an insulting manner or uses any threatening or insulting expression to or in the presence of the Commission shall be guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale and to imprisonment for one month.

**Matters consequential on the removal of responsibilities from Traffic Commission.**

6.(1) All rights, obligations and liabilities with respect to matters which, immediately before the coming into force of this Act, were vested in or imposed on the Traffic Commission constituted under the provisions of the Traffic Act, and which are, hereonin, vested in or imposed on the Commission by virtue of the provisions of this Act, shall, hereby, be vested in or imposed on the Commission.

(2) Any proceedings to which the aforementioned Traffic Commission was a party, and which are pending immediately before the coming into

force of this Act, with regard to matters which, immediately before the coming into force of this Act, were vested in or imposed on the said Traffic Commission, and which are hereonin, vested in or imposed on the Commission by virtue of the provisions of this Act, shall be continued as if the Commission was a party thereto in lieu of the said Traffic Commission.

**Transport inspectors.**

7.(1) The Minister may, from time to time, appoint as transport inspectors such persons as he considers necessary on such terms as he considers appropriate for the purposes of securing compliance with the provisions of—

- (a) this Act or of any subsidiary legislation made hereunder;
- (b) licences granted under this Act,

and the discharge of such other duties as the Minister considers can conveniently be discharged by persons acting as such inspectors.\*

(2) A transport inspector shall, on production, if so required, of his authority, be entitled to enter and inspect any vehicle licensed under this Act, and for that purpose may require any such vehicle to be stopped, and may at any time require such vehicles to undergo examinations within such period as he may specify, and may at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that such a vehicle is kept, and a person who obstructs any such inspector in the performance of his duty, or fails to submit the vehicle for examination within the period specified by a transport inspector is guilty of an offence.

**PART III**

**PUBLIC SERVICE VEHICLES**

*General provisions*

**Certificate of fitness.**

8.(1) Subject to the provisions of subsection (7), a motor vehicle shall not be used as a public service vehicle unless either —

- (a) a certificate of fitness has been issued by a transport inspector to the effect that the provisions of this Act or of subsidiary

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\* LN 2000/080 The Minister for Transport under section 7 of the Transport Ordinance 1998 appoints the following persons to be ex-officio Transport Inspectors from 22.9.2000.

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legislation made under this Act and the requirements of the Commission as to the fitness, size, fittings, colour, general suitability and other specifications of vehicles are fulfilled in respect of the vehicle and such a certificate is in force in respect of the vehicle; or

- (b) the Commission has, notwithstanding that the provisions of paragraph (a) above are not fulfilled in respect of the vehicle, issued an authority in writing (hereinafter called “an authority”) certifying that the vehicle may be used as a public service vehicle subject to such terms and conditions as may be prescribed in such authority and such authority is in force.

(2) A certificate of fitness or an authority shall, unless previously revoked or cancelled by the Commission, continue in force for such period not being longer than one year as may be specified in the certificate or in the authority as the case may be.

(3) If on the inspection of a public service vehicle it appears to a transport inspector that the vehicle does not comply with any provision of this Act or of subsidiary legislation made under this Act or the requirements of the Commission or, where an authority or certificate has been issued, with the terms and conditions of the authority or certificate he may suspend or the Commission may revoke or cancel the certificate or authority for that vehicle and thereupon the vehicle shall cease to be a vehicle in respect of which a certificate or an authority is in force unless or until a new certificate or authority is obtained or the suspension is removed.

(4) When a transport inspector suspends or the Commission revokes or cancels a certificate of fitness or an authority under this section he shall forthwith give written notice to the Commission, the Commissioner of Police and to the owner of the vehicle specifying in what respects he has found the vehicle to be unfit or not to have complied with the terms and conditions of the authority.

(5) A suspension of a certificate of fitness or of an authority may be removed by a transport inspector and where a transport inspector removes any suspension he shall forthwith give written notice of the removal to the Commission, the Commissioner of Police and to the owner of the vehicle.

(6) A person who uses a motor vehicle or causes or permits a motor vehicle to be used in contravention of any provision of this section is guilty of an offence.

(7) If any person considers himself aggrieved by the revocation of a certificate of fitness or of an authority, or by the refusal of a transport

inspector to remove the suspension of a certificate of fitness or of an authority, he may, within twenty-one days of the date of such revocation or refusal appeal on a point of law to the magistrates' court and upon such appeal the court may make such order as it thinks fit.

**Examination of vehicles.**

9.(1) If, at any time, a transport inspector has reason to believe that a vehicle licensed under this Part has ceased to be fit for the purpose for which it was licensed, or does not comply with any prescribed conditions as to fitness, he, may order the person in charge or the owner of the vehicle to produce the vehicle for examination at a specified time and place.

(2) If, on the report of the person who conducts an examination under subsection (1), it appears to the transport inspector that the vehicle does not comply with any prescribed conditions of fitness, or is not fit for the purpose for which it is licensed, he may suspend the licence until all necessary repairs, adjustments or alterations to the vehicle have been effected to his satisfaction and during the period of such suspension the vehicle shall cease to be a vehicle licensed under this Part.

(3) A person who fails to obey any order given under the provisions of subsection (1) is guilty of an offence.

(4) If any person considers himself aggrieved by the suspension of a licence under this section he may, within twenty-one days of the date of such suspension, appeal on a point of law to a judge of the Supreme Court and upon such appeal the judge may make such order as he thinks fit and such order shall be binding on the Commission.

**General conditions of licence.**

10. The Commission may attach to any licence granted under this Act such conditions as it thinks fit with respect to the matters to which it is required to have regard under this Act and, in particular, for securing that on such days and at such times as shall be notified from time to time by the Commission to the registered owner, the vehicle to which the said licence refers shall not be used to ply for hire or reward within the limit of such areas, or undertake such activities, as may be specified.

**Failure to renew licence.**

10A. Any licence granted under this Act which is not renewed shall be deemed to be cancelled three months after the date of expiry, if it is not renewed before that time; except that the Commission may extend the



period for renewal beyond three months if good cause is shown before the licence is deemed cancelled.

*Road Service Licences: Taxis, courtesy vehicles and private vehicles.*

**Road service licence required.**

11.(1) No person shall use or cause or permit to be used any motor vehicle falling within category B as a public service vehicle except under a road service licence granted by the Commission and in accordance with the terms and conditions thereof.

(2) The driver of any public service vehicle to which this section applies on a road shall, on being so required by a police officer or a transport inspector, produce for examination a copy of the road service licence under the authority of which the vehicle is being used as a public service vehicle.

(3) A person who uses a vehicle or causes or permits it to be used in contravention of the provisions of this section or being the holder of a road service licence wilfully or negligently fails to comply with any of the conditions attached to the licence is guilty of an offence.

**Application for licence.**

12.(1) An application for a road service licence shall be made in the prescribed form and shall be forwarded to the Commission accompanied by—

- (a) particulars of the type, size and design of vehicle proposed to be used;
- (b) copies of a roadworthiness certificate and a certificate of fitness in respect of the vehicle it is proposed to use; and
- (c) such other particulars as the Commission may consider to be reasonably necessary to enable it to discharge its duties in relation to the application.

(2) An application for a road service licence for a partnership shall be made in the names of all partners jointly.

(3) An application for a road service licence by a company shall be signed by all the directors thereof provided that the Commission may, in its absolute discretion waive or modify this requirement in cases where it is satisfied about the repute of the applicant and that compliance is unduly onerous in practice.

(4) Where an application for a road service licence is made before a vehicle which is proposed to be used under such licence is acquired by the applicant, then, notwithstanding that the Commission has, in accordance with the provisions of this Act, decided to grant a road service licence in respect of such vehicle, it shall not do so until a roadworthiness certificate and a certificate of fitness are produced.

(5) Within 14 days of an application under subsection (1) the applicant shall cause to be published in a newspaper circulating in Gibraltar a notice, giving such details of that application and in such form as shall be required by the Commission from time to time, and shall provide to the Commission a copy of the published notice.

(6) In considering the application, the Commission shall give due regard to written representations received by it, provided that such representations shall—

- (a) be received by the Commission within 14 days of the date of publication of the notice referred to in subsection (5) above;
- (b) relate to the matters dealt with in paragraphs (a), (b), (c), (d) (f) and (g) of section 15; and
- (c) in the case of representations objecting to the application, be copied to the applicant by the representing party.

(7) If no written representations against the granting of the licence are received by the Commission within the time specified in subsection (6), the Commission may, subject to the provisions of this Act, and, in its discretion, grant or refuse the application.

(8) If any written representations against the granting of the licence are received by the Commission within the time specified in subsection (6) the Commission may decide to hold a public hearing.

(9) If a public hearing is to be held the Commission shall give notice to the applicant and to any objectors of the time and place appointed for such public hearing not less than 14 days before the day appointed.

(10) Where no public hearing has been held, the Commission shall give the applicant an opportunity to comment in writing on any objection made under subsection (6) above.

(11) After receiving any evidence and any representations against the application, the Commission shall, within 42 days of receipt of the same,

subject to the provisions of this Act and in its discretion, grant or refuse such application.

**Grant or refusal of licence.**

13. Notwithstanding any other provision of this Act, the Commission shall have an absolute discretion regarding whether to grant or refuse a road service licence.

**Maximum number of road service licences.**

14.(1) The Minister may, from time to time, by notice published in the Gazette, determine the maximum number of road service licences that may be granted for any type or types of public service vehicle.

(2) Where a maximum number of licences is prescribed under subsection (1), then, notwithstanding any other provision in this Act, the Commission shall not grant a road service licence where the granting of the licence would result in the total number of licences in force in respect of public service vehicles of the type to which the licence relates exceeding the maximum number for the time being prescribed in respect of that type.

**Matters to be considered by the Commission before determining application.**

15. In exercising its discretion to grant or refuse a road service licence and its discretion to attach any conditions to such a licence the Commission shall have regard to the following matters –

- (a) the extent to which the needs of the area of the proposed service are already met;
- (b) the desirability of encouraging the provision of adequate and efficient services;
- (c) the applicant's reliability, and the facilities at his disposal for carrying out the proposed service;
- (d) the size, type and description of the vehicle which the applicant proposes to use under the licence;
- (e) any evidence or representation received by it in accordance with the provisions of section 12 and any representations otherwise made by the licensing authority, Commissioner of Police, any transport inspector, any public body or any person carrying on transport services of any kind likely to be affected;

- (f) the age and state of repair of the vehicle, other than a vintage vehicle, which the applicant proposes to use under the licence; and
- (g) in the case of a vintage vehicle, the fitness, roadworthiness and general suitability of the vehicle which the applicant proposes to use under the licence,

Provided that before taking into consideration any adverse representation made otherwise than at a public hearing the Commission shall give the applicant an opportunity to reply in writing to such representation.

**Conditions of licence.**

16.(1) The Commission may attach to a road service licence such conditions as it thinks fit with respect to the matters to which it is required to have regard under section 15 and in particular for securing that –

- (a) any vehicle operated under the licence shall be maintained in a fit, serviceable and presentable condition; and
- (b) generally for securing the safety and convenience of the public,

and the Commission may, from time to time, vary in such manner as it thinks fit the conditions attached to a road service licence.

(2) The breach by a person to whom a road service licence has been granted of a condition attached to that licence under subsection (1) shall be a summary offence punishable on conviction by a fine at level 3 on the standard scale.

**Special conditions in all road service licences for taxis.**

17.(1) The Commission shall insert in every road service licence in respect of a taxi, a condition that the vehicle shall not be used for hire or reward except by the registered owner of the taxi.

(2) Subsection (1) shall not apply to road service licences first issued in respect of taxis prior to the coming into force of this Act.

(3) In subsections (4) to (8), references to a road service licence shall be construed as references to a road service licence first issued in respect of taxis prior to the coming into force of this Act and renewed after the coming into force of this Act.

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(4) The Commission shall insert in every road service licence a condition that the vehicle shall not be used for hire or reward except by the registered owner and by one named driver or, where the registered owner does not drive the vehicle for hire or reward, by two named drivers; and in either case the second driver may only offer a city service in accordance with the Taxis (city Service and Cruise Terminal) Regulations 1999.

(5) It shall be a condition of every road service licence that on such days and at such times as shall be notified from time to time by the Commission to the registered owner, the taxi shall be used and be used only for hire or reward for point-to-point journeys within the limits of such area as shall be specified in the notice.

(6) Without prejudice to the provisions of subsection (4) above –

(a) a registered owner or named driver of a taxi temporarily out of use because of the need to carry out extensive repairs thereto, may apply to the Commission to be inserted as a named driver in the road service licence of another taxi during the period of such repair;

(b) a registered owner–

(i) who is temporarily absent from Gibraltar or temporarily incapacitated from driving by reason of illness duly certified by a medical practitioner; or

(ii) who has a named driver in his road service licence who is temporarily absent from Gibraltar or temporarily incapacitated from driving by reason of illness duly certified by a medical practitioner,

may apply to the Commission for the insertion as named driver in his road service licence, for the duration of such absence or incapacity, a person licensed to drive public service vehicles under the provisions of the Traffic Act.

(7) Subject to the provisions of this Act and to any directions given to him by the Commission, the Secretary to the Commission may, on the application of the registered owner of a taxi, amend the road service licence by adding the name of a person as named driver, or by substituting the name of a person as a named driver in place of any other named driver: provided that any such amendment addition or substitution shall be for a period of not less than 7 days.

(8) The name of any person shall not be inserted as a named driver in any road service licence unless it is satisfied that the person concerned is of good character and is a fit and proper person.

(9) Without prejudice to the provisions of subsection (1) above, a road service licence in respect of a taxi first issued after the coming into effect of this Act shall only be issued to, or retainable by, fit and proper persons of good character.

**Temporary replacement of taxis.**

18. Where a vehicle licensed as a taxi is undergoing extensive repairs the Commission may grant a road service licence as a taxi (in this section called a substituted licence) in respect of another vehicle in place thereof subject to the following conditions –

- (a) the period of the substituted licence shall not exceed three months in the first instance, but may be extended for successive periods not exceeding three months;
- (b) satisfactory evidence shall be produced to the Commission as to the relevant facts; and
- (c) the use of the substitute vehicle shall have been approved in writing by the Commission,

and a condition that another vehicle shall not be used in substitution for a licensed taxi except in accordance with the provisions of this section shall be deemed to be incorporated in every road services.

**Penalties.**

19. A registered owner or named driver of a taxi responsible for any act or omission contrary to the provisions of section 17, is guilty of an offence.

**Revocation and suspension of licence.**

20.(1) A road service licence may be revoked or suspended by the Commission on the ground that any condition subject to which the licence was granted has not been complied with, and, without prejudice to the generality of the foregoing, a licence may be suspended, revoked or not renewed–

- (a) if a certificate of fitness or a roadworthiness certificate is not in force with respect to the vehicle concerning which the road service licence was granted;

- (b) where the holder of the licence or driver of the licensed vehicle has been convicted of an offence contrary to any provision of this Act or the Traffic Act;
- (c) where the holder of the licence or driver of the licensed vehicle has failed to comply with any condition attached to the licence;
- (d) where the licensed vehicle is, together with other vehicles, used, parked, placed or abandoned on a public highway in a manner that causes the public highway to be intentionally obstructed in manifestation, or in pursuance, of a grievance, dispute or otherwise; or
- (e) for any reasonable cause.

(2) If any holder of such a licence abandons or curtails any service in respect of which he has been granted a road service licence without the prior permission of the Commission, the Commission may in its discretion revoke the licence for that service and all other road service licences held by him or any of them.

(3) The Commission shall, before revoking or suspending any road service licence, give the holder 30 days to show cause against the revocation or suspension.

(4) A road service licence may be reviewed by the Commission during its currency and such conditions may be added as in the opinion of the Commission are necessary to achieve provision of the service for which the licence has been granted or renewed.

#### **Duration of licences.**

21.(1) Subject to the provisions of this section, every road service licence shall, unless it is the sooner revoked, expire on a date to be specified by the Commission on the licence not later than three years from the date of issue of the licence.

(2) When application is made for the renewal of a licence in accordance with the provisions of section 22, the licence, if the application for renewal is not disposed of before the date of expiry of the licence, shall continue in force until the application is disposed of, unless the Commission otherwise directs.

#### **Renewal of licences.**

22. Every application for the renewal of a road service licence shall be made to the Commission giving details of any changes since the licence was granted in-

- (a) the matter described in section 15, and
- (b) the information provided by the applicant in his original application for a licence;

and the Commission may renew the licence if it is satisfied that there have been no material changes.

**Transfer of licences.**

23.(1) A road service licence issued after the coming into force of this Act shall not be transferable and shall not be transferred to any person unless the licence was issued or renewed, subject to a condition that it may, with the consent of the Commission, be so transferred.

(2) Licences first issued prior to the 1st November 1990, may be transferred subject to the prior approval of the Commission, unless it was issued or renewed on terms that it may not be so transferred.

(3) Application for the transfer of a road service licence to which subsection (2) applies shall be made in the prescribed form and forwarded to the Commission accompanied by the prescribed fee.

(4) Subject to the provisions of this Act, the Commission may refuse the transfer of a licence or may grant a transfer of the licence to which subsection (2) applies either unconditionally or upon or subject to such conditions as it thinks fit but it shall not in any case grant a transfer unless it is satisfied that the proposed transferee—

- (a) is able to carry on the service and is likely to carry it on satisfactorily;
- (b) is of good character; and
- (c) is a fit and proper person.

**Amendment of licences.**

24.(1) During the currency of any road service licence the Commission may, of its own motion or on the application of the licensee, amend the licence by altering or revoking any of the terms or conditions of the licence



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or by adding any new terms or conditions that may be necessary in the public interest.

(2) An application for the amendment of a road service licence shall be made in the prescribed form and forwarded to the Commission accompanied by the prescribed fee.

(3) Where the Commission intends of its own motion to amend any licence under this section, the provisions of section 12 shall with the necessary modifications, apply as if the Commission had received an application for the proposed amendment. In any such case a copy of the public notice given under that section shall be given to the licensee not less than seven clear days before the expiry of the time specified in the public notice for the receipt of written representations against the proposed amendment.

*Operator Licenses: buses and lorries*

**Operator licence required.**

25.(1) No person shall use or permit to be used –

- (a) any motor vehicle falling within category C or category C1, except under a road haulage operator licence granted by the Commission and in accordance with the terms and conditions thereof unless the vehicle is exempted by virtue of subsection (4);
- (b) any motor vehicle falling within category D, except under a road passenger transport operator licence granted by the Commission and in accordance with the terms and conditions thereof.

(2) The driver on a road of any vehicle required to be operated under either of the licences referred to in subsection (1) above shall, on being so required by a police officer, an officer of the Commission, a transport inspector, or an inspector appointed under section 10 of the Shop Hours Act, as the case may be, produce for inspection a copy of the operator licence under the authority of which the vehicle is being used.

(3) A person who uses a motor vehicle or causes it or permits it to be used in contravention of the provisions of this section or, being the holder of the operator licence, wilfully or negligently fails to comply with any of the conditions attached to the licence, is guilty of an offence.

(4) The requirement of sub-section (1)(a) shall not apply to any class of vehicle mentioned in Part I of Annex 1 to Schedule 1.

(5) Sub-section (1) shall not apply to the use of a motor vehicle falling within category C or category C1, for international carriage by a haulier established in the territory of a member State and not established in Gibraltar.

(6) For the purposes of this Act, a road haulage operator licence shall not be required—

- (a) where such activity is undertaken by a person on his own account, that is to say, where the following conditions are satisfied—
  - (i) the goods carried are the property of the person or have been sold, or let out on hire or hired, produced, extracted, processed or repaired by that person;
  - (ii) the purpose of the journey is to carry the goods to or from the premises of the person or to move them, either inside the premises or outside the premises but for the purpose of the business of the person;
  - (iii) the motor vehicles used for such carriage are driven by employees of the person;
  - (iv) the vehicles carrying the goods are owned by the person or have been bought by him on deferred terms or are hired provided that, except in the case of the use of replacement vehicles during a short breakdown of the vehicle normally used, the terms of hiring are in accordance with Directive 84/697 of the European Economic Communities on the use of vehicles hired without drivers for the carriage of goods; and
  - (v) the carriage of the goods is no more than ancillary to the overall activities of the person;
- (b) where a company (“the first company”) carries goods for hire or reward and those goods are the property of another company (“the second company”) where the second company is either—
  - (i) a subsidiary of the first company; or
  - (ii) a holding company for the first company; or

- (iii) a subsidiary of a company which is a holding company for that subsidiary and for the first company;

(7) In subsection (5) “established”, “haulier” and “international carriage” have the same meaning as in Council Regulation (EEC) No. 881/92 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, set out below in Schedule 2.

#### **General conditions of operator licence.**

26.(1) The Commission may attach to an operator licence such conditions as it thinks fit with respect to the matters to which it is required to have regard under section 28 and, in particular, for securing that—

- (a) in relation to a road passenger transport operator licence—
  - (i) copies of timetables and fare tables shall be carried in every omnibus operated under the licence in a position easily available to passengers in the vehicle and that, in the case of omnibuses, copies of the timetable shall be displayed at the expense of the licensee at all stopping points;
  - (ii) passengers shall not be taken up or set down on to or from any omnibus except at specified points and shall not be taken up or set down between specified points;
  - (iii) a ticket shall be issued in respect of every fare;
- (b) in respect of any operator licence—
  - (i) any vehicle operated under the licence shall be maintained in a fit, serviceable and presentable condition;
  - (ii) generally, for securing the safety and convenience of the public,

and the Commission may, from time to time, vary in such manner as it thinks fit the conditions attached to a licence.

(2) The breach by a person to whom a licence has been granted of a condition attached to that licence under subsection (1) above, shall be a

summary offence punishable on conviction by a fine at level 3 on the standard scale.

**Application for operator licence.**

27.(1) An application for an operator licence shall be made in the prescribed form and shall be forwarded to the Commission accompanied by—

- (a) particulars of the type or size and design of vehicles proposed to be used;
- (b) copies of roadworthiness certificates in respect of each vehicle proposed to be used;
- (c) copies of certificates of fitness or an authority issued under section 8;
- (d) in the case of an application for an operator licence in respect of a regular service by omnibuses, particulars of the route, time tables and fare tables of the service it is proposed to provide; and
- (e) such other particulars as the Commission may consider to be reasonably necessary to enable it to discharge its duties in relation to the application.

(2) An application for a road service licence for a partnership shall be made in the names of all partners jointly.

(3) An application for a road service licence by a company shall be signed by the one or more individual directors of the company authorised by the company for that purpose.

(4) When an application for an operator licence is made before a vehicle which is proposed to be used under such licence is acquired by the applicant, then, notwithstanding that the Commission has, in accordance with the provisions of section 28, decided to grant a licence it shall not do so until a roadworthiness certificate and a certificate of fitness are produced in respect of such vehicle.

(5) Within 14 days of making an application under subsection (1), the applicant shall cause to be published in a newspaper circulating in Gibraltar a notice giving details of that application, and in such form, as shall be required by the Commission from time to time and shall provide to the Commission a copy of the published notice.

(6) In considering the application, the Commission shall give due regard to written representations received by it provided that such representations shall—

- (a) be received by the Commission within 14 days of the date of publication of the notice referred to in subsection (3) above;
- (b) relate to the matters dealt with in section 28 below; and
- (c) in the case of representations objecting to the application, be copied to the applicant by the representing party.

(7) If no written representations against the granting of the licence are received by the Commission within the time specified in subsection (6) above, the Commission may, subject to the provisions of this Act, and in its discretion, grant or refuse the application.

(8) If any written representations against the granting of the licence are received by the Commission within the time specified in subsection (6) the Commission may decide to hold a public hearing.

(9) If a public hearing is to be held, the Commission shall give notice to the applicant and to any objectors of the time and place appointed for such public hearing not less than 14 days before the day appointed.

(10) Where no public hearing is to take place, the applicant shall be given an opportunity to comment in writing on any objection made under this section.

(11) After receiving any evidence and any representations against the application, the Commission shall, within 42 days of receipt of the same, subject to the provisions of this Act and in its discretion, grant or refuse such application.

#### *Grant of operator licences*

#### **Criteria for grant of operator licence.**

28.(1) In exercising its discretion to grant or refuse an operator licence and its discretion to attach any condition to such licence, the Commission shall have regard to the following matters—

- (a) the extent to which the needs of the area of the proposed service are already met;

- (b) the desirability of encouraging the provision of adequate and efficient services and eliminating unnecessary or unremunerative services;
- (c) the need to establish that the applicant for the licence—
  - (i) is of good repute;
  - (ii) satisfies the requirements as to appropriate financial standing;
  - (iii) satisfies the requirements as to professional competence;
- (d) the number, type, design and description of the vehicles which the applicant proposes to use under the licence and the facilities at the disposal of the applicant for carrying out the proposed service;
- (e) any representations made by the Licensing Authority, the Commissioner of Police, transport inspectors or any other public body.

(2) The provisions of Schedule 1 below shall have effect for supplementing the provisions of this section, and for modifying the operation of this section in the case of persons engaged in road passenger transport and to which section 25 (1) applies, before the dates set out in Schedule 1.

#### **Revocation and suspension of operator licence.**

29.(1) An operator licence may be revoked or suspended by the Commission on the ground that any condition subject to which the licence was granted has not been complied with and, without prejudice to the generality of the foregoing, a licence may be suspended, revoked or not renewed—

- (a) if a certificate of fitness or a roadworthiness certificate is not in force with respect to the vehicle concerning which the licence was granted;
- (b) where the holder of the licence or driver of the licensed vehicle has been convicted of an offence contrary to any provision of this Act or the Traffic Act;
- (c) where the licensed vehicle is, together with other vehicles, used, parked, placed or abandoned on a public highway in a

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manner that causes the public highway to be intentionally obstructed in manifestation, or in pursuance, of a grievance, dispute or otherwise;

- (d) where the operator has failed to comply with the provisions of-
  - (i) Council Regulation (EEC) 3820/85;
  - (ii) Council Regulation (EEC) 3821/85;
  - (iii) Commission Regulation (EEC) 3314/90; or
  - (iv) Commission Regulation (EEC) 3688/92,as applied by sections 36 to 38; or
- (e) for any other reasonable cause.

(2) If any holder of an operator licence abandons or curtails any service in respect of which a licence has been granted without the prior permission of the Commission, the Commission may, in its discretion, revoke that licence.

(3) The Commission shall, before revoking, suspending or not renewing any operator licence, give the holder a due opportunity to be heard.

(4) An operator licence may be reviewed by the Commission and such conditions may be added as, in the opinion of the Commission, are necessary to achieve provision of the service for which the licence has been granted or renewed.

## **Duration of operator licence.**

30.(1) Subject to the provisions of this Act, every operator licence shall, unless it is sooner revoked, expire on a date to be specified by the Commission on the licence not later than 5 years from the date of issue of the licence.

(2) When an application is made for the renewal of the licence in accordance with the provisions of section 32, the licence, if the application for renewal is not disposed of before the date of expiry of the licence, shall continue in force until the application is disposed of, unless the Commission otherwise directs.

## **Issue of documents and certificates for other member 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 member State other than Gibraltar, the Commission shall issue to the applicant a certificate of qualification as to such matters relating to the applicant's repute, professional competence and, where relevant, his financial standing within the meaning of the 1974 Council Directive 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 the law of the other member State as to those requirements.

(2) A certificate of qualification shall be in such form as may be specified by the Commission and shall have effect for the purposes of Article 3 and 4 and shall be the certificate referred to in Article 5.2 of Council Directive (EEC) 77/796.

(3) A person who makes application to the Commission for a document or certificate falling within sub-section (4), 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 sub-section (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 document or certificate for which application was made under that sub-section.

(5) Any person having made an application under subsection (3) who is aggrieved by a failure by the Commission to issue a document or certificate, 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.

#### **Renewal of operator licences.**

32.(1) Every application for the renewal of an operator licence shall be made to the Commission giving details of any changes since the licence was granted in-

- (a) the matter described in section 28, and



(b) the information provided by the applicant in his original application for a licence;

and the Commission may renew the licence if it is satisfied that there have been no material changes;

(2) Where the holder of a licence is himself seeking an amendment to any condition to which that licence was subject, he shall cause to be published in a newspaper circulating in Gibraltar a notice giving such details of the application for renewal, and in such form, as shall be required by the Commission from time to time and shall provide to the Commission a copy of the published notice.

#### **Non-transferability of operator licences.**

33. An operator licence granted to any person under the provisions of this Act is not transferable and shall not be transferable to any other person except as provided for in this Act.

#### **Amendment of operator licences.**

34.(1) During the currency of an operator licence the Commission may, of its own motion or on application of the licensee, amend the licence by altering or revoking any of the terms or conditions of the licence or by adding any new terms or conditions that may be necessary in the public interest or that may be reasonable taking all relevant considerations into account.

(2) In the exercise of its powers under subsection (1), the Commission may, in particular, require the holder of an operator licence to effect such improvements in the service to which the licence relates—

- (a) in the case of road passenger transport operator licences by way of—
  - (i) extension or amendment of the routes authorised;
  - (ii) the improvement of the timetable; or
  - (iii) the frequency of the service;
- (b) in relation to any operator licence, in any other manner as may be desirable in the public interest or may seem reasonable taking all relevant considerations into account,

as the case may require.

(3) Application for the amendment of an operator licence shall be made in the prescribed form and forwarded to the Commission accompanied by the prescribed fee.

(4) Where the Commission intends, of its own motion, to amend any licence under this section, the Commission shall follow the procedure specified in section 32(1) as if it were dealing with an application for a new licence, and shall inform the licensee in writing of the decision of the Commission not less than 7 clear days before the day on which the Commission proposes to make such amendment.

*Operator Licences: Suitability and equipment of vehicles*

**Suitability of vehicles.**

35. Notwithstanding any other provision of this Act, the Commission shall refuse to grant any operator licence unless the Commission is satisfied that the vehicle is suitable in type, size, overall state of repair, age, and design for its intended use.

36-41 *Repealed.*

*Operator licences: Supplementary and final*

**Transitional provisions.**

42.(1) A person to whom section 25(1) applies and who, at the 31st day of December 1990—

- (a) is undertaking an activity for which a road haulage operator licence is required and who holds in respect of that activity a road transport contracting licence issued under the Trade Licensing Act; or
- (b) is undertaking an activity for which a road passenger transport operator licence is required and who holds in respect of that activity a licence issued under the provisions of the Traffic Act,

shall be deemed to satisfy the provisions of section 25 in respect of the activity so licensed unless the licence concerned ceases to be valid.

(2) The licences referred to in subsection (1) may be the licences in existence at the 31st day of December 1990, renewed or varied from time to time.

**Supplementary provisions in respect of road haulage operator licences and road passenger transport operator licences.**

43.(1) The Minister may, from time to time, by notice published in the Gazette, determine the maximum number of operator licences that may be granted for any type or types of public service vehicle.

(2) Where a maximum number of licences is prescribed under subsection (1), then, notwithstanding any other provision in this Act, the Commission shall not grant any operator licence where the granting of the licence would result in the total number of licences in force in respect of public service vehicles of the type to which the licence relates exceeding the maximum number for the time being prescribed in respect of that type.

(3) Schedule 1 shall have effect in respect of operator licences.

*Horse-drawn vehicles*

**Licensing of horse-drawn vehicle.**

44.(1) No person shall drive or, being the owner, permit any other person to drive a horse-drawn vehicle unless a licence under this Part in respect of such vehicle is in force.

(2) Application for a licence in respect of a horse-drawn vehicle shall be made in the prescribed form to the Commission who may, on payment of the prescribed fee, in its discretion issue a licence in the prescribed form.

**Licensing of horse drawn vehicle drivers.**

45.(1) No person shall drive a horse drawn vehicle unless he is licensed so to do under the provisions of this Part.

(2) Application for a licence to drive a horse drawn vehicle shall be made to the Commission who shall, subject to the provisions of this section, issue to the applicant a licence in the prescribed form on payment of the prescribed fee.

(3) No licence to drive a horse drawn vehicle shall be issued to any person unless he has attained the age of eighteen years.

*Self-drive hire cars*

**Licensing of self-drive operators and self-drive cars.**

46.(1) No person shall carry on the business of a self-drive car operator except, and in accordance with, the terms and conditions of a licence granted by the Commission (in this Act called a “self-drive operator’s licence”).

(2) No motor vehicles shall be used by a self-drive cars operator in the course of his business as such unless the motor vehicles is licensed by the licensing authority as a self-drive cars.

(3) The Commission shall have a discretion to grant, renew, refuse, revoke or suspend self-drive operator’s licences and to impose and vary conditions therein. In exercising such discretion the Commission shall have regard to the following matters –

- (a) the reliability and financial stability of the applicant;
- (b) the motor cars at his disposal;
- (c) the facilities available to him for the garaging and maintenance of the motor cars at his disposal;
- (d) his ability to provide assistance in the case of breakdowns; and
- (e) any other matter as the Commission shall think relevant in the circumstances of the case.

(4) It shall be a condition of the self-drive operator’s licence that the number of motor cars available for the purpose at any one time shall be not less or not more than such number of motor vehicles as the Minister may prescribe by Notice in the Gazette (in this section referred to as the “prescribed number”).

(5) Every self-drive operator’s licence shall expire on the 31st October next after the date on which the licence is expressed to come into force.

(6) The Commission shall notify the applicant and the licensing authority of the approval of an application, but shall not grant the licence until the prescribed fee has been paid.

(7) Notwithstanding the provisions of subsection (5) above, any self-drive operator’s licence may be revoked or suspended by the Commission in accordance with the provisions of this Act at any time.

(8) A person who contravenes or fails to comply with any of the provisions of this section or, being the holder of a self-drive operator’s

licence, wilfully or negligently contravenes any of the conditions attached to his licence is guilty of an offence.

#### **Application for licence.**

47.(1) An application for a self-drive operator's licence shall be made in such form as the Commission shall require and shall be forwarded to the Commission accompanied by such particulars as the Commission may consider to be reasonably necessary to enable it to discharge its duties in relation to the application.

(2) An application for a self-drive operator's licence for a partnership shall be made in the names of all partners jointly.

(3) An application for a self-drive operator's licence for a company shall be signed by one or more individual directors of the company authorised by the company for that purpose.

#### **Renewal of licences.**

47A. Every application for renewal of a self-drive operator's licence shall be made to the Commission giving details of any changes since the licence was granted in-

- (a) the matter described in section 46(3) and
- (b) the information provided by the applicant in his original application for a licence;

and the Commission may renew the licence if it is satisfied that there have been no material changes.

#### **Revocation and suspension of licence.**

48.(1) A self-drive operator's licence may be revoked or suspended by the Commission on the ground that any condition subject to which the licence was granted has not been complied with.

(2) The Commission shall, before revoking or suspending any self-drive operator's licence, give the holder a due opportunity to be heard.

#### **Transfer of licences.**

49. A self-drive operator's licence is not transferable and may not be transferred to any person.

**Limitation of age of self-drive cars.**

50.(1) A private motor vehicle shall not be licensed as a self-drive car if the date of commencement of the licence would be more than two years after the date of manufacture of the motor vehicle.

(1A) A goods vehicle shall not be licensed as a self-drive vehicle if the date of commencement of the licence would be more than five years after the date of manufacture of the motor vehicle;

(2) A motor car shall not be licensed as a self-drive car, except on production of a roadworthiness certificate and a certificate of fitness in respect of that vehicle.

*Chauffeur licences***Licensing of chauffeurs.**

51.(1) No person shall offer his services as a chauffeur unless he is licensed so to do under this section.

(2) Applications for licences under this section shall be made to the Commission who may, subject to the provisions of this section, and, in its absolute discretion, issue the applicant with a licence in the prescribed form on payment of the prescribed fee.

(3) The Commission may attach to a licence issued under this section such conditions as it thinks fit and in particular, but without prejudice to the generality of the foregoing, for securing that the licensee is trained as a chauffeur to a satisfactory standard, and for ensuring that the service to be offered by the licence-holder is of a quality and worth which, in the Commission's opinion, is reasonable to expect taking all relevant circumstances into account.

(4) A person shall be deemed to offer his services as a chauffeur when he accepts to perform duties, a principal element of which includes driving passenger vehicles for hire or reward.

(5) Nothing in this section shall apply to holders of operator licences or road service licence when acting in the ordinary course of their duties.

*Chauffeur-driven hire cars***Licensing of chauffeur-driven hire car operators and chauffeur-driven hire cars.**

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52.(1) No person shall carry on the business of a chauffeur-driven hire car operator except under, and in accordance with the terms and conditions of a licence granted by the Commission (in this Act called a chauffeur-driven hire car operator's licence), and unless the motor vehicle is licensed by the licensing authority as a chauffeur-driven hire car.

(2) The Commission shall have discretion to grant, renew, refuse, revoke or suspend chauffeur-driven hire car operator's licences under this section and to impose and vary conditions therein. In exercising such discretion the Commission shall have regard to the following matters –

- (a) the reliability and financial stability of the applicant;
- (b) the motor vehicles at his disposal;
- (c) the facilities available to him for garaging and maintenance of the motor vehicle at his disposal;
- (d) his ability to provide assistance in the case of breakdowns; and
- (e) any other matter as the Commission shall think relevant in the circumstances of the case.

(3) It shall be a condition of the chauffeur-driven hire car operator's licence that the number of motor vehicles available for the purpose at any one time shall be not less or not more than such number of motor vehicles as the Minister may prescribe by Notice in the Gazette (in this section referred to as the "prescribed number").

(4) Every chauffeur-driven hire car operator's licence shall expire on the 31st October next after the date on which the licence is expressed to come into force.

(5) The Commission shall notify the applicant and the licensing authority of the approval of an application, but shall not grant the licence until the prescribed fee has been paid.

(6) A person who contravenes or fails to comply with any of the provisions of this section or being the holder of a chauffeur-driven hire car operator's licence wilfully or negligently contravenes any of the conditions attached to his licence is guilty of an offence.

#### **Application for licence.**

53. An application for a chauffeur-driven hire car licence shall be made in such form as the Commission shall require and shall be forwarded to the

Commission accompanied by such particulars as the Commission may consider to be reasonably necessary to enable it to discharge its duties in relation to the application.

**Revocation and suspension of licence.**

54.(1) A chauffeur-driven hire car licence may be revoked or suspended by the Commission on the ground that any condition subject to which the licence was granted has not been complied with.

(2) The Commission shall before revoking or suspending any chauffeur-driven hire car licence give the holder a due opportunity to be heard.

**Transfer of licences.**

55. A chauffeur-driven hire car licence is not transferable and may not be transferred to any person.

**Supplementary requirements.**

56. A motor vehicle shall not be licensed as a chauffeur-driven hire car, except on production of a roadworthiness certificate and a certificate of fitness in respect of that vehicle.

**PART IV**

**COMMUNITY AUTHORISATIONS.**

**Purpose and interpretation.**

57.(1) This Part implements Council Regulation (EEC) No.811/92 on access to the market in the carriage of goods by road within the Community, or from the territory of a member State or passing across the territory of one or more member States.

(2) In this Part -

“actual holder” in relation to a person established as a haulier in Gibraltar, has the meaning which it bears in paragraph 30(1) of Schedule 1;

“Community authorisation” means a Community authorisation issued under the Council Regulation;

“competent authority” means the Commission;



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“the Council Regulation” means Council Regulation (EEC) No. 881/92;

“the First Council Directive” means the First Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road;

“operating centre” has the meaning which it bears in paragraph 16(2) of Schedule 1;

and, subject thereto, expressions used which are also used in the Council Regulation have the meaning which they bear in that Regulation.

#### **Use of goods vehicle without Community authorisation.**

58. A person who uses a vehicle in Gibraltar in contravention of Article 3.1 of the Council Regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Entitlement to the issue of Community authorisation.**

59.(1) A person established as a haulier in Gibraltar shall be entitled on payment of the prescribed fee (if any) to be issued with a Community authorisation under Article 3.2 of the Council Regulation if he holds a road haulage operator licence covering international transport operations.

(2) For the purposes of sub-section (1), “international transport operations” has the meaning which it bears in paragraph 1 of Schedule 1.

#### **Rights of appeal.**

60. A person who—

- (a) being entitled to be issued with a Community authorisation under section 59, is aggrieved by the refusal of the competent authority to issue such authorisation to him, or
- (b) being the holder of a Community authorisation, is aggrieved by the decision of the competent authority to withdraw it,

may appeal on a point of law to a judge of the Supreme Court praying such leave as the case may require.

#### **Effect of failure to comply with conditions governing use of Community authorisation.**

61. A person who uses a vehicle in Gibraltar under a Community authorisation and, without reasonable excuse, fails to comply with any of the conditions governing the use of that authorisation the Council Regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Authorised inspecting officers.**

62. Authorised inspecting officers for the purposes of the Council Regulation shall be a police officer, a transport inspector, an officer of the Commission, a person nominated under section 37(1)(b) or an inspector appointed under section 10 of the Shop Hours Act.

**Return of documents.**

63.(1) The holder of a Community authorisation which is withdrawn by the competent authority in accordance with Article 8.2 of the Council Regulation shall, within 7 days of such withdrawal, return to the competent authority the original authorisation and all certified true copies of it.

(2) The holder of a Community authorisation shall return to the competent authority such certified true copies of the authorisation as the authority may require pursuant to any reduction in the number of vehicles at the disposal of the holder or any decision of the authority under Article 8.3 of the Council Regulation to suspend certified true copies of that authorisation.

(3) A person who, without reasonable excuse, fails to comply with any provision of sub-section (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Supply of information.**

64.(1) The holder of a Community authorisation shall furnish such information as the competent authority may reasonably require from time to time, to enable the authority to decide whether the holder is entitled to retain that authorisation.

(2) A person who, without reasonable excuse, fails to supply any information required under sub-section (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Death, bankruptcy etc. of holder of Community authorisation.**

65. Where a person is treated as the holder of a road haulage operator licence by virtue of a direction under paragraph 30 of Schedule 1, such person shall also be treated as the holder of any Community authorisation held by the actual holder of that road haulage operator licence, for the same period as is specified in that direction or that paragraph.

#### **Offences by corporations etc.**

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

(2) Where the affairs of a body corporate are managed by its members, sub-section (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(4) Where an offence under this Part committed by a partnership is proved to have been committed with the consent or connivance, or to have been attributable to any neglect on the part of a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

### **Part IVA**

#### **Drivers' Hours**

#### **Interpretation, supplementary provisions, etc, for Part IVA.**

66A. (1) In this Part—

“analogue recording equipment” has the meaning given by subsection 66P(7);

“the applicable Community rules” means any directly applicable Community provision for the time being in force about the driving of road vehicles and includes the European Agreement concerning the Work of Crews of Vehicles engaged in International Road

Transport of 1st July 1970, as amended, as applied by Article 2(3) of the Community Drivers' Hours Regulation;

“the Community Drivers’ Hours Regulation” means Regulation (EC) No 561/2006 of the European Parliament and of the Council as amended from time to time;

“the Community Recording Equipment Regulation” means Council Regulation (EEC) No 3821/85 on recording equipment in road transport as it has effect in accordance with—

- (a) Commission Regulation (EEC) No 3314/90;
- (b) Commission Regulation (EEC) No 3688/92;
- (c) Commission Regulation (EC) No 2479/95;
- (d) Commission Regulation (EC) No 1056/97;
- (e) Article 1 of Council Regulation (EC) No 2135/98;
- (f) Commission Regulation (EC) No 1360/2002;
- (g) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded;
- (h) Regulation (EC) No 1882/2003 of the European Parliament and of the Council;
- (i) Commission Regulation (EC) No 432/2004; and
- (j) the Community Drivers’ Hours Regulation,

and as read with Schedule 3;

“copying” and “copies”, in relation to data stored on a driver card or digital recording equipment, is to be construed in accordance with subsection 66O(5);

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“digital recording equipment” has the meaning given by subsection 66O(6);

“driver”, “employee-driver” and “owner-driver” have the meaning assigned by subsection 66B(4);

“driver card” has the meaning given by subsection 66O(6);

“electronic copy” of data has the meaning given by subsection 66O(6);

“employer”, in relation to an employee-driver, means the employer of that driver in the employment by virtue of which that driver is an employee-driver;

“hard copy” in relation to data stored electronically has the meaning given by subsection 66O(6);

“officer” means any person authorised by the Minister for the purposes of this Part;

“recording equipment” means equipment for recording information as to the use of a vehicle;

“record sheet” includes a temporary sheet attached to a record sheet in accordance with Article 16(2) of the Community Recording Equipment Regulation;

“the relevant Annexes” to the Community Recording Equipment Regulation—

- (a) in the case of a vehicle put into service for the first time before 1st May 2006 means—
  - (i) either Annex I or Annex IB to that Regulation; and
  - (ii) Annex II to that Regulation; and
- (b) in the case of a vehicle put into service for the first time on or after that date means—
  - (i) Annex IB to that Regulation; and
  - (ii) Annex II to that Regulation;

“relevant Community provision” means any Community provision for the time being in force about the driving of road vehicles, whether directly applicable or not;

“transport undertaking” has the meaning given in the Community Drivers’ Hours Regulation;

“working day”, in relation to any driver, means—

- (a) any period during which he is on duty and which does not fall to be aggregated with any other such period by virtue of paragraph (b) of this definition; and
- (b) where a period during which he is on duty is not followed by an interval for rest of not less than eleven hours or (where permitted by virtue of paragraph (b) of subsection 66C(4)) of not less than nine and a half hours, the aggregate of that period and each successive such period until there is such an interval as aforesaid, together with any interval or intervals between periods so aggregated;

“working week” means, subject to subsection (5), a week beginning at midnight between Sunday and Monday;

and any expression not defined above shall be construed in accordance with the relevant Community provision.

(2) For the purposes of this Part, a director of a company shall be deemed to be employed by it.

(3) In this Part, references to a person driving a vehicle are references to his being at the driving controls of the vehicle for the purpose of controlling its movements, whether it is in motion or is stationary with the engine running.

(4) In this Part, references to a driver being on duty are references—

- (a) in the case of an employee-driver, to his being on duty (whether for the purpose of driving a vehicle to which this Part applies or for other purposes) in the employment by virtue of which he is an employee-driver, or in any other employment under the person who is his employer in the first-mentioned employment; and
- (b) in the case of an owner-driver, to his driving a vehicle to which this Part applies for the purposes of a trade or business carried

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on by him or being otherwise engaged in work for the purposes of that trade or business, being work in connection with such a vehicle or the load carried thereby.

(5) The Minister may, on the application of an owner-driver or of the employer of an employee-driver, from time to time direct that a week beginning at midnight between two days other than Sunday and Monday shall be, or be deemed to have been, a working week in relation to that owner-driver or employee-driver; but where by virtue of any such direction a new working week begins before the expiration of a previous working week then, without prejudice to the application of the provisions of this Part in relation to the new working week, those provisions shall continue to apply in relation to the previous working week until its expiration.

(6) In paragraph (e) of subsection 66M(2), “a small goods vehicle” means a goods vehicle which has a plated weight of the prescribed description not exceeding 3500 kilograms or (not having a plated weight) has an unladen weight not exceeding 1525 kilograms; but the Minister may by regulations direct that the foregoing provisions of this subsection shall have effect, in relation to either or both of those sections—

- (a) with the substitution for either of the weights there specified of such other weight as may be specified in the regulations;
- (b) with the substitution for either of those weights or for any other weight for the time being specified as aforesaid of a weight expressed in terms of the metric system, being a weight which is equivalent to that for which it is substituted or does not differ from it by more than five per cent thereof.

#### **Vehicles and drivers subject to control under this Part.**

66B. (1) This Part shall have effect with a view to securing the observance of proper hours or periods of work by persons engaged in the carriage of passengers or goods by road and thereby protecting the public against the risks which arise in cases where the drivers of motor vehicles are suffering from fatigue, but the Minister may by regulations make such provision by way of substitution for or adaptation of the provisions of this Part, or supplemental or incidental to this Part, as he considers necessary or expedient to take account of the operation of any relevant Community provision.

- (2) Regulations under subsection (1) may in particular—

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- (a) make such provision as the Minister may deem fit and appropriate in order to give effect to applicable Community rules;
  - (b) apply to journeys and work to which no relevant Community provision applies;
  - (c) include provision as to the circumstances in which a period of driving or duty to which a relevant EU provision applies is to be included or excluded in reckoning any period for purposes of any relevant Community provision; and
  - (d) may contain such transitional, supplemental or consequential provisions as the Minister thinks necessary or expedient.
- (3) This Part applies to—
- (a) passenger vehicles, that is to say—
    - (i) public service vehicles; and
    - (ii) motor vehicles (other than public service vehicles) constructed or adapted to carry more than twelve passengers;
  - (b) goods vehicles, that is to say—
    - (i) motor tractors and any motor vehicle so constructed that a trailer may by partial superimposition be attached to the vehicle in such a manner as to cause a substantial part of the weight of the trailer to be borne by the vehicle; and
    - (ii) motor vehicles (except those mentioned in paragraph (a) of this subsection) constructed or adapted to carry goods other than the effects of passengers;
  - (c) vehicles not falling within paragraph (a) or (b) of this subsection which are vehicles within the meaning given by Article 4 of the Community Drivers' Hours Regulation.
- (4) This Part applies to any such person as follows (in this Part referred to as “a driver”), that is to say—
- (a) a person who drives a vehicle to which this Part applies in the course of his employment (in this Part referred to as “an employee-driver”); and



- (b) a person who drives such a vehicle for the purposes of a trade or business carried on by him (in this Part referred to as “an owner-driver”);

and in this Part references to driving by any person are references to his driving as aforesaid.

**Permitted driving time and periods of duty.**

66C. (1) Subject to the provisions of this section, a driver shall not on any working day drive a vehicle or vehicles to which this Part applies for periods amounting in the aggregate to more than ten hours.

(2) Subject to the provisions of this section, if on any working day a driver has been on duty for a period of, or for periods amounting in the aggregate to, five and a half hours and—

- (a) there has not been during that period, or during or between any of those periods, an interval of not less than half an hour in which he was able to obtain rest and refreshment; and
- (b) the end of that period, or of the last of those periods, does not mark the end of that working day,

there shall at the end of that period, or of the last of those periods, be such an interval as aforesaid.

(3) Subject to the provisions of this section, the working day of a driver—

- (a) except where paragraph (b) or (c) of this subsection applies, shall not exceed eleven hours;
- (b) if during that day he is off duty for a period which is, or periods which taken together are, not less than the time by which his working day exceeds eleven hours, shall not exceed twelve and a half hours;
- (c) if during that day—
  - (i) all the time when he is driving vehicles to which this Part applies is spent in driving one or more express carriages or contract carriages; and
  - (ii) he is able for a period of not less than four hours to obtain rest and refreshment,

shall not exceed fourteen hours.

(4) Subject to the provisions of this section, there shall be, between any two successive working days of a driver, an interval for rest which—

- (a) subject to paragraph (b) of this subsection, shall not be of less than eleven hours;
- (b) if during both those days all or the greater part of the time when he is driving vehicles to which this Part applies is spent in driving one or more passenger vehicles, may, on one occasion in each working week, be of less than eleven hours but not of less than nine and a half hours;

and for the purposes of this Part a period of time shall not be treated, in the case of an employee-driver, as not being an interval for rest by reason only that he may be called upon to report for duty if required.

(5) Subject to the provisions of this section a driver shall not be on duty in any working week for periods amounting in the aggregate to more than sixty hours.

(6) Subject to the provisions of this section, there shall be, in the case of each working week of a driver, a period of not less than twenty-four hours for which he is off duty, being a period either falling wholly in that week or beginning in that week and ending in the next week; but—

- (a) where the requirements of the foregoing provisions of this subsection have been satisfied in the case of any week by reference to a period ending in the next week, no part of that period (except any part after the expiration of the first twenty-four hours of it) shall be taken into account for the purpose of satisfying those requirements in the case of the next week; and
- (b) those requirements need not be satisfied in the case of any working week of a driver who on each working day falling wholly or partly in that week drives one or more stage carriages if that week is immediately preceded by a week in the case of which those requirements have been satisfied as respects that driver or during which he has not at any time been on duty.

(7) If in the case of the working week of any driver the following requirement is satisfied, that is to say, that, in each of the periods of twenty-four hours beginning at midnight which make up that week, the driver does not drive a vehicle to which this Part applies for a period of, or periods

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amounting in the aggregate to, more than four hours, the foregoing provisions of this section shall not apply to him in that week, except that the provisions of subsections (1), (2) and (3) shall nevertheless have effect in relation to the whole of any working day falling partly in that week and partly in a working week in the case of which that requirement is not satisfied.

(8) If on any working day a driver does not drive any vehicle to which this Part applies—

- (a) subsections (2) and (3) shall not apply to that day, and
- (b) the period or periods of duty attributable to that day for the purposes of subsection (5) shall, if amounting to more than eleven hours, be treated as amounting to eleven hours only.

(9) For the purpose of enabling drivers to deal with cases of emergency or otherwise to meet a special need, the Minister may by regulations—

- (a) create exemptions from all or any of the requirements of subsections (1) to (6) in such cases and subject to such conditions as may be specified in the regulations;
- (b) empower a person designated in the regulations, subject to the provisions of the regulations—
  - (i) to dispense with the observance of all or any of those requirements (either generally or in such circumstances or to such extent as that designated person thinks fit) in any particular case for which provision is not made under paragraph (a) of this subsection;
  - (ii) to grant a certificate (which, for the purposes of any proceedings under this Part, shall be conclusive evidence of the facts therein stated) that any particular case falls or fell within any exemption created under the said paragraph (a);

and regulations under this subsection may enable any dispensation under paragraph (b)(i) to be granted retrospectively and provide for a document purporting to be a certificate granted by virtue of paragraph (b)(ii) to be accepted in evidence without further proof.

(10) If any of the requirements of regulations referred to in this section is contravened in the case of any driver—

- (a) that driver; and
- (b) any other person (being that driver's employer or a person to whose orders that driver was subject) who caused or permitted the contravention,

shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; but a person shall not be liable to be convicted under this subsection if he proves to the court—

- (i) that the contravention was due to unavoidable delay in the completion of a journey arising out of circumstances which he could not reasonably have foreseen; or
- (ii) in the case of a person charged under paragraph (b) of this subsection, that the contravention was due to the fact that the driver had for any particular period or periods driven or been on duty otherwise than in the employment of that person or, as the case may be, otherwise than in the employment in which he is subject to the orders of that person, and that the person charged was not, and could not reasonably have become, aware of that fact.

(11) Where, in the case of a driver of a motor vehicle, there is a contravention of any requirement of the applicable Community rules as to periods of driving, or distance driven, or periods on or off duty, then the offender and the offender's employer, and any other person to whose orders the offender was subject, shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(12) But a person shall not be liable to be convicted under subsection (11) if—

- (a) he proves the matters specified in subparagraph (i) of subsection (10); or
- (b) being charged as the offender's employer or a person to whose orders the offender was subject, he proves the matters specified in subparagraph (ii) of that subsection; or
- (c) being charged as mentioned in paragraph (b), he proves—
  - (i) that at the time of the contravention he was complying with Article 10(1) (distance-related payments etc.) and Article 10(2) (organisation of drivers' work etc.) of the Community Drivers' Hours Regulation; and

- (ii) that he took all reasonable steps to avoid the contravention.

(13) A person who—

- (a) is subject to the requirement imposed by Article 10(4) of the Community Drivers' Hours Regulation (undertakings etc to ensure that contractually agreed transport time schedules respect that Regulation); and
- (b) fails to take all reasonable steps to comply with that requirement,

shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(14) If a driver who is subject to the orders of more than one transport undertaking fails, without reasonable excuse, to provide each of them with sufficient information to enable them to avoid a contravention of Chapter 2 of the Community Drivers' Hours Regulation, he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(15) The Minister may by order in the Gazette—

- (a) direct that subsection (1) shall have effect with the substitution for the reference to ten hours of a reference to nine hours, either generally or with such exceptions as may be specified in the order;
- (b) direct that paragraph (a) of subsection (3) shall have effect with the substitution for the reference to eleven hours of a reference to any shorter period, or remove, modify or add to the provisions of that subsection containing exceptions to the said paragraph (a);
- (c) remove, modify or add to any of the requirements of subsections (2), (4), (5) or (6) or any of the exemptions provided for by subsections (7), (8) and (9);

and any order under this subsection may contain such transitional and supplementary provisions as the Minister thinks necessary or expedient, including provisions amending any definition in section 66A which is relevant to any of the provisions affected by the order.

#### **Installation and use of recording equipment.**

66D. (1) No person shall use, or cause or permit to be used, a vehicle to which this section applies unless—

- (a) there is in the vehicle recording equipment which—
  - (i) has been installed in accordance with the Community Recording Equipment Regulation;
  - (ii) complies with the relevant Annexes to that Regulation; and
  - (iii) is being used as provided by Articles 13 to 15 of that Regulation; or
- (b) in which there is recording equipment which has been repaired (whether before or after installation) otherwise than in accordance with the Community Recording Equipment Regulation;

and any person who contravenes this subsection shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person shall not be liable to be convicted under subsection (1) if he proves to the court that he neither knew nor ought to have known that the recording equipment had not been installed or repaired, as the case may be, in accordance with the Community Recording Equipment Regulation.

(3) A person shall not be liable to be convicted under paragraph (a) of subsection (1) if he proves to the court that the vehicle in question was proceeding to a place where recording equipment which would comply with the requirements the relevant Annexes to the Community Recording Equipment Regulation was to be installed in the vehicle in accordance with that Regulation.

(4) A person shall not be liable to be convicted under paragraph (a) of subsection (1) by reason of the recording equipment installed in the vehicle in question not being in working order if he proves to the court that—

- (a) it had not become reasonably practicable for the equipment to be repaired by an approved fitter or workshop; and
- (b) the requirements of Article 16(2) of the Community Recording Equipment Regulation were being complied with.

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(5) A person shall not be liable to be convicted under paragraph (a) of subsection (1) by reason of any seal on the recording equipment installed in the vehicle in question not being intact if he proves to the court that—

- (a) the breaking or removal of the seal could not have been avoided;
- (b) it had not become reasonably practicable for the seal to be replaced by an approved fitter or workshop; and
- (c) in all other respects the equipment was being used as provided by Articles 13 to 15 of the Community Recording Equipment Regulation.

(6) A person shall not be liable to be convicted under paragraph (a) of subsection (1) by reason of the driver card not being used with the recording equipment installed in the vehicle in question if he proves to the court that—

- (a) the driver card was damaged, malfunctioning, lost or stolen;
- (b) the requirements of Article 16(2) and, apart from the last paragraph thereof, Article 16(3) of the Community Recording Equipment Regulation were being complied with; and
- (c) in all other respects the recording equipment was being used as provided by Articles 13 to 15 of the Community Recording Equipment Regulation.

(7) For the purposes of this section recording equipment is used as provided by Articles 13 to 15 of the Community Recording Equipment Regulation if, and only if, the circumstances of its use are such that each requirement of those Articles is complied with.

(8) This section applies at any time to any vehicle to which this Part applies if, at that time, Article 3 of the Community Recording Equipment Regulation requires recording equipment to be installed and used in that vehicle; and in this section and sections 66F to 66K any expression which is also used in that Regulation has the same meaning as in that Regulation.

#### **Forgery, etc. of seals on recording equipment.**

66E. (1) A person who, with intent to deceive, forges, alters or uses any seal on recording equipment installed in, or designed for installation in, a vehicle to which section 66D applies, shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(3) In this section, a person “forges” a seal if he makes a false seal in order that it may be used as genuine.

**Records etc. produced by equipment may be used in evidence.**

66F. (1) Where recording equipment is installed in a vehicle to which this Part applies, any record produced by means of the equipment shall, in any proceedings under this Part, be evidence of the matters appearing from the record.

(2) Any entry made on a record sheet or print out by a driver for the purposes of Article 15(2) or (5) or 16(2) of the Community Recording Equipment Regulation shall, in any proceedings under this Part, be evidence of the matters appearing from that entry.

**Delivery of record sheets and other documents.**

66G.(1) This section applies to the following documents—

- (a) record sheets; and
- (b) manual records and printouts made in accordance with the Community Recording Equipment Regulation.

(2) If such a document relates to a person in his capacity as the driver of a vehicle to which section 66D applies, he must before the end of the delivery period deliver the document to the transport undertaking to whose orders he was subject in driving the vehicle.

(3) The delivery period is the period of 42 days starting on the day after the latest date to which the document relates.

(4) A person who without reasonable excuse fails to comply with subsection (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) If a transport undertaking fails without reasonable excuse to secure that each driver subject to its orders complies with subsection (2), in respect of documents relating to him in his capacity as such a driver, that



undertaking is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) If a person is subject to the orders of two or more transport undertakings in driving a vehicle during a period to which a document relates—

- (a) subsection (2) has effect as if it were a requirement to deliver that document to the undertaking to whose orders he was first subject in driving the vehicle during that period;
- (b) subsection (5), in relation to that document, applies only to the undertaking to whose orders he was first subject in driving the vehicle during that period.

**Vehicle units: downloading data.**

66H.(1) This section applies where a transport undertaking is required by Article 10 of the Community Drivers' Hours Regulation to ensure that data is downloaded from a vehicle unit in a vehicle.

(2) The undertaking must ensure that relevant data is downloaded from the unit not later than the end of the download period if—

- (a) it controls the use of the vehicle throughout that period; and
- (b) it uses the vehicle at some point during that period.

(3) The download period begins and ends as set out in the following table—

Case	Download period begins	Download period begins
1. The undertaking has not previously downloaded data from the unit under this section.	On the first day after the commencement of this section on which the undertaking— controls the use of the vehicle, and is required by article 10 to ensure that data is downloaded from the unit.	On the earlier of— the expiry of the period of 56 days starting on the first day of the download period; any downloading of the data before the expiry of that period.
2. The undertaking uses the vehicle during the period of 56 days starting on the day after the last downloading under this section.	On the day after the last downloading under this section.	
3. The undertaking does not use the vehicle during the period of 56 days starting on the day after the	On the first day of the undertaking's use of the vehicle after the last downloading under this section.	

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last downloading under this section.		
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(4) The undertaking must ensure that all relevant data is downloaded from the unit—

- (a) immediately before transferring control of the use of the vehicle to another person;
- (b) without delay upon permanently removing the unit from service in the vehicle;
- (c) without delay upon becoming aware that the unit is malfunctioning;
- (d) without delay in any circumstances such that the imminent erasure of the data by the unit, in the normal course of its operations, is reasonably foreseeable.

(5) But paragraph (c) of subsection (4) does not apply if, as a result of the malfunctioning of the unit, it is impossible to download the data.

(6) For the purposes of this section “relevant data” means any data recorded by the vehicle unit in a vehicle, other than detailed speed data.

(7) For the purposes of this section and section 66I an undertaking controls the use of a vehicle during any period in which it may determine when, by whom and for what purpose the vehicle may be driven.

(8) In this section and sections 66i to 66K, “downloaded” is to be construed in accordance with the definition of “downloading” in Annex 1B to the Community Recording Equipment Regulation.

#### **Driver cards: downloading data.**

66I. (1) This section applies where a transport undertaking is required by Article 10 of the Community Drivers’ Hours Regulation to ensure that data is downloaded from a driver card issued to a driver.

(2) The undertaking must ensure that all data is downloaded from the card not later than the end of the download period.

(3) The download period begins and ends as set out in the following table—

Case	Download period begins	Download period begins
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1. The undertaking has not previously downloaded data from the card under this section.	On the first day after the commencement of this section on which— the driver drives for the undertaking; and the undertaking is required by Article 10 to ensure that data is downloaded from the card.	On the earlier of— the expiry of the period of 28 days starting on the first day of the download period; any downloading of the data before the expiry of that period.
2. The undertaking has previously downloaded data from the card under this section.	On the first day on which the driver drives for the undertaking after the last downloading under this section.	

(4) The undertaking must ensure that the data is downloaded from the card—

- (a) immediately before the driver ceases to be employed by the undertaking as a driver, or otherwise to carry out work for the undertaking as a driver;
- (b) without delay upon becoming aware that the card has been damaged or is malfunctioning;
- (c) without delay in any circumstances such that the imminent erasure of the data, in the normal course of use of the card, is reasonably foreseeable;
- (d) if it is not possible to do so other than by means of a vehicle unit installed in a vehicle, immediately before ceasing to control the use of that vehicle.

(5) But paragraph (b) of subsection (4) does not apply if as a result of damage to the card or its malfunctioning it is impossible to download the data.

**Downloading data: requirement imposed by an officer.**

66J. (1) This section applies where—

- (a) an officer has reason to believe that an offence under this Part or under the Traffic Act 2005 has been committed in respect of the use of a vehicle, and
- (b) Article 10(5) of the Community Drivers' Hours Regulation applies to a transport undertaking in respect of the vehicle unit in the vehicle or a driver card issued to a person who has driven the vehicle.

(2) The officer may, on production if so required of his authority, require the undertaking without delay—

- (a) to download data from the vehicle unit or driver card;
- (b) to permit him to inspect or copy the downloaded data.

(3) In this section “download” is to be construed in accordance with the definition of “downloading” in Annex 1B to the Community Recording Equipment Regulation.

**Downloading and retaining data: offences.**

66K. (1) A transport undertaking commits an offence if, without reasonable excuse, it fails to comply with section 66H or 66I, or with a requirement imposed under section 66J.

(2) A transport undertaking commits an offence if, without reasonable excuse, it fails to comply with any requirement imposed by Article 10 of the Community Drivers’ Hours Regulation in respect of the retention of data downloaded in accordance with sections 66H to 66J.

(3) An offence under this section is punishable on summary conviction with a fine not exceeding level 5 on the standard scale.

**Access to downloaded data.**

66L. (1) An officer may, on production if so required of his authority, require a person to make readily accessible to him, either on or from premises occupied or controlled by the person in question, that person's retained data.

(2) Any person who without reasonable excuse fails to comply with a requirement under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purposes of subsection (1), data is a person’s “retained data” if he is required by Article 10 of the Community Drivers’ Hours Regulation to retain it for at least 12 months following its recording.

**Written records.**

66M.(1) The Minister may make regulations—

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- (a) requiring drivers to keep, and employers of employee-drivers to cause to be kept, in such books as may be specified in the regulations, records with respect to such matter relevant to the enforcement of this Part as may be so specified; and
- (b) requiring owner-drivers and the employers of employee-drivers to maintain such registers as may be so specified with respect to any such books as aforesaid which are in their possession or in that of any employee-drivers in their employment.

(2) Regulations under this section may contain such supplementary and incidental provisions including provisions supplementary and incidental to the requirements of the applicable Community rules as to books, records or documents as the Minister thinks necessary or expedient, including in particular provisions—

- (a) specifying the person or persons from whom books and registers required for the purposes of the regulations or of the applicable Community rules are to be obtained and, if provision is made for them to be obtained from the Minister, charging a fee for their issue by him;
- (b) as to the form and manner of making of entries in such books and registers;
- (c) as to the issue by, and return to, the employers of employee-drivers of books required to be kept by the latter for the purposes of the regulations;
- (d) requiring any book in current use for the purposes of the regulations to be carried on, or by the driver of, any vehicle, as to the preservation of any books and registers used for those purposes, and otherwise as to the manner in which those books and registers are to be dealt with;
- (e) for exemptions from all or any of the requirements of the regulations in respect of drivers of small goods vehicles as defined in subsection 66A(6) and for other exemptions from all or any of those requirements.

(3) The requirements of regulations made under this section shall not apply as respects the driving of a vehicle to which section 66D applies and which is installed with recording equipment complying with the relevant Annexes (within the meaning of that section).

(4) Subject to the provisions of any regulations made under this section, the Minister may dispense with the observance by any employee-driver or his employer, or by any owner-driver, of any requirement imposed under this section, either generally or in such circumstances or to such extent as the Minister thinks fit, but the Minister shall not grant such a dispensation unless satisfied that it is not reasonably practicable for the requirement dispensed with to be observed.

(5) Any person who contravenes any regulations made under this section or any requirement as to books, records or documents of the applicable Community rules shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale; but the employer of an employee-driver shall not be liable to be convicted under this subsection by reason for contravening any such regulation whereby he is required to cause any records to be kept if he proves to the court that he has given proper instructions to his employees with respect to the keeping of the records and has from time to time taken reasonable steps to secure that those instructions are being carried out.

(6) A person shall not be liable to be convicted under subsection (5) by reason of contravening any regulation made under this section if he proves to the court that, if the vehicle in question had been such a vehicle as is mentioned in subsection (3), there would have been no contravention of the provisions of this Part so far as they relate to the use of such vehicles.

(7) Any entry made by an employee-driver for the purposes of regulations under this section or of the applicable Community rules shall, in any proceedings under this Part, be admissible in evidence against his employer.

#### **Inspection of records and other documents.**

66N.(1) An officer may, on production if so required of his authority, require any person to produce, and permit him to inspect and copy—

- (a) any book or register which that person is required by regulations under section 66M to carry or have in his possession for the purpose of making in it any entry required by those regulations or which is required under those regulations to be carried on any vehicle of which that person is the driver;
- (b) any book or register which that person is required by regulations under section 66M to preserve;
- (c) if that person is the owner of a vehicle to which this Part applies, any other document of that person which the officer

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may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part or of regulations made thereunder have been complied with;

and that book, register or document shall, if the officer so requires by notice in writing served on that person, be produced at that officer's office within such time (not being less than ten days) from the service of the notice as may be so specified.

- (2) An officer may, on production if so required of his authority—
  - (a) at any time, enter any vehicle to which this Part applies and inspect that vehicle and any recording equipment installed in it and inspect and copy any record sheet on the vehicle on which a record has been produced by means of the equipment or an entry has been made;
  - (b) at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that such a vehicle is kept or that any such record sheets, books, registers or other documents as are mentioned in subsection (1) are to be found, and inspect any such vehicle, and inspect and copy any such record sheet, book, register or document, which he finds there.

(3) For the purpose of exercising his powers under paragraph (a) of subsection (2) and, in respect of a document carried on, or by, the driver of a vehicle under paragraph (a) of subsection (1), an officer may detain the vehicle in question during such time as is required for the exercise of that power.

- (4) Any person who—
  - (a) fails to comply with any requirement under subsection (1); or
  - (b) obstructs an officer in the exercise of his powers under subsection (2) or (3),

shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) A person shall not be liable to be convicted under subsection (4) by reason of failing to comply with any requirement under paragraphs (a) or (b) of subsection (1) if he proves to the court that, if the vehicle in question had been such a vehicle as is mentioned in subsection 66M(3), there would have

been no contravention of the provisions of this Part so far as they relate to the use of such vehicles.

(6) Any person who makes, or causes to be made, any entry in a book, register or document kept or carried for the purposes of regulations under section 66M which he knows to be false or, with intent to deceive, alters or causes to be altered any such record or entry shall be liable—

- (a) on summary conviction, to a fine not exceeding not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.

(7) If an officer has reason to believe that an offence under subsection (6) has been committed in respect of any record or document inspected by him under this section, he may seize that record or document; and where a record or document is seized as aforesaid and within six months of the date on which it was seized no person has been charged since that date with an offence in relation to that record or document under that subsection and the record or document has not been returned to the person from whom it was taken, the magistrates' court shall, on an application made for the purpose by that person or by an officer, make such order respecting the disposal of the record or document and award such costs as the justice of the case may require.

(8) The powers conferred by this Part on an officer shall be exercisable also by a police officer, who shall not, if wearing uniform, be required to produce any authority.

(9) In this section references to the inspection and copying of any record produced by means of recording equipment installed in a vehicle include references to the application to the record of any process for eliciting the information recorded thereby and to taking down the information elicited from it.

(10) Subsections (1) to (7) and (9) do not apply in respect of vehicles to which section 66D applies.

#### **Inspection of records and other documents and data relating to recording equipment.**

66O.(1) An officer may, on production if so required of his authority, require any person to produce, and permit him to inspect, remove, retain and copy—



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- (a) if that person is the owner of a vehicle to which section 66D applies, any document of that person which the officer may reasonably require to inspect for the purpose of ascertaining whether the provisions of this Part have been complied with;
  - (b) any record sheet or hard copy of electronically stored data which that person is required by the Community Recording Equipment Regulation to retain or to be able to produce;
  - (c) any book, register or other document required by the applicable Community rules or which the officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with.
- (2) An officer may, on production if so required of his authority, require any person—
- (a) to produce and permit him to inspect any driver card which that person is required by Article 15(7) of the Community Recording Equipment Regulation to be able to produce; and
  - (b) to permit the officer to copy the data stored on the driver card (and to remove temporarily the driver card for the purpose of doing so) and to remove and retain the copy.
- (3) If the officer so requires by notice in writing, anything that a person is required to produce under subsection (1) or (2) shall, instead of being produced when the requirement under those subsections is imposed, be produced at an address specified in the notice, within such time (not being less than ten days) from the service of the notice as is so specified.
- (4) Where a notice is served under subsection (3), the officer may exercise his powers under this section at the place specified in the notice.
- (5) In this Part any reference to copying data stored on a driver card or on digital recording equipment includes a reference to making a hard copy or an electronic copy of the data (and any reference to copies of data shall be construed accordingly).
- (6) In this Part—
- “digital recording equipment” means recording equipment that complies with Annex IB to the Community Recording Equipment Regulation;

“driver card” has the meaning given in that Annex;

“electronic copy” of data means a copy of data stored electronically together with the data's digital signature (within the meaning of that Annex);

“hard copy” in relation to data stored electronically means a printed out version of the data.

**Power of entry.**

66P.(1) An officer may, on production if so required of his authority, at any time enter any vehicle to which section 66D applies in order to inspect that vehicle and any recording equipment in or on it.

- (2) Where any officer enters any vehicle under subsection (1) he may—
- (a) inspect, remove, retain and copy any record sheet that he finds there on which a record has been produced by means of analogue recording equipment or on which an entry has been made;
  - (b) inspect, remove, retain and copy any hard copy of data that he finds there which was stored on any digital recording equipment or on a driver card;
  - (c) inspect, remove, retain and copy any other document that he finds there which the officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable Community rules have been complied with;
  - (d) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment in or on the vehicle or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
  - (e) copy data stored on any digital recording equipment that is in or on the vehicle and remove and retain that copy;
  - (f) inspect any recording equipment that is in or on the vehicle and, if necessary for the purposes of the inspection, remove it from the vehicle;
  - (g) retain the recording equipment as evidence if he finds that it has been interfered with;

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- (h) inspect the vehicle for the purpose of ascertaining whether there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle;
- (i) inspect anything in or on the vehicle which he believes is such a device and, if necessary for the purpose of the inspection, remove it from the vehicle;
- (j) retain the device as evidence if he finds that it is capable of interfering with the proper operation of the recording equipment.

(3) Where any officer who is a vehicle examiner appointed under section 6 of the Traffic Act 2005, or any police officer, enters any vehicle under subsection (1), he may, if he has reason to believe that—

- (a) any recording equipment in or on the vehicle has been interfered with so as to affect its proper operation; or
- (b) there is in or on the vehicle any device which is capable of interfering with the proper operation of any recording equipment in or on the vehicle,

require the driver or operator of the vehicle to take it to an address specified by the officer or police officer for the purposes of enabling an inspection of the recording equipment, the vehicle or any device in or on it to be carried out.

(4) An officer may, on production if so required of his authority, at any time which is reasonable having regard to the circumstances of the case, enter any premises on which he has reason to believe that—

- (a) a vehicle to which section 66D applies is kept;
- (b) any such document as is mentioned in subsection 66O(1) is to be found;
- (c) any driver card or copy of data previously stored on a driver card or on recording equipment is to be found; or
- (d) any digital recording equipment is to be found.

(5) Where any officer enters any premises under subsection (4) he may—

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- (a) inspect any vehicle which he finds there and to which section 66D applies;
  - (b) inspect, remove, retain and copy any such document as is mentioned in subsection 66O(1) that he finds there;
  - (c) make a copy of any such copy of data as is mentioned in paragraph (c) of subsection (4) that he finds there, and remove and retain the copies he makes;
  - (d) inspect any driver card that he finds there, copy the data stored on it (using any digital recording equipment on the premises or temporarily removing the driver card for the purpose of copying the data) and remove and retain the copy;
  - (e) copy data stored on any digital recording equipment that he finds there and remove and retain that copy;
  - (f) inspect any recording equipment that he finds there and, if necessary for the purposes of inspection, remove it from the premises;
  - (g) retain any such recording equipment as evidence if he finds that it has been interfered with;
  - (h) inspect anything that he finds there which he believes is a device capable of interfering with the proper operation of any recording equipment and, if necessary for the purpose of the inspection, remove it from the premises;
  - (i) retain any such device as evidence if he finds that it is capable of interfering with the proper operation of recording equipment.
- (6) For the purposes of—
- (a) exercising any of his powers under this section in relation to a vehicle or anything found in or on a vehicle, or
  - (b) exercising any of his powers under subsections 66O(1) or (2) in respect of a document or driver card carried by the driver of a vehicle,

an officer may detain the vehicle during such time as is required for the exercise of that power.

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(7) In this Part “analogue recording equipment” means recording equipment that complies with Annex I to the Community Recording Equipment Regulation.

**Sections 66O and 66P: supplementary.**

66Q.(1) Where an officer makes any hard copy of data stored on a driver card or on recording equipment under section 66O or 66P, he may require a person to sign the hard copy (if necessary with manual corrections) to confirm that it is a true and complete record of his activities during the period covered by it.

(2) Any record sheet, book, register, other document or any electronic copy of data that is retained by an officer under section 66O or 66P may only be retained—

- (a) for six months; and
- (b) if it is required as evidence in any proceedings, any further period during which it is so required.

(3) In sections 66O and 66P references to the inspection and copying of any record produced by means of equipment in or on a vehicle include references to the application to the record of any process for eliciting the information recorded by it and to taking down the information elicited from it.

**Offence of failing to comply with requirements or obstructing an officer.**

66R.(1) A person commits an offence if he—

- (a) fails without reasonable excuse to comply with any requirement imposed on him by an officer under any of sections 66O to 66Q; or
- (b) obstructs an officer in the exercise of his powers under section 66P or 66T .

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Offences: false records and data etc.**

66S.(1) A person commits an offence—

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- (a) if he makes, or causes or permits to be made, a relevant record or entry which he knows to be false;
  - (b) if, with intent to deceive, he alters, or causes or permits to be altered, a relevant record or entry;
  - (c) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, a relevant record or entry; or
  - (d) if he fails without reasonable excuse to make a relevant record or entry, or causes or permits such a failure.
- (2) For the purposes of subsection (1) a “relevant record or entry” is–
- (a) any record or entry required to be made by or for the purposes of the Community Recording Equipment Regulation or section 66D; or
  - (b) any entry in a book, register or document kept or carried for the purposes of the applicable Community rules.
- (3) A person commits an offence–
- (a) if he records or causes or permits to be recorded any data which he knows to be false on recording equipment or on a driver card;
  - (b) if he records or causes or permits to be recorded any data which he knows to be false on any hard copy of data previously stored on recording equipment or on a driver card;
  - (c) if, with intent to deceive, he alters, or causes or permits to be altered, any data stored on recording equipment or on a driver card or appearing on any copy of data previously so stored;
  - (d) if, with intent to deceive, he produces anything falsely purporting to be a hard copy of data stored on recording equipment or on a driver card;
  - (e) if he destroys or suppresses, or causes or permits to be destroyed or suppressed, any data stored in compliance with the requirements of the applicable Community rules on recording equipment or on a driver card; or

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- (f) if he fails without reasonable excuse to record any data on recording equipment or on a driver card, or causes or permits such a failure.
- (4) A person guilty of an offence under subsection (1) or (3) consisting otherwise than in permitting an act or omission is liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (5) A person guilty of an offence under subsection (1) or (3) consisting in permitting an act or omission is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person commits an offence if he produces, supplies or installs any device—
- (a) that is designed to interfere with the proper operation of any recording equipment, or
  - (b) that is designed to enable the falsification, alteration, destruction or suppression of data stored in compliance with requirements of the applicable Community rules on any recording equipment or driver's card.
- (7) A person commits an offence if without reasonable excuse he provides information which would assist other persons in producing any such device.
- (8) A person shall not be liable to be convicted under subsection (6) or (7) if he proves to the court that he produced, supplied or installed the device, or provided information to assist a person in producing a device, for use in connection with the enforcement of the provisions of this Part.
- (9) A person guilty of an offence under subsection (6) or (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) For the purposes of this section, a person shall be taken to permit an act or omission if he is, or ought reasonably to be, aware of the act or omission, or of it being a likelihood, and takes no steps to prevent it.

**Power to seize documents.**

66T.(1) If an officer has reason to believe that an offence under section 66S has been committed in respect of any document inspected by him under section 66O or 66P, he may seize that document.

(2) Where a document is so seized, the magistrates' court shall, on an application made for the purpose by that person or by an officer, make such order respecting the disposal of the document and award such costs as the justice of the case may require if—

- (a) within six months of the date on which it was seized no person has been charged since that date with an offence under section 66S in relation to that document; and
- (b) the document has not been returned to the person from whom it was taken.

**Power to prohibit driving of vehicle.**

66U.(1) If—

- (a) the driver of a Gibraltar vehicle obstructs an authorised person in the exercise of his powers under subsection 66N(2) or (3) or under section 66P or fails to comply with any requirement made by an authorised person under subsection 66N(1) or under any of sections 66O to 66Q;
- (b) it appears to an authorised person that, in relation to a Gibraltar vehicle or its driver, there has been a contravention of any of the provisions of—
  - (i) sections 66C to 66M and any orders or regulations under those sections, or
  - (ii) the applicable Community rules,or that there will be such a contravention if the vehicle is driven on a road, or
- (c) it appears to an authorised person that an offence under subsection 66N(6) or section 66S has been committed in respect of a Gibraltar vehicle or its driver,

the authorised person may prohibit the driving of the vehicle on a road either for a specified period or without limitation of time.



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(2) Where an authorised person prohibits the driving of a vehicle under this section, he may also direct the driver to remove the vehicle (and, if it is a motor vehicle drawing a trailer, also to remove the trailer) to such place and subject to such conditions as are specified in the direction; and the prohibition shall not apply to the removal of the vehicle in accordance with that direction.

(3) On imposing a prohibition under subsection (1), the authorised person shall give notice in writing of the prohibition to the driver of the vehicle, specifying the circumstances (as mentioned in paragraph (a), (b) or (c) of that subsection) in consequence of which the prohibition is imposed and stating whether it is imposed only for a specified period (and if so specifying the period) or without limitation of time.

(4) Any direction under subsection (2) may be given—

- (a) in the notice under subsection (3); or
- (b) in a separate notice in writing given to the driver of the vehicle.

(5) In this section—

“authorised person” means—

- (a) a vehicle examiner appointed under section 6 of the Traffic Act 2005, or
- (b) a police officer authorised to act for the purposes of this section by or on behalf of the Commissioner of Police;

“Gibraltar vehicle” means a vehicle registered under the Traffic Act 2005.

(6) The Traffic (Immobilisation of Vehicles) (No.2) Regulations 1986 has effect with respect to the immobilisation of vehicles the driving of which has been prohibited under subsection (1).

#### **Duration and removal of prohibition.**

66V.(1) Subject to any exemption granted under subsection (2), a prohibition under subsection 66U(1) shall come into force as soon as notice of it has been given in accordance with subsection (3) of that section and shall continue in force—

- (a) until it is removed under subsection (3) of this section; or

- (b) in the case of a prohibition imposed for a specified period, until it is removed under that subsection or that period expires, whichever first occurs.

(2) Where notice of a prohibition has been given under subsection 66U(3) in respect of a vehicle, an exemption in writing for the use of the vehicle in such manner, subject to such conditions and for such purposes as may be specified in the exemption may be granted by any authorised person.

(3) A prohibition under subsection 66U(1) may be removed by any authorised person, if he is satisfied that appropriate action has been taken to remove or remedy the circumstances (as mentioned in paragraph (a), (b) or (c) of subsection 66U(1)) in consequence of which the prohibition was imposed; and on doing so the authorised person shall give notice in writing of the removal of the prohibition to the driver of the vehicle.

(4) In this section, “authorised person” has the same meaning as in section 66U.

#### **Failure to comply with prohibition.**

66W. Any person who—

- (a) drives a vehicle on a road in contravention of a prohibition imposed under subsection 66U(1);
- (b) causes or permits a vehicle to be driven on a road in contravention of such a prohibition; or
- (c) refuses or fails to comply within a reasonable time with a direction given under subsection 66U(2),

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Power to give effect to international agreements.**

66X. The Minister may by order in the Gazette make such provision as appears to him to be requisite for enabling the extension to Gibraltar of any international agreement relating to the drivers or crews of vehicles used on international journeys, and, without prejudice to the generality of the foregoing provisions of this subsection, an order under this subsection may—

- (a) modify or exclude any of the provisions contained in or having effect under this Part or contained in or having effect under any other enactment passed before or after this Act;

- (b) provide for exemptions from all or any of the provisions of the order;
- (c) provide for the punishment of contraventions of any provision of the order;
- (d) contain such supplementary, incidental or consequential provisions as appear to the Minister to be necessary or expedient.

**Application to the Crown and exemption for police and fire brigade.**

66Y.(1) Subject to subsections (2) and (5), this Part shall apply to vehicles and persons in the public service of the Crown.

(2) This Part shall not apply in the case of motor vehicles owned by the Ministry of Defence while being driven by members of Her Majesty's armed forces.

(3) Where an offence under this Part is alleged to have been committed in connection with a vehicle in the public service of the Crown, proceedings may be brought in respect of the offence against a person nominated for the purpose on behalf of the Crown; and, subject to subsection (4), where any such offence is committed any person so nominated shall also be guilty of the offence as well as any person actually responsible for the offence (but without prejudice to proceedings against any person so responsible).

(4) Where a person is convicted of an offence by virtue of subsection (3)–

- (a) no order may be made on his conviction save an order imposing a fine;
- (b) payment of any fine imposed on him in respect of that offence may not be enforced against him; and
- (c) apart from the imposition of any such fine, the conviction shall be disregarded for all purposes other than any appeal (whether by way of case stated or otherwise).

(5) This Part shall not apply in the case of motor vehicles while being used for police or fire and rescue authority purposes.

**Offences by bodies corporate etc. .**

66Z.(1) If an offence under this Part committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of an officer of the body, or
- (b) to be attributable to any neglect on the part of an officer of the body,

he, as well as the body corporate, is guilty of the offence.

(2) In subsection (1) a reference to an officer of a body includes a reference to—

- (a) a director, manager or secretary;
- (b) a person purporting to act as an officer of the body.

(3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(4) If an offence under this Part committed by a limited partnership is proved—

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence.

(5) In subsection (4) a reference to a partner includes a reference to a person purporting to act as a partner.

(6) If an offence under this Part committed by an unincorporated association (other than a partnership) is proved—

- (a) to have been committed with the consent or connivance of an officer of the association, or
- (b) to be attributable to any neglect on the part of an officer of the association,

that officer, as well as the association, is guilty of the offence.

(7) In subsection (6) a reference to an officer of an association includes a reference to—

- (a) a member of its governing body;
- (b) a person purporting to act in the capacity of an officer of the association.

### **Schedule 3.**

66ZA. Schedule 3 shall have effect.

### **Regulations.**

66ZB. The Minister may make regulations giving effect to any Community obligations connected to the operation of this Part.

## **PART V**

### **FINAL PROVISIONS**

### **Appeals.**

67. Any person who is aggrieved by—

- (a) any decision of the Minister;
- (b) the refusal to issue him with any licence;
- (c) any term or condition in any licence save for such term or condition expressly provided for, in or under this Act;
- (d) the revocation or cancellation of a licence issued to him;
- (e) any decision of the Commission;
- (f) any decision of a transport inspector; or
- (g) any decision of the Gibraltar Tourist Board,

concerning which no specific right of appeal is provided for in this Act, may appeal on a point of law to a judge of the Supreme Court but, in respect of

any decision other than a final decision of the Commission, only with the leave of the court.

**Rules of court.**

68. The Chief Justice may make rules of court governing appeals under section 67 above.

**Regulations.**

69.(1) The Minister may make regulations for any purpose for which regulations may be made under this Act and for prescribing anything which may be prescribed and generally for the purpose of carrying this Act into effect and in particular, but without prejudice to the generality of the foregoing, may make regulations with respect to any of the following matters –

- (a) the application for and issue of licences, the fees to be paid in respect thereof and the manner and conditions of payment;
- (b) the grant and authentication of any passes, certificates or other documents relating to vehicles or the drivers of vehicles which may be required for any purpose connected with this Act;
- (c) the payment in respect of any such documents as are mentioned in paragraph (a) of such fees as appear to the Minister to be appropriate having regard to any services performed in connection therewith in pursuance of the regulations;
- (d) the issue of and the fees to be paid in respect of copies of licences or certificates of fitness or in the case of licences or certificates lost or destroyed;
- (e) the documents, plates and marks to be carried by vehicles to which this Act applies and the manner in which they are to be carried;
- (f) the determination of the number of passengers a vehicle to which this Act applies is adapted to carry, and the number who may be carried;
- (g) the carriage of luggage and goods on such vehicles;
- (h) the safe custody and redelivery or disposal of any property accidentally left in such vehicles;

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- (i) the equipment, fixtures, fittings, livery, colour-scheme and furniture to be carried by such vehicles;
- (j) the fixing of rates and fares, and the designation of taxi ranks or omni bus stops ;
- (k) the framing of time tables and fare tables and the publication of the same;
- (l) the conduct of passengers, drivers and conductors;
- (m) the use of taximeters;
- (n) the licensing and regulation of drivers, conductors and guides;
- (o) the badges to be worn by drivers, conductors and guides;
- (p) the mode of dress of licence-holders under this Act, in the course of their duties;
- (q) the times and geographical areas, in which persons licensed under this Act can or cannot make use of such licences for profit or reward;
- (r) the licensing and regulation of journeys intended to familiarise any person with the geography, history, culture or architecture of Gibraltar for profit or reward, and the arrangements to be entered into for the booking of such journeys;
- (s) the keeping of records by licence holders;
- (t) the maximum hours of work and the minimum periods of rest of persons employed as drivers;
- (u) for the purpose of implementing in Gibraltar–
  - (i) international agreements and conventions;
  - (ii) European Communities legislation,
- (v) the use of horse-drawn vehicles, their construction and equipment and the conditions under which they may be used;
- (w) the kind of lamps and reflectors to be carried on horse-drawn vehicles, the carrying of such lamps and reflectors and how and when they shall be used;

- (x) the registration of horse-drawn vehicles and the size and shape and character of the registration number to be affixed to the vehicle and the manner in which it is to be displayed and rendered easily discernible by day or night;
- (y) the licensing of horse-drawn vehicles, the restricting of the number of horse drawn vehicles which may be licensed, and the control of vehicles so licensed;
- (z) controlling the plying for hire of horse drawn vehicles;
- (aa) the safe custody and redelivery or disposal of any property accidentally left in a horse drawn vehicle;
- (bb) the conduct of drivers of horse drawn vehicles; and
- (cc) the appliances to be fitted to horse-drawn vehicles for signalling their approach when used on roads and for securing that the drivers of such vehicles shall, by means of such appliances give sufficient warning of their approach; and
- (dd) the establishment of a complaints procedure with respect to persons licensed under this Act, and, in this context, to require persons to give evidence, to request expert advice to be given and to institute such sanctions as the Minister may deem reasonable,

and different regulations may be made as respects different classes or descriptions of vehicles and as respects the same class and description of vehicles in different circumstances.

(2) Regulations made under this section may provide for such offences and for such penalties as may reasonably be appropriate in the circumstances.

**Forgery, etc., of licences and certificates.**

70.(1) person who with intent to deceive—

- (a) forges within the meaning of the Criminal Offences Act or alters or uses or lends to or allows to be used by any other person a licence or certificate under this Act; or



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- (b) makes or has in his possession any document so closely resembling such licence or certificate as to be calculated to deceive,

is guilty of an offence and is liable –

- (i) on summary conviction to imprisonment for six months and to a fine at level 2 on the standard scale;
- (ii) on conviction on indictment to imprisonment for two years and to a fine at twice the amount at level 2 on the standard scale.

(2) A person who, for the purpose of obtaining the grant or variation of any licence or certificate to himself or any other person or for the purpose of preventing the grant or variation of any licence or certificate or for the purpose of procuring any condition or limitation in relation to a licence or certificate, knowingly makes any false statement is guilty of an offence and is liable on summary conviction to imprisonment for six months and to a fine at level 2 on the standard scale.

(3) Any police officer or transport inspector who has reasonable cause to believe that any licence or certificate produced to him by the driver of a vehicle is a document in relation to which an offence under this section has been committed, may seize and retain the document until the matter has been investigated.

#### **Duty to give information.**

71. Where the driver of a vehicle is alleged to be guilty of an offence under this Act or of any offence involving dishonesty towards a passenger the owner of the vehicle shall, on demand by a police officer, give such information as he can as to the identity of the driver and any other person shall, on such demand, give any information which it is in his power to give and may lead to the identification of the driver and if the owner or such other person fails to do so, he is guilty of an offence.

#### **General Penalty.**

72. (1) A person convicted of an offence under this Act for which no special penalty is provided is liable on summary conviction in the case of the first offence to a fine at level 1 on the standard scale and in the case of a second or subsequent conviction to a fine at twice the amount of level 1 on the standard scale or to imprisonment for three months.

(2) Without prejudice to section 66(1) and (2) where a body corporate is guilty of an offence under this section and that offence is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in such capacity he, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

(3) Without prejudice to section 66(3), a fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(4) Without prejudice to section 66(4), where an offence committed by a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

#### **Avoidance of contracts.**

73. Any contract for the conveyance of a passenger in a vehicle shall, so far as it purports to regulate or restrict the liability of any person in respect of any claim which may be made against that person in respect of the death of or bodily injury to the passenger while being carried on or entering or alighting from the vehicle or which purports to impose any conditions with respect to the enforcement of any such liability, be void.

#### **Saving of rights.**

74. Nothing in this Act shall affect the right of the Minister, the Government, or any person to recover compensation from the owner or driver of any vehicle for any injury, damage or loss which may be sustained by the Minister, the Government or by such person by reason of the use of such vehicle.

#### **Nuisances.**

75. Nothing in this Act shall authorise any person to use on any road any vehicle so constructed or used as to cause a public nuisance or shall affect the civil liability of the driver or owner so using such a vehicle.

#### **Repeals and consequential amendments.**

76.(1) The following provisions of the Traffic Act are repealed—

- (a) sections 46A to 46F;

- (b) sections 48 and 50;
  - (c) sections 58, and 60 to 73 M;
  - (d) sections 76A to 82; and
  - (e) Part IVA.
- (2) The following provisions of the Traffic Act are amended—
- (a) section 2 shall be amended as follows—
    - (i) by deleting the following definitions—
      - “international operation”;
      - “road haulage operator licence”;
      - “road passenger transport operator licence”;
      - “road service licence”; and
      - “road transport operator”,
    - (ii) by deleting subsections (2B) and 2C);
  - (b) section 54 shall be amended by deleting paragraph (b);
  - (c) section 83 shall be amended as follows—
    - (i) in paragraph (a), by deleting the words “road service licences, road haulage operator licence, road passenger transport licences and”;
    - (ii) paragraphs (e), (k) and (v) shall be deleted; and
    - (iii) by deleting paragraph (I);
  - (d) the Schedules to the Traffic Act shall be amended as follows—
    - (i) the first Schedule appearing after section 104 shall be designated “Schedule 1”;
    - (ii) the Schedules appearing after Schedule 1 are hereby repealed.

(3) The following subsidiary instruments as amended from time to time, are hereby revoked—

- (a) the Road Service Licences (Taxis) Notice;
- (b) the following provisions of the Traffic (Licensing and Registration) Regulations—
  - (i) Part IV (Horse drawn vehicles licences and permits),
  - (ii) regulations 36, 37, 38, 39, 40, 41, 42, 43, 44;
- (c) the following provisions of the Vehicles (Construction, Equipment and Maintenance) Regulations—
  - (i) regulations 35 to 54,
  - (ii) regulations 56 to 60;
- (d) Regulations 34 to 36 of the Control of Traffic Regulations;
- (e) the Public Service Vehicles Regulations;
- (f) Paragraphs 5, 6, 7 and 16 of the Traffic (Parking and Waiting) Order;
- (g) the Traffic (Road Service Licences for Private Hiring Cars) Notice 1988;
- (h) the Traffic (Tour Guides) Regulations 1989; and
- (j) the Licensing (Tour Guide) Rules 1989.

**Transitional provisions.**

77. Nothing in this Act shall operate, or be capable of operating, in relation to things done or omitted to be done, or events occurring or not occurring, prior to the commencement of this Act (including, in particular, but without prejudice to the generality of the foregoing, past acts of compliance with any enactment, failures of compliance, contraventions, offences and convictions of offences), and, to the extent that this section applies, the provisions of the Traffic Act shall be deemed to apply as if this Act had not been enacted.

**SCHEDULE 1**

Sections 25, 28 and 43

**SUPPLEMENTARY PROVISIONS AS TO QUALIFICATIONS FOR  
OPERATOR LICENCES****Interpretation.**

1.(1) In this Schedule, unless the context shall otherwise require—

“application for a licence” means an application for an operator licence:  
and “application” when used otherwise than as part of that  
expressions means—

- (a) an application for a licence, or
- (b) an application for the renewal of a licence, or
- (c) an application for amendment to a licence;

“company”, “holding company” and “subsidiary” shall be construed as  
provided in the Companies Act;

“disc” means a disc issued in accordance with paragraph 21(1) and (2) or  
36 (2) below;

“holder” in relation to a licence means the person to whom the licence  
was granted:

“international transport operation” has the same meaning as in the 1974  
Council Directive, and the expression “national transport  
operation” shall be construed accordingly;

“keeper” in relation to a vehicle is the person in whose name the vehicle  
is registered;

“licence” means an operator licence;

“maintenance” in relation to a vehicle includes inspection. repair and  
fuelling;

“relevant conviction” means any conviction in respect of an offence  
which is a serious offence as defined in sub-paragraph (3)(a) and  
(b) of paragraph 9 below or a road transport offence as defined in  
sub-paragraph (3)(c) of that paragraph;

“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;

“the 1974 Council Directive” means Council Directive (EEC) 74/561 on admission to the occupation of road haulage operator in national and international transport operations as amended by Council Directives 80/1178/EEC, 85/578/EEC and 89/438/EEC;

“the 1977 Council Directive” means Council Directive (EEC) 77/796 aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intending to encourage these operators effectively to exercise their right to freedom of establishment as amended by Council Directives 80/1180/EEC, 85/579/EEC and 89/438/EEC;

(2) For the purpose of this Schedule, a person who is an applicant for, or a holder of, a licence, or who is a transport manager, shall be regarded as being engaged in a road transport undertaking if the person in question is—

- (a) the holder or, if an individual, one of the joint holders, of a licence, or
- (b) the subsidiary of the holder of a licence, being a subsidiary to which goods or passenger vehicles used under the licence belong or in whose possession they are, or
- (c) if an individual, in the employment of a person who carries on a road transport undertaking, and which gives the individual responsibility for the operation of goods or passenger vehicles used under a licence.

(3) For the purposes of this Schedule, the driver of a vehicle, if it belongs to him or is in his possession under an agreement for hire, hire purchase or loan, and in any other case the person whose servant or agent the driver is, shall be regarded as the person using the vehicle and references to using the vehicle shall be construed accordingly.

#### **Classification of operator licences.**

2.(1) Licences may authorise vehicles to be used -

- (a) on both international and national transport operations. or

- (b) on national transport operations only.

(2) A statement shall appear on the face of each licence indicating whether it covers both international and national transport operations or national transport operations only.

**Manner of application and manner of objections and representations.**

3.(1) Every application shall—

- (a) be made on a form supplied by the Commission and contain the information required by that form;
- (b) be signed—
  - (i) if made by an individual person, by that individual,
  - (ii) if made by a body corporate, by an individual person authorised for the purpose by the body or under its common seal, and
  - (iii) if made by persons in partnership, by one of the partners with the authority of the others;
- (c) if made for the grant of a licence, state whether the licence is to cover—
  - (i) both national transport operations operations and international operations, or
  - (ii) national transport operations operations only.

(2) The production of evidence for the purposes of sections 25 to 43 and this Schedule shall be subject to the provisions of Council Directive 77/796 where the applicant or a transport manager is a national of another member State to which that Directive applies.

(3) The manner in which an objection to, or a representation about, an application shall be made is that it shall—

- (a) be written;
- (b) be signed—
  - (i) if made by an individual, by that person;

- (ii) if made by any other body or group of persons, by one or more individual persons authorised for that purpose by the body or group;
- (iii) if made by persons in partnership, by all of the partners or by one of them with the authority of the others;

or, in any of the above cases. by a solicitor acting on behalf of (as the case may be) the person, body or group; and

- (c) state the grounds on which it is made.

(4) A copy of every objection or representation shall be sent by the objector, or the person making the representation, to the applicant at the same time as it is sent to the Commission.

#### **Time of application.**

4.(1) Every application shall be sent to the Commission so as to reach it not less than eight weeks before the time at which the applicant desires the licence, renewal or amendment applied for to take effect.

(2) An application shall be deemed to be made on the date on which it is received by the Commission.

#### **Dispensations as to applications.**

5. The Commission may consider applications notwithstanding that the requirement specified in paragraph 4(1) has not been complied with.

#### **Restrictions on applications.**

6.(1) No person shall make an application for a licence to the Commission while another application for a licence by him to the Commission has not been disposed of.

(2) No person shall include in any application any vehicle—

(a) which is specified in—

- (i) an existing licence, unless the application is for a licence to replace the licence in which the vehicle is specified, or is for the purpose of having the vehicle deleted from one licence and added to another;



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- (ii) another application which is still under consideration by the Commission, unless the applications are for the purpose of having the vehicle deleted from one licence and added to another; or
  - (iii) a licence which was issued to him, but which has been suspended under section 29;
- (b) which has ceased to be an authorised vehicle under a licence which was issued to him, but which is the subject of conditions under the Act.

### **Inspections of applications.**

7.(1) The Commission shall, until an application has been determined, make available for inspection—

- (a) to any person authorised to make the inspection by the Licensing Authority, the Commissioner of Police or any other public body, such part of the application (or the whole of it) as any such person in writing requests to see; and
- (b) to any person who is, by virtue of section 27(4) entitled to make representations in respect of the application, or a person authorised by such a person to make the inspection on his behalf, such part of the application as is, in the opinion of the Commission, relevant to the representation.

(2) The Commission shall, during the currency of the licence, make a copy of it available for inspection by any person who appears to the Commission to have reasonable grounds for making such an inspection.

(3) The Commission shall satisfy its obligation under sub-paragraph (1) by—

- (a) making the application or, as the case may be, part of it, available for inspection at its offices, or
- (b) on prior receipt of its expenses in that behalf, by posting a copy of the application or, as the case may be, part of it, to the address given for that purpose by the person wanting to make the inspection.

(4) The Commission shall satisfy its obligation under sub-paragraph (2) by—

- (a) making a copy of the licence or, as the case may require, part of it, available for inspection at its offices, or
- (b) on prior receipt of its expenses in that behalf, by posting a copy of the licence or, as the case may require, part of it, to the address given for that purpose by the person requesting to make the inspection.

**Qualifications of applicants.**

8.(1) The provisions of paragraphs 9, 10 and 11 apply for the purpose of supplementing the provisions of section 28(1)(c) in respect of an application for a licence.

(2) Where particulars of a transport manager are, in accordance with section 27 included in an application, the applicant shall forthwith notify the Commission if there occurs, in the interval between the making of the application and the date on which it is disposed of, any event affecting any information given pursuant to that section and, for these purposes, an application shall be taken to be disposed of on the date on which the applicant receives notice of the decision of the Commission.

**Qualifications for operator licence– good repute.**

9.(1) In determining whether an individual is of good repute, the Commission shall have regard to any matter, and in particular to–

- (a) relevant convictions of the individual and his employees and agents; and
- (b) such other information as the Commission may have as to his previous conduct appearing to relate to his fitness to hold a licence.

(2) In determining whether a company is of good repute, the Commission shall have regard to all the material evidence and in particular to–

- (a) relevant convictions of the company, its officers, employees and agents; and
- (b) such other information as the Commission may have as to previous conduct of–
  - (i) the company's officers, employees and agents appearing to relate to the company's fitness to hold a licence; and

- (ii) each of the company's directors, in whatever capacity, appearing to relate to the company's fitness to hold a licence.

(3) The Commission shall determine that an individual is not of good repute if he has been convicted—

- (a) of a serious offence;
- (b) of an offence under the Act which has resulted in the exercise by the Commission of its powers under section 29 to suspend or revoke a licence;
- (c) on two or more occasions of road transport offences that is to say—
  - (i) an offence under the Act relating to drivers' driving and rest periods, the weight and dimension of commercial vehicles, road safety, vehicle safety or falsification of documents;
  - (ii) an offence under the Employment and Training Act relating to the employment of persons in a business in respect of which a licence is required;
  - (iii) any corresponding offence under the law of a country or territory outside Gibraltar:

Provided that account shall only be taken of offences falling within (c) in respect of which the person was convicted in the seven years preceding the date of application.

- (4) For the purposes of sub-paragraph (3)(a) a serious offence is—
- (a) an offence under the law of Gibraltar for which a sentence of imprisonment for a term exceeding three months or a fine exceeding level 4 on the standard scale was imposed; and
  - (b) any corresponding offence under the law of a country or territory outside Gibraltar for which a corresponding punishment was imposed.

(5) In sub-paragraph (4)(a) “a sentence of imprisonment” includes any form of custodial sentence or order other than one under the enactments relating to mental health.

(6) Sub-paragraph (3) is without prejudice to the power of the Commission to determine that an individual is not of good repute for reasons other than convictions of the kind there mentioned.

(7) In this paragraph references to an individual include references to a transport manager as well as to an individual who is an applicant for, or the holder of, a licence.

**Qualifications for operator licences– appropriate financial standing.**

10.(1) Being of appropriate financial standing in relation to an applicant for, or holder of, a licence consists in having available sufficient financial resources to ensure the establishment and proper administration of the road transport undertaking carried on, or proposed to be carried on, under the licence.

(2) An applicant for, or holder of, a licence authorising the use of vehicles for international transport operations shall not be considered to be of appropriate financial standing unless he has available capital and reserves of an amount equal to at least -

- (a) 3,000 European Currency Units multiplied by the number of vehicles which are to be or are used under the licence; or
- (b) in the case of road haulage operator licences, 150 European Currency Units multiplied by the number of tonnes of the aggregate of the maximum authorised weight of such vehicles; or
- (c) in the case of road passenger transport operator licences, 150 European Currency Units multiplied by the number of passenger seats in that number of vehicles,

whichever is the less.

(3) In assessing the financial resources available to an applicant for or a holder of a licence, the Commission shall have regard to–

- (a) the annual accounts, if any, of the applicant or the holder;
- (b) the extent that they are available for the road transport undertaking, in respect of which the application is made or the licence is held–
  - (i) funds available to the applicant or the holder, including moneys in bank accounts, overdraft and loan facilities;

- (ii) any assets of the applicant or holder, including property, and the extent to which such assets are available by way of security;
- (c) the costs to the applicant, or the holder of the road transport undertaking in respect of which the application is made or the licence is held, including, but not limited to—
  - (i) the purchase cost of or initial payment in respect of the vehicles the applicant proposes to operate in the undertaking, and in respect of which the licence is to be issued or is issued;
  - (ii) the cost of purchase or rent in respect of premises, plant and equipment used in the operation of the undertaking;
- (d) the amount and cost of working capital adequate in respect of the undertaking.

(4) The applicant or holder shall provide such evidence as the Commission may require for the purpose of establishing that the provisions of sub-paragraph (3) are met, including, if so required, guarantees by a bank or other similar institution.

(5) The Commission may, in exercise of its power under section 5, summon to attend, or to produce any document or to give evidence, any person who, in the view of the Commission, has in his possession information or documents relevant to determining the financial resources available to an applicant, or to a holder of a licence for the purposes of setting up and operating the undertaking in respect of which the application has been made, or the licence is held.

(6) Where the holder of a licence varies the vehicles authorised for use in the undertaking and specified in the licence, the amount of financial resources required to satisfy sub-paragraph (3) shall be similarly varied, and the Commission shall have regard to the amount so varied.

#### **Qualification of applicants— Professional competence.**

11.(1) References in this Schedule and in the Act to professional competence are to the professional competence of an individual.

(2) A company satisfies a requirement as to professional competence if, and so long as, in respect of its road transport undertaking, it has a transport manager, or managers, and such number of them as the Commission may

require, who, or if more than one each of whom, is of good repute and professionally competent.

(3) Where an individual is not himself professionally competent, the requirement as to professional competence shall be regarded as satisfied in relation to him if, and so long as, he has a transport manager of his road transport undertaking who is of good repute and professionally competent.

(4) Where the holder of a licence relies on a single transport manager to satisfy the requirement as to professional competence and that manager—

- (a) dies or ceases by reason of physical disability or mental disorder to be capable of discharging his duties as transport manager;
- (b) ceases to work for the business; or
- (c) ceases to be of good repute,

the holder shall, nevertheless, not be treated as failing to satisfy that requirement until the expiry of such period (not exceeding 18 months) as, in the opinion of the Commission, is reasonably required for the appointment of a new transport manager.

(5) Where the holder of a licence is a company with two or more transport managers, and any of them ceases to be of good repute, the company shall, nevertheless, not be treated as failing to satisfy the requirement as to professional competence until the expiry of such period as, in the opinion of the Commission, is reasonably required for his removal or the appointment of a transport manager in his place.

(6) An individual shall be regarded as professionally competent for the purposes of this Schedule and of the Act if, and only if—

- (a) he has demonstrated possession of the requisite skills by passing a written examination, which may take the form of a multiple-choice examination, organised by an approved body and he is the holder of a certificate to that effect issued by the approved body; or
- (b) he is the holder of any other certificate of competence, diploma or other qualifications recognised for the purposes of this sub-paragraph by the Commission.

(7) In sub-paragraph (6) “approved body” means -

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- (a) a body approved by the Government for the purposes of that sub-paragraph;
- (b) a body or authority designated by the United Kingdom or another member State for the purposes of Article 3.4 of the 1974 Council Directive; or
- (c) a body or authority designated by another member State for the purposes of Article 2(4) of Council Directive (EEC) 74/562 of 12th November 1974 on admission to the occupation of road passenger transport operations as amended by Council Directive transport operator in national and international (EEC) 89/438 of 21st June 1989,

all as consolidated in Council Directive (EC) 96/26 of the 29th April 1996,

and “the requisite skills” means skills in the subjects listed in Part A of the Annex to the last of these Directives and, in the case of a licence to cover international operations, also skills in the subjects listed in Part B of the Annex to the said Directive.

**Death, bankruptcy etc. of applicant or licence holder.**

12.(1) In any event specified in sub-paragraph (3) an application for a licence shall fail save in a case specified in sub-paragraph (4).

(2) In any event specified in sub-paragraph (3) a licence shall cease to have effect save in a case specified in sub-paragraph (4).

(3) The events referred to in sub-paragraph (1) and (2) are—

- (a) where an application is made, or a licence is held, by an individual—
  - (i) he dies, or
  - (ii) a petition has been presented to the court under section 5 of the Bankruptcy Act for the making of a receiving order against him and no absolute order of discharge of such receiving order has been made under section 25 of that Act, or
  - (iii) he becomes a patient within the meaning of Part IV of the Mental Health Act 2016, or

- (iv) the requirements of professional competence cease to be satisfied;
- (b) where an application is made, or a licence is held, by a body corporate—
  - (i) the court has made a winding up order in respect of the company, or
  - (ii) the company has resolved by extraordinary resolution that it cannot by reason of its liabilities continue its business, or
  - (iii) a receiver has been appointed on behalf of the holders of any debentures of the company, secured by a floating charge, or
  - (iv) in the case of a Co-operative Society, a receiver has been appointed by the Registrar under section 39 (2) of the Co-operative Societies Act, or
  - (v) in the case of a society registered under the Friendly Societies Act, an application has been made to the Registrar under section 12 of that Act for investigation into the affairs of the society, or
  - (vi) the requirements of professional competence cease to be satisfied;
- (c) where an application is made, or a licence is held, by persons in partnership—
  - (i) the partnership is dissolved, or
  - (ii) one of such persons becomes a patient within the meaning of Part IV of the Mental Health Act 2016  
  
with the result that only one other of such persons who is not such a patient remains in the firm, or
  - (iii) one of such persons who alone manages the road transport business carried on by the partnership ceases to be a member of the partnership (either by death or otherwise) or becomes a patient within the meaning of Part IV of the Mental Health Act 2016, or



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- (iv) a petition has been presented to the court under section 5 of the Bankruptcy Act for the making of a receiving order against any partner and no absolute order of discharge of such receiving order has been made under section 25 of that Act, or
  - (v) the court has made a winding up order in respect of the company, or
  - (vi) the requirements of professional competence cease to be satisfied.
- (4) The cases referred to in sub-paragraph (1) and (2) are—
- (a) where-
    - (i) within 2 months of the event in question, notice that the person to whom the licence was issued has ceased to be the user of the vehicles which are authorised vehicles under the licence, and the reason for such cessation, and of the name of the persons by whom the trade or business is being carried on, is sent to the Commission, and
    - (ii) within four months of the sending of such notice, an application for a new licence is made by that person,

the licence shall, subject to the provisions specified in sub-paragraphs (5) and (6), continue in force for the benefit of that person who shall so long as the licence so continues be deemed to be the holder thereof;
  - (b) where the requirement of professional competence ceases to be satisfied the Commission shall not be required to revoke the licence during such period, not exceeding one year from the date of such cessation, or during such further period, not exceeding six months from the end of that first period as the Commission may determine and this provision applies to a successor mentioned in (a) as well as to the person to whom the licence was granted.
- (5) The provisions of sub paragraph (4)(a) do not apply so as to continue in force a licence beyond the date on which it would have expired but for the occurrence of the relevant event or after the application for the new licence is disposed of.

(6) Where the Commission delays the revocation of the licence, the holder or the person mentioned in sub-paragraph (4)(a) shall take such steps of a temporary or interim nature during the period of the delay as the Commission may specify to ensure the proper conduct of the operation.

(7) Where the licence is in respect of national transport operations and the reason for the revocation is a failure to comply with section 28(c)(iii) the Commission may exercise a discretion not to revoke the licence provided that the business is operated by an individual with at least three years experience in the day-to-day management of that business.

(8) An applicant for a licence and a holder of a licence shall, if he is so required by the Commission, give to the Commission—

- (a) particulars of any activities carried on at any time before the making of the applications or the granting of the licence by—
  - (i) the applicant or the holder, as the case may be;
  - (ii) any company of which the applicant or the holder, as the case may be, is or has been a director;
  - (iii) where the applicant or the holder, as the case may be, is a company, any person who is a director of the company;
  - (iv) where the applicant proposes to operate authorised vehicles, or the holder operates authorised vehicles, as the case may be, in partnership with any other persons, any of those other persons;
  - (v) any company of which any person as is mentioned in (iii) or (iv) is or has been a director;
  - (vi) any company of which the applicant or the holder, as the case may be, is a subsidiary;
- (b) particulars of any convictions during the five years preceding the making of the application or the granting of the licence—
  - (i) of the applicant or the holder, as the case may be; and
  - (ii) of any other person as to whose activities particulars may be required to be given under (a);
- (c) information from which the Commission may satisfy itself that—

- (i) there will be or are, as the case may be, satisfactory arrangements for securing that sections 36 to 41 will be or are complied with in the case of authorised vehicles and for securing that those vehicles are not overloaded;
- (ii) there will be or are, as the case may be, satisfactory facilities and arrangements for maintaining the authorised vehicles in a fit and serviceable condition and that the place which is to be the operating centre for those vehicles is suitable for the purpose;
- (iii) the provision of such facilities and arrangements as are mentioned in (ii) and of a suitable operating centre will not be prejudiced by reason of the applicant or the holder, as the case may be, having insufficient financial resources for that purpose.

#### **Partnerships.**

13.(1) The provisions of sub-paragraph (1) of paragraph 8 shall apply in any case where an applicant for a licence is persons in partnership so that the Commission is required to satisfy itself that—

- (a) every one of such persons is of good repute,
- (b) the firm satisfies the requirement of appropriate financial standing, and
- (c) either—
  - (i) if one or more of those persons manage the road transport business carried on by the firm, he, or if more than one each of them, is professionally competent, or
  - (ii) the firm employs a transport manager or transport managers who, or if more than one each of whom, is of good repute and professionally competent.

(2) The provisions of sub-paragraph (1) of paragraph 18 shall apply in any case where the holder of a licence is persons in partnership if—

- (a) any one or more of those persons cease to satisfy the requirements to be of good repute, or

- (b) the firm ceases, to satisfy the requirements to be of appropriate financial standing, or
- (c) when the requirement as to professional competence is satisfied by one or more of those persons who manage the road transport business carried on by the firm, he, or if more than one each of them, ceases to do so, or when the firm employs a transport manager or transport managers such manager, or if, more than one any of them, ceases to be of good repute, or when the firm relies upon the employment of a single transport manager to satisfy the requirement as to professional competence, that transport manager ceases to be employed by the firm.

(3) The provision in paragraph 10 as regards determining whether the applicant for, or the holder of, a licence is of appropriate financial standing shall apply, in the case of persons in partnership, to the financial standing of the firm.

(4) The provision in paragraph 11(2) that a company satisfies the requirement as to professional competence if, and so long as, it has a transport manager or transport managers of its road transport business who, or if more than one each of whom, is of good repute and professionally competent shall apply in the case of persons in partnership so that the firm satisfies the said requirement if, and so long as, each of such persons is of good repute, and either–

- (a) if one or more of those persons manage the road transport business carried on by the partnership, he, or if more than one each of them, is professionally competent, or
- (b) the firm employs a transport manager or transport managers of its road transport business who, or if more than one each of whom, is of good repute and professionally competent.

(5) In a case where one or more persons in partnership manage the road transport business carried on by the firm or the firm employs a transport manager or transport managers the provision in paragraph 8 shall apply–

- (a) as regards one such person or a single transport manager employed by the firm as it applies as regards a single transport manager employed by a company,
- (b) as regards two or more such persons or two or more transport managers employed by the firm as it applies as regards two or more transport managers employed by a company.

(6) In this paragraph "firm" has the same meaning as in section 6 of the Partnership Act.

**Conditions to be attached to operator licences.**

14.(1) Subject to sub-paragraph (3), the Commission, when granting licence, shall attach to the licence—

- (a) a condition requiring the holder of the licence to inform the Commission of any event which could affect the satisfaction by the holder of the requirements of good repute, appropriate financial standing and professional competence, and to do so within 28 days of the event, and
- (b) a condition requiring the holder of the licence to inform the Commission of any event which could affect satisfaction of the requirements of good repute and professional competence by any transport manager employed by that holder and relied on by him to satisfy the requirement of professional competence, and to do so within 28 days of the event coming to that holder's knowledge.

(2) A condition attached by the Commission to a licence under subparagraph (1) shall be regarded as having been attached under section 26.

(3) A condition attached by the Commission to a licence under subparagraph (1), in a case where the holder of the licence is a company, shall not require the holder to inform the Commission of any change in the persons holding shares of the company unless the change is such as to cause a change in the control of the company.

(4) For the purposes of sub-paragraph (3) a change in the control of a company occurs when the controlling interest (as defined in subparagraph (5)) passes from one person to another person or from one group of persons to a wholly or substantially different group of persons.

(5) A person holds a controlling interest in a company for the purposes of sub-paragraph (4) if he is the beneficial owner of more than half its equity share capital as defined in the Companies Act.

**Conditions which may be attached to an operator licence.**

15. The conditions which may be attached under the Act to a licence are conditions regulating—

- (a) the number, type and size of authorised vehicles which may at any one time be at any operating centre of the holder of the licence for the purposes of maintenance and parking;
- (b) the parking arrangements to be provided for authorised vehicles at or in the vicinity of every such operating centre;
- (c) the times between which there may be carried out at every such operating centre any maintenance or movement of any authorised vehicle and the times at which any equipment may be used for any such maintenance or improvement; and
- (d) the means of ingress to and egress from every such operating centre for any authorised vehicle.

**Considerations relevant to suitability of site as an operating centre.**

16.(1) The considerations which the Commission shall take into account in considering the suitability of a site as an operating centre or the conditions relating to the operating centre or its manner of use to be imposed on a licence are—

- (a) the nature and the use of any other land in the vicinity of the land proposed to be used or used as an operating centre, and, in the case of an application for a licence, any effect which the use of the land as an operating centre, would be likely to have, or the use has on the environment of that vicinity;
- (b) in a case where the land proposed to be used as an operating centre is, or has previously been, used as an operating centre, the extent to which the grant of the application would result in any material change as regards that operating centre, or its use, which would adversely affect the environment of the vicinity of that land;
- (c) in the case of an application which, if granted, would result in land which has not previously been used as an operating centre being used as one, any information known to the Commission about any approved planning scheme, any application for outline planning permission, any such permission granted or any planning permit relating to the land or any other land in the vicinity of that land;
- (d) the number, type and size of authorised vehicles;

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- (e) in the case of an application for a licence, the proposed or likely arrangements for the parking of authorised vehicles or the arrangements for such parking;
- (f) in the case of an application for licence, the proposed nature and times of the use of the land proposed to be used for the purpose of an operating centre or the nature and times of the use of the land for the purpose of an operating centre;
- (g) in the case of an application for a licence, the nature and the times of the use of any equipment proposed or likely to be installed on the land proposed to be used as an operating centre for the purpose of the use of that land as an operating centre the nature and times of the use of any equipment installed on the land used as an operating centre for that purpose;
- (h) in the case of an application for a licence, the proposed means and frequency of vehicular ingress to, and egress from, the land proposed to be used as an operating centre or the means and frequency of such ingress to, and egress from, the land used as an operating centre.

(2) In this paragraph—

“approved planning scheme”, “outline planning permission” and “planning permit” have the meanings given to those expressions in the Town Planning Act as amended from time to time;

“authorised vehicles”, in relation to an application for a licence, includes any one or more vehicles which would be authorised vehicles if the application were granted or any one or more vehicles; and

“operating centre” in relation to an application for a licence, includes the place which would be the operating centre if the application were granted and includes part of an operating centre.

#### **Variation, review, renewal and amendment of operator licences.**

17.(1) The provisions of paragraphs 8 and 14 apply to the variation of a licence, to the review of a licence, to an application to renew a licence, to the amending of a licence and to the imposition of conditions as those provisions respectively apply to an application for a licence, the decision to grant such a licence and the imposition of conditions on the occasion of the grant of such a licence, and for the purposes of the said application the references in those paragraphs to the application or the applicant for, or the grant of, a licence shall be construed respectively as references to the

application or the applicant for such variation, review, renewal or amendment or to the making of such variation, review, renewal or amendment.

(2) If the holder of a licence which covers national transport operations applies for the licence to be amended so that it shall also cover international transport operations –

- (a) the application shall include in his application the particulars about professional competence on which he intends to rely, and
- (b) the Commission shall refuse to make the amendment applied for unless satisfied that the professional competence on which the applicant proposes to rely is sufficient for the purposes of international transport operations.

#### **Suspension and revocation of operator licences.**

18.(1) Subject to the provisions of paragraphs 12 and 30 and of sub-paragraph (2) the Commission shall suspend or revoke a licence if it appears to the Commission at any time that the holder no longer satisfies the requirement to be of good repute, the requirement to be of appropriate financial standing or the requirement as to professional competence, and the provisions of paragraphs 9, 10 and 11 shall apply for the purposes of this sub-paragraph as they apply for the purposes of paragraph 8.

(2) Before acting under sub-paragraph (1) the Commission shall give notice in writing to the holder of the licence that it is considering suspension or revocation of the licence, and shall state in the notice the grounds on which suspension or revocation is being considered and that written representations may be made by the holder of the licence to the Commission with respect thereto, so as to be received by the Commission within 21 days from the date of the notice, and the Commission shall consider all such representations duly made.

(3) A licence which has been suspended by the Commission shall during any time of suspension be of no effect.

(4) Where the Commission decides that a licence be revoked, the Commission may as part of that decision disqualify the person who was the holder thereof indefinitely or for such period as the Commission thinks fit from holding or obtaining a licence, and so long as the disqualification is in force–

- (a) no licence shall be granted to him and any such licence obtained by him shall be of no effect; and



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- (b) if he applies for or obtains such a licence he shall be liable on summary conviction to a fine at level 3 on the standard scale.

(5) Where the Commission under paragraph (4) disqualifies a person, the Commission may direct that if that person, at any time or during such period as the Commission may specify—

- (a) is a director of or holds a controlling interest in—
  - (i) a company which holds a licence of the kind to which the disqualification applies; or
  - (ii) a company of which such a company is a subsidiary; or
- (b) operates any goods or passenger vehicles in respect of which a licence is required in partnership with a person who holds such a licence,

the licence of that company, or as the case may be, of that person shall be liable to variation, review, suspension, revocation or amendment.

(6) The powers conferred by paragraphs (4) and (5) in relation to the person who was the holder of the licence shall be exercisable also, where that person was a company, in relation to any director of the company, and, where that person operated the authorised vehicles in partnership with other persons, in relation to any of those other persons.

(7) Where the Commission suspends a licence or imposes conditions which have the effect of removing any vehicle from being an authorised vehicle under the licence—

- (a) in the case of a suspension, any vehicle specified in the licence may not be used under any other licence;
- (b) in the case of conditions removing any vehicle, the vehicle may not be used under any other licence and shall not be capable of being effectively specified in any other licence,

and a suspension or the imposition of conditions under this sub-paragraph shall cease to have effect on such date, not being more than six months after the suspension or imposition of conditions, as may be specified by the Commission or, if it is earlier, on the date on which the licence which was suspended or on which conditions were imposed ceases to be in force.

(8) The Commission may, where it is satisfied that it should do so, cancel a suspension or withdraw any conditions imposed on a licence under the provisions of this paragraph and shall do so where it is satisfied that the holder again satisfies the requirement to be of good repute, the requirement to be of appropriate financial standing or the requirement as to professional competence, and the provisions of paragraphs 9, 10 and 11 shall apply for the purposes of this sub-paragraph as they apply for the purposes of paragraph 8.

**Written notification of refusal.**

19. Where the Commission refuses an application for the grant of an operator licence, varies the conditions of such a licence, suspends or revokes such a licence, refuses to renew such a licence or amends such a licence it shall specify in writing to the applicant or the holder of the licence, as the case may be, the reasons for the refusal, variation, suspension, revocation, refusal to renew or amendment, as the case may require, and shall do so at the time that notice of the decision of the Commission is given to the applicant or holder.

**Requirement for transport manager to be notified.**

20.(1) The Commission shall not make a finding that a transport manager is not of good repute or is not professionally competent unless the Commission is satisfied that the transport manager has been served with a notice—

- (a) stating that the Commission has before it allegations concerned with whether or not he is of good repute or is professionally competent (as the case may be);
- (b) stating that he is entitled to make representations under this paragraph, within 28 days beginning with the date that the notice is served on him; and
- (c) setting out the nature of the allegations against him.

(2) Where a transport manager makes representations under this paragraph, the Commission shall consider the representations in determining whether the transport manager is of good repute and is professionally competent.

(3) A notice shall be deemed for the purposes of sub-paragraph (2) to have been served on a transport manager on the date that it would have been delivered in the ordinary course of post if it was sent by post addressed to

him at his last known address, notwithstanding that the notice was returned as undelivered or was for any other reason not received by him.

(4) The reference in this paragraph to a person being of good repute or professionally competent shall be construed in accordance with paragraphs 9 and 11 respectively.

## **Identification of vehicles.**

21.(1) The Commission shall, when any vehicle to be used under a licence is specified in the licence, issue to the holder of the licence a disc in respect of the vehicle.

(2) Those discs shall distinguish between a vehicle specified in a licence which covers both international and national transport operations and one specified in a licence which covers national transport operations only.

(3) The holder of a licence shall, during such time as any vehicle is specified in the licence and whether or not for the time being the vehicle is being used for the purpose for which a licence is required, cause a disc appropriate to the vehicle to be affixed to that vehicle in a waterproof container—

- (a) in the case of a vehicle fitted with a front windscreen, on the near side and near the lower edge of the windscreen with the obverse side facing forwards;
- (b) in the case of a vehicle not fitted with a front windscreen, in a conspicuous position on the front or near side of the vehicle.

(4) At all times while a disc is affixed to a vehicle in accordance with the requirements of sub-paragraph (3) the person for the time being in control of that vehicle shall keep that disc readily legible, and at no time shall any person except the Commission, or a person authorised to do so on its behalf, write on or make any other alteration to a disc.

## **Temporary addition of a vehicle.**

22. Where—

- (a) a vehicle specified in a licence (“the specified vehicle”) has been rendered unfit for service or withdrawn from service for overhaul or repair, and the holder of the licence informs the Commission of his desire to have a variation of the licence specifying, until the specified vehicle is rendered fit for service

again, a motor vehicle in his possession or to be hired without a driver (“the additional vehicle”), or

- (b) the specified vehicle has been rendered fit for service again, and the holder of the licence informs the Commission of his desire to have a variation of the licence whereby the additional vehicle will cease to be specified in the licence,

the provisions of paragraphs 3 and 4 shall not apply and the holder of the licence shall return to the Commission the disc for the specified vehicle, or the additional vehicle, as the case may be.

**Notification of change of address.**

23. If during the currency of a licence its holder changes his address for the service of notice as notified in his application or as subsequently notified under this paragraph he shall within 21 days from the date of such change notify such change to the Commission.

**Production of licence for examination.**

24.(1) The holder of a licence shall produce the licence for inspection by—

- (a) a police officer;
- (b) an officer of the Commission;
- (c) a person nominated under section 37 (1)(b);
- (d) a person appointed under section 10 of the Shop Hours Act;
- (e) a transport inspector,

on being required by such a person to do so, and the holder may do so at any operating centre covered by the licence or at his head or principal place of business, or may be required to do so at the office of the Commission or at a police station.

(2) The holder of a licence shall comply with any requirement mentioned in sub-paragraph (1) within 14 days of the day on which the requirement is made.

**Issue of copies of licences and discs.**

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25.(1) If a licence or disc has been lost, destroyed or defaced, the person to whom it was issued shall forthwith notify in writing the Commission.

(2) If–

- (a) the Commission is satisfied that a licence or disc has been lost, destroyed or defaced, and
- (b) in the case of a licence or disc which has been defaced it is surrendered to the Commission,

the Commission shall issue a copy (so marked) which shall have effect as the original licence or disc.

(3) Where a licence or disc has been lost and after a copy has been issued the lost licence or disc is found by or comes into the possession of the holder of the licence he shall forthwith return the original licence or disc to the Commission.

#### **Return of licences and discs.**

26.(1) If the holder of a licence ceases to use under the licence any vehicle specified in the licence he shall within 21 days notify the Commission and return to the Commission the licence for variation and the disc relating to the vehicle.

(2) If a licence is varied or amended its holder shall, when required by the Commission so to do, return to the Commission–

- (a) the licence, and
- (b) if the number of vehicles specified in the licence has been reduced, the disc relating to any vehicle no longer specified in the licence.

(3) If a licence is surrendered, suspended or revoked, or if the Commission has varied or amended the conditions to which a licence is subject, the holder of the licence shall on or before the date specified in a notice to that effect delivered to him personally or sent to him by the registered post service at the address shown in his application or last notified in accordance with paragraph 23 send or deliver to the Commission–

- (a) the licence, and

- (b) the disc relating to any vehicle which the Commission may specify

for cancellation, retention during the time of suspension, or alteration as the case may be.

**Expiry of licences.**

27. The dates for the expiry of operator licences are the last day of every month.

**Holding companies and subsidiaries.**

- 28.(1) A holding company may apply to the Commission—
- (a) if it does not already hold a licence for the grant of a licence, or
  - (b) if it already holds a licence and does not desire to replace such licence with a new licence, for an amendment under section 34 to its licence,

which would have the effect, if the application were granted, of including in the licence to be issued to, or already held by, the holding company, vehicles belonging to or in the possession of a subsidiary of that company specified in the application.

(2) An application by a holding company under sub-paragraph (1) shall, unless the subsidiary is not the holder of a licence, or the licence or amendment applied for by the holding company will not take effect until any licence held by the subsidiary has expired by effluxion of time, be accompanied by an application by the subsidiary for the amendment of the licence held by the subsidiary for the removal therefrom of all or some of the vehicles authorised to be used thereunder, being the vehicles to which the application of the holding company relates.

(3) Where a holding company, on an application under sub-paragraph (1) signifies to the Commission its desire that the provisions of this paragraph should have effect as respects a subsidiary of that company, then, in relation to the application and to any licence granted to the holding company, or held by the holding company and amended, on that application, and to the use of the vehicles authorised to be used under any such licence sections 25 to 34 and 42 and this Schedule shall have effect subject to the modifications specified in paragraph 29.

(4) The provisions of this paragraph shall cease to have effect as respects a holding company and its subsidiary—

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- (a) if the holding company gives notice to the Commission that it desires that this paragraph should, as from any date, cease to apply to the holding company and that subsidiary, as from that date; or
- (b) as from the date on which that subsidiary ceases to be a subsidiary of that holding company.

(5) Where the provisions of this paragraph cease to have effect as respects a holding company and its subsidiary by virtue of sub-paragraph 4(b) the company which was the holding company shall within 21 days of the event which caused the subsidiary to cease to be a subsidiary of that company notify the Commission, supply all material details of the event, and return to the Commission the licence and the disc relating to the vehicles authorised to be used thereunder, and in so far as the holding company fails to satisfy that requirement, the company which was the subsidiary company shall on being so directed by the Commission, within 7 days of that direction supply the details, or return the licence and the discs, as the case may require.

(6) In a case where the applicant for, or the holder, of a licence is a holding company and the goods vehicles used, or to be used, under the licence belong to, or are in the possession of, a subsidiary of that holding company, the provisions of this Schedule apply as if—

- (a) the road transport undertaking and any operating centre of the subsidiary were the road transport undertaking and an operating centre of the holding company,
- (b) for purposes of, or relating to, the reputation and financial standing of the holding company, the activities, relevant convictions and financial resources of the subsidiary were activities, convictions and resources of the holding company, and
- (c) in relation to a transport manager, his employment by the subsidiary were employment by the holding company.

#### **Modifications in relation to holding companies and subsidiaries.**

29.(1) Sections 25 to 30, and 32 to 34 and 42 and this Schedule shall have effect in relation to licences as if any reference (except in this paragraph) to a provision which is modified by this paragraph were a reference to that provision as so modified.

(2) Sections 25 to 30, and 32 to 34 and 42 and this Schedule have effect as if—

- (a) vehicles belonging to, or in the possession of, the subsidiary, belonged to, or were in possession of, the holding company;
- (b) where a vehicle is used in circumstances in which, but for the provisions of paragraph 28 the subsidiary would be deemed to be the user, the holding company were the user;
- (c) a trade or business carried on by the subsidiary were carried on by the holding company;
- (d) the subsidiary were an applicant for the grant or variation of the licence;
- (e) any operating centre of the subsidiary were an operating centre of the holding company;
- (f) any person who is a director of the subsidiary were a director of the holding company;
- (g) any person who is an employee of the subsidiary were an employee of the holding company.

(3) This Schedule shall have effect as if—

- (a) in paragraph 6 the reference to an operating centre of the applicant included a reference to an operating centre of the subsidiary;
- (b) in paragraph 24 the reference to the holder of the licence included a reference to the subsidiary.

**Direction as to “holder” of an operator licence.**

30.(1) In this paragraph, “actual holder” in relation to a licence, means the person to whom the licence was issued.

(2) This paragraph applies in the event—

- (a) of the death or bankruptcy of the actual holder of a licence,
- (b) in the case of a company, of the actual holder of a licence going into liquidation, or



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- (c) of the appointment of a receiver or manager of the trade or business of the actual holder of a licence.

(3) This paragraph also applies in the event of the actual holder of a licence becoming a patient within the meaning of Part IV of the Mental Health Act 2016.

(4) After the happening of any of the events mentioned in sub-paragraphs (2) and (3) the Commission may direct that a person carrying on the trade or business of the actual holder of the licence is to be treated for the purposes of sections 25 to 34, and 42 and this Schedule as if he were the holder thereof for such purpose and to such extent as is specified in the direction for a period not exceeding—

- (a) if it appears to the Commission that there are special circumstances, 18 months;
- (b) in any other cases, 12 months;

from the date of the happening of the event.

(5) The powers under sub-paragraph (4) shall be exercisable in relation to a licence whether or not the person carrying on the trade or business of the actual holder of the licence satisfies the requirement of professional competence.

(6) Where a person is treated as if he were the holder of the licence by virtue of a direction under this paragraph—

- (a) any vehicle belonging to the actual holder of the licence or in his possession under an agreement for hire purchase, hire or loan, shall for the purposes of sections 25 to 34 and this Schedule be treated as if it belonged to that person, or was in the possession of that person under an agreement for hire purchase, hire or loan as the case may be, and
- (b) nothing in paragraph 18 shall oblige the Commission to revoke the licence by reason only of that person not satisfying the requirement of professional competence.

(7) A licence shall not by virtue of this paragraph continue to have effect after it would otherwise have expired by effluxion of time or ceased to continue in force by virtue of section 30 (2) (whichever is the later).

(8) Where the actual holder of a licence (“the old licence”) makes an application for a new licence, nothing in this paragraph shall prevent the

application being treated as an application for a new licence in substitution for the old licence.

(9) Where a person who, by virtue of a direction given under this paragraph is treated as being the holder of a licence (“the old licence”), makes an application in his own name for a new licence in substitution for the old licence the application shall, unless the contrary intention appears from the direction, be treated as an application by the actual holder of the old licence.

### **Offences.**

31.(1) Any contravention of, or failure to comply with, a provision in paragraphs 21(3), 21(4), 23, 24, 25(1), 26(2) or 26(3) is hereby declared to be an offence and subject on summary conviction to a fine at level 2 on the standard scale.

(2) A person who uses a goods or passenger vehicle under a licence, which covers carrying goods or passengers for hire or reward on national transport operations only, for carrying goods or passengers for hire or reward on international transport operations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale

(3) The provisions of this paragraph do not apply in relation to offences committed before the date on which this Schedule comes into effect and subject to any transitional provisions in respect of the effect of this Schedule.

### **Classes of vehicle for which an operator licence is not required.**

32. The classes of vehicle specified under sub-section (4) of section 25 as those to which sub-section (1)(a) of that section does not apply are the classes mentioned in Part I of the Annex to this Schedule.

### **Temporary exemption.**

33. Notwithstanding section 25(1)(a), before the consultations referred to in Article 2 (2) of the 1974 Council Directive are completed the Commission may, for the purpose of enabling an emergency to be dealt with or otherwise enabling a special need to be met, by notice in writing grant a temporary exemption from the requirement for a licence for the use of a vehicle, or a vehicle of any class, for hire or reward on national transport operations.

### **Application of paragraph 33.**

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34. The exemption referred to in paragraph 33 above can only be granted in respect of a person engaged exclusively in such operations having only a minor impact on the transport market because of the nature of the goods carried or the short distance involved.

**Persons engaged in road passenger transport before the coming into effect of the Act.**

35. For the purposes of paragraphs 36 and 37 below, an individual or company was authorised to engage in the occupation of road passenger transport operator at any time if, and only if, at that time—

- (a) he was the holder, or one of the joint holders of a road service licence or an operator's licence under this Act; or
- (b) he was, under or by virtue of any provision in this Act deemed to be the holder or one of the joint holders of such a licence; or
- (c) he was so authorised under the law of another member State ;  
or
- (d) he was the transport manager of a person within paragraph (a), (b) or (c).

36.(1) An individual or company authorised to engage in the occupation of road passenger transport operator at any time before the coming into force of this Act shall be deemed until the contrary is proved to satisfy the requirements to be of good repute, appropriate financial standing and professional competence.

(2) An applicant for a licence to which this paragraph applies, or for the variation of such a licence, shall not be obliged to furnish the Commission in support of his application information relating to a requirement that is deemed to be satisfied by virtue of sub-paragraph (1) above, unless it appears to the Commission that there are grounds for thinking that the requirement is not satisfied.

37. For the purposes of this Act, an individual shall be regarded as professionally competent if he was authorised to engage in the occupation of road passenger transport before this Act is in force and was so authorised—

- (a) for a period of, or for periods amounting in the aggregate to, two years during the period 1st January 1975 to 31st December 1979; or

- (b) at any time in the period 1st January 1970 to 31st December 1974.

ANNEX

Paragraph 32

**CLASSES OF VEHICLES FOR WHICH LICENCE IS NOT  
REQUIRED**

**PART I**

1. Any tractor which is being used for one or more of the purposes specified in Part II of this Annex.
2. A dual-purpose vehicle and any trailer drawn by it.
3. A vehicle used on a road only in passing from private premises to other private premises in the immediate neighbourhood belonging (except in the case of a vehicle so used only in connection with excavation or demolition) to the same person, provided that the distance travelled on a road by any such vehicle does not exceed in the aggregate six miles in any one week.
4. A motor vehicle constructed or adapted primarily for the carriage of passengers and their effects, and any trailer drawn by it, while being so leased.
5. A vehicle which is being used for funerals.
6. A vehicle which is being used for police, fire brigade or ambulance purposes.
7. A vehicle which is being used for fire-fighting or rescue operations at mines.
8. A vehicle on which no permanent body has been constructed, which is being used only for carrying burden which either is carried solely for the purpose of test or trial, or consists of articles and equipment which will form part of the completed vehicle when the body is constructed.
9. A vehicle which is being used under a dealers licence.
10. A vehicle used by or under the control of Her Majesty's United Kingdom forces or the Gibraltar Regiment

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11. A trailer not constructed primarily for the carriage of goods but which is being used incidentally for that purpose in connection with the construction, maintenance or repair of roads.
12. A road roller and any trailer drawn by it.
13. A vehicle while being used under the direction of the Port Department or the police force for the carriage of life-boats, life-saving appliances or crew.
14. A vehicle fitted with a machine, appliance, apparatus or other contrivance which is a permanent or essentially permanent fixture, provided that the only goods carried on the vehicle are—
  - (a) required for use in connection with the machine, appliance, apparatus or contrivance or the running of the vehicle,
  - (b) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle in order to make fodder for animals, or
  - (c) mud or other matter swept up from the surface of a road by the use of the machine, appliance, apparatus or other contrivance.
15. A vehicle while being used by the Government—
  - (a) for the purposes of the enactments relating to weights and measures or the sale of food and drugs; or
  - (b) road cleansing or road watering; or
  - (c) the collection or disposal of refuse, night soil or the contents of cess-pools or septic tanks.
16. A steam-propelled vehicle.
17. A tower wagon or trailer drawn thereby, provided that the only goods carried on the trailer are goods required for use in connection with the work on which the tower wagon is ordinarily used as such.
18. A vehicle while being used for the carriage of goods within the area of the airfield.
19. An electrically propelled vehicle.
20. A showman's goods vehicle and any trailer drawn thereby.

21. A vehicle first used before 1 January 1977 which has an unladen weight not exceeding 1525 kilograms and for which the maximum gross weight, as shown on a plate affixed to the vehicle, exceeds 3.5 tonnes but does not exceed 3 1/2 tons.
22. A vehicle being held ready for use in an emergency by an undertaking for the supply of water, electricity, gas or telephone services.
23. A recovery vehicle.
24. A vehicle which is being used for snow clearing, or for the distribution of grit, salt or other materials on frosted, icebound or snow-covered roads or for going to or from the place where it is to be used for the said purposes or for any other purpose directly connected with those purposes.
25. A vehicle proceeding to or from the motor vehicle test centre provided that—
- (a) the only load being carried is a load required for the purposes of the examination,
  - (b) it is being carried at the request of the Chief Examiner, the Commission or a transport inspector.

## PART II

### PURPOSES REFERRED TO IN PARAGRAPH 1 OF PART I OF THIS ANNEX

1. Hauling—
- (a) threshing appliances;
  - (b) farming implements;
  - (c) a living van for the accommodation of persons employed to drive the tractor; or
  - (d) supplies of water or fuel required for the tractor.
2. Hauling articles for a farm required by the keeper, being either the occupier of the farm or a contractor employed to do agricultural work on the farm by the occupier of the farm.

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3. Hauling articles for a forestry estate required by the keeper where the keeper is the occupier of that estate or employed to do forestry work on the estate by the occupier or a contractor employed to do forestry work on the estate by the occupier.
4. Hauling within 25 kilometres of a farm or a forestry estate occupied by the keeper, agricultural or woodland produce of that farm or estate.
5. Hauling within 25 kilometres of a farm or a forestry estate occupied by the keeper, material to be spread on roads to deal with frost, ice or snow.
6. Hauling a snow plough or a similar contrivance for the purpose of clearing snow.
7. Hauling—
  - (a) soil for landscaping or similar works, or
  - (b) a mowing machine, where the keeper is a local authority.

## SCHEDULE 2

Sections 36 and 25

**COUNCIL REGULATION (EEC) NO 3820/85 OF 20 DECEMBER  
1985 ON THE HARMONISATION OF CERTAIN SOCIAL  
LEGISLATION RELATING TO ROAD TRANSPORT.**

The Council of the European Communities,

Having regard to the treaty establishing the European Economic Community, and in particular article 75 thereof;

Having regard to the Council Decision of 13 May 1965 on the harmonisation of certain provisions affecting competition in transport by rail, road and inland waterway (1), and in particular section iii thereof,

Having regard to the proposal from the Commission (2),

Having regard to the opinion of the European Parliament (3),

Having regard to the opinion of the economic and social committee (4),

Whereas in the field of road transport, community social legislation is set out in Regulation (EEC) no 543/69 (5) as last amended by Regulation (EEC) no 2829/77 (6);

Whereas that legislation aims at the harmonisation of conditions of competition between methods of inland transport, especially with regard to the road sector and the improvement of working conditions and road safety;

Whereas progress made in these fields must be safeguarded and extended; whereas, however, it is necessary to make the provisions of the said regulation more flexible without undermining their objectives;

Whereas, taking into account the amendments set out hereinafter, in order to clarify matters, all the relevant provisions should be brought together in a single text, and in consequence thereof, Regulation (EEC) no 543/69 should be repealed;

Whereas, however, the exemptions set out in article 4 for certain vehicles and the provisions of article 15 for certain passenger transport operations should be maintained in force for a certain time;

Whereas the provisions of this regulation dealing with working conditions cannot be allowed to prejudice the right of the two sides of industry to lay



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down, by collective bargaining or otherwise, provisions more favourable to workers;

Whereas, in order not only to promote social progress but also to improve road safety, each member state must retain the right to adopt certain appropriate measures;

Whereas in view of the fall in the number of drivers' mates and conductors it is no longer necessary to regulate the rest periods of crew members other than the driver;

Whereas the replacement of the flexible week by a fixed week would make it easier for drivers to organise their work and improve checking;

Whereas a system should be defined to apply to international road transport operations to or from a third country or between two countries in transit through the territory of a member state;

Whereas the provisions of the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR) of 1 July 1970 should apply to those transport operations;

Whereas in the case of vehicles registered in a state which is not a contracting party to AETR, those provisions will only apply to that part of the journey effected within the community;

Whereas, since the subject matter of the AETR agreement falls within the scope of this regulation, the power to negotiate and conclude the agreement lies with the community;

Whereas, however, the particular circumstances in which the AETR negotiations took place warrant, by way of exception, a procedure whereby the member states of the community individually deposit the instruments of ratification or accession in a concerted action but nonetheless act in the interest and on behalf of the Community;

Whereas, in order to ensure the supremacy of Community law in intra-Community transport, member states should enter a reservation when depositing their instruments of ratification or accession whereby international transport operations between member states are not to be regarded as international transport operations within the meaning of the agreement;

Whereas the possibilities provided for in the agreement itself for bilateral agreements between contracting parties derogating from the said agreement

as regards frontier zone and transit transport operations are a matter which in principle fall within the competence of the community;

Whereas, if an amendment to the internal community rules in the field in question necessitates a corresponding amendment to the agreement, the member states will act jointly to obtain such an amendment to the agreement in accordance with the procedure laid down therein;

Whereas certain transport operations May be exempted from the application of this Regulation;

Whereas it is desirable to amplify and clarify certain definitions and to bring up to date certain provisions, in particular concerning the exceptions for certain categories of vehicles;

Whereas it is desirable to lay down provisions concerning the minimum ages for drivers engaged in the carriage of goods or of passengers - bearing in mind here certain vocational training requirements - and concerning also the minimum age for drivers' mates and conductors;

Whereas for the purposes of vocational training, member states must be able to reduce the approved minimum age for drivers mates to 16 years;

Whereas, with regard to driving periods, it is desirable to set limits on continuous driving time and on daily driving time, but without prejudice to any national rules whereby drivers are prohibited from driving for longer than they can with complete safety;

Whereas a longer driving day, together with a shorter driving time over a two-week period is likely to facilitate the management of transport undertakings and to contribute to social progress;

Whereas the provisions on breaks in driving should be adjusted because of the longer daily driving time;

Whereas, with regard to rest periods, it is desirable to lay down the minimum duration of and other conditions governing the daily and weekly rest periods of crew members;

Whereas trips would be made easier if the driver were able to split up his daily rest period, in particular to avoid his having to take a meal and lodging in the same place;

Whereas it is beneficial to social progress and to road safety to lengthen weekly rest periods, while enabling these periods to be shortened, provided

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that the driver can compensate for parts of his rest period which have not been taken in a place of his choosing within a given time;

Whereas many road transport operations within the community involve transport by ferryboat or by rail for part of the journey;

Whereas provisions regarding daily rest periods and breaks which are appropriate to such operations should therefore be provided for in the rules;

Whereas, in the interests of road safety, the payment of bonuses for distance travelled and/or tonnage carried which might endanger road safety must be prohibited;

Whereas it is desirable to provide that exceptions May be made from this Regulation for certain national transport operations with special characteristics;

Whereas in the event of exceptions member states should ensure that the standard of social protection and road safety is not jeopardised;

Whereas it is justified, given the specific nature of passenger transport, to redefine the category of vehicles that the member states May exempt from application of the regulation in the field of national transport;

Whereas the member states should be entitled, with the commission's authorisation, to grant exceptions from the provisions of the Regulation in exceptional circumstances; whereas in urgent cases, it should be possible to grant these exceptions for a limited time without prior authorisation from the Commission;

Whereas in the case of drivers of vehicles used for regular passenger services, a copy of the timetable and an extract from the undertaking's duty roster May replace the recording equipment; whereas it would be useful for the application of this regulation and the prevention of abuse, to have delivered to drivers who so request extracts from their duty rosters;

Whereas it is desirable, in the interest of effective control, that regular international passenger services, with the exception of certain border services should no longer be exempt from the obligation to install and use recording equipment;

Whereas it is desirable to emphasise the importance of and the need for compliance with this regulation by employers and drivers;

Whereas the Commission should monitor the way the situation with member states develops and submit to the Council and to the European Parliament a report on the application of the rules every two years;

Whereas, in order that this regulation May be applied and that compliance therewith May be checked, it is appropriate for member states to give each other assistance, has adopted this Regulation:

## Section I

### Definitions

#### Article 1

In this Regulation -

1. “carriage by road” means any journey made on roads open to the public of a vehicle, whether laden or not, used for the carriage of passengers or goods;
2. “vehicles” means motor vehicles, tractors, trailers and semi-trailers, defined as follows:
  - (a) “motor vehicle”: any mechanically self-propelled vehicle circulating on the road, other than a vehicle running on rails, and normally used for carrying passengers or goods;
  - (b) “tractor”: any mechanically self-propelled vehicle circulating on the road, other than a vehicle running on rails, and specially designed to pull, push or move trailers, semi-trailers, implements or machines;
  - (c) “trailer”: any vehicle designed to be coupled to a motor vehicle or a tractor;
  - (d) “semi-trailer”: a trailer without a front axle coupled in such a way that a substantial part of its weight and of the weight of its load is borne by the tractor or motor vehicle;
3. “driver” means any person who drives the vehicle even for a short period, or who is carried in the vehicle in order to be available for driving if necessary;
4. “week” means the period between 00.00 hours on Monday and 24.00 hours on Sunday;

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5. “rest” means any uninterrupted period of at least one hour during which the driver May freely dispose of his time;
6. “permissible maximum weight” means the maximum authorised operating weight of the vehicle fully laden;
7. “regular passenger services” means national and inter-national services as defined in article 1 of Council Regulation no 117/66/EEC of 28 July 1966 on the introduction of common rules for the international carriage of passengers by coach and bus (1).

## Section II

### Scope

#### Article 2

1. This Regulation applies to carriage by road, as defined in article 1 (1), within the Community.
2. The European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) shall apply instead of the present rules to international road transport operations:
  - to and/or from third countries which are contracting parties to the Agreement, or in transit through such countries, for the whole of the journey where such operations are carried out by vehicles registered in a member state or in one of the said third countries;
  - to and/or from a third country which is not a contracting party to the Agreement in the case of any journey made within the community where such operations are carried out by vehicles registered in one of those countries.

#### Article 3

The Community shall enter into any negotiations with third countries which May prove necessary for the purpose of implementing this Regulation.

#### Article 4

This Regulation shall not apply to carriage by:

1. vehicles used for the carriage of goods where the maximum permissible weight of the vehicle, including any trailer or semi-trailer, does not exceed 3,5 tonnes;

2. vehicles used for the carriage of passengers which, by virtue of their construction and equipment, are suitable for carrying not more than nine persons, including the driver, and are intended for that purpose;
3. vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres;
4. vehicles with a maximum authorised speed not exceeding 30 kilometres per hour;
5. vehicles used by or under the control of the armed services, civil defence, fire services, and forces responsible for maintaining public order;
6. vehicles used in connection with the sewerage, flood protection, water, gas and electricity services, highway maintenance and control, refuse collection and disposal, telegraph and telephone services, carriage of postal articles, radio and television broadcasting and the detection of radio or television transmitters or receivers;
7. vehicles used in emergencies or rescue operations;
8. specialised vehicles used for medical purposes;
9. vehicles transporting circus and fun-fair equipment;
10. specialised breakdown vehicles;
11. vehicles undergoing road tests for technical development, repair or maintenance purposes, and new or rebuilt vehicles which have not yet been put into service;
12. vehicles used for non-commercial carriage of goods for personal use;
13. vehicles used for milk collection from farms and the return to farms of milk containers or milk products intended for animal feed.

### Section III

#### Crew

##### Article 5

1. The minimum ages for drivers engaged in the carriage of goods shall be as follows:

- (a) for vehicles, including, where appropriate, trailers or semi-trailers, having a permissible maximum weight of not more than 7,5 tonnes, 18 years;
- (b) for other vehicles:
  - 21 years, or
  - 18 years provided that the person concerned holds a certificate of professional competence recognised by one of the member states confirming that he has completed a training course for drivers of vehicles intended for the carriage of goods by road, in conformity with community rules on the minimum level of training for road transport drivers.

2. Any driver engaged in the carriage of passengers shall have reached the age of 21 years.

Any driver engaged in the carriage of passengers on journeys beyond a 50 kilometre radius from the place where the vehicle is normally based must also fulfil one of the following conditions:

- (a) he must have worked for at least one year in the carriage of goods as a driver of vehicles with a permissible maximum weight exceeding 3,5 tonnes;
- (b) he must have worked for at least one year as a driver of vehicles used to provide passenger services on journeys within a 50 kilometre radius from the place where the vehicle is normally based, or other types of passenger services not subject to this regulation, provided the competent authority considers that he has by so doing acquired the necessary experience;
- (c) he must hold a certificate of professional competence recognised by one of the member states confirming that he has completed a training course for drivers of vehicles intended for

the carriage of passengers by road, in conformity with community rules on the minimum level of training for road transport drivers.

3. The minimum age for drivers' mates and conductors shall be 18 years.
4. A driver engaged in the carriage of passengers shall not be subject to the conditions laid down in paragraph 2, second subparagraph, (a), (b) and (c) if he has carried on that occupation for at least one year prior to 1 October 1970.
5. In the case of internal transport operations carried out within a 50 kilometre radius of the place where the vehicle is based, including local administrative areas the centres of which are situated within that radius, member states May reduce the minimum age for drivers' mates to 16 years, on condition that this is for purposes of vocational training and subject to the limits imposed by their national law on employment matters.

#### Section IV

#### Driving Periods

##### Article 6

1. The driving period between any two daily rest periods or between a daily rest period and a weekly rest period, hereinafter called “daily driving period”, shall not exceed nine hours. it May be extended twice in any one week to 10 hours.

A driver must, after no more than six daily driving periods, take a weekly rest period as defined in article 8 (3).

The weekly rest period May be postponed until the end of the sixth day if the total driving time over the six days does not exceed the maximum corresponding to six daily driving periods.

In the case of the international carriage of passengers, other than on regular services, the terms “six” and “sixth” in the second and third subparagraphs shall be replaced by “twelve” and “twelfth” respectively.

Member states May extend the application of the previous subparagraph to national passenger services within their territory, other than regular services.

2. The total period of driving in any one fortnight shall not exceed 90 hours.



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## Section V

### Breaks and Rest Periods

#### Article 7

1. After four-and-a-half hours' driving, the driver shall observe a break of at least 45 minutes, unless he begins a rest period.
2. This break May be replaced by breaks of at least 15 minutes each distributed over the driving period or immediately after this period in such a way as to comply with the provisions of paragraph 1.
3. By way of exception from paragraph 1, in the case of national carriage of passengers on regular services member states May fix the minimum break at not less than 30 minutes after a driving period not exceeding four hours. Such exceptions May be granted only in cases where breaks in driving of over 30 minutes could hamper the flow of urban traffic and where it is not possible for drivers to take a 15-minute break within four-and-a-half hours of driving prior to a 30-minute break.
4. During these breaks, the driver May not carry out any other work.

For the purposes of this article, the waiting time and time not devoted to driving spent in a vehicle in motion, a ferry, or a train shall not be regarded as "other work".

5. The breaks observed under this article May not be regarded as daily rest periods.

#### Article 8

1. In each period of 24 hours, the driver shall have a daily rest period of at least 11 consecutive hours, which May be reduced to a minimum of nine consecutive hours not more than three times in any one week, on condition that an equivalent period of rest be granted as compensation before the end of the following week.

On days when the rest is not reduced in accordance with the first subparagraph, it May be taken in two or three separate periods during the 24-hour period, one of which must be of at least eight consecutive hours. In this case the minimum length of the rest shall be increased to 12 hours.

2. During each period of 30 hours when a vehicle is manned by at least two drivers, each driver shall have a rest period of not less than eight consecutive hours.

3. In the course of each week, one of the rest periods referred to in paragraphs 1 and 2 shall be extended, by way of weekly rest, to a total of 45 consecutive hours. This rest period May be reduced to a minimum of 36 consecutive hours if taken at the place where the vehicle is normally based or where the driver is based, or to a minimum of 24 consecutive hours if taken elsewhere. Each reduction shall be compensated by an equivalent rest taken en bloc before the end of the third week following the week in question.
4. A weekly rest period which begins in one week and continues into the following week May be attached to either of these weeks.
5. In the case of the carriage of passengers to which article 6 (1), fourth or fifth subparagraph, applies, the weekly rest period May be postponed until the week following that in respect of which the rest is due and added on to that second week's weekly rest.
6. Any rest taken as compensation for the reduction of the daily and/or weekly rest periods must be attached to another rest of at least eight hours and shall be granted, at the request of the person concerned, at the vehicle's parking place or driver's base.
7. The daily rest period May be taken in a vehicle, as long as it is fitted with a bunk and is stationary.

### **Article 9**

Notwithstanding article 8 (1) where a driver engaged in the carriage of goods or passengers accompanies a vehicle which is transported by ferryboat or train, the daily rest period may be interrupted not more than once, provided the following conditions are fulfilled:

- that part of the daily rest period spent on land must be able to be taken before or after the portion of the daily rest period taken on board the ferryboat or the train,
- the period between the two portions of the daily rest period must be as short as possible and May on no account exceed one hour before embarkation or after disembarkation, customs formalities being included in the embarkation or disembarkation operations,
- during both portions of the rest period the driver must be able to have access to a bunk or couchette.

The daily rest period, interrupted in this way, shall be increased by two hours.

## Section VI

### Prohibition of Certain Types of Payment

#### Article 10

Payments to wage-earning drivers, even in the form of bonuses or wage supplements, related to distances travelled and/or the amount of goods carried shall be prohibited, unless these payments are of such a kind as not to endanger road safety.

## Section VII

### Exceptions

#### Article 11

Each member May apply higher minima or lower maxima than those laid down in articles 5 to 8 inclusive. Nevertheless, the provisions of this Regulation shall remain applicable to drivers engaged in international transport operations on vehicles registered in another member state.

#### Article 12

Provided that road safety is not thereby jeopardised and to enable him to reach a suitable stopping place, the driver May depart from the provisions of this Regulation to the extent necessary to ensure the safety of persons, of the vehicle or of its load. The driver shall indicate the nature of and reason for his departure from those provisions on the record sheet of the recording equipment or in his duty roster.

#### Article 13

1. Each member state May grant exceptions on its own territories or, with the agreement of the states concerned, on the territory of another member state from any provision of this Regulation applicable to carriage by means of a vehicle belonging to one or more of the following categories:

- (a) vehicles used for carrying passengers, which by virtue of their construction and equipment are suitable for carrying not more than 17 persons, including the driver, and are intended for that purpose;

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- (b) vehicles used by public authorities to provide public services which are not in competition with professional road hauliers;
- (c) vehicles used by agricultural, horticultural, forestry or fishery undertakings for carrying goods within a 50 kilometre radius of the place where the vehicle is normally based, including local administrative areas the centres of which are situated within that radius;
- (d) vehicles used for carrying animal waste or carcasses which are not intended for human consumption;
- (e) vehicles used for carrying live animals from farms to the local markets and vice versa or from markets to the local slaughterhouses;
- (f) vehicles used as shops at local markets or for door-to-door selling, or used for mobile banking, exchange or saving transactions, for worship, for the lending of books, records or cassettes, for cultural events or exhibitions, and specially fitted for such uses;
- (g) vehicles carrying material or equipment for the driver's use in the course of his work within a 50 kilometre radius of the place where the vehicle is normally based, provided that driving the vehicle does not constitute the driver's main activity and that the exception does not seriously prejudice the objectives of the regulation. The member states may make such exceptions subject to individual authorisation;
- (h) vehicles operating exclusively on islands not exceeding 2 300 square kilometres in area which are not linked to the rest of the national territory by a bridge, ford or tunnel open for use by motor vehicles;
- (i) vehicles used for the carriage of goods and propelled by means of gas produced on the vehicle or of electricity or equipped with a governor in so far as such vehicles are regarded, under the legislation of the member state of registration, as equivalent to vehicles propelled by a petrol or diesel engine, the maximum permissible weight of which, including the weight of trailers or semi-trailers, does not exceed 3,5 tonnes;
- (j) vehicles used for driving instruction with a view to obtaining a driving licence;

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- (k) tractors used exclusively for agricultural and forestry work.

Member states shall inform the Commission of the exceptions granted under this paragraph.

2. Member states May, after authorisation by the Commission, grant exceptions from the application of the provisions of this regulation to transport operations carried out in exceptional circumstances, if such exceptions do not seriously jeopardise the objectives of the regulation. In urgent cases they May grant a temporary exception for a period not exceeding 30 days, which shall be notified immediately to the Commission. The Commission shall notify the other member states of any exception granted pursuant to this Regulation.

## Section VIII

### Control Procedures and Penalties

#### Article 14

1. In the case of -
  - regular national passenger services, and
  - regular international passenger services whose route terminals are located within a distance of 50 kilometres as the crow flies from a frontier between two member states and whose route length does not exceed 100 kilometres,

which are subject to this regulation, a service timetable and a duty roster shall be drawn up by the undertaking.

2. The duty roster shall show, in respect of each driver, the name, place where based and the schedule laid down in advance for various periods of driving, other work and availability.
3. The duty roster shall include all the particulars specified in paragraph 2 for a minimum period covering both the current week and the weeks immediately preceding and following that week.
4. The duty roster shall be signed by the head of the undertaking or by a person authorised to represent him.
5. Each driver assigned to a service referred to in paragraph 1 shall carry an extract from the duty roster and a copy of the service timetable.

6. The duty roster shall be kept by the undertaking for one year after expiry of the period covered. The undertaking shall give an extract from the roster to the drivers concerned who request it.

7. This article shall not apply to the drivers of vehicles fitted with recording equipment used in accordance with the provisions of Council Regulation (EEC) no 3821/85 of 20 December 1985 on recording equipment in road transport (1).

### **Article 15**

1. The transport undertaking shall organise drivers' work in such a way that drivers are able to comply with the relevant provisions of this Regulation and of Regulation (EEC) no 3821/85.

2. The undertaking shall make periodic checks to ensure that the provisions of these two regulations have been complied with. If breaches are found to have occurred, the undertaking shall take appropriate steps to prevent their repetition.

### **Article 16**

1. The Commission shall produce a report every two years on the implementation of this regulation by member states and developments in the fields in question. The Commission shall forward the report to the Council and the European Parliament within 13 months of expiry of the two-year period covered by the report.

2. To enable the Commission to draw up the report referred to in paragraph 1, member states shall communicate the necessary information to the Commission every two years, using a standard form. This information must reach the Commission not later than 30 September following the date on which the two-year period covered by the report expires.

3. The Commission shall draw up the standard form after consulting the member states.

### **Article 17**

1. Member states shall, in due time and after consulting the Commission adopt such laws, regulations or administrative provisions as May be necessary for the implementation of this Regulation. Such measures shall cover, inter alia, the organisation of, procedure for and means of control and the penalties to be imposed in case of breach.

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2. Member states shall assist each other in applying this Regulation and in checking compliance therewith.

3. Within the framework of this mutual assistance the competent authorities of the member states shall regularly send one another all available information concerning:

- breaches of this Regulation committed by non-residents and any penalties imposed for such breaches;
- penalties imposed by a member state on its residents for such breaches committed in other member states.

## Section IX

### Final Provisions

#### Article 18

1. Regulation (EEC) no 543/69 is hereby repealed. However:

- article 4 of the said regulation shall, until 31 December 1989, continue to apply to vehicles used by public authorities for public services which do not compete with commercial transport undertakings and to tractors used solely for local agricultural and forestry work. A member state may, nevertheless, provide that this Regulation will apply to such national transport operations within its territory from an earlier date.
- article 15 of the said Regulation shall, until 31 December 1989, continue to apply to vehicles and drivers employed in regular international passenger services in so far as the vehicles used for such services are not fitted with recording equipment used as prescribed in Regulation (EEC) no 3821/85.

2. References to the regulation repealed under paragraph 1 shall be construed as references to this regulation.

#### Article 19

This Regulation shall enter into force on 29 September 1986.

This Regulation shall be binding in its entirety and directly applicable in all member states.

Done at Brussels, 20 December 1985.

For the Council

the President

R. Krieps

- (1) OJ no 88, 24 5. 1965, p. 1500/65.
- (2) OJ no C 100, 12. 4. 1984, p. 3, and OJ no C 223, 3. 9. 1985, p. 5.
- (3) OJ no C 122, 20. 5. 1985, p. 168.
- (4) OJ no C 104, 25. 4. 1985, p. 4, and OJ no C 303, 25. 11. 1985, p. 29.
- (5) OJ no L 77, 29. 3. 1969, p. 49.
- (6) OJ no L 334, 24. 12. 1977, p. 1.
- (1) OJ no 147, 9. 8. 1966, p. 2688/66.
- (1) see page 8 of this Official Journal.



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**COUNCIL REGULATION (EEC) NO 3821/85 OF 20 DECEMBER 1985 ON RECORDING EQUIPMENT IN ROAD TRANSPORT THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the treaty establishing the European Economic Community, and in particular article 75 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the economic and social committee (3),

Whereas regulation (EEC) no 1463/70 (4) as last amended by Regulation (EEC) no 2828/77 (5) introduced recording equipment in road transport;

Whereas, taking into account the amendments set out hereinafter, in order to clarify matters, all the relevant provisions should be brought together in a single text, and in consequence thereof, regulation (EEC) no 1463/70 of the Council should be repealed;

Whereas, however, the exemptions set out in article 3 (1) for certain passenger services should be maintained in force for a certain time;

Whereas the use of recording equipment that may indicate the periods of time referred to in Regulation (EEC) no 3820/85 on the harmonisation of certain social legislation relating to road transport (6) is intended to ensure effective checking on that social legislation;

whereas the obligation to use such recording equipment can be imposed only for vehicles registered in member states; whereas furthermore certain of such vehicles may, without giving rise to difficulty, be excluded from the scope of this Regulation;

Whereas the member states should be entitled, with the commission's authorisation, to grant certain vehicles exemptions from the provisions of the Regulation in exceptional circumstances;

Whereas, in urgent cases, it should be possible to grant these exemptions for a limited time without prior authorisation from the Commission;

Whereas, in order to ensure effective checking, the equipment must be reliable in operation, easy to use and designed in such a way as to minimise any possibility of fraudulent use;

Whereas to this end recording equipment should in particular be capable of providing, on separate sheets for each driver and in a sufficiently precise and easily readable form, recorded details of the various periods of time;

Whereas automatic recording of other details of a vehicle's journey, such as speed and distance covered, will contribute significantly to road safety and will encourage sensible driving of the vehicle;

Whereas, consequently, it appears appropriate to provide for the equipment also to record those details;

Whereas it is necessary to set community construction and installation standards for recording equipment and to provide for an EEC approval procedure, in order to avoid throughout the territory of the member states any impediment to the registration of vehicles fitted with such recording equipment, to their entry into service or use, or to such equipment being used;

Whereas, in the event of differences of opinion between member states concerning cases of EEC type approval, the Commission should be empowered to take a decision on a dispute within six months if the states concerned have been unable to reach a settlement;

Whereas it would be helpful in implementing this regulation and preventing abuses to issue drivers who so request with a copy of their record sheets;

Whereas, in order to achieve the aims hereinbefore mentioned of keeping a check on work and rest periods, it is necessary that employers and drivers be responsible for seeing that the equipment functions correctly and that they perform with due care the operations prescribed;

Whereas the provisions governing the number of record sheets that a driver must keep with him must be amended following the replacement of the flexible week by a fixed week;

Whereas technical progress necessitates rapid adaptation of the technical specifications set out in the annexes to this Regulation;

Whereas, in order to facilitate the implementation of the measures necessary for this purpose, provision should be made for a procedure establishing close co-operation between the member states and the Commission within an advisory committee;

Whereas member states should exchange the available information on breaches established;

Whereas, in order to ensure that recording equipment functions reliably and correctly, it is advisable to lay down uniform requirements for the periodic checks and inspections to which the equipment is to be subject after installation, has adopted this Regulation:

## Chapter I

### Principles and Scope

#### Article 1

Recording equipment within the meaning of this Regulation shall, as regards construction, installation, use and testing, comply with the requirements of this regulation and of annexes I and II thereto, which shall form an integral part of this Regulation.

#### Article 2

For the purposes of this regulation the definitions set out in article 1 of Regulation (EEC) no 3820/85 shall apply.

#### Article 3

1. Recording equipment shall be installed and used in vehicles registered in a member state which are used for the carriage of passengers or goods by road, except the vehicles referred to in articles 4 and 14(1) of Regulation (EEC) no 3820/85.

2. Member states may exempt vehicles mentioned in article 13(1) of Regulation (EEC) no 3820/85 from application of this regulation. Member states shall inform the Commission of any exemption granted under this paragraph.

3. Member states may, after authorisation by the Commission, exempt from application of this Regulation vehicles used for the transport operations referred to in article 13(2) of Regulation (EEC) no 3820/85. In urgent cases they may grant a temporary exemption for a period not exceeding 30 days, which shall be notified immediately to the Commission. The Commission shall notify the other member states of any exemption granted pursuant to this paragraph.

4. In the case of national transport operations, member states may require the installation and use of recording equipment in accordance with this Regulation in any of the vehicles for which its installation and use are not required by paragraph 1.

## Chapter II

### Type Approval

#### Article 4

Applications for EEC approval of a type of recording equipment or of a model record sheet shall be submitted, accompanied by the appropriate specifications, by the manufacturer or his agent to a member state. No application in respect of any one type of recording equipment or of any one model record sheet may be submitted to more than one member state.

#### Article 5

A member state shall grant EEC approval to any type of recording equipment or to any model record sheet which conforms to the requirements laid down in annex I to this Regulation, provided the member state is in a position to check that production models conform to the approved prototype. Any modifications or additions to an approved model must receive additional EEC type approval from the member state which granted the original EEC type approval.

#### Article 6

Member states shall issue to the applicant an EEC approval mark, which shall conform to the model shown in annex II, for each type of recording equipment or model record sheet which they approve pursuant to article 5.

#### Article 7

The competent authorities of the member state to which the application for type approval has been submitted shall, in respect of each type of recording equipment or model record sheet which they approve or refuse to approve, either send within one month to the authorities of the other member states a copy of the approval certificate accompanied by copies of the relevant specifications, or, if such is the case, notify those authorities that approval has been refused; in cases of refusal they shall communicate the reasons for their decision.

### Article 8

1. If a member state which has granted EEC type approval as provided for in article 5 finds that certain recording equipment or record sheets bearing the EEC type approval mark which it has issued do not conform to the prototype which it has approved, it shall take the necessary measures to ensure that production models conform to the approved prototype. The measures taken may, if necessary, extend to withdrawal of EEC type approval.
2. A member state which has granted EEC type approval shall withdraw such approval if the recording equipment or record sheet which has been approved is not in conformity with this regulation or its annexes or displays in use any general defect which makes it unsuitable for the purpose for which it is intended.
3. If a member state which has granted EEC type approval is notified by another member state of one of the cases referred to in paragraphs 1 and 2 shall also, after consulting the latter member state, take the steps laid down in those paragraphs, subject to paragraph 5.
4. A member state which ascertains that one of the cases referred to in paragraph 2 has arisen may forbid until further notice the placing on the market and putting into service of the recording equipment or record sheets. The same applies in the cases mentioned in paragraph 1 with respect to recording equipment or record sheets which have been exempted from EEC initial verification, if the manufacturer, after due warning, does not bring the equipment into line with the approved model or with the requirements of this regulation. In any event, the competent authorities of the member states shall notify one another and the Commission, within one month, of any withdrawal of EEC type approval or of any other measures taken pursuant to paragraphs 1, 2 and 3 and shall specify the reasons for such action.
5. If a member state which has granted an EEC type approval disputes the existence of any of the cases specified in paragraphs 1 or 2 notified to it, the member states concerned shall endeavour to settle the dispute and the Commission shall be kept informed. If talks between the member states have not resulted in agreement within four months of the date of the notification referred to in paragraph 3 above, the Commission, after consulting experts from all member states and having considered all the relevant factors, e.g. economic and technical factors, shall within six months adopt a decision which shall be communicated to the member states concerned and at the same time to the other member states. The Commission shall lay down in each instance the time limit for implementation of its decision.

**Article 9**

1. An applicant for EEC type approval of a model record sheet shall state on his application the type or types of recording equipment on which the sheet in question is designed to be used and shall provide suitable equipment of such type or types for the purpose of testing the sheet.
2. The competent authorities of each member state shall indicate on the approval certificate for the model record sheet the type or types of recording equipment on which that model sheet may be used.

**Article 10**

No member state may refuse to register any vehicle fitted with recording equipment, or prohibit the entry into service or use of such vehicle for any reason connected with the fact that the vehicle is fitted with such equipment, if the equipment bears the EEC approval mark referred to in article 6 and the installation plaque referred to in article 12.

**Article 11**

All decisions pursuant to this regulation refusing or withdrawing approval of a type of recording equipment or model record sheet shall specify in detail the reasons on which they are based. A decision shall be communicated to the party concerned, who shall at the same time be informed of the remedies available to him under the laws of the member states and of the time-limits for the exercise of such remedies.

**Chapter III****Installation and Inspection****Article 12**

1. Recording equipment may be installed or repaired only by fitters or workshops approved by the competent authorities of member states for that purpose after the latter, should they so desire, have heard the views of the manufacturers concerned.
2. The approved fitter or workshop shall place a special mark on the seals which it affixes. The competent authorities of each member state shall maintain a register of the marks used.
3. The competent authorities of the member states shall send each other their lists of approved fitters or workshops and also copies of the marks used.

4. For the purpose of certifying that installation of recording equipment took place in accordance with the requirements of this regulation an installation plaque affixed as provided in annex I shall be used.

## Chapter IV

### Use of Equipment

#### Article 13

The employer and drivers shall be responsible for seeing that the equipment functions correctly.

#### Article 14

1. The employer shall issue a sufficient number of record sheets to drivers, bearing in mind the fact that these sheets are personal in character, the length of the period of service and the possible obligation to replace sheets which are damaged, or have been taken by an authorised inspecting officer. The employer shall issue to drivers only sheets of an approved model suitable for use in the equipment installed in the vehicle.

2. The undertaking shall keep the record sheets in good order for at least a year after their use and shall give copies to the drivers concerned who request them. The sheets shall be produced or handed over at the request of any authorised inspecting officer.

#### Article 15

1. Drivers shall not use dirty or damaged record sheets. The sheets shall be adequately protected on this account. In case of damage to a sheet bearing recordings, drivers shall attach the damaged sheet to the spare sheet used to replace it.

2. Drivers shall use the record sheets every day on which they are driving, starting from the moment they take over the vehicle. The record sheet shall not be withdrawn before the end of the daily working period unless its withdrawal is otherwise authorised. No record sheet may be used to cover a period longer than that for which it is intended. When, as a result of being away from the vehicle, a driver is unable to use the equipment fitted to the vehicle, the periods of time indicated in paragraph 3, second indent (b), (c) and (d) below shall be entered on the sheet, either manually, by automatic recording or other means, legibly and without dirtying the sheet.

Drivers shall amend the record sheets as necessary should there be more than one driver on board the vehicle, so that the information referred to in Chapter II (1) to (3) of annex I is recorded on the record sheet of the driver who is actually driving.

3. Drivers shall:

- ensure that the time recorded on the sheet agrees with the official time in the country of registration of the vehicle,
- operate the switch mechanisms enabling the following periods of time to be recorded separately and distinctly:
  - (a) under the sign : driving time;
  - (b) under the sign : all other periods of work;
  - (c) under the sign : other periods of availability, namely:
    - waiting time, i.e. the period during which drivers need remain at their posts only for the purpose of answering any calls to start or resume driving or to carry out other work,
    - time spent beside the driver while the vehicle is in motion,
    - time spent on a bunk while the vehicle is in motion;
  - (d) under the sign : breaks in work and daily rest periods.

4. Each member state may permit all the periods referred to in paragraph

3. second indent (b) and (c) to be recorded under the sign on the record sheets used on vehicles registered in its territory.

5. Each crew member shall enter the following information on his record sheet:

- (a) on beginning to use the sheet - his surname and first name;
- (b) the date and place where use of the sheet begins and the date and place where such use ends;
- (c) the registration number of each vehicle to which he is assigned, both at the start of the first journey recorded on the sheet and



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then, in the event of a change of vehicle, during use of the sheet;

- (d) the odometer reading:
  - at the start of the first journey recorded on the sheet,
  - at the end of the last journey recorded on the sheet,
  - in the event of a change of vehicle during a working day (reading on the vehicle to which he was assigned and reading on the vehicle to which he is to be assigned);
- (e) the time of any change of vehicle.

6. The equipment shall be so designed that it is possible for an authorised inspecting officer, if necessary after opening the equipment, to read the recordings relating to the nine hours preceding the time of the check without permanently deforming, damaging or soiling the sheet.

The equipment shall, furthermore, be so designed that it is possible, without opening the case, to verify that recordings are being made.

7. Whenever requested by an authorised inspecting officer to do so, the driver must be able to produce record sheets for the current week, and in any case for the last day of the previous week on which he drove.

## Article 16

1. In the event of breakdown or faulty operation of the equipment, the employer shall have it repaired by an approved fitter or workshop, as soon as circumstances permit. If the vehicle is unable to return to the premises within a period of one week calculated from the day of the breakdown or of the discovery of defective operation, the repair shall be carried out en route.

Measures taken by member states pursuant to article 19 may give the competent authorities power to prohibit the use of the vehicle in cases where breakdown or faulty operation has not been put right as provided in the foregoing subparagraphs.

2. While the equipment is unserviceable or operating defectively, drivers shall mark on the record sheet or sheets, or on a temporary sheet to be attached to the record sheet, all information for the various periods of time which is not recorded correctly by the equipment.

## Chapter V

**Final Provisions****Article 17**

The amendments necessary to adapt the annexes to technical progress shall be adopted in accordance with the procedure laid down in article 18.

**Article 18**

1. A committee for the adaptation of this regulation to technical progress (hereinafter called “the committee”) is hereby set up; it shall consist of representatives of the member states, and a representative of the Commission shall be chairman.

2. The committee shall adopt its own rules of procedure.

3. Where the procedure laid down in this article is to be followed, the matter shall be referred to the committee by the chairman, either on his own initiative or at the request of the representative of a member state.

4. The Commission representative shall submit to the committee a draft of the measures to be taken. The committee shall give its opinion on that draft within a time limit set by the chairman having regard to the urgency of the matter. Opinions shall be delivered by a qualified majority in accordance with article 148(2) of the treaty. The chairman shall not vote.

5. (a) The Commission shall adopt the envisaged measures where they are in accordance with the opinion of the committee.

(b) where the measures envisaged are not in accordance with the opinion of the committee or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal on the measures to be taken. The Council shall act by a qualified majority.

(c) if the Council has not acted within three months of the proposal being submitted to it, the proposed measures shall be adopted by the Commission.

**Article 19**

1. Member states shall, in good time and after consulting the Commission, adopt such laws, regulations or administrative provisions as may be necessary for the implementation of this Regulation. Such measures shall cover, inter alia, the reorganisation of, procedure for, and means of carrying out, checks on compliance and the penalties to be imposed in case of breach.

2. Member states shall assist each other in applying this regulation and in checking compliance therewith.

3. Within the framework of this mutual assistance the competent authorities of the member states shall regularly send one another all available information concerning:

- breaches of this Regulation committed by non-residents and any penalties imposed for such breaches,
- penalties imposed by a member state on its residents for such breaches committed in other member states.

## Article 20

Regulation (EEC) no 1463/70 shall be repealed. However, article 3 (1) of the said Regulation shall, until 31 December 1989, continue to apply to vehicles and drivers employed in regular international passenger services in so far as the vehicles used for such services are not fitted with recording equipment used as prescribed in this Regulation.

## Article 21

This Regulation shall enter into force on 29 September 1986.

This Regulation shall be binding in its entirety and directly applicable in all member states.

Done at Brussels, 20 December 1985.

For the Council

the President

R. Krieps

- (1) OJ No C 100, 12. 4. 1984, p. 3, and OJ No C 223, 3. 9. 1985, p. 5.
- (2) OJ No C 122, 20. 5. 1985, p. 168.
- (3) OJ No C 104, 25. 4. 1985, p. 4, and OJ No C 303, 25. 11. 1985, p. 29.
- (4) OJ No L 164, 27. 7. 1970, p. 1.
- (5) OJ No L 334, 24. 12. 1977, p. 11.

- (6) see page 1 of this Official Journal.

### Annex I

#### Requirements for Construction, Testing, Installation and Inspection

##### I. Definitions

In this Annex:

- (a) “recording equipment” means: equipment intended for installation in road vehicles to show and record automatically or semi-automatically details of the movement of those vehicles and of certain working periods of their drivers;
- (b) “record sheet”: means: a sheet designed to accept and retain recorded data, to be placed in the recording equipment and on which the marking devices of the latter inscribe a continuous record of the information to be recorded;
- (c) “the constant of the recording equipment” means: the numerical characteristic giving the value of the input signal required to show and record a distance travelled of one kilometre; this constant must be expressed either in revolutions per kilometre ( $k = \dots \text{ rev/km}$ ), or in impulses per kilometre ( $k = \dots \text{ imp/km}$ );
- (d) “characteristic coefficient” of the means: the numerical characteristic giving the value of the output signal emitted by the part of the vehicle linking it with the recording equipment (gearbox output shaft or axle) while the vehicle travels a distance of one measured kilometre under normal test conditions (see Chapter VI, point 4 of this Annex). The characteristic coefficient is expressed either in revolutions per kilometre ( $w = \dots \text{ rev/km}$ ) or in impulses per kilometre ( $w = \dots \text{ imp/km}$ );
- (e) “effective circumference of wheel tyres” means: the average of the distances travelled by the several wheels moving the vehicle (driving wheels) in the course of one complete rotation. The measurement of these distances must be made under normal test conditions (see Chapter VI, point 4 of this Annex) and is expressed in the form :  $l = \dots \text{ mm}$ .

## II. General characteristics and functions of recording equipment

The equipment must be able to record the following:

1. distance travelled by the vehicle;
2. speed of the vehicle;
3. driving time;
4. other periods of work or of availability;
5. breaks from work and daily rest periods;
6. opening of the case containing the record sheet. For vehicles used by two drivers the equipment must be capable of recording simultaneously but distinctly and on two separate sheets details of the periods listed under 3, 4 and 5.

## III. Construction requirements for recording equipment

### (a) General Points

1. Recording equipment shall include the following:
  - 1.1. Visual instruments showing:
    - distance travelled (distance recorder),
    - speed (speedometer),
    - time (clock).
  - 1.2. Recording instruments comprising:
    - a recorder of the distance travelled,
    - a speed recorder,
    - one or more time recorders satisfying the requirements laid down in Chapter III (c) 4.
  - 1.3. A marking device showing on the record sheet each opening of the case containing that sheet.
2. Any inclusion in the equipment of devices additional to those listed above must not interfere with the proper operation of the mandatory devices

or with the reading of them. The equipment must be submitted for approval complete with any such additional devices.

3. Materials

3.1. All the constituent parts of the recording equipment must be made of materials with sufficient stability and mechanical strength and stable electrical and magnetic characteristics.

3.2. Any modification in a constituent part of the equipment or in the nature of the materials used for its manufacture must, before being applied in manufacture, be submitted for approval to the authority which granted type-approval for the equipment.

4. Measurement of distance travelled

The distances travelled may be measured and recorded either:

- so as to include both forward and reverse movement, or
- so as to include only forward movement.

Any recording of reversing movements must on no account affect the clarity and accuracy of the other recordings.

5. Measurement of speed

5.1. The range of speed measurement shall be as stated in the type approval certificate.

5.2. The natural frequency and the damping of the measuring device must be such that the instruments showing and recording the speed can, within the range of measurement, follow acceleration changes of up to 2 m/s<sup>2</sup>, within the limits of accepted tolerances.

6. Measurement of time (clock)

6.1. The control of the mechanism for resetting the clock must be located inside a case containing the record sheet; each opening of that case must be automatically recorded on the record sheet.

6.2. If the forward movement mechanism of the record sheet is controlled by the clock, the period during which the latter will run correctly after being fully wound must be greater by at least 10 % than the recording period corresponding to the maximum sheet-load of the equipment.

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## 7. Lighting and protection

7.1. The visual instruments of the equipment must be provided with adequate non-dazzling lighting.

7.2. For normal conditions of use, all the internal parts of the equipment must be protected against damp and dust. In addition they must be made proof against tampering by means of casings capable of being sealed.

### (b) Visual Instruments

#### 1. Distance travelled indicator (distance recorder)

1.1. The value of the smallest grading on the instrument showing distance travelled must be 0,1 kilometres. Figures showing hectometres must be clearly distinguishable from those showing whole kilometres.

1.2. The figures on the distance recorder must be clearly legible and must have an apparent height of at least 4 mm.

1.3. The distance recorder must be capable of reading up to at least 99 999,9 kilometres.

#### 2. Speed indicators (speedometer)

2.1. Within the range of measurement, the speed scale must be uniformly graduated by 1, 2, 5 or 10 kilometres per hour. The value of a speed graduation (space between two successive marks) must not exceed 10 % of the maximum speed shown on the scale.

2.2. The range indicated beyond that measured need not be marked by figures.

2.3. The length of each space on the scale representing a speed difference of 10 kilometres per hour must not be less than 10 millimetres.

2.4. On an indicator with a needle, the distance between the needle and the instrument face must not exceed three millimetres.

#### 3. Time indicator (clock)

The time indicator must be visible from outside the equipment and give a clear, plain and unambiguous reading.

### (c) Recording Instruments

1. General Points

1.1. All equipment, whatever the form of the record sheet (strip or disc) must be provided with a mark enabling the record sheet to be inserted correctly, in such a way as to ensure that the time shown by the clock and the time-marking on the sheet correspond.

1.2. The mechanism moving the record sheet must be such as to ensure that the latter moves without play and can be freely inserted and removed.

1.3. For record sheets in disc form, the forward movement device must be controlled by the clock mechanism. In this case, the rotating movement of the sheet must be continuous and uniform, with a minimum speed of seven millimetres per hour measured at the inner border of the ring marking the edge of the speed recording area.

In equipment of the strip type, where the forward movement device of the sheets is controlled by the clock mechanism the speed of rectilinear forward movement must be at least 10 millimetres per hour.

1.4. Recording of the distance travelled, of the speed of the vehicle and of any opening of the case containing the record sheet or sheets must be automatic.

2. Recording distance travelled

2.1. Every kilometre of distance travelled must be represented on the record by a variation of at least one millimetre on the corresponding co-ordinate.

2.2. Even at speeds reaching the upper limit of the range of measurement, the record of distances must still be clearly legible.

3. Recording speed

3.1. Whatever the form of the record sheet, the speed recording stylus must normally move in a straight line and at right angles to the direction of travel of the record sheet.

However, the movement of the stylus may be curvilinear, provided the following conditions are satisfied:

- the trace drawn by the stylus must be perpendicular to the average circumference (in the case of sheets in disc form) or to the axis (in the case of sheets in strip form) of the area reserved for speed recording,



- the ratio between the radius of curvature of the trace drawn by the stylus and the width of the area reserved for speed recording must be not less than 2,4 to 1 whatever the form of the record sheet,
- the markings on the time-scale must cross the recording area in a curve of the same radius as the trace drawn by the stylus. The spaces between the markings on the time-scale must represent a period not exceeding one hour.

3.2. Each variation in speed of 10 kilometres per hour must be represented on the record by a variation of at least 1,5 millimetres on the corresponding co-ordinate.

#### 4. Recording time

4.1. Recording equipment must be so constructed that it is possible, through the operation where necessary of a switch device, to record automatically and separately four periods of time as indicated in article 15 of the Regulation.

4.2. It must be possible, from the characteristics of the traces, their relative positions and if necessary the signs laid down in article 15 of the Regulation to distinguish clearly between the various periods of time.

The various periods of time should be differentiated from one another on the record by differences in the thickness of the relevant traces, or by any other system of at least equal effectiveness from the point of view of legibility and ease of interpretation of the record.

4.3. In the case of vehicles with a crew consisting of more than one driver, the recordings provided for in point 4.1 must be made on two separate sheets, each sheet being allocated to one driver. In this case, the forward movement of the separate sheets must be effected either by a single mechanism or by separate synchronised mechanisms.

#### (d) Closing Device

1. The case containing the record sheet or sheets and the control of the mechanism for resetting the clock must be provided with a lock.

2. Each opening of the case containing the record sheet or sheets and the control of the mechanism for resetting the clock must be automatically recorded on the sheet or sheets.

## (e) Markings

1. The following markings must appear on the instrument face of the equipment:

- close to the figure shown by the distance recorder, the unit of measurement of distance, indicated by the abbreviation “km”,
- near the speed scale, the marking “km/h”,
- the measurement range of the speedometer in the form 'vmin... km/h, vmax... km/h', this marking is not necessary if it is shown on the descriptive plaque of the equipment.

However, these requirements shall not apply to recording equipment approved before 10 August 1970.

2. The descriptive plaque must be built into the equipment and must show the following markings, which must be visible on the equipment when installed:

- name and address of the manufacturer of the equipment,
- manufacturer's number and year of construction,
- approval mark for the equipment type,
- the constant of the equipment in the form 'k =... rev/km' or 'k =... imp/km',
- optionally, the range of speed measurement, in the form indicated in point 1,
- should the sensitivity of the instrument to the angle of inclination be

capable of affecting the readings given by the equipment beyond the permitted tolerances, the permissible angle expressed as:

where “a” is the angle measured from the horizontal position of the front face (fitted the right way up) of the equipment for which the instrument is calibrated, while “v” and g represent respectively the maximum permissible upward and downward deviations from the angle of calibration a. (f) maximum tolerances (visual and recording instruments)

1. On the test bench before installation:

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(a) distance travelled:

1 % more or less than the real distance, where that distance is at least one kilometre;

(b) speed:

3 km/h more or less than the real speed;

(c) time:

Ò two minutes per day with a maximum of 10 minutes per seven days in cases where the running period of the clock after rewinding is not less than that period.

2. On installation:

(a) distance travelled:

2 % more or less than the real distance, where that distance is at least one kilometre;

(b) speed:

4 km/h more or less than the real speed;

(c) time:

Ò two minutes per day, or

Ò 10 minutes per seven days.

3. In use:

(a) distance travelled:

4 % more or less than the real distance, where that distance is at least one kilometre;

(b) speed:

6 km/h more or less than the real speed;

(c) time:

Ò two minutes per day, or

Ò 10 minutes per seven days.

4. The maximum tolerances set out in points 1, 2 and 3 are valid for temperatures between 0 ~ and 40 ~C, temperatures being taken in close proximity to the equipment.
5. Measurement of the maximum tolerances set out in points 2 and 3 shall take place under the conditions laid down in Chapter VI. IV.

Record sheets

(a) General Points

1. The record sheets must be such that they do not impede the normal functioning of the instrument and that the records which they contain are indelible and easily legible and identifiable. The record sheets must retain their dimensions and any records made on them under normal conditions of humidity and temperature. In addition it must be possible to write on the sheets, without damaging them and without affecting the legibility of the recordings, the information referred to in article 15 (5) of the Regulation.

Under normal conditions of storage, the recordings must remain clearly legible for at least one year.

2. The minimum recording capacity of the sheets, whatever their form, must be 24 hours.

If several discs are linked together to increase the continuous recording capacity which can be achieved without intervention by staff, the links between the various discs must be made in such a way that there are no breaks in or overlapping of recordings at the point of transfer from one disc to another.

(b) Recording areas and their graduation

1. The record sheets shall include the following recording areas:
  - an area exclusively reserved for data relating to speed,
  - an area exclusively reserved for data relating to distance travelled,
  - one or more areas for data relating to driving time, to other periods of work and availability to breaks from work and to rest periods for drivers.

2. The area for recording speed must be scaled off in divisions of 20 kilometres per hour or less. The speed corresponding to each marking on the scale must be shown in figures against that marking. The symbol 'km/h' must be shown at least once within the area. The last marking on the scale must coincide with the upper limit of the range of measurement.
3. The area for recording distance travelled must be set out in such a way that the number of kilometres travelled may be read without difficulty.
4. The area or areas reserved for recording the periods referred to in point 1 must be so marked that it is possible to distinguish clearly between the various periods of time.

(c) Information to be printed on the record sheets

Each sheet must bear, in printed form, the following information:

- name and address or trade name of the manufacturer,
- approval mark for the model of the sheet,
- approval mark for the type or types of equipment in which the sheet May be used,
- upper limit of the speed measurement range, printed in kilometres per hour.

By way of minimal additional requirements, each sheet must bear, in printed form a time-scale graduated in such a way that the time may be read directly at intervals of fifteen minutes while each five minute interval may be determined without difficulty.

(d) Free space for hand written insertions

A free space must be provided on the sheets such that drivers may as a minimum write in the following details:

- surname and first name of the driver,
- date and place where use of the sheet begins and date and place where such use ends,
- the registration number or numbers of the vehicle or vehicles to which the driver is assigned during the use of the sheet,

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- odometer readings from the vehicle or vehicles to which the driver is assigned during the use of the sheet,
- the time at which any change of vehicle takes place.

#### V. Installation of recording equipment

1. Recording equipment must be positioned in the vehicle in such a way that the driver has a clear view from his seat of speedometer, distance recorder and clock while at the same time all parts of those instruments, including driving parts, are protected against accidental damage.
2. It must be possible to adapt the constant of the recording equipment to the characteristic coefficient of the vehicle by means of a suitable device, to be known as an adaptor.

Vehicles with two or more rear axle ratios must be fitted with a switch device whereby these various ratios may be automatically brought into line with the ratio for which the equipment has been adapted to the vehicle.

3. After the equipment has been checked on installation, an installation plaque shall be affixed to the vehicle beside the equipment or in the equipment itself and in such a way as to be clearly visible. After every inspection by an approved fitter or workshop requiring a change in the setting of the installation itself, a new plaque must be affixed in place of the previous one.

The plaque must show at least the following details:

- name, address or trade name of the approved fitter or workshop,
- characteristic coefficient of the vehicle, in the form 'w =... rev/km' or 'w =... imp/km',
- effective circumference of the wheel tyres in the form 'l =... mm',
- the dates on which the characteristic coefficient of the vehicle was determined and the effective measured circumference of the wheel tyres.

#### 4. Sealing

The following parts must be sealed:

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- (a) the installation plaque, unless it is attached in such a way that it cannot be removed without the markings thereon being destroyed;
- (b) the two ends of the link between the recording equipment proper and the vehicle;
- (c) the adaptor itself and the point of its insertion into the circuit;
- (d) the switch mechanism for vehicles with two or more axle ratios;
- (e) the links joining the adaptor and the switch mechanism to the rest of the equipment;
- (f) the casings required under Chapter III (a) 7.2.

In particular cases, further seals may be required on approval of the equipment type and a note of the positioning of these seals must be made on the approval certificate. Only the seals mentioned in (b), (c) and (e) may be removed in cases of emergency; for each occasion that these seals are broken a written statement giving the reasons for such action must be prepared and made available to the competent authority.

## VI. Checks and inspections

The member states shall nominate the bodies which shall carry out the checks and inspections.

### 1. Certification of new or repaired instruments

Every individual device, whether new or repaired, shall be certified in respect of its correct operation and the accuracy of its readings and recordings, within the limits laid down in Chapter III (f) 1, by means of sealing in accordance with chapter v (4) (f).

For this purpose the member states may stipulate an initial verification, consisting of a check on and confirmation of the conformity of a new or repaired device with the type-approved model and/or with the requirements of the Regulation and its Annexes, or may delegate the power to certify to the manufacturers or to their authorised agents.

### 2. Installation

When being fitted to a vehicle, the equipment and the whole installation must comply with the provisions relating to maximum tolerances laid down in Chapter III (f) 2.

The inspection tests shall be carried out by the approved fitter or workshop on his or its responsibility.

### 3. Periodic inspections

(a) periodic inspections of the equipment fitted to vehicles shall take place at least every two years and may be carried out in conjunction with roadworthiness tests of vehicles.

These inspections shall include the following checks:

- that the equipment is working correctly,
- that the equipment carries the type approval mark, - that the installation plaque is affixed,
- that the seals on the equipment and on the other parts of the installation are intact,
- the actual circumference of the tyres.

(b) an inspection to ensure compliance with the provision of chapter III (f) 3 on the maximum tolerances in use shall be carried out at least once every six years, although each member state may stipulate a shorter interval or such inspection in respect of vehicles registered in its territory. Such inspections must include replacement of the installation plaque.

### 4. Measurement of errors

The measurement of errors on installation and during use shall be carried out under the following conditions, which are to be regarded as constituting standard test conditions:

- vehicle unladen, in normal running, order
- tyre pressures in accordance with the manufacturer's instructions,
- tyre wear within the limits allowed by law,
- movement of the vehicle: the vehicle must proceed, driven by its own engine, in a straight line and on a level surface, at a speed of 50  $\pm$  5 km/h;



provided that it is of comparable accuracy, the test may also be carried out on an appropriate test bench.

## Annex II

### Approval Mark and Certificate

#### I. Approval mark

1. The approval mark shall be made up of:

- a rectangle, within which shall be placed the letter 'e' followed by a distinguishing number or letter for the country which has issued the approval in accordance with the following conventional signs:

1.2 Belgium 6, Denmark 18, Germany 1, Greece gr, Spain 9, France 2, Ireland irl, Italy 3, Luxembourg 13, Netherlands 4, Portugal 21, United Kingdom 11, and

- an approval number corresponding to the number of the approval certificate drawn up for prototype of the recording equipment or the record sheet, placed at any point within the immediate proximity of this rectangle.

2. The approval mark shall be shown on the descriptive plaque of each set of equipment and on each record sheet. It must be indelible and must always remain clearly legible.

3. The dimensions of the approval mark drawn below are expressed in millimetres, these dimensions being minima. The ratios between the dimensions must be maintained.

(1) these figures are shown for guidance only.

#### II. Approval certificate

A state having granted approval shall issue the applicant with an approval certificate, the model for which is given below. When informing other member states of approvals issued or, if the occasion should arise, withdrawn, a member state shall use copies of that certificate.

Approval certificate

Name of competent administration

notification concerning (1):

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- approval of a type of recording equipment
  - withdrawal of approval of a type of recording equipment
  - approval of a model record sheet
  - withdrawal of approval of a record sheet
- approval no.....

1. Trade mark or name
2. Name of type or model
3. Name of manufacturer
4. Address of manufacturer
5. Submitted for approval on
6. Tested at
7. Date and number of test report
8. Date of approval
9. Date of withdrawal of approval
10. Type or types of recording equipment in which sheet is designed to be used
11. Place
12. Date
13. Descriptive documents annexed
14. Remarks

(signature)

(1) delete items not applicable.

**COMMISSION REGULATION (EEC) NO 3314/90 OF 16  
NOVEMBER 1990 COMMISSION REGULATION ADAPTING TO**

**TECHNICAL PROGRESS COUNCIL REGULATION (EEC) NO  
3821/85 ON RECORDING EQUIPMENT IN ROAD TRANSPORT**

The Commission of the European Communities,

Having regard to the treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (1), and in particular articles 17 and 18 thereof,

Whereas it is necessary to eliminate the possibilities of fraud in the use of electronic recording equipment in road transport in particular those caused by the interruption of the power supply or of the distance and speed sensor;

Whereas in the light of experience and in view of the current state of the art it is possible to indicate such interruptions clearly on the record sheets in order to facilitate application of the Regulation and to discourage this kind of fraudulent use;

Whereas it is appropriate to implement this new technology in the community construction and installation standards for electronic recording equipment;

Whereas in order to ensure effective checking and correct registration of driving time in particular, driving time should be recorded automatically and the other periods, when the driver is not driving the vehicle, should be recorded according to the sign indicated on the switch mechanism;

Whereas current recording equipment already provides for this automatic recording of driving time and therefore in the light of experience and current state of the art the construction standards for the recording equipment should be adapted accordingly;

Whereas the measures provided for in this regulation are in accordance with the opinion of the committee for adaptation of Regulation (EEC) No 3821/85 to technical progress, has adopted this Regulation:

**Article 1**

Annex I of Regulation (EEC) No 3821/85 is hereby amended as follows;

1. In Chapter II, the following point is inserted:

- “7. For electronic recording equipment which is equipment operating by signals transmitted electrically from the distance and speed sensor, any interruption exceeding 100 milliseconds in the power supply of the recording equipment (except lighting), in the power supply of the distance and speed sensor and any interruption in the signal lead to the distance and speed sensor.”
2. In Chapter III under “(a) general points”, point 1.3 is replaced by the following:
- “1.3 a means of marking showing on the record sheet individually:
- each opening of the case containing that sheet,
  - for electronic recording equipment, as defined in point 7 of Chapter II, any interruption exceeding 100 milliseconds in the power supply of the recording equipment (except lighting), not later than at switching-on the power supply again,
  - for electronic recording equipment, as defined in point 7 of Chapter II, any interruption exceeding 100 milliseconds in the power supply of the distance and speed sensor and any interruption in the signal lead to the distance and speed sensor.”
3. In Chapter III under “(c) recording instruments”, point 4.1 is replaced by the following:
- “4.1 Recording equipment must be so constructed that the period of driving time is always recorded automatically and that it is possible, through the operation where necessary of a switch device to record separately the other periods of time as indicated in article 15 (3), second indent (b), (c) and (d) of the Regulation.”

## Article 2

As from 1 July 1991 member states shall no longer grant EEC approval to any type of recording equipment which does not comply with the provisions of Regulation (EEC) no 3821/85, as amended by this Regulation.

## Article 3

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This version is out of date

As from 1 January 1996 the recording equipment of any new vehicle brought into service for the first time shall comply with regulation (EEC) no 3821/85, as amended by this Regulation.

## **Article 4**

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all member states.

Done at Brussels, 16 November 1990.

For the Commission

Karel van Miert

Member of the Commission

(1) OJ No L 370, 31. 12. 1985, p. 8.

**COMMISSION REGULATION (EEC) NO 3688/92 OF 21  
DECEMBER 1992 ADAPTING TO TECHNICAL PROGRESS  
COUNCIL REGULATION (EEC) NO 3821/85 ON RECORDING  
EQUIPMENT IN ROAD TRANSPORT**

The Commission of the European Communities,

Having regard to the treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (1), as last amended by Regulation (EEC) No 3572/90 (2), and in particular articles 17 and 18 thereof,

Whereas it is necessary to eliminate the possibilities of fraud in the use of the electronic recording equipment in road transport;

Whereas in the light of experience and in view of the current state of the art it is possible to protect the connecting cables of the appliance to the impulse transmitter in order to make them inviolable;

Whereas, having regard to the lifetime of the existing recording equipment, there is a need to implement this new technology in the community construction and installation standards for electronic recording equipment;

Whereas it is necessary to break the seal of the recording equipment to install a speed limitation device on the vehicle;

Whereas such an action is permitted by the regulation only in an emergency case;

Whereas it is advisable consequently to amend the Regulation accordingly;

Whereas the measures provided for in this regulation are in accordance with the opinion of the committee for adaptation of Regulation (EEC) no 3821/85 to technical progress, has adopted this Regulation:

**Article 1**

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

1. in article 12, the following paragraph 5 is inserted:

“5. Any seal may be removed by the fitters or workshops approved by competent authorities under paragraph 1 of this article, or in

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the circumstances described in Annex I, Chapter V, paragraph 4 to this Regulation.”;

2. in Annex I, Chapter V, paragraph 4, the following provision (g) is included:

“(g) any cover giving access to the means of adapting the constant of the recording equipment to the characteristic coefficient of the vehicle.”

At the end of paragraph 4, “only the seals mentioned in (b), (c) and (e) May be removed in cases of emergency”; is amended as follows:

“the seals mentioned in (b), (c) and (e) are authorised to be removed:

- in case of emergency,
- to install, to adjust or to repair a speed limitation device or any other device contributing to road safety,

provided that the recording equipment continues to function reliably and correctly and is resealed by an approved fitter or workshop immediately after fitting the speed limitation device or any other device contributing to road safety or within seven days in other cases.”;

3. in Annex I, Chapter V, the following provision 5 is inserted:

“5. The cables connecting the recording equipment transmitter must be protected by a continuous plastic-coated stainless sheath with crimped ends.”;

## Article 2

As from 1 January 1994, member states shall no longer grant EEC approval to any type of recording equipment which does not comply with the provisions of Regulation (EEC) no 3821/85, as amended by this Regulation.

**Article 3**

As from 1 January 1996, the recording equipment of any new vehicle brought into service for the first time shall comply with Regulation (EEC) no 3821/85, as amended by this Regulation.

**Article 4**

This Regulation shall enter into force on the third day following its publication in the Official Journal of the European Communities. This Regulation shall be binding in its entirety and directly applicable in all member states.

Done at Brussels, 21 December 1992.

For the Commission

Karel van Miert

member of the Commission

(1) OJ No L 370, 31. 12. 1985, p. 8. (2) OJ No L 353, 17. 12. 1990, p. 12.

**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**

The Council of the European Communities,

Having regard to the treaty establishing the European Economic Community, and in particular article 75 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the economic and social committee (3),

Whereas the establishment of a common transport policy involves, 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;



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Whereas those rules must be laid down in such a way as to contribute to the attainment of the internal transport market;

Whereas these uniform arrangements for market access also involve introducing the freedom to provide services by eliminating all restrictions imposed on the provider of services because of his nationality or the fact that he is established in a member state other than that in which the service is to be provided;

Whereas, as regards carriage from a member state to a non-member country and vice versa, implementation of the freedom to provide services for the journey within the territory of the member state of loading or unloading should be deferred until appropriate agreements with the non-member countries concerned have been concluded or amended, in order to guarantee compliance with the principle of non-discrimination and equality of conditions of competition between community carriers;

Whereas, following the judgment of the court of justice of 22 May 1985 in case 13/83 (4) and the conclusions adopted on 28 and 29 June 1985 by the European Council on the Commission Communication on the completion of the internal market, on 21 June 1988 the Council adopted Regulation (EEC) no 1841/88 (5) amending regulation (EEC) no 3164/76 on access to the market in the international carriage of goods by road (6);

Whereas under article 4a of regulation (EEC) no 3164/76 inserted by Regulation (EEC) no 1841/88 from 1 January 1993, community quotas, bilateral quotas between member States and quotas for transit traffic to and from non-member countries will be abolished for the types of carriage referred to in that article, and arrangements for access to a market without quantitative restrictions based on qualitative criteria which hauliers must meet will be introduced;

Whereas these qualitative criteria are laid down principally in Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations, as last amended by Council Directive 89/483/EEC of 21 June 1989 (7);

Whereas pursuant to article 4b of regulation (EEC) No 3164/76, as inserted by Regulation (EEC) No 1841/88, the Council must adopt the measures necessary for the implementation of the aforementioned article 4a;

Whereas with regard to the rules for applying the access arrangements the international carriage of goods by road must be made conditional on the possession of a quota-free community transport authorisation;

Whereas at present, under the first Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road between member states (8), a certain number of types of carriage are exempt from any quota and carriage authorisation system;

Whereas, within the framework of the new organisation of the market introduced by this Regulation, a system of exemption from community authorisation and from any other carriage authorisation must be maintained for some of those types of transport, because of their special nature;

Whereas the conditions governing the issue and withdrawal of authorisations and the types of carriage to which they apply, their periods of validity and the detailed rules for their use must be determined,

Has adopted this Regulation:

### **Article 1**

1. This Regulation shall apply to the international carriage of goods by road for hire or reward for journeys carried out within the territory of the Community.
2. In the event of carriage from a member state to a non-member country and vice versa, this Regulation shall apply to that part of any journey carried out within the territory of the member state of loading or unloading, after conclusion of the necessary agreement between the Community and the non-member country concerned.
3. Pending the conclusion of agreements between the Community and the non-member countries concerned, this Regulation shall not affect:
  - provisions relating to the carriage referred to in paragraph 2 included in bilateral agreements concluded by member states with those non-member countries. However, member states shall endeavour to adapt those agreements to ensure compliance with the principle of non-discrimination between Community hauliers,
  - provisions relating to the carriage referred to in paragraph 2 included in bilateral agreements concluded between member States which either under bilateral authorisations or under liberalisation arrangements, allow loading and unloading in a member state by hauliers not established in that state.

### **Article 2**

For the purposes of this Regulation:

- “vehicle” shall mean a motor vehicle registered in a member state or a coupled combination of vehicles the motor vehicle of which at least is registered in a member state and which are used exclusively for the carriage of goods,
- “international carriage” shall mean:
  - a journey undertaken by a vehicle the point of departure and the point of arrival of which are in two different member states, with or without transit through one or more member states or non-member countries;
  - a journey undertaken by a vehicle from a member state to a non member country or vice versa, with or without transit through one or more member States or non-member countries;
  - a journey undertaken by a vehicle between non-member countries, with transit through the territory of one or more member states;
  - an unladen journey in conjunction with such carriage.

### Article 3

1. International carriage shall be carried out subject to community authorisation.

2. Community authorisation shall be issued by a member state, in accordance with article 5 and 7, to any haulier carrying goods by road for hire or reward who:

- is established in a member state, hereinafter referred to as the “member State of establishment” in accordance with the legislation of that member State,
- is entitled in that member state, in accordance with the legislation of the Community and of that state concerning admission to the occupation of road haulage operator to carry out the international carriage of goods by road.

**Article 4**

The Community authorisation referred to in article 3 shall replace the document issued by the competent authorities of the member State of establishment, where such a document exists, certifying that the haulier has been granted access to the market in the international carriage of goods by road. For carriage falling within the scope of this regulation it shall also replace both the Community authorisations and the bilateral authorisations exchanged between member States which are necessary until this Regulation comes into force.

**Article 5**

1. The Community authorisation referred to in article 3 shall be issued by the competent authorities of the member State of establishment.
2. The member States shall issue the holder with the original of the Community authorisation, which shall be kept by the haulage undertaking, and the number of certified true copies corresponding to the number of vehicles at the disposal of the holder of the community authorisation, whether wholly owned or, for example, under hire purchase, hire or leasing contracts.
3. The Community authorisation shall correspond to the model set out in of annex I, which also lays down the conditions governing its use.
4. The Community authorisation shall be made out in the haulier's name, he may not transfer it to any third party. A certified true copy shall be kept in the vehicle and must be produced whenever required by an authorised inspecting officer.

**Article 6**

The Community authorisation shall be issued for a renewable period of five years.

**Article 7**

Whenever an application for a community authorisation is lodged, not more than five years after issue and subsequently at least every five years, the competent authorities of the member State of establishment shall verify whether the haulier satisfies or still satisfies the conditions laid down in article 3 (2).

## Article 8

1. If the conditions laid down in article 3 (2) are not satisfied, the competent authorities of the member state of establishment shall reject an application for the issue or renewal of a community authorisation, by means of a reasoned decision.

2. The competent authorities shall withdraw a community authorisation where the holder:

- no longer satisfies the conditions laid down in article 3 (2),
- has supplied incorrect information in relation to the data required for the issue of a community authorisation.

3. In the event of serious infringements or repeated minor infringements of carriage regulations, the competent authorities of the member state of establishment of the haulier who has committed such infringements may *inter alia* temporarily or partially suspend the certified true copies of the Community authorisation.

These sanctions shall be determined having regard to the seriousness of the infringement committed by the holder of the community authorisation and having regard to the total number of certified copies that he holds in respect of international traffic.

## Article 9

The member States shall guarantee that the applicant or the holder of a Community authorisation is able to appeal against any decision by the competent authorities of the member state of establishment to refuse or withdraw an authorisation.

## Article 10

By 31 January each year member states shall inform the Commission of the number of hauliers possessing Community authorisations on 31 December of the previous year and of the number of certified true copies corresponding to the vehicles in circulation at that date.

## Article 11

1. The member States shall give each other mutual assistance in ensuring the application and monitoring of this Regulation.

2. Where the competent authorities of a member State are aware of an infringement of this regulation attributable to a haulier from another member State, the member state within the territory of which the infringement is established shall inform the competent authorities of the member State in which the haulier is established and may ask the competent authorities of the member State of establishment to impose sanctions in accordance with this Regulation.

3. In the event of a serious infringement or repeated minor infringements of carriage regulations, the competent authorities of the member State in which the haulier is established shall examine the ways in which the sanctions provided for in article 8 (3) are applied and shall communicate their decision to the competent authorities of the member state in which the infringements were established.

### Article 12

The following shall be repealed:

- Council Regulation (EEC) no 3164/76,
- article 4 of Council Directive 75/130/EEC of 17 February 1975 on the establishment of common rules for certain types of combined carriage of goods between member states (9),
- Council Directive 65/269/EEC of 13 May 1965 concerning the standardisation of certain rules relating to authorisations for the carriage of goods by road between member States (10),
- Council Decision 80/48/EEC of 20 December 1979 on the adjustment of capacity for the carriage of goods by road for hire or reward between member States (11).

### Article 13

The first Council Directive of 23 July 1962 is hereby amended as follows:

1. the title shall be replaced by: “first Council Directive of 23 July 1962 on the establishment of common rules for certain types of carriage of goods by road”;

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2. Article 1 shall be replaced by:

## “Article 1

1. Under the conditions laid down in paragraph 2, member States shall liberalise the types of international carriage of goods by road for hire or reward and on own account listed in the annex where such carriage is performed to or from or in transit through their territory.

2. The types of carriage and unladen journeys made in conjunction with the carriage listed in the annex shall be exempted from community authorisation and from any carriage authorisation”;

3. Annex II shall be deleted and the text of annex I shall be replaced by that appearing in annex II to this Regulation.

## Article 14

The member States shall communicate to the Commission the measures they take to implement this Regulation.

## Article 15

This Regulation shall enter into force on the day following of its publication in the Official Journal of the European Communities. It shall apply from 1 January 1993. This Regulation shall be binding in its entirety and directly applicable in all member States.

Done at Brussels, 26 March 1992.

For the Council

the President

Joaquim Ferreira do Amaral

- (1) OJ No C 238, 13. 9. 1991, p. 2.
- (2) OJ No C 39, 17. 2. 1992.
- (3) OJ No C 40, 17. 2. 1992, p. 15.
- (4) ECR 1985, p. 1513.
- (5) OJ No L 163, 30. 6. 1988, p. 1.

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- (6) OJ No L 357, 29. 12. 1976, p. 1. Regulation last amended by Regulation (EEC) no 3914/90 (OJ no L 375, 31. 12. 1990, p. 7).
- (7) OJ No L 308, 19. 11. 1974, p. 1. Directive last amended by Regulation (EEC) No 3572/90 (OJ No L 353, 17. 12. 1990, p. 12).
- (8) OJ No L 70, 6. 8. 1962, p. 2005/62. Directive last amended by Directive 84/647/EEC (OJ No L 335, 22. 12. 1984, p. 72).
- (9) OJ No L 48, 22. 2. 1975, p. 31. Directive last amended by directive 91/224/EEC (OJ No L 103, 23. 4. 1991, p. 1).
- (10) OJ No 88, 24. 5. 1965, p. 1469/65. Directive as last amended by Directive 85/505/EEC (OJ No L 309, 21. 11. 1985, p. 27).
- (11) OJ No L 18, 24. 1. 1980, p. 21.

#### ANNEX I

“Annex

European Economic Community

(a) (blue card - din a4)

(first page of the authorisation)

(Text in (one of) the official language(s) of the member State issuing the authorisation).

Distinguishing sign (1) name of the competent authority or body authorisation No..... for the international carriage of goods by road for hire or reward.

This authorisation 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 effected for hire or reward within the territory of the Community, as laid down in Council Regulation (EEC) no 881/92 of 26 March 1992 and subject to the general provisions of this authorisation.



Particular remarks:

This authorisation shall be valid from.....to.....

Issued in.....

On.....(3)

(1) see page 1 of this Official Journal.

(2) “Vehicle” means a motor vehicle registered in a member State or a coupled combination of vehicles, the motor vehicle of which at least is registered in a member State, used exclusively for the carriage of goods.”

(b) (second page of the authorisation)

(Text in (one of) the official language(s) of the member state issuing the authorisation).

## General Provisions

This authorisation is issued under 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 (1).

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 effected within the territory of the Community 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 member States, with or without transit through one or more member States or non-member countries,
- from a member State to a non-member country or vice versa, with or without transit through one or more member States or non-member countries,
- between non-member countries with transit through the territory of one or more member States,

and unladen journeys in connection with such carriage.

In the case of carriage from a member State to a non-member country or vice versa, this authorisation is valid for that part of the journey effected on

the territory of the member State of loading or unloading upon conclusion of the necessary agreement between the Community and the non-member country in question in accordance with Regulation (EEC) No 881/92.

The authorisation is personal to the holder and is not transferable.

It May be withdrawn by the competent authority of the member State which issued it, notably where the haulier has:

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

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

A certified copy of the authorisation must be kept in the vehicle (2).

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 authorisation holder or if it is registered or authorised to use the roads in another member State.

The authorisation must be produced whenever required by an authorised inspecting officer. Within the territory of each member 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) OJ No L 335, 22. 12. 1984, p. 72.'

(1) The distinguishing signs are:

(B) Belgium,

(DK) Denmark,

(D) Germany,

(GR) Greece,

(ES) Spain,

(F) France,

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- (IRL) Ireland,
  - (I) Italy,
  - (L) Luxembourg,
  - (NL) Netherlands,
  - (P) Portugal,
  - (UK) United Kingdom.
- (2) Name or business name and full address of the haulier.
  - (3) Signature and stamp of the issuing competent authority or body.”.

## Annex II

“Annex

Types of carriage to be exempted from any community authorisation and from any carriage authorisation.

1. Carriage of mail as a public service.
2. Carriage of vehicles which have suffered damage or breakdown.
3. Carriage of goods in motor vehicles the permissible laden weight of which, including that of trailers, does not exceed six tonnes or the permissible payload of which, including that of trailers, does not exceed 3,5 tonnes.
4. Carriage of goods in motor vehicles provided the following conditions are fulfilled:
  - (a) the goods carried must be the property of the undertaking or must have been sold, bought, let out on hire or hired, produced, extracted, processed or repaired by the undertaking;
  - (b) the purpose of the journey must be to carry the goods to or from the undertaking or to move them, either inside the undertaking or outside for its own requirements;
  - (c) motor vehicles used for such carriage must be driven by employees of the undertaking;

- (d) the vehicles carrying the goods must be owned by the undertaking or have been bought by it on deferred terms or hired provided that in the latter case they meet the conditions of Council Directive 84/647/EEC of 19 December 1984 on the use of vehicles hired without drivers for the carriage of goods by road (1). This provision shall not apply to the use of a replacement vehicle during a short breakdown of the vehicle normally used;
  - (e) carriage must be no more than ancillary to the overall activities of the undertaking.
5. Carriage of medicinal products, appliances, equipment and other articles required for medical care in emergency relief, in particular for natural disasters.

**SCHEDULE 3**

Section 66ZA

**EXEMPTION LISTINGS****Interpretation.**

1. Any expression used in this Schedule which is used in the Community Drivers' Hours Regulation has the same meaning as in that Regulation.

**Exemption Listings.**

2. Pursuant to Article 13(1) of the Community Drivers' Hours Regulation, exemption is granted from Articles 6, 7, 8 and 9 of that Regulation in respect of—

2.1.(1) Any vehicle which is owned or hired without a driver by a public authority to undertake carriage by road otherwise than in competition with private transport undertakings.

(2) A vehicle does not fall within the description specified in this paragraph unless the vehicle—

(a) is being used for the provision of ambulance services—

(i) by the Gibraltar Health Authority, or

(ii) in pursuance of arrangements made by or at the request of the Gibraltar Health Authority;

(b) is being used for the transport of organs, blood, equipment, medical supplies or personnel—

(i) by the Gibraltar Health Authority, or

(ii) in pursuance of arrangements of the kind mentioned in paragraph (a)(ii);

(c) is being used by the Elderly Care Agency to provide, in the exercise of social services functions—

(i) services for old persons; or

(ii) services for physically and mentally handicapped persons;

(d) is being used for purposes connected with the lighthouse at Europa Point.

2.2(1) Any vehicle which has a maximum permissible mass not exceeding 7.5 tonnes and is being used for carrying materials, equipment or machinery for the driver's use in the course of the driver's work.

(2) A vehicle does not fall within the description specified in this paragraph if—

(i) the vehicle is being used outside Gibraltar; or

(ii) driving the vehicle constitutes the driver's main activity.

2.3(1) Any vehicle which has a maximum permissible mass not exceeding 7.5 tonnes which is being used to deliver items as part of a universal service by a universal service provider as defined in Article 2(13) of Directive 97/67/EC of the European Parliament and of the Council on common rules for the development of the internal market of Community postal services.

(2) A vehicle does not fall within the description specified in this paragraph if—

(i) the vehicle is being used outside Gibraltar; or

(ii) driving the vehicle constitutes the driver's main activity.

2.4 Any vehicle which is used by an undertaking for the carriage of goods within Gibraltar, is propelled by means of natural or liquefied gas or electricity and has a maximum permissible mass, including the mass of any trailer or semi-trailer drawn by it, not exceeding 7.5 tonnes.

2.5(1) Any vehicle which is being used for driving instruction and examination with a view to obtaining a driving licence or certificate of professional competence.

(2) A vehicle does not fall within the description specified in this paragraph if the vehicle or any trailer or semi-trailer drawn by it is being used for the commercial carriage of goods or passengers.

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- 2.6 Any vehicle which is being used in connection with—
- (a) sewerage, flood protection, water, gas or electricity maintenance services;
  - (b) road maintenance or control;
  - (c) door-to-door household refuse collection or disposal;
  - (d) telegraph or telephone services;
  - (e) radio or television broadcasting; or
  - (f) the detection of radio or television transmitters or receivers.
- 2.7 Any vehicle with not more than 17 seats, including the driver's seat, used exclusively for the non-commercial carriage of passengers.
- 2.8 Any specialised vehicle which is being used for transporting circus or funfair equipment.
- 2.9 Any mobile project vehicle the primary purpose of which is use as an educational facility when stationary and which is specially fitted for that purpose.
- 2.10 Any specialised vehicle transporting money and/or valuables.
- 2.11 Any vehicle which is being used to carry animal waste or carcasses which are not intended for human consumption.
- 2.12(1) Any vehicle which is used exclusively on roads inside hub facilities.
- (2) For the purposes of this paragraph, examples of "hub facilities" include the port and the airport.
3. For the purpose of Article 3(i) of the Community Drivers' Hours Regulation a vehicle has a historic status if it is a vehicle which is by virtue of its construction and equipment suitable for carrying passengers or goods and which was manufactured more than 25 years before the date on which it is being driven.
4. Pursuant to Article 3(2) of the Community Recording Equipment Regulation, exemption is granted from the provisions of that Regulation in

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respect of any vehicle falling within a description specified in this Part of this Schedule.