

# Transport Act 1998

This version is out of date

## Principal Act

<b>Act. No. 1998-44</b>	<i>Commencement (s.69)</i>	4.8.1999 <sup>1</sup>
	<i>(all except section 76(3))</i>	7.9.2000 <sup>2</sup>
	<i>(s.76(3))</i>	22.9.2000 <sup>3</sup>
	<i>Assent</i>	3.9.1998

Amending enactments	Relevant current provisions	Commencement date
Act. 2002-23	ss. 2, 10A, 11, 17(4)(b)(ii), 22, 27(1), 32(1), 46, 47(3), 47A, 50(1), (1A), (2), 67, Sch.1	21.1.2003
2003-17	s. 17(4), (8)-(9)	1.8.2003
2008-19	ss. 36-41, 66A-66ZB, Schs.2-3	13.11.2008
2010-07	ss. 2, 11(4), 17(3), (8), (10)-(12), 46(2), (6), 51(1), 52(1), (4A), (5), 53, 54(1), (2), 55-56	15.4.2010
LN. 2016/037	ss. 66A, (1A), 66D(1)(a)(i)-(iii), (2)-(3), (4)(b), (5)(c), (6)(b)-(c), (7)-(8), 66F(2), 66G(1)(b), 66H(8), 66J(3), 66M(3), 66O(1)(b), (2)(a), 66P(2)(a), (7), 66S(1)(e), (2)(a), (6)	2.3.2016
Act. 2016-18	Sch.1	23.4.2018
2017-10	Sch.3	13.6.2018
LN. 2019/149	ss. 66A(1), 66B(1)-(2), (3)(c), 66C(11), (12)(c)-(d), (13)(a), (14), 66CA, 66D(1)(a)(ii)-(iii), (b), (3), (6A)-(6C), (8)-(9), 66DA, 66DBA, 66DC, 66E(1), 66F(2), 66G(1)(b), (2), 66H(1), (3), 66I(1), (3), 66J(1)(b), 66K(2), 66L(3), 66M(2)-(3), (5), (7), 66N(6)(a), (10), 66O(1), (2)(a), (6)-(7), 66P(1), (2)(a), (c), (4)(a), (5)(a), (7), 66S(2), 66TA, 66U(1)(b)(ii), 66WA, 70(1)(a), Sch.3	30.7.2019
2019/236	ss. 66A, 66D(1)(a)(i)-(ii), (9), 66M(3)(a), 66O(7)(a), Schs.2-3	21.11.2019
2019/237	ss. 2, 25(1)(a)-(b), (2), (5), (6)(a)(iv), (7), 29(1)(d), 31, 31A, 57(1)-(2), 58, 59(1)-(2), 60(a)-(b), 61-62, 63(1)-(3), 65, Schs.1-2	28.11.2019
2019/048	s. 31(1)	1.1.2021
2019/236	ss. 66A, 66B(1)-(2), 66C(11), 66CA(1)(a), 66D(1)(a)(i), (b), (6A), 66DB(5)(a)(ii), (b)(ii), 66M(5)(b)	1.1.2021
2019/237	ss. 2(1), 69(1)(u)	1.1.2021

<sup>1</sup> Notice of Commencement (LN.1999/091)

<sup>2</sup> Notice of Commencement (LN.2000/066)

<sup>3</sup> Notice of Commencement (LN.2000/071)

Act. 2024-08 s. 17(10)-(12)

26.3.2024

**EU legislation/International Agreements involved:**

Regulation (EC) No. 561/2006

Regulation (EC) No 1071/2009

Regulation (EC) No 1072/2009

Regulation (EC) No 1073/2009

Regulation (EU) No 165/2014

Regulation (EU) 2016/799

ARRANGEMENT OF SECTIONS

Section

**PART I**

**PRELIMINARY**

1. Title and Commencement
2. Interpretation

**PART II**

**TRANSPORT COMMISSION AND TRANSPORT INSPECTORS**

3. Transport Commission
4. Functions of Commission
5. Procedural powers of Commission
6. Matters consequential on the removal of responsibilities from Traffic Commission
7. Transport inspectors

**PART III**

**PUBLIC SERVICE VEHICLES**

*General Provisions*

8. Certificate of fitness
9. Examination of vehicles
10. General conditions of licence
- 10A. Failure to renew licence

*Road Service Licences: Taxis*

11. Road service licence required
12. Application for licence
13. Grant or refusal of licence
14. Maximum number of road service licences
15. Matters to be considered by the Commission before determining application
16. Conditions of licence
17. Special conditions in all road service licences for taxis
18. Concessioned taxis
19. Penalties

20. Revocation and suspension of licence
21. Duration of licences
22. Renewal of licences
23. Transfer of licences
24. Amendment of licences

*Operator Licences: Buses and Lorries*

25. Operator licence required
26. General conditions of operator licence
27. Application for operator licence

*Grant of Operator Licences*

28. Criteria for grant of operator licence
29. Revocation and suspension of operator licence
30. Duration of operator licence
31. Issue of certificate of professional competence for relevant States
- 31A. Issue of other documents and certificates for relevant States
32. Renewal of operator licences
33. Non-transferability of operator licences
34. Amendment of operator licences

*Operator Licences: Suitability and equipment of Vehicles*

35. Suitability of vehicles
- 36-41 *Repealed*

*Operator Licences: Supplementary and Final*

42. Transitional provisions
43. Supplementary provisions in respect of road haulage operator licences and road passenger transport operator licences

*Horse-drawn Vehicles*

44. Licensing of horse-drawn vehicles
45. Licensing of horse-drawn vehicle drivers

*Self-drive hire cars*

46. Licensing of self-drive operators and self-drive cars
47. Application for licence
- 47A. Renewal of licences

- 48. Revocation and suspension of licence
- 49. Transfer of licences
- 50. Limitation of age of self-drive cars

*Chauffeur Licences*

- 51. Licensing of chauffeurs

*Chauffeur-driven hire-cars*

- 52. Licensing of chauffeur-driven hire car operators and chauffeur driven hire cars
- 53. Application for licence
- 54. Revocation and suspension of licence
- 55. Transfer of licence
- 56. *Repealed*

**PART IV**

**COMMUNITY LICENCES**

- 57. Purpose and interpretation
- 58. Use of goods vehicle without Community Licence
- 59. Entitlement to the issue of Community Licence
- 60. Rights of appeal
- 61. Effect of failure to comply with conditions governing use of Community Licence
- 62. Authorised inspecting officers
- 63. Return of documents
- 64. Supply of information
- 65. Death, bankruptcy etc. of holder of Community Licence
- 66. Offences by corporations etc

**PART IVA**

**Drivers' Hours**

- 66A. Interpretation, supplementary provisions, etc, for Part IVA.
- 66B. Vehicles and drivers subject to control under this Part.
- 66C. Permitted driving time and periods of duty.
- 66CA. Authorisation of field tests.
- 66D. Installation and use of recording equipment - EU requirements.
- 66DA. Installation and use of recording equipment - AETR requirements.
- 66DB. Supply of recording equipment which is not type-approved.
- 66DBA. Manual daily record sheet.
- 66DC. Recording equipment system elements: security vulnerabilities.

- 66E. Forgery, etc. of seals on recording equipment.
- 66F. Records etc produced by equipment may be used in evidence.
- 66G. Delivery of record sheets and other documents.
- 66H. Vehicle units: downloading data.
- 66I. Driver cards: downloading data.
- 66J. Downloading data: requirement imposed by an officer.
- 66K. Downloading and retaining data: offences.
- 66L. Access to downloaded data.
- 66M. Written records.
- 66N. Inspection of records and other documents.
- 66O. Inspection of records and other documents and data relating to recording equipment.
- 66P. Power of entry.
- 66Q. Sections 66O and 66P: supplementary.
- 66R. Offence of failing to comply with requirements or obstructing an officer.
- 66S. Offences: false records and data etc.
- 66T. Power to seize documents.
- 66TA. Power to stop.
- 66U. Power to prohibit driving of vehicle.
- 66V. Duration and removal of prohibition.
- 66W. Failure to comply with prohibition.
- 66WA. Exchange of information with AETR competent authorities.
- 66X. Power to give effect to international agreements.
- 66Y. Application to the Crown and exemption for police and fire brigade.
- 66Z. Offences by bodies corporate etc.
- 66ZA. Schedule 3.
- 66ZB. Regulations.

## PART V

### FINAL PROVISIONS

- 67. Appeals
- 68. Rules of court
- 69. Regulations
- 70. Forgery, etc., of licences and certificates
- 71. Duty to give information
- 72. General Penalty
- 73. Avoidance of contracts
- 74. Saving of rights
- 75. Nuisances
- 76. Repeals and consequential amendments
- 77. Transitional provisions

### SCHEDULE 1

Supplementary provisions as to qualifications for operator licences.

**SCHEDULE 2**

*Deleted*

**SCHEDULE 3**  
**EXEMPTION LISTINGS**

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING TO PUBLIC TRANSPORT AND ROAD HAULAGE: TO MAKE PROVISION FOR THE ESTABLISHMENT OF THE TRANSPORT COMMISSION: TO MAKE FURTHER PROVISION FOR THE REGULATION AND LICENSING OF SERVICES SUPPLIED TO THE TOURISM SECTOR OF THE ECONOMY: AND FOR MATTERS CONNECTED THERETO.

## 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 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;

“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 public service vehicle that—

- (a) is a category B motor vehicle;
- (b) is let out for hire or reward on terms that a chauffeur shall be responsible for driving it; and
- (c) is not a vehicle in respect of which there is a current road service licence.

“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;

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

“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;

“Regulation (EC) No 1071/2009” means Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, as amended from time to time;

“Regulation (EC) No 1072/2009” means Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market, as amended from time to time;

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

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

“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;

“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 of a relevant State;

“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;

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

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

**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 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

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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.



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.

(4) This section does not apply to a chauffeur-driven hire car operated under a chauffeur-driven hire car operator's licence.

#### **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) and 10, 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.

(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) (a) The name of any person shall not be inserted as a named driver in any road service licence unless the Commission is satisfied that the person concerned—
- (i) is of a good character
  - (ii) is a fit and proper person; and
  - (iii) has no regular employment other than that of driving a taxi
- (b) Paragraph (a)(iii) does not apply to a person named as a driver in any road service licence prior to the coming into force of this paragraph.

(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 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) or (5);
- (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 unless the vehicle is exempted by virtue of subsection (5).

(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, a person authorised by the Minister under Part IVA to carry out checks and inspections of recording equipment, 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) Subsection (1) shall not apply to the use of a motor vehicle falling within-

(a) category C or category C1; or

(b) category D,

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

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

(i) a community licence;

(ii) a driver attestation, if required,

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

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

(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 2006/1/EC of the European Parliament and of the Council of 18 January 2006 on the use of vehicles hired without drivers for the carriage of goods by road, as amended from time to time; 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” means the relevant State in which an undertaking is established, regardless of whether its transport manager originates from another country;

“international carriage” has the same meaning as in Article 2(2) of Regulation (EC) No 1072/2009 for category C and category C1 vehicles and has the same meaning as in Article 2(1) of Regulation (EC) No 1073/2009 for category D vehicles.

#### **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 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) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as amended from time to time;
  - (ii) Regulation (EC) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, as amended from time to time;

as applied by-

- (iii) Part VIA of this Act;
- (iv) Road Transport (Working Time) Regulations 2005;
- (v) Tachographs (Miscellaneous Provisions) Regulations 2015;
- (iv) Transport (Recording Equipment) (Minimum conditions) Regulations 2008; or
- (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 certificate of professional competence for relevant States.**

31.(1) Subject to the provisions of this section, on an application by a person who wishes to engage in a road transport undertaking in the territory of a relevant State, the Commission shall issue to the applicant a certificate of professional competence as to such matters relating to the applicant's; effective and stable establishment in Gibraltar, the applicant's good repute, professional competence and his financial standing within the meaning of Regulation (EC) No 1071/2009 as—

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

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

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

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

- (a) if it is satisfied that the evidence is sufficient for the purpose; and

- (b) the prescribed fee (if any) has been paid,

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

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

**Issue of other documents and certificates for relevant States.**

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

- (a) in the case of category C, or category C1, vehicles-
  - (i) a community licence; or
  - (ii) a driver attestation, if required,

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

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

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

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

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

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

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

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

#### **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) *Deleted*

(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) *Deleted*

(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—

- (a) he is licensed to do so under this section; and
- (b) he is licensed to drive a chauffeur-driven hire car under regulation 117C(1) of the Transport Regulations 2000.

(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.**

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).



(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.

(4A) The driver of a chauffeur-driven hire car shall, on being so required by a police officer or a transport inspector, produce for examination a copy of–

- (a) his chauffeur licence;
- (b) the chauffeur-driven hire car operator's licence under which authority the vehicle is being used as a public service vehicle;
- (c) the vehicle's certificate of fitness; and
- (d) the vehicle's roadworthiness certificate.

(5) *Deleted*

(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 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.

**Revocation and suspension of licence.**

54.(1) A chauffeur-driven hire car 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 chauffeur-driven hire car operator's licence give the holder a due opportunity to be heard.

**Transfer of licences.**

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

56. *Repealed*

**PART IV**

**COMMUNITY LICENCES.**

**Purpose and interpretation.**

57.(1) This Part implements Regulation (EC) No 1072/2009.

(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 Licence” means a Community Licence issued under Regulation (EC) No 1072/2009;

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

and, subject thereto, expressions used which are also used in the Regulation (EC) No 1072/2009 have the meaning which they bear in that Regulation.

**Use of goods vehicle without Community Licence.**

58. A person who uses a vehicle in Gibraltar in contravention of Article 3 of Regulation (EC) No 1072/2009 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 Licence.**

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 Licence under Article 4 of Regulation (EC) No 1072/2009 if he holds a road haulage operator licence covering international carriage.

(2) For the purposes of sub-section (1), “international transport operations” has the meaning which it bears in paragraph 1 of subsection (1), “international carriage” has the meaning which it bears in Articles 2(2) of Regulation(EC) No 1072/2009.

**Rights of appeal.**

60. A person who—

- (a) being entitled to be issued with a Community Licence under section 59, is aggrieved by the refusal of the competent authority to issue such licence to him, or
- (b) being the holder of a Community Licence, 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 Licence.**

61. A person who uses a vehicle in Gibraltar under a Community Licence and, without reasonable excuse, fails to comply with any of the conditions governing the use of that licence under Regulation (EC) No 1072/2009 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 Regulation (EC) No 1072/2009 shall be a police officer, a transport inspector, an officer of the a person authorised by the Minister under Part IVA to carry out checks and inspections of recording equipment or an inspector appointed under section 10 of the Shop Hours Act.

**Return of documents.**

63.(1) The holder of a Community Licence which is withdrawn by the competent authority in accordance with Article 7.2 of Regulation (EC) No 1072/2009 shall, within 7 days of such withdrawal, return to the competent authority the original licence and all certified true copies of it.

(2) The holder of a Community Licence shall return to the competent authority such certified true copies of the licence 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 12.1 of Regulation (EC) No 1072/2009 to suspend certified true copies of that licence.

(3) A person who, without reasonable excuse, fails to comply with any provision of subsection (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 Licence.**

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 Licence 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—

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

“the applicable EU rules” means any directly applicable retained EU law provision being in force on exit day about the driving of road vehicles and includes the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport of 1st July 1970, as amended, as applied by Article 2(3) of the EU Drivers' Hours Regulation;

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

“Commission Implementing Regulation (EU) 2016/799” means Commission Implementing Regulation (EU) 2016/799 of 18 March 2016 implementing Regulation (EU) No 165/2014 of the European Parliament and of the Council laying down the requirements for the construction, testing, installation, operation and repair of tachographs and their components, as amended from time to time;

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

“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);

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

- “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;
- “the equivalent EU Regulation” means Regulation (EU) No 165/2014 of the European Parliament and of the Council on tachographs in road transport as it has effect in EU law, as amended from time to time;
- “EU Tachographs Regulation” means Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport, as the same may be amended from time to time;
- “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 37(2) of the EU Tachographs Regulation or a manual daily record sheet drawn up under section 66DBA;
- “relevant EU provision” means any retained EU law provision for the time being in force on exit day about the driving of road vehicles, whether directly applicable or not;
- “relevant Appendices” to the Annex to the AETR means Appendix 1, Appendix 1B and Appendix 2 to the Annex;

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

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

“transport undertaking” has the meaning given in the EU 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 EU provision.

(1A) A reference to Annex IB to the EU Tachographs Regulation has effect, until the coming into force of that Annex, as a reference to Annex IB to Council Regulation (EEC) No. 3821/85 on recording equipment in road transport.

(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 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.

(2) *Deleted*

(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—
  - (i) are vehicles within the meaning given by Article 4 of the EU Drivers' Hours Regulation; and
  - (ii) are not referred to in Article 3 of that 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 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, whether occurring in Gibraltar or another contracting country, of any requirement of the applicable EU 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) in respect of a contravention of a provision of the EU Driving Hours Regulation, 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 EU Drivers' Hours Regulation; and
    - (ii) that he took all reasonable steps to avoid the contravention; or
  - (d) being charged as mentioned in paragraph (b) in respect of a contravention of a provision of the AETR, the person proves—
    - (i) that at the time of the contravention the person was complying with Article 11(1) to (3) of the AETR (organisation of drivers' work, distance-related payments etc); and
    - (ii) that the person took all reasonable precautions to avoid the contravention.
- (13) A person who—
- (a) is subject to the requirement imposed by Article 10(4) of the EU Drivers' Hours Regulation or Article 11(5) of the AETR (undertakings etc to ensure that contractually agreed transport time schedules respect that provision); 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 EU 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.

#### **Authorisation of field tests.**

66CA.(1) The Minister may authorise a person to carry out tests (“field tests”) of—

- (a) recording equipment that has not been type-approved as required by Article 11A of the EU Driver’s Hours Regulation (granting of type-approval), or
  - (b) modifications or additions to recording equipment that has been so approved.
- (2) An authorisation is to be in writing.
- (3) The Minister may withdraw an authorisation by giving written notice.
- (4) An authorisation may contain conditions which may in particular relate to—
- (a) the places where and equipment by means of which a field test is, or is to be, carried out;
  - (b) the procedure to be adopted in carrying out a field test;
  - (c) the records to be kept and the evidence to be furnished of the carrying out of a field test;
  - (d) the training of persons for carrying out field tests;
  - (e) the inspection by or on behalf of the Minister of places where and equipment by means of which field tests are, or are to be, carried out;
  - (f) the display, at the places where field tests are carried out, of signs indicating that field tests are carried out there by persons approved by the Minister.

(5) The Minister must from time to time publish lists of the persons currently authorised under this section.

**Installation and use of recording equipment - EU requirements.**

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 EU Tachographs Regulation, including the relevant technical specifications, or the equivalent EU Regulation;
  - (ii) complies with the EU Tachographs Regulation, including the relevant technical specifications; and
  - (iii) is being used as provided by Articles 27 to 29 and 32 to 37 of the EU Tachographs Regulation; or
- (b) in which there is recording equipment which has been repaired (whether before or after installation) otherwise than in accordance with the the EU Tachographs Regulation or the equivalent EU 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 EU Tachographs 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 EU Tachographs 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 37(2) of the EU Tachographs Regulation were being complied with.
- (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 27 to 29 and 32 to 37 of the EU Tachographs 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 Articles 29(2) to (5), 35 and 37(2) of the EU Tachographs Regulation; and
  - (c) in all other respects the recording equipment was being used as provided by Articles 27 to 29 and 32 to 37 of the EU Tachographs Regulation.
- (6A) A person shall not be liable to be convicted under subsection (1) of this section by reason of using recording equipment which does not bear the relevant Gibraltar type-approval mark, the UK relevant type-approval mark or the relevant EU type-approval mark (see Article 11A of the EU Tachographs Regulation) if he proves to the court that the use of the recording equipment was in the course of a field test authorised under section 66CA.
- (6B) Where a person (“the driver”)—
- (a) in the course of the driver's employment, uses a vehicle in contravention of subsection (1); and
  - (b) is liable to be convicted under that subsection in respect of that use, the employer also commits an offence and shall be liable on summary conviction to a fine.
- (6C) A person shall not be liable to be convicted under subsection (6B) in respect of the use of a vehicle if the requirements of Article 10(1) and (2) of the EU Drivers' Hours Regulation



(liability of transport undertakings) and Article 33(1) of the EU Tachographs Regulation (responsibility of transport undertakings) were complied with in relation to that use.

(7) For the purposes of this section recording equipment is used as provided by Articles 27 to 29 and 32 to 37 of the EU Tachographs 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 EU Tachographs Regulation requires recording equipment to be installed and used in that vehicle not being a vehicle which is exempt by virtue of Article 3(2) or (3) of that Regulation; and in this section and sections 66F to 66K so far as those sections relate to the EU Tachographs Regulation any expression which is also used in that Regulation has the same meaning as in that Regulation.

(9) In this Part—

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

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

- (i) Annex I of the EU Tachographs Regulation;
- (ii) Annex IB of Council Regulation (EEC) No 3821/85 for as long as preserved and applied by article 46 of the EU Tachographs Regulation; or
- (iii) Annex IC to Commission Implementing Regulation (EU) 2016/799; and

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

- (i) Annex IB of Council Regulation (EEC) No 3821/85 for as long as preserved and applied by article 46 of the EU Tachographs Regulation; or
- (ii) Annex IC to Commission Implementing Regulation (EU) 2016/799; and

(c) in the case of a vehicle put into service for the first time on or after 15 June 2019, Annex IC to Commission Implementing Regulation (EU) 2016/799.

#### **Installation and use of recording equipment - AETR requirements.**

66DA.(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 AETR;
  - (ii) complies with the AETR (including the relevant Appendices to the Annex to the AETR); and
  - (iii) is being used as provided by Articles 10 to 13 of the Annex to the AETR;  
or
- (b) in which there is recording equipment which has been repaired (whether before or after installation) otherwise than in accordance with the AETR,

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 for contravention of subsection (1) of this section if the person proves to the court that the person 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 AETR.

(3) A person shall not be liable to be convicted for contravention of subsection (1)(a) if the person proves to the court that the vehicle in question was proceeding to a place where recording equipment which would comply with the AETR was to be installed in the vehicle in accordance with the AETR.

(4) A person shall not be liable to be convicted for contravention of subsection (1)(a) by reason of the recording equipment installed in the vehicle in question not being in working order if the person 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 13(2)(a) of the Annex to the AETR were being complied with.

(5) *Not used.*

(6) A person shall not be liable to be convicted for contravention of subsection (1)(a) by reason of any seal on the recording equipment installed in the vehicle in question not being intact if the person 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 10 to 13 of the Annex to the AETR.
- (7) A person shall not be liable to be convicted for contravention of subsection (1)(a) by reason of the driver card not being used with the recording equipment installed in the vehicle in question if the person proves to the court that—
- (a) the driver card was damaged, malfunctioning, lost or stolen;
  - (b) the requirements of Articles 12(1) and 13(2) and (3) of the Annex to the AETR were being complied with; and
  - (c) in all other respects the recording equipment was being used as provided by Articles 10 to 13 of the Annex to the AETR.
- (8) Where a person ("the driver")—
- (a) in the course of the driver's employment, uses a vehicle in contravention of subsection (1), and
  - (b) is liable to be convicted for the contravention of that subsection in respect of that use,
- the employer also commits an offence and shall be liable on summary conviction to a fine.
- (9) A person shall not be liable to be convicted under subsection (8) in respect of the use of a vehicle if the requirements of Article 11(1) to (3) of the AETR and Article 11(1) of the Annex to the AETR were complied with in relation to that use.
- (10) For the purposes of this section recording equipment is used as provided by Articles 10 to 13 of the Annex to the AETR if, and only if, the circumstances of its use are such that each requirement of those Articles is complied with.
- (11) This section applies at any time to any vehicle to which this Part of this Act applies if, at that time, the AETR requires recording equipment to be installed and used in that vehicle; and in this section and sections 66F to 66K (so far as those sections relate to the AETR) any expression which is also used in the AETR has the same meaning as in the AETR.
- (12) In this Part-
- "the relevant Appendices" to the Annex to the AETR—

- (a) in the case of a vehicle put into service for the first time before 16th June 2010 means-
  - (i) either Appendix 1 or Appendix 1B to that Annex; and
  - (ii) Appendix 2 to that Annex; and
- (b) in the case of a vehicle put into service for the first time on or after that date means-
  - (i) Appendix 1B to that Annex; and
  - (ii) Appendix 2 to that Annex.

**Supply of recording equipment which is not type-approved.**

66DB.(1) A person commits an offence if the person supplies, as recording equipment which complies with the EU Tachographs Regulation or the AETR, recording equipment in respect of which no appropriate type-approval certificate is in force.

- (2) It is a defence to show that—
  - (a) the recording equipment was supplied for export from Gibraltar;
  - (b) the person had reasonable cause to believe that the recording equipment would not be installed in a vehicle used on a road in Gibraltar or would not be so installed until an appropriate type-approval certificate was in force; or
  - (c) the person had reasonable cause to believe that the recording equipment would only be installed in a vehicle which was not required under the relevant instrument to have recording equipment installed in it.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) Nothing in this section affects the validity of a contract or any rights arising under or in relation to a contract.
- (5) In this section—

"appropriate type-approval certificate" means—

- (a) in relation to recording equipment supplied as complying with the EU Tachographs Regulation, a type-approval certificate-

- (i) issued under the United Kingdom's Motor Vehicles (Type Approval) Regulations 1980 and the EU Tachographs Regulation, or
  - (ii) issued under the equivalent EU Regulation;
- (b) in relation to recording equipment supplied as complying with the AETR, a type approval certificate-
- (i) issued under the United Kingdom's Motor Vehicles (Type Approval) Regulations 1980 and the AETR, or
  - (ii) issued in another contracting country under the AETR;

"relevant instrument"-

- (a) in relation to recording equipment supplied as complying with the EU Tachographs Regulation, means that Regulation;
- (b) in relation to recording equipment supplied as complying with the AETR, means the AETR;

"supplies" includes-

- (a) sells;
- (b) offers to sell or supply;
- (c) exposes for sale.

#### **Manual daily record sheet.**

66DBA.(1) The crew of a vehicle registered in a country which is not a contracting Party to the AETR may, in lieu of a tachograph conforming to the specifications in the Annex to the AETR, manually complete daily record sheets.

(2) The daily record sheets referred to in subparagraph (1) must be completed by a crew member for the period of time from the moment of entry into the territory of the first contracting Party to the AETR.

(3) In completing the record sheets referred to subparagraph (1), a crew member shall write on his record sheet the information concerning his professional activities and rest periods, using the appropriate graphic symbols as defined in article 12 of the Annex to the AETR.

**Recording equipment system elements: security vulnerabilities.**

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

- (a) the person is a manufacturer of a vehicle unit, motion sensor or tachograph card for which a type-approval certificate has been issued under the United Kingdom’s Motor Vehicles (Type Approval) Regulations 1980 and the EU Tachographs Regulation;
- (b) the person knows that security vulnerabilities have been detected for elements already on the market, as mentioned in Article 20(3) of the EU Tachographs Regulation; and
- (c) the person fails to inform the Driver and Vehicle Licensing Department that the security vulnerabilities have been detected.

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

**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 or section 66DA 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—
  - (a) Article 34(1), (3), (4) or (6) or 37(2) of the EU Tachographs Regulation; or

(b) Article 12(1), (2) or (5) or 13(2)(a) of the Annex to the AETR, 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 EU Tachographs Regulation or the AETR.
- (2) If such a document relates to a person in his capacity as the driver of a vehicle to which section 66D or section 66DA 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 EU Drivers' Hours Regulation or article 11(2)(b) of the Annex to the AETR 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 of the EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR to ensure that data is downloaded from the unit.	On the earlier of– the expiry of the period of 90 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 90 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 90 days starting on the day after the last downloading under this section.	On the first day of the undertaking’s use of the vehicle after the last downloading under this section.	

(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 Articles 2(2)(n) of the EU Tachographs Regulation.

**Driver cards: downloading data.**

66I.(1) This section applies where a transport undertaking is required by Article 10 of the EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR 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
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 of the EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR 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 EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR 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 Articles 2(2)(n) of the EU Tachographs 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 EU Drivers’ Hours Regulation or article 11(2)(b) of the Annex to the AETR 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 EU Drivers' Hours Regulation or article 11(2)(b) of the Annex to the AETR to retain it for at least 12 months following its recording.

**Written records.**

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

- (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 EU 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 EU 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) a vehicle to which section 66D applies and which is installed with recording equipment complying with the relevant technical specifications (within the meaning of that section);
- (b) a vehicle to which section 66DA applies and which is installed with recording equipment complying with the AETR (including the relevant Appendices to the Annex, 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-

- (a) contravenes any regulations made under this section; or
- (b) contravenes, whether in Gibraltar or another contracting country, any requirement as to books, records or documents of the applicable EU 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 EU 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 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 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 or section 66DA 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—

- (a) if that person is the owner of a vehicle to which section 66D or section 66DA 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 EU Tachographs Regulation or the AETR to retain or to be able to produce;
  - (c) any book, register or other document required by the applicable EU rules or which the officer may reasonably require to inspect for the purpose of ascertaining whether the requirements of the applicable EU 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 36 of the EU Tachographs Regulation or Article 12(7)(a) or (b) of the Annex to the AETR 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 the relevant provision;

“driver card” has the meaning given by the relevant provision;

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

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

- (7) In subsection (6) “relevant provision” means-
- (a) in relation to a vehicle to which section 66D applies-
    - (i) where the vehicle was put into service for the first time before 15 June 2019-
      - (A) Annex IB of Council Regulation (EEC) No 3821/85 for as long as preserved and applied by article 46 of the EU Tachographs Regulation; or
      - (B) Annex IC to Commission Implementing Regulation (EU) 2016/799; and
    - (ii) where the vehicle was put into service for the first time on or after 15 June 2019, Annex IC to Commission Implementing Regulation (EU) 2016/799;
  - (b) in relation to a vehicle to which section 66DA applies, Appendix 1B to the Annex to the AETR.

**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 or section 66DA 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 EU 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;
- (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 or section 66DA 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—
  - (a) inspect any vehicle which he finds there and to which section 66D or section 66DA 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.

- (7) In this Part, “analogue recording equipment” means-

- (a) in relation to a vehicle to which section 66D applies, recording equipment that complies with Annex I to the EU Tachographs Regulation;
- (b) in relation to a vehicle to which section 66DA applies, recording equipment that complies with Appendix 1 to Annex 1 to the AETR.

**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—

- (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;
  - (e) if he holds more than one driver card;
  - (f) if he uses a card other than a card issued to him;
  - (g) if he uses a driver card which is defective; or
  - (h) if he uses a driver card which is damaged.
- (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 EU Tachographs, the AETR or section 66D or section 66DA; or
  - (b) any entry in a book, register or document kept or carried for the purposes of the applicable EU 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
  - (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, distributes, installs, advertises or sells 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 stop.**

66TA.(1) Subsection (2) applies if a vehicle appears to an officer to be one to which this Part could apply.

(2) The officer may direct the driver to stop the vehicle for the purpose of enabling him to exercise powers under this Part.

(3) In this section “an officer” means—

- (a) an “officer” as defined in section 66A(1);
- (b) a vehicle examiner appointed under section 6 of the Traffic Act 2005; or
- (c) a police officer authorised to act for the purposes of this section by or on behalf of the Commissioner of Police.

**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 EU 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.

(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.

**Exchange of information with AETR competent authorities.**



66WA. The Driver and Vehicle Licensing Department shall send to the competent authority of the contracting party to the AETR, lists of approved fitters, approved workshops and the cards issued to them and also copies of the marks and of the necessary information relating to the electronic security data used.

**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;
- (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 international agreements and conventions;
- (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) makes a false instrument within the meaning of the Crimes Act 2011 or alters or uses or lends to or allows to be used by any other person a licence or certificate under this Act; or
- (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 (l);
  - (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 2014;

“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 carriage” has the same meaning as in Article 2.2 of Regulation (EC) No 1072/2009, and the expression “national carriage” shall be construed accordingly;

“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;

(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 carriage; or
- (b) on national carriage only.

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

(3) Where the Commission issues a certificate or licence in accordance with Regulation (EC) No 1071/2009, Regulation (EC) No 1072/2009 or Regulation (EC) No 1073/2009 such certificate or licence shall accord with the format of such certificate or licence as provided for in the respective Regulation.

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

**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 carriage operations and international carriage, or
  - (ii) national carriage 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 Regulation (EC) No 1071/2009 where the applicant or a transport manager is a national of relevant State to which that Regulation 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;
- (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 carriage shall not be considered to be of appropriate financial standing unless he has available capital and reserves of an amount equal to at least £8,000 for a single vehicle and £4,500 for each additional vehicle.

(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 subparagraph (6) “approved body” means–

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

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

**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 person who lacks capacity within the meaning of Part 5 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 person who lacks capacity within the meaning of Part 5 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 person who lacks capacity within the meaning of Part 5 of the Mental Health Act 2016, or
- (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 subparagraphs (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 carriage 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;
- (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 carriage applies for the licence to be amended so that it shall also cover international carriage –
- (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 carriage.

#### **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
- (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 carriage and one specified in a licence which covers national carriage 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 authorised by the Minister under Part IVA to carry out checks and inspections of recording equipment;
- (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.**

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—

- (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
  - (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 person who lacks capacity within the meaning of Part 5 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 carriage only, for carrying goods or passengers for hire or reward on international carriage 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) 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 carriage.

**Application of paragraph 33.**

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 a relevant 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
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.
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.

*This version is out of date*

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.

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**SCHEDULE 2**  
*Deleted*

## SCHEDULE 3

Section 66ZA

## EXEMPTION LISTINGS

**Interpretation.**

1. Any expression used in this Schedule which is used in the EU Drivers' Hours Regulation has the same meaning as in that Regulation.

**Exemption Listings.**

2. Pursuant to Article 11(a) of the EU 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 disabled 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.
- 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 and for the purpose of Article 2(2)(k) of the AETR 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 EU Tachographs Regulation, exemption is granted from the provisions of that Regulation in respect of any vehicle falling within a description specified in this Part of this Schedule.