

Subsidiary Legislation made under s.69.

Transport (Recording Equipment) (Minimum Conditions) Regulations 2008

LN.2008/075

Commencement **25.9.2008**

Amending enactments	Relevant current provisions	Commencement date
LN. 2012/132	r. 2, Schs.1-3	4.10.2012
2016/037	rr. 2(b), 10(1), 12(2), Sch.1	2.3.2016
2019/236	rr. 2-3, 4(1)-(2), (4), (6), 6(6), 7, 8(1), (4), 9(2)(a), (c), 10(3), 11(1), (3), 12(1), (2)(c), 13, Schs.1, 3	21.11.2019
“	rr. 2, 4(3), (6), 5(2), 6(6), 8(4), 9(2)(a)-(c), (3), 10(1)-(3), 12(1)-(2), (c), 13, Sch.1	1.1.2021

Transposing:

Directive 2006/22/EC

Directive 2009/4/EC

Directive 2009/5/EC

Regulation (EU) No. 165/2014

EU Legislation/International Agreements involved:

Regulations (EEC) No. 3821/85

Regulations (EEC) No. 561/2006

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INFRINGEMENTS

In exercise of the powers conferred on me by section 69 of the Transport Act 1998 and in order to transpose into the law of Gibraltar Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No. 561/2006 and (EEC) No. 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, I have made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008 and come into operation on the day of publication.

Interpretation.

2. In these Regulations and unless the context otherwise requires—

“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;

“competent authority” means such person or persons as the Minister may appoint for the purposes of these Regulations;

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

“Directive” means Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No. 561/2006 and (EEC) No. 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC, as amended from time to time;

“Hours and Tachographs Regulations” means—

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

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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;

“Minister” means the Minister with responsibility for Traffic or the Minister with responsibility for public transport, as the case may be;

“Principal Secretary” means the Principal Secretary of the Ministry responsible for transport.

Purpose.

3. These Regulations lay down minimum conditions for the implementation of the Hours and Tachographs Regulations and of the AETR.

Checking systems.

4.(1) The competent authority shall implement a system of appropriate and regular checks on the correct and consistent implementation of the Hours and Tachographs Regulations both at the roadside and at premises of undertakings of all transport categories.

(2) The checks referred to in sub-regulation (1) shall cover each year a large and representative cross-section of mobile workers, drivers, undertakings and vehicles of all transport categories falling within the scope of the Hours and Tachographs Regulations.

(3) The Minister shall prepare a national enforcement strategy for Gibraltar. For this purpose, the Minister may designate a body for the coordination of actions taken under regulations 6 and 8.

(4) The competent authority shall organise the checks referred to in sub-regulation (1) in such a way that 2% of days worked by drivers of vehicles falling within the scope of the Hours and Tachographs Regulations are checked. This percentage will increase to at least 3% from 1 January 2010.

(5) In carrying out checks under this regulation not less than 30% of the total number of the working days checked shall be checked at the roadside and not less than 50% shall be checked at the premises of undertakings.

(6) Shall include the following information–

(a) the number of drivers checked at the roadside;

- (b) the number of checks at the premises of undertakings;
- (c) the number of working days checked; and
- (d) the number and type of infringements reported,

together with a record of whether passengers or goods were transported.

Statistics.

5.(1) The competent authority shall ensure that statistics collected from the checks organised in accordance with regulation 4(1) to (5) are broken down into the following categories–

- (a) for roadside checks–
 - (i) type of road and country of registration of the vehicle inspected, in order to avoid discrimination;
 - (ii) type of tachograph: analogue or digital;
- (b) for checks at the premises–
 - (i) type of transport activity, namely whether the activity is international or domestic, passenger or freight, own account or for hire or reward;
 - (ii) size of company fleet;
 - (iii) type of tachograph: analogue or digital.

(2) The statistics referred to in sub-regulation (1) shall be submitted biannually to the Transport Commission and shall be published in a report. The competent authority shall keep a record of the data collected for the previous year.

(3) Undertakings responsible for drivers shall keep, for a period of one year, the documents, records of results and other relevant data passed to them by the competent authority concerning checks carried out on them at their premises and/or on their drivers at the roadside.

Roadside checks.

6.(1) The competent authority shall organise roadside checks in various places and at different times and shall cover a sufficiently extensive part of the road network to make it difficult to avoid checkpoints.

(2) The competent authority shall ensure that—

- (a) sufficient provision is made for checkpoints on or nearby existing and planned roads and, if necessary, that service stations and other safe locations along roadways can function as checkpoints;
- (b) checks are carried out following a random rotation system, with an appropriate geographical balance.

(3) The points to be verified at roadside checks are set out in Part A of Schedule 1. Checks may focus on a specific point if the situation so requires.

(4) Without prejudice to regulation 11(2), roadside checks shall be carried out without discrimination. In particular, the competent authority shall not discriminate on any of the following grounds—

- (a) country of registration of the vehicle;
- (b) country of residence of the driver;
- (c) country of establishment of the undertaking;
- (d) origin and destination of the journey;
- (e) type of tachograph: analogue or digital.

(5) The competent authority shall be provided by the Minister with—

- (a) a list of the principal points to be checked, as set out in Part A of Schedule 1;
- (b) standard checking equipment, as set out in Schedule 2.

(6) Where the findings of a roadside check on the driver of a vehicle registered in another contracting country afford grounds for believing that infringements have been committed which cannot be established during the check owing to a lack of necessary data, the Minister may instruct the competent authority to either—

- (a) assist the competent authority; or
- (b) seek assistance from the competent authority,

of that contracting country in order to clarify the situation.

Concerted checks.

7.(1) The competent authority shall, at least six times per year, undertake concerted roadside checks, and may do so with the competent authority of at least one Member State, or contracting third country on drivers and vehicles falling within the scope of the Hours and Tachographs EC Regulations and of the AETR.

(2) Checks pursuant to sub-regulation (1) shall be undertaken at the same time where done with the competent authority of a Member State or contracting third country and each competent authority shall operate in its own territory.

Checks at the premises of undertakings.

8.(1) Checks at premises shall be planned in the light of past experience in relation to the various types of transport and undertakings, and shall also be carried out if serious infringements of the Hours and Tachographs Regulations and of the AETR have been detected at the roadside.

(2) Checks at premises shall cover the points listed in Parts A and B of Schedule 1.

(3) The competent authority shall be provided by the Minister with—

- (a) a list of the principal points to be checked, as set out in Parts A and B of Schedule 1;
- (b) standard checking equipment, as set out in Schedule 2.

(4) The competent authority shall, in the course of the check, take into account any information provided by the designated liaison body of a contracting country concerning the activities of the undertaking in question in that contracting country.

(5) For the purposes of sub-regulations (1) to (4), checks carried out at the premises of the competent authority, on the basis of relevant documents or data handed over by undertakings at the request of the competent authority, shall have the same status as checks carried out at the premises of undertakings.

Intracommunity liaison.

9.(1) The Principal Secretary is designated to perform the tasks set out in sub-regulation (2).

- (2) The Principal Secretary shall have the following tasks–
- (a) to ensure coordination with equivalent persons in the contracting country concerned as regards actions taken under regulation 7;
 - (b) to forward the biannual statistical returns to the Transport Commission;
 - (c) to be primarily responsible for assisting the competent authorities of contracting country pursuant to regulation 6(6).

Exchange of information.

10. The Principle Secretary may of his own volition or following a request from a contracting country in individual cases, exchange information–

- (a) to assist competent authorities, in Gibraltar or in a contracting country, in applying the AETR;
- (b) concerning infringements of the AETR by fitters and workshops, types of manipulation practices, and any penalties imposed for such infringements;
- (c) infringements of the rules set out in Chapter II of Regulation (EC) 561/2006 committed by non-residents and any penalties imposed for such infringements;
- (d) penalties imposed on residents for infringements committed in a contracting country.

Risk rating system.

11.(1) The Minister shall introduce a risk-rating system for undertakings based on the relative number and severity of any infringements of the Hours and Tachographs Regulations and of the AETR that an individual undertaking has committed.

(2) Undertakings with a high-risk rating shall be checked more closely and more often.

(3) An initial list of infringements of the Hours and Tachographs Regulations and of the AETR, and the gravity of such infringements is set out in Schedule 3.

Best practice.

12.(1) The competent authority may establish joint training programmes on best practice with its counter parts in contracting countries.

(2) An electronic and printable form, drawn up in the format of Article 11 (3) of the Directive, shall be used when a driver—

- (a) has been on sick leave,
- (b) has been on annual leave, or
- (c) has driven another vehicle exempted from the scope of Regulation (EC) No 561/2006,

during the period mentioned in Article 36 of Regulation (EU) No 165/2014.

(3) The Minister shall ensure that the competent authority is well trained for the execution of its tasks.

13. *Deleted.*

Schedules.

14. The Schedules shall have effect.

SCHEDULE 1

Regulations 6, 8 and 14

PART A**ROADSIDE CHECKS**

The following points shall, in general, be covered by roadside checks–

- (1) daily and weekly driving times, breaks and daily and weekly rest periods; also the preceding days' record sheets which have to be carried on board the vehicle in accordance with paragraph 7 of the Annex to the AETR or Article 36 of Regulation (EU) No 165/2014 and/or the data stored for the same period on the driver card and/or in the memory of the recording equipment in accordance with Schedule 2 and/or on printouts;
- (2) for the period referred to in paragraph 7 of the Annex to the AETR or Article 36 of Regulation (EU) No 165/2014, any cases where the vehicle's authorised speed is exceeded, to be defined as being any periods of more than one minute during which the vehicle's speed exceeds 90 km/h for category N3 vehicles or 105 km/h for category M3 vehicles (categories N3 and M3 being defined in Annex 2, Part A to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers;
- (3) where appropriate, momentary speeds attained by the vehicle as recorded by the recording equipment in no more than the previous 24 hours' use of the vehicle;
- (4) the correct functioning of the recording equipment (determination of possible misuse of the equipment and/or the driver card and/or record sheets) or, where appropriate, presence of equivalent paper documents;
- (5) Where appropriate, and with due regard to safety considerations, a verification of the recording equipment installed in vehicles in order to detect the installation and/or the use of any device, or devices, intended to destroy, suppress, manipulate or alter any data, or which is intended to interfere with any part of the electronic data exchange between the component parts of recording equipment, or which inhibits or alters the data in such ways prior to encryption.

PART B**CHECKS AT THE PREMISES OF UNDERTAKINGS**

The following points shall be checked at the premises of undertakings, in addition to those set out in Part A–

- (1) weekly rest periods and driving times between these rest periods;
- (2) observance of the two-weekly limitation of driving times;
- (3) record sheets, vehicle unit and driver card data and printouts.

The competent authority may, if appropriate, check on the joint liability of other instigators or accessories in the transport chain, such as shippers, freight forwarders or contractors, if an infringement is detected, including verification that contracts for the provision of transport permit compliance with the Hours and Tachographs Regulations and of the AETR.

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STANDARD EQUIPMENT TO BE AVAILABLE TO ENFORCEMENT UNITS

The competent authority shall ensure that the following standard equipment is available to enforcement units carrying out the duties set out in Schedule 1 as follows—

- (1) equipment capable of downloading data from the vehicle unit and driver card of the digital tachograph, reading data, and analysing data and/or transmitting findings to a central database for analysis;
- (2) equipment to check the tachograph sheets;
- (3) Specific analysis equipment, with appropriate software, to verify and confirm the digital signature attached to data, as well as specific analysis software to provide a detailed speed profile of vehicles prior to the inspection of their recording equipment.

SCHEDULE 3

(regulations 11 and 14)

INFRINGEMENTS

In accordance with regulation 11(3), the following table contains guidelines on a common range of infringements of Regulation (EC) No. 561/2006 and Regulation (EU) No. 165/2014, divided into categories according to their gravity.

1. Groups of infringements against Regulation (EC) No. 561/2006 (Hours)

No	LEGAL BASIS	TYPE OF INFRINGEMENT	LEVEL OF SERIOUSNESS (1)			
			MSI	VSI	SI	MI
A	Crew					
A1	Art 5.1	Not respecting minimum ages for conductors			X	
B	Driving periods					
B1	Article 6.1	Exceed daily driving time of 9h if possibilities to extend to 10h not allowed	9h < ... < 10h			X
B2			10h ≤ ... < 11h			X
B3			11h ≤ ...		X	
B4		Exceed daily driving time of 9h by 50 % or more without taking a break or without any rest of at least 4,5 hours	13h30 ≤ ... and no break/rest	X		
B5		Exceed extended daily driving time of 10h if extension allowed	10h < ... < 11h			X
B6		Exceed daily driving time of 10h by 50 % or more without taking a break of or without any rest of at least 4,5 hours	11h ≤ ... < 12h			X
B7			12h ≤ ...		X	
B8				15h ≤ ... and no break/rest	X	

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B9	Article 6.2	Exceed weekly driving time	56h < ... < 60h				X
B10			60h ≤ ... < 65h			X	
B11			65h ≤ ... < 70h		X		
B12		Exceed weekly driving time by 25 % or more	70h ≤ ...	X			
B13	Art 6.3	Exceed maximum total driving time during 2 consecutive weeks	90h < ... < 100h				X
B14			100h ≤ ... < 105h			X	
B15			105h ≤ ... < 112h30		X		
B16			Exceed maximum total driving time during 2 consecutive weeks by 25 % or more	112h30 ≤ ...	X		
C	Breaks						
C1	Article 7	Exceed uninterrupted driving time of 4,5 hours before taking the break	4h30 < ... < 5h				X
C2			5h ≤ ... < 6h			X	
C3			6h ≤ ...		X		
D	Rest Periods						
D1	Article 8.2	Insufficient daily rest period of less than 11h if reduced daily rest period not allowed	10h ≤ ... < 11h				X
D2			8h30 ≤ ... < 10h			X	
D3			... < 8h30		X		
D4		Insufficient reduced daily rest period of less than 9h if reduce allowed	8h ≤ ... < 9h				X
D5			7h ≤ ... < 8h			X	

D6			$\dots < 7\text{h}$		X		
D7		Insufficient split daily rest period of less than $3\text{h} + 9\text{h}$	$3\text{h} + [8\text{h} \leq \dots < 9\text{h}]$				X
D8			$3\text{h} + [7\text{h} \leq \dots < 8\text{h}]$			X	
D9			$3\text{h} + [\dots < 7\text{h}]$		X		
D10	Article 8.5	Insufficient daily rest period of less than 9h for multi-manning	$8\text{h} \leq \dots < 9\text{h}$				X
D11						X	
D12				$\dots < 7\text{h}$		X	
D13	Article 8.6	Insufficient reduced weekly resting period of less than 24 h	$22\text{h} \leq \dots < 24\text{h}$				X
D14						X	
D15				$\dots < 20\text{h}$		X	
D16		Insufficient weekly resting period of less than 45 h if reduced weekly resting period not allowed	$42\text{h} \leq \dots < 45\text{h}$				X
D17						X	
D18				$\dots < 36\text{h}$		X	
D19	Article 8.6	Exceeding 6 consecutive 24-hour periods following the previous weekly rest period	$\dots < 3\text{h}$				X
D20						X	
D21				$12\text{h} \leq \dots$		X	
E	12-day rule derogation						
E1	Article 8.6a.	Exceeding 12 consecutive 24-hour periods following a previous regular weekly rest	$\dots < 3\text{h}$				X
E2						X	

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E3			12h ≤ ...		X		
E4	Article 8.6a. (b)(ii)	Weekly rest period taken following 12 consecutive 24-hour periods	65h < ... ≤ 67h			X	
E5			... ≤ 65h		X		
E6	Article 8.6a. (d)	Driving period, between 22.00 and 6.00, of more than 3 hours before the break, if the vehicle is not multi-manned	3h < ... < 4,5 h			X	
E7			4,5 h ≤ ...		X		
F	Work organisation						
F1	Article 10.1	Link between wage and distance travelled or amount of goods carried			X		
F2	Article 10.2	No or improper organisation of driver's work, no or improper instructions given to driver enabling him to comply with the law			X		

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

No	LEGAL BASIS	TYPE OF INFRINGEMENTS	LEVEL OF SERIOUSNESS				
			MSI	VSI	SI	MI	
G	Installation of tachograph						
G1	Article 3.1 and Article 22.2	Not having type-approved tachograph installed and used (<i>e.g.: not having a tachograph installed by fitters, workshops or vehicle manufacturers approved by the competent authorities of the Member States, using a tachograph without the necessary seals placed or replaced by an approved fitter, workshop or vehicle manufacturer or using a tachograph without the installation plaque</i>)		X			
H	Use of tachograph, driver card or record sheet						
H1	Article 23.1	Using a tachograph not inspected by an approved workshop			X		
H2	Article 27	Driver holding and/or using more than one own driver card			X		

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H3		Driving with a driver card that has been falsified (<i>considered as driving without driver card</i>)	X			
H4		Driving with a driver card of which the driver is not the holder (<i>considered as driving without driver card</i>)	X			
H5		Driving with a driver card which has been obtained on the basis of false declarations and/or forged documents (<i>considered as driving without driver card</i>)	X			
H6	Article 32.1	Tachograph not correctly functioning (<i>e.g.: tachograph not properly inspected, calibrated and sealed</i>)		X		
H7	Article 32.1 and Article 33.1	Tachograph improperly used (<i>e.g.: deliberate, voluntary or imposed misuse, lack of instructions on correct use, etc.</i>)		X		
H8	Article 32.3	Using a fraudulent device able to modify the records of the tachograph	X			
H9		Falsifying, concealing, suppressing or destroying data recorded on the record sheets or stored and downloaded from the tachograph and/or the driver card	X			
H10	Article 33.2	Undertaking not keeping record sheets, printouts and downloaded data		X		
H11		Recorded and stored data not available for at least a year		X		
H12	Art 34.1	Incorrect use of record sheets/driver card		X		
H13		Unauthorised withdrawal of record sheets or driver card which has an impact on the record of relevant data		X		
H14		Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost		X		
H15	Article 34.2	Use dirty or damaged record sheets or drivers card and data not legible		X		
H16	Article 34.3	Not using manual input when required to do so		X		
H17	Article 34.4	Not using correct record sheet or driver card not in the correct slot (multi-manning)			X	

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H18	Article 34.5	Incorrect use of switch mechanism		X		
I	Producing information					
I1	Article 36	Refusing to be checked		X		
I2	Article 36	Unable to produce records of current day and the previous 28 days		X		
I3		Unable to produce records of the driver card if the driver holds one		X		
I4	Article 36	Unable to produce manual records and printouts made during the current day and the previous 28 days		X		
I5	Article 36	Unable to produce a driver card, if the driver holds one		X		
J	Malfunctioning					
J1	Article 37.1 and Article 22.1	Tachograph not repaired by an approved fitter or workshop		X		
J2	Article 37.2	Driver not marking all required information for the periods of time, which are no longer recorded while tachograph is unserviceable or malfunctioning		X ²		

⁽¹⁾ MSI = most serious infringements, VSI = very serious infringement, SI = serious infringement, MI = minor infringement.

⁽²⁾ 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.