
**TRANSPORT (RECORDING EQUIPMENT) (MINIMUM
CONDITIONS) REGULATIONS 2008**

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**Subsidiary
2008/075**

Subsidiary Legislation made under s. 69.

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(LN. 2008/075)

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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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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—

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

“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;

“EC 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; 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 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;

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“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 EC Regulations.

Checking systems.

4.(1) The competent authority shall implement a system of appropriate and regular checks on the correct and consistent implementation of the EC 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 EC 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 and shall ensure that the European Commission and the Member States are informed thereof.

(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 EC 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) The information submitted to the European Commission in accordance with Article 17(1) of Regulation (EEC) No 561/2006 shall include the following information—

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

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- (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 European 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.

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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 a Member State 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—

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

of that Member State in order to clarify the situation.

Concerted checks.

7.(1) The competent authority shall, at least six times per year, undertake concerted roadside checks with the competent authority of at least one Member State on drivers and vehicles falling within the scope of the EC Regulations.

(2) Checks pursuant to sub-regulation (1) shall be undertaken at the same time 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 EC Regulations 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 Member State concerning the activities of the undertaking in question in that Member State.

(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.

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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 Member States concerned as regards actions taken under regulation 7;
- (b) to forward the biannual statistical returns to the European Commission under Article 17(1) of Regulation (EEC) No. 561/2006;
- (c) to be primarily responsible for assisting the competent authorities of Member States pursuant to regulation 6(6).

(3) The Minister shall ensure that the European Commission is notified of the designation made pursuant to sub-regulation (1).

Exchange of information.

10.(1) Information made available bilaterally under Article 22(2) of Regulation (EEC) No. 561/2006 or Article 40 of Regulation (EU) No 165/2014, shall be exchanged between the Principal Secretary and the bodies in Member States designated in accordance with Article 7(2) of the Directive.

(2) The exchange of information referred to in sub-regulation (1) shall take place—

- (a) at least once every six months; or
- (b) upon specific request by a Member State in individual cases.

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 EC Regulations that an individual undertaking has committed.

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

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(3) An initial list of infringements of the EC Regulations is set out in Schedule 3.

Best practice.

12.(1) The competent authority shall establish joint training programmes on best practice with its counterparts in the Member States. The programmes shall be held at least once per year and shall facilitate the annual exchange of staff of the respective competent authorities.

(2) An electronic and printable form, drawn up by the European Commission in accordance with 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 (EEC) 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.

Negotiations with third countries.

13. Pending the conclusion of negotiations by the Community with third countries, the competent authority shall include data on checks carried out on vehicles from third countries in their returns to the European Commission as set out in Article 17(1) of Regulation (EEC) No 561/2006

Schedules.

14. The Schedules shall have effect.

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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 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 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 the documents referred to in Article 16(2) of Regulation (EEC) No 561/2006;
- (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

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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 EC Regulations.

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SCHEDULE 2

Regulations 6, 8 and 14

**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.

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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 (EEC) No. 3821/85, divided into categories according to their gravity.

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

| No | Legal Basis | Type of Infringement | Level of Seriousness* | | |
|-----|------------------------|--|-----------------------|----|----|
| | | | VS I | SI | MI |
| A | Crew | | | | |
| A1 | Art.5.1 | Not respecting minimum ages for drivers | | X | |
| B | Driving periods | | | | |
| B1 | Art. 6.1 | Exceed daily driving time of 9h if possibilities of 10h not allowed | 9h<...<10h | | X |
| B2 | | | 10h<...<11h | | X |
| B3 | | | 11h<... | X | |
| B4 | | Exceed extended daily driving time of 10h if extension allowed | 10h<...<11h | | X |
| B5 | | | 11h<...<12h | | X |
| B6 | | | 12h<... | X | |
| B7 | Art. 6.2 | Exceed weekly driving time | 56h<...<60h | | X |
| B8 | | | 60h<...<70h | | X |
| B9 | | | 70h<... | X | |
| B10 | Art. 6.3 | Exceed accumulated driving time during 2 consecutive weeks | 90h<...<100h | | X |
| B11 | | | 100h<...<120h30 | | X |
| B12 | | | 120h30<... | X | |
| C | Breaks | | | | |
| C1 | Art. 7 | Exceed uninterrupted driving time | 4h30<...<5h | | X |
| C2 | | | 5h<...<6h | | X |
| C3 | | | 6h<... | X | |
| D | Rest periods | | | | |
| D1 | Art. 8.2 | Insufficient daily rest period of less than 11h if reduced daily rest period | 10h<...<11h | | X |
| D2 | | | 8h30<...<10h | | X |
| D3 | | | ...<8h30 | X | |

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|--|-------------------------|--|----------------|-------------|---|--|
| | | not allowed | | | | |
| D4 | | Insufficient reduced daily rest period of less than 9h if reduce allowed | 8h<...<9h | | X | |
| D5 | | | 7h<...<8h | X | | |
| D6 | | | ...<7h | X | | |
| D7 | | Insufficient split daily rest period of less than 3h+9h | 3h+(8h<...<9h) | | X | |
| D8 | | | 3h+(7h<...<8h) | X | | |
| D9 | | | 3h+(...<7h) | X | | |
| D10 | Art. 8.5 | Insufficient daily rest period of less than 9h for multi-manning | 8h<...<9h | | X | |
| D11 | | | | 7h<...<8h | X | |
| D12 | | | | ...<7h | X | |
| D13 | Art. 8.6 | Insufficient reduced weekly resting period of less than 24h | 22h<...<24h | | X | |
| D14 | | | | 20h<...<22h | X | |
| D15 | | | | ...<20h | X | |
| D16 | | Insufficient weekly resting period of less than 45h if reduced weekly resting period not allowed | 42h<...<45h | | X | |
| D17 | | | | 36h<...<42h | X | |
| D18 | | | | ...<36h | X | |
| E | Types of payment | | | | | |
| E1 | Art. 10.1 | Link between wage and distance travelled or amount of goods carried | | X | | |
| *VSI=Very Serious Infringement, SI=Serious Infringement, MI=Minor Infringement | | | | | | |

2. Groups of infringements against Regulation (EEC) No 3821/85

| No. | Legal Basis | Type of infringements | *Level of seriousness | | |
|----------|--|--|-----------------------|----|----|
| | | | VS | SI | MI |
| F | Installation of recording equipment | | | | |
| FI | Art. 3.1 | No type approved recording equipment installed and used | X | | |
| G | Use of recording equipment, driver card or record sheet | | | | |
| GI | Art. 13 | Recording equipment not correctly functioning (for example: recording equipment not properly inspected, calibrated and sealed) | X | | |
| G2 | | Recording equipment improperly used (not using a valid driver card, voluntary abuse,....) | X | | |
| G3 | Art.14.1 | Not carrying a sufficient number of | | X | |

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| | | | | | |
|----------|----------------------------|--|---|---|---|
| | | record sheets | | | |
| G4 | | Model of record sheet not approved | | X | |
| G5 | | Not carrying enough paper for printouts | | | X |
| G6 | Art.14.2 | Undertaking not keeping record sheets, printouts and downloaded data | X | | |
| G7 | Art.14.4 | Driver holding more than one valid driver card | X | | |
| G8 | Art. 14.4 | Use of driver card which is not the driver's own valid card | X | | |
| G9 | Art. 14.4 | Use of defective or expired driver card | X | | |
| G10 | Art.14.5 | Recorded and stored data not available for at least 365 days | X | | |
| G11 | Art 15.1 | Use dirty or damaged sheets or driver cards and data legible | | | X |
| G12 | | Use dirty or damaged sheets or driver cards and data not legible | X | | |
| G13 | | Failure to apply for replacement of damaged, malfunctioning, lost or stolen driver card within 7 calendar days | | X | |
| G14 | Art.15.2 | Incorrect use of recording sheets/driver cards | X | | |
| G15 | | Unauthorised withdrawal of sheets or driver card which has an impact on the record of relevant data | X | | |
| G16 | | Unauthorised withdrawal of sheets or driver cards without any impact on data recorded | | | X |
| G17 | | Record sheet or driver card used to cover a period longer than that for which it is intended but no data is lost | | | X |
| G18 | | Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost | X | | |
| G19 | | Not using manual input when required to do so | X | | |
| G20 | | Not using correct sheet or driver card not in the correct slot (multi-manning) | X | | |
| G21 | Art. 15.3 | Time recorded on the sheet does not agree with official time of country of registration of the vehicle | | X | |
| G22 | | Incorrect use of switch mechanism | X | | |
| H | Fill in information | | | | |

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| | | | | | |
|----------|------------------------------|--|---|---|---|
| H1 | Art. | Surname missing on record sheet | X | | |
| H2 | 15.5 | First name missing on record sheet | X | | |
| H3 | | Date of beginning or end of use of the sheet missing | | X | |
| H4 | | Place or beginning or end of use of the sheet missing | | | X |
| H5 | | Registration number missing on record sheet | | | X |
| H6 | | Odometer reading (start) missing on record sheet | | X | |
| H7 | | Odometer reading (end) missing on record sheet | | | X |
| H8 | | Time of change of vehicle missing on record sheet | | | X |
| H9 | Art. 15.5a | Symbol of country not entered in recording equipment | | | X |
| I | Producing information | | | | |
| I1 | Art. 15.7 | Refuse to be checked | X | | |
| I2 | Art. | Unable to produce records of current day | X | | |
| I3 | 15.7 | Unable to produce records of previous 28 days | X | | |
| I4 | | Unable to produce records of the driver card if the driver holds me | X | | |
| I5 | | Unable to produce manual records and printouts made during the current week and the previous 28 days | X | | |
| I6 | | Unable to produce driver card | X | | |
| I7 | | Unable to produce printouts made during the current week and the previous 28 days | X | | |
| J | Fraud | | | | |
| J1 | Art.15.8 | Falsify, suppress, destroy data recorded on record sheets, stored in the recording equipment or on the driver card or printouts from the recording equipment | X | | |
| J2 | | Manipulation of recording equipment, record sheet or driver card which may result in data and/or printouts information being falsified | X | | |
| J3 | | Manipulation device that could be used to falsify data and/or printouts information present on vehicle (switch/wire...) | X | | |

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|--|----------------------------------|--|---|---|--|
| K | Breakdown | | | | |
| K1 | Art.16.1 | Not repaired by an approved fitter or workshop | X | | |
| K2 | | Not repaired en route | | X | |
| L | Manual input or printouts | | | | |
| L1 | Art. 16.2 | Driver not marking all information for the periods of time which are no longer recorded while recording equipment in unserviceable or malfunctioning | X | | |
| L2 | | Driver card number and/or name and/or driving licence number missing on temporary sheet | X | | |
| L3 | | Signature missing on temporary sheet | | X | |
| L4 | Art.16.3 | Lost or theft of driver card not formally declared to the competent authorities of the Member State where the theft occurred | X | | |
| *VSI=Very Serious Infringement, SI=Serious Infringement, MI=Minor Infringement | | | | | |