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

This version is out of date

**Subsidiary
2008/075**

Subsidiary Legislation made under s. 69.

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

(LN. 2008/075)

Commencement **25.9.2008**

Transposing:

Directive 2006/22/EC

EU Legislation/International Agreements involved:

Regulations (EEC) No. 3821/85

Regulations (EEC) No. 561/2006

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

This version is out of date

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Interpretation.
3. Purpose.
4. Checking systems.
5. Statistics.
6. Roadside checks.
7. Concerted checks.
8. Checks at the premises of undertakings.
9. Intracommunity liaison.
10. Exchange of information.
11. Risk rating system.
12. Best practice.
13. Negotiations with third countries.
14. Schedules.

SCHEDULE 1

SCHEDULE 2

STANDARD EQUIPMENT TO BE AVAILABLE TO ENFORCEMENT
UNITS

SCHEDULE 3

INFRINGEMENTS

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

This version is out of date

**Subsidiary
2008/075**

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) Council Regulation (EEC) No. 3821/85 of 20 December 1985 on recording equipment in road transport, as amended;

“Minister” means the Minister responsible for transport.

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

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

This version is out of date

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;
- (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.

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

This version is out of date

Subsidiary
2008/075

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.

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

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

This version is out of date

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—

- (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.

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

This version is out of date

**Subsidiary
2008/075**

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.

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—

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

This version is out of date

- (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 19(3) of Regulation (EEC) No 3821/85 as amended from time to time, 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.

(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

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

This version is out of date

**Subsidiary
2008/075**

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 15(7)(a)(i) of Regulation (EEC) No 3821/85.

(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.

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

This version is out of date

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 15(7) of Regulation (EEC) No 3821/85 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 15(7) of Regulation (EEC) No 3821/85, 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.

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

This version is out of date

**Subsidiary
2008/075**

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.

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

This version is out of date

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.

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

This version is out of date

**Subsidiary
2008/075**

SCHEDULE 3

Regulations 11 and 14

INFRINGEMENTS

(1) In accordance with regulation 11(3) for the purposes of these Regulations, the following non-exhaustive list gives guidance on what is to be regarded as an infringement—

- (1) exceeding the maximum daily, weekly or fortnightly driving times;
- (2) disregarding the minimum daily or weekly rest period;
- (3) disregarding the minimum break;
- (4) failure to fit a tachograph in accordance with the requirements of Regulation (EEC) No 3821/85.

(2) Serious infringements against the Regulation on the harmonisation of certain social legislation relating to road transport include the following—

- (1) exceeding the maximum daily, six-day or fortnightly driving time limits by a margin of 20% or more;
- (2) disregarding the minimum daily or weekly rest period by a margin of 20% or more;
- (3) disregarding the minimum break by a margin of 33% or more;
and
- (4) a tachograph not fitted in accordance with the requirements of Regulation (EEC) No 3821/85.