SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3955 of 4 October, 2012

LEGAL NOTICE NO. 132 OF 2012.

TRANSPORT ACT 1998

TRANSPORT (RECORDING EQUIPMENT) (MINIMUM CONDITIONS) (AMENDMENT) REGULATIONS 2012

In exercise of the powers conferred on him by section 69 of the Transport Act 2008, and in order to transpose into the law of Gibraltar Commission Directive 2009/4/EC and Commission Directive 2009/5/EC, both on counter measures to prevent and detect manipulation of records of tachographs, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Transport (Recording Equipment) (Minimum Conditions) (Amendment) Regulations 2012 and come into operation on publication.

Amendment of the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008

- 2. The Transport (Recording Equipment) (Minimum Conditions) Regulations 2008 are amended—
 - (a) in regulation 2, by substituting the following definition for the definition of "Minister"—
 - ""Minister" means the Minister with responsibility for Traffic or the Minister with responsibility for public transport, as the case may be;";
 - (b) in Part A of Schedule 1, by-
 - (i) substituting a semi-colon for the full-stop at the end of paragraph (4), and
 - (ii) inserting the following paragraph after paragraph (4)-

- "(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.";
- (c) in Schedule 2, by-
 - (i) substituting a semi-colon for the full-stop at the end of paragraph (2), and
 - (ii) inserting the following paragraph after paragraph (2)-
- "(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."; and
- (d) by substituting the following Schedule for Schedule 3-

"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	Type of Infringement	Level of		
	Basis		Seriousness*		ess*
			VSI	SI	MI
A	Crew				

A 1					3.7	1 1
A1	Art.5.	Not respecting m	ninimum ages for		X	
D	1	drivers				
B		g periods	01101.			V
B1	Art. 6.1	Exceed daily	9h<<10h		37	X
B2	0.1	driving time of 9h	10h<<11h	7.7	X	
B3		if possibilities of 10h not allowed	11h<	X		
B4		Exceed extended	10h<<11h			X
B5		daily driving time	11h<<12h		X	
B6		of 10h if	12h<	X		
		extension allowed				
B7	Art.	Exceed weekly	56h<<60h			X
B8	6.2	driving time	60h<<70h		X	
B9			70h<	X	† -	
B10	Art.	Exceed	90h<<100h			X
B11	6.3	accumulated	100h<<120h30		X	
B12		driving time	120h30<	X		
212		during 2	1201100			
		consecutive				
		weeks				
1		WCCKS				
С	Breaks					
C1	Breaks Art. 7		4h30<<5h			X
C1 C2		Exceed uninterrupted	4h30<<5h 5h<<6h		X	X
C1 C2 C3		Exceed		X	X	X
C1 C2		Exceed uninterrupted driving time	5h<<6h	X	X	X
C1 C2 C3	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily	5h<<6h 6h<	X	X	X
C1 C2 C3 D	Art. 7 Rest pe	Exceed uninterrupted driving time	5h<<6h 6h<	X	X	
C1 C2 C3 D	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if	5h<<6h 6h<	X		
C1 C2 C3 D D1 D2	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest	5h<<6h 6h< 10h<<11h 8h30<<10h			
C1 C2 C3 D D1 D2	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not	5h<<6h 6h< 10h<<11h 8h30<<10h			
C1 C2 C3 D D1 D2 D3	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed	5h<<6h 6h< 10h<<11h 8h30<<10h <8h30			X
C1 C2 C3 D D1 D2 D3	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30		X	
C1 C2 C3 D D1 D2 D3	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30 8h<<9h 7h<<8h	X		X
C1 C2 C3 D D1 D2 D3	Art. 7 Rest pe	Exceed uninterrupted driving time Priods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest period of less than less than	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30		X	X
C1 C2 C3 D D1 D2 D3	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest period of less than 9h if reduce	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30 8h<<9h 7h<<8h	X	X	X
C1 C2 C3 D D1 D2 D3 D4 D5 D6	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest period of less than 9h if reduce allowed	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30 8h<<9h 7h<<8h<7h	X	X	X
C1 C2 C3 D D1 D2 D3 D4 D5 D6	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest period of less than 9h if reduce allowed Insufficient split	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30 8h<<9h 7h<<8h<7h 3h+(8h<<9h)	X	X	X
C1 C2 C3 D D1 D2 D3 D4 D5 D6	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest period of less than 9h if reduce allowed Insufficient split daily rest period	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30 8h<<9h 7h<<8h<7h 3h+(8h<<9h) 3h+(7h<<8h)	X	X	X
C1 C2 C3 D D1 D2 D3 D4 D5 D6 D7 D8 D9	Rest pe Art. 8.2	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest period of less than 9h if reduce allowed Insufficient split daily rest period of less than 3h+9h	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30 8h<<9h 7h<<8h<7h 3h+(8h<<9h) 3h+(7h<<8h) 3h+(7h<<8h)	X	X	X
C1 C2 C3 D D1 D2 D3 D4 D5 D6	Art. 7 Rest pe	Exceed uninterrupted driving time eriods Insufficient daily rest period of less than 11h if reduced daily rest period not allowed Insufficient reduced daily rest period of less than 9h if reduce allowed Insufficient split daily rest period	5h<<6h 6h< 10h<<11h 8h30<<10h<8h30 8h<<9h 7h<<8h<7h 3h+(8h<<9h) 3h+(7h<<8h)	X	X	X

D12		than 9h for multi-	<7h	X			
		manning					
D13	Art.	Insufficient	22h<<24h			X	
D14	8.6	reduced weekly	20h<<22h		X		
D15		resting period of	<20h	X			
		less than 24h					
D16		Insufficient	42h<<45h			X	
D17		weekly resting	36h<<42h		X		
D18		period of less than	<36h	X			
		45h if reduced					
		weekly resting					
		period not					
		allowed					
E	Types	of payment					
E1	Art.	Link between w	age and distance	X			
	10.1	travelled or amount	of goods carried				
*VSI=	*VSI=Very Serious Infringement, SI=Serious Infringement, MI=Minor						
Infring	Infringement						

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

No.	Legal Basis	Type of infringements	*Level seriousness		of
			VSI	SI	MI
F	Installati	on of recording equipment			
FI	Art. 3.1	No type approved recording equipment installed and used	X		
G	Use of re	ecording equipment, driver card or			
	record sh	neet			
GI	Art. 13	Recording equipment not correctly functioning (for example: recording equipment not properly inspected,	X		
		calibrated and sealed)			
G2		Recording equipment improperly used (not using a valid driver card, voluntary abuse,)	X		
G3	Art.14.1	Not carrying a sufficient number of record sheets		X	
G4		Model of record sheet not approved		X	
G5		Not carrying enough paper for printouts			X
G6	Art.14.2	Undertaking not keeping record	X		

G7 Art.14.4 Driver holding more than one valid driver card G8 Art. Use of driver card which is not the 14.4 driver's own valid card G9 Art. Use of defective or expired driver X card G10 Art.14.5 Recorded and stored data not available for at least 365 days G11 Art 15.1 Use dirty or damaged sheets or driver cards and data legible G12 Use dirty or damaged sheets or driver cards and data not legible Failure to apply for replacement of damaged, malfunctioning, lost or stolen drier card within 7 calendar days G14 Art.15.2 Incorrect use of recording sheets/driver cards G15 Unauthorised withdrawal of sheets or driver card which has an impact on the record of relevant data Unauthorised withdrawal of sheets or driver cards without any impact on data recorded G17 Record sheet or driver card used to cover a period longer than that for which it is intended but no data is lost G18 Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost Not using manual input when required to do so Not using correct sheet or driver card not in the correct slot (multimanning) G20 Art. Time recorded on the sheet does not 15.3 agree with official time of country of registration of the vehicle Incorrect use of switch mechanism X		I			1	1
G8 Art. 14.4 Driver holding more than one valid driver card G8 Art. Use of driver card which is not the 14.4 driver's own valid card G9 Art. Use of defective or expired driver X 14.4 card G10 Art.14.5 Recorded and stored data not available for at least 365 days G11 Art 15.1 Use dirty or damaged sheets or driver cards and data legible Use dirty or damaged sheets or driver cards and data not legible Failure to apply for replacement of damaged, malfunctioning, lost or stolen drier card within 7 calendar days G14 Art.15.2 Incorrect use of recording X sheets/driver cards G15 Unauthorised withdrawal of sheets or driver card which has an impact on the record of relevant data G16 Unauthorised withdrawal of sheets or driver cards without any impact on data recorded G17 Record sheet or driver card used to cover a period longer than that for which it is intended but no data is lost G18 Record sheet or driver card used to cover a period longer than that for which it is intended and data is lost Not using manual input when required to do so G20 Not using correct sheet or driver card not in the correct slot (multimanning) G21 Art. Time recorded on the sheet does not agree with official time of country of registration of the vehicle G22 Incorrect use of switch mechanism			sheets, printouts and downloaded			
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registration of the vehicle G22 Incorrect use of switch mechanism X		15.3	agree with official time of country of			
G22 Incorrect use of switch mechanism X						
H Fill in information	G22	1		X		
	H	Fill in inf	formation			

H1	Art.	Surname missing on record sheet	X		
H2	15.5	First name missing on record sheet	X		
Н3		Date of beginning or end of use of		X	
		the sheet missing			
H4		Place or beginning or end of use of			X
		the sheet missing			
H5		Registration number missing on			X
		record sheet			
Н6		Odometer reading (start) missing on		X	
		record sheet			
H7		Odometer reading (end) missing on			X
		record sheet			
H8		Time of change of vehicle missing on			X
		record sheet			
H9	Art.	Symbol of country not entered in			X
	15.5a	recording equipment			
I	Producin	g information			
I1	Art.	Refuse to be checked	X		
	15.7				
I2	Art.	Unable to produce records of current	X		
	15.7	day			
I3		Unable to produce records of	X		
		previous 28 days			
I4		Unable to produce records of the	X		
		driver card if the driver holds me			
I5		Unable to produce manual records	X		
		and printouts made during the current			
		week and the previous 28 days			
I6		Unable to produce driver card	X		
I7		Unable to produce printouts made	X		
		during the current week and the			
		previous 28 days			
J	Fraud				
J1	Art.15.8	Falsify, suppress, destroy data	X		
		recorded on record sheets, stored in			
		the recording equipment or on the			
		driver card or printouts from the			
		recording equipment			
J2		Manipulation of recording	X		
		equipment, record sheet or driver			
		card which may result in data and/or			
		printouts information being falsified			

J3		Manipulation device that could be used to falsify data and/or printouts information present on vehicle (switch/wire)	X			
K	Breakdo	wn				
K1	Art.16.1	Not repaired by an approved fitter or workshop	X			
K2		Not repaired en route		X		
L	Manual i	nput 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					

Dated 4th October, 2012.

PAUL BALBAN, Minister with responsibility for Traffic.

EXPLANATORY MEMORANDUM

These Regulations amend the Transport (Recording Equipment) (Minimum Conditions) Regulations 2008 in order to transpose into the law of Gibraltar Commission Directive 2009/5/EC of 23 January 2009 on counter measures to prevent and detect manipulation of records of tachographs and Commission Directive 2009/5/EC of 23 January 2009 on counter measures to prevent and detect manipulation of records of tachographs.

The Regulations have the effect of-

- (a) improving the integrity of recording equipment to prevent fraud; and
- (b) updating tachograph infringements, as part of an EU harmonisation exercise.