

EXPLANATORY MEMORANDUM TO

The Road Transport (Working Time) (Amendment) Regulations (Northern Ireland) 2012

SR 2012 No. 169

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of the Environment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and is subject to the negative resolution procedure.
- 1.3. The rule is due to come into operation on 11th May 2012.

2. Purpose

- 2.1. The purpose of these Regulations is to bring self-employed drivers into the scope of Directive 2002/15/EC which establishes minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of persons performing mobile road transport activities and to improve road safety and align conditions of competition.

3. Background

- 3.1. The main effect of Directive 2002/15/EC is to restrict mobile workers, notably drivers of commercial goods over 3.5 tonnes and passenger vehicles carrying more than 9 vehicles, to an average working week of 48 hours, along with requirements as to the provisions of breaks and maximum limits on night work.
- 3.2. The Directive originally excluded self-employed drivers until 23rd March 2009 and could only be changed following a proposal from the European Commission and with the agreement of a majority of Member States and the European Parliament. In October 2008, the Commission put forward a proposal to definitively exclude self-employed drivers. However, this proposal was rejected by the Parliament at their plenary session on 28th April 2010 and the Commission subsequently withdrew the proposal. The UK is therefore legally required to apply the existing Directive to self-employed drivers.
- 3.3. As the Directive now applies to self-employed drivers, these Regulations amend the Road Transport (Working Time) Regulations (Northern Ireland) 2005 to include self-employed drivers.

4. Consultation

- 4.1. A UK-wide consultation on the Commission's proposal to permanently exclude self-employed drivers was carried out by Department for Transport from 16 January to 27 February 2009. Industry was generally supportive of the continued exclusion of self-employed drivers, whilst the Trade Unions wished to see such workers included.

5. Equality Impact

- 5.1. An equality screening exercise was carried out on this proposal and no equality issues were identified.

6. Regulatory Impact

- 6.1. The impact on charities, social economy enterprises or voluntary sectors is expected to be nil.
- 6.2. The main business sectors affected are the road haulage, freight transport and passenger transport industries. There is likely to be an impact on some self-employed drivers who currently work longer than the maximum time stipulated under the Directive.

7. Financial Implications

- 7.1. The Regulations have no measurable financial implications.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The Regulations are considered compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The Regulations ensure full compliance in Northern Ireland with Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities.

10. Parity or Replicatory Measure

- 10.1. The Regulations ensure parity with the Great Britain provisions, the Road Transport (Working Time) (Amendment) Regulations 2012 (SI 2012 No. 991).

11. Additional Information

- 11.1. None

Regulatory Impact Assessment

1. Title of Proposal

The Road Transport (Working Time) (Amendment) Regulations (Northern Ireland) 2012

2. Purpose and intended effect of measure

(i) Objectives

To bring self-employed drivers into scope of the road transport working time legislation to ensure full compliance with Directive 2002/15/EC (“the Directive”) on the organisation of the working time of persons performing mobile road transport activities.

(ii) Background

The Statutory Rule will amend the Road Transport (Working Time) Regulations (Northern Ireland) 2005 (“the 2005 Regulations”) which implement the Directive.

The Directive applies to mobile workers (namely drivers and travelling crew) who operate on vehicles that are subject to the separate EU rules on drivers’ hours as set out in Regulation (EC) No. 561/2006. It restricts the amount of working time that these mobile workers (notably drivers of commercial vehicles over 3.5 tonnes and passenger vehicles carrying more than 9 persons) can perform and specifies requirements in relation to breaks, rest periods and night work.

The Directive required self-employed drivers to be covered by the rules from March 2009. In response to concerns from Member States, including the UK, the Commission made a subsequent proposal in October 2008 to remove this provision from the Directive, in other words, to continue to exclude self-employed drivers from the requirements of the Directive. However, on 16 June 2010 the European Parliament voted to reject the proposal and on 30 June 2010 the Commission withdrew the proposal. The Commission is, therefore, now obliged to require Member States to apply the Directive in full and bring self-employed drivers into scope.

(iii) Risk Assessment

The main risks and road safety issues the proposals address are:

- the number of road traffic collisions caused by the fatigue of drivers who have been working excessive hours; and
- poor productivity and driver ill health due to working excessive hours

3. Options

Option 1: Do nothing

Doing nothing would mean that the UK has failed to fully implement the requirements of the Directive and would result in infraction proceedings which could mean large fines for the UK. The costs of infraction vary but under the implementation of Article 260 of the Treaty of the European Union (Lisbon Treaty), a lump sum of €9,666,000 (approximately £8,537,671) as well as a daily fine, calculated by multiplying the standard rate €640/day (approximately £565) by coefficients for seriousness and duration, and then by an 'n' factor fixed by country which takes account of the Member State's capacity to pay (the UK 'n' factor is currently 18.31).

Doing nothing is not, therefore, a realistic option.

Option 2: Amend domestic legislation to include self-employed drivers in the Regulations

Amending domestic legislation to include self-employed drivers in the Regulations would ensure full compliance with the requirements of the Directive and avoid any infraction proceedings being taken against the UK.

4. Benefits

Option 1

No benefits.

Option 2

Road Safety Benefits

One of the main objectives of the Directive is to improve road safety by limiting the working time of mobile workers and thus limiting the number of collisions caused by the fatigue of drivers who have been working excessive hours. Bringing self-employed drivers in scope of the Regulations would therefore be a further improvement to road safety as they would now also be less likely to be fatigued and be involved in fatigue-related road collisions.

The number of workers currently in scope of the Regulations is estimated to be 17,000. The number of self-employed drivers who would be brought in scope under this policy option is broadly estimated to be in the region of 2,000. The source of these estimates is the NI Labour Force Survey (LFS), January-December 2010. The estimates are based on small sample sizes and are subject to a relatively high degree of sampling variability. They should, therefore, be treated with caution¹.

¹ The LFS is a voluntary sample survey carried out by interviewing individuals in private households and is the most comprehensive source of information on their circumstances and work. It is the biggest regular household survey in NI, providing a rich source of information on the labour force using internationally agreed concepts and definitions.

As a result of this policy option, there would be an estimated 19,000 workers covered by the Regulations. This would represent a 12% increase in the number of those in scope with restrictions on their working time.

In 2010, 10,442 vehicles were involved in road traffic collisions in Northern Ireland. Of these, 267 (2.6%) were HGVs, 558 (5.3%) were LGVs and 187 (1.8%) were buses or coaches.

There were 5,666 road traffic collisions in 2010 resulting in 8,957 casualties. One hundred and eighty three of these collisions involved passenger vehicles with 8+ passenger seats and 249 involved goods vehicles 3.5 tonnes or more.

Eighteen of the road traffic collisions in 2010 had the causation factor recorded as fatigue, 5 of which an LGV, HGV, bus or coach was involved (28%). The 18 collisions resulted in 26 injuries (0.3% of all casualties in 2010), 4 of which were serious and 22 of which were slight. Of these 26 injuries, an LGV, HGV, bus or coach was recorded as being involved in collisions resulting in 9 casualties (35%). It is not possible to state if the drivers of these vehicles were in scope of the current Regulations or not.

In 2010 DfT estimated:²

- the prevention of a road traffic fatality was £1,585,510,
- the prevention of a road traffic serious injury was £178,160
- the prevention of a road traffic slight injury was £13,740 and
- the average cost for prevention of a road traffic casualty was £47,740.

Based on 2010 casualty and value of road traffic prevention data, if all 9 casualties resulting from collisions involving an LGV, HGV, bus or coach and in which fatigue was recorded as the causation factor could be avoided by bringing self-employed drivers within scope of road transport working time legislation the annual casualty saving benefit would be estimated in the region of £429,660.

Quantifiable Benefits

There will be benefits for those currently working less than 48 hours per week on average as they will be able to absorb some of the hours freed up by those currently working over 48 hours. New entrants will also benefit from the excess hours of those currently working over 48 hours. Finally, all drivers will benefit from an increase in their salary/fees resulting from the reduction in the number of total hours supplied.

Figures taken from the LFS are subject to an associated sampling error that decreases as the sample size increases. It is the nature of sampling variability that the smaller the group whose size is being estimated, the (proportionately) less precise the estimate is.

² <http://assets.dft.gov.uk/statistics/releases/road-accidents-and-safety-annual-report-2010/rrcgb2010-02.pdf>

Non-quantifiable Benefits

- (i) Possible increase in road safety due to limits in working time.
- (ii) Possible improved industry image, recruitment and retention due to more attractive working conditions.
- (iii) Possible improved productivity and driver health, less sick leave.
- (iv) Possible improved balance between home and life due to required limits on working time.
- (v) Possible avoidance of damages paid for Francovich claims for failure to fully implement the Directive.
- (vi) Possible uptake of work and increased earnings for drivers working under 48 hours per week on average.

Business sectors affected

The main business sectors affected are the road haulage, freight transport and passenger transport industries.

Other Impact Assessments

There are no equality, human rights, environmental or rural issues involved.

In addition, the proposed measure will have no impact on development, sustainable or otherwise.

5. Costs

(i) Compliance costs

Option 1

None.

Option 2

The key area of cost will be to the estimated 2,000 self-employed drivers who will now be brought into scope of the Regulations and will be subject to limits on their working time. They may also have higher administration costs - arising, for example, from the need to keep records of the time worked and to provide copies - but it is not possible to estimate what any increased costs arising from this would amount to.

(ii) Other costs

Option 1

None.

Option 2

Any increase in enforcement costs under this policy option will be met by existing resources within DVA and PSNI.

This should simplify enforcement for DVA and PSNI as when drivers are stopped there will be no confusion as to whether they are employed or self-employed and therefore whether they are in or out of scope of the Regulations and subject to limits on their working time.

6. Consultation with small business: the Small Business Impact Test

Applying the Regulations to self-employed drivers balances competition between drivers employed by companies and self-employed drivers.

It is considered that there is not likely to be a disproportionate effect on small businesses and they may benefit from a more level playing field with regard to competition.

No issues were raised in relation to small businesses during the February 2005 NI consultation.

7. Enforcement and Sanctions

Once made, these regulations will bring self-employed mobile workers in scope of the Directive and therefore they will be subject to the same sanctions as other mobile workers in respect of EU rules on drivers' hours.

8. Monitoring and Review

The policy will be reviewed in 2017.

9. Consultation

Prior to the implementation of the Directive in the UK, two public consultation exercises were completed. The first, in October 2003, was on a UK-wide basis and sought the views of stakeholders on how the Directive should be implemented in the UK. The second consultation was on the draft Regulations and associated draft guidance, with separate exercises undertaken in Britain and NI, in November 2004 and February 2005 respectively.

The February 2005 NI consultation document was issued to over 630 businesses, trade associations, voluntary bodies, individuals etc. Nine responses were received, four of which made no substantive comments. The comments in the five substantive responses were, in the main, similar to those received in Britain and were addressed by Department for Transport.

In addition, a UK-wide consultation was carried out in January 2009 on the Commission's proposal to permanently exclude self-employed drivers. Industry was generally supportive of the continued exclusion of self-employed drivers, whilst the Trade Unions wished to see such workers included.

10. Summary and Recommendation

The Department is committed to proceeding with option 2 at the earliest opportunity and recommends that regulations should be made to bring self-employed drivers into scope of the road transport working time legislation to ensure full compliance with the Directive and to avoid infraction proceedings being taken against the UK.

11. Declaration

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”

Signed: Iain Greenway

Date: 19th April 2012

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DEPARTMENT OF THE ENVIRONMENT

TRANSPOSITION NOTE

Directive 2002/15/EC of the European Parliament and the Council of 11 th March 2002 on the organisation of the working time of persons performing mobile road transport activities			
Article	Objectives	Implementation	Responsibility
2	Sets scope of the Directive	Regulation 3 amends regulation 3 of the Road Transport (Working Time) Regulations (Northern Ireland) 2005 (“the 2005 Regulations”) to apply the Regulations to self-employed drivers.	Department of the Environment
3	Definitions	Regulation 2 amends regulation 2 of the 2005 Regulations to include self-employed drivers within the definition of “period of availability”. It also amends the definition of “worker” and substitutes the definition of “working time”.	Department of the Environment
4	Prescribes the maximum, and the average, weekly working time	Regulation 4 amends regulation 4 of the 2005 Regulations applying the working time provisions to self-employed drivers.	Department of the Environment
5	Prescribes minimum break requirements	Regulation 6 amends Regulation 7 of the 2005 Regulations applying the minimum break requirements to self-employed drivers.	Department of the Environment
6	Applies rest periods contained in the Community Drivers’ Hours Regulation (Council Regulation (EEC) 3820/85)	Regulation 7 amends regulation 8 of the 2005 Regulations applying the rest period requirements to self-employed drivers.	Department of the Environment
7	Night Work	Regulation 8 amends regulation 9 of the 2005 Regulations applying maximum night time working hours to self-employed drivers.	Department of the Environment
8	Derogations	No amendments made to the 2005 Regulations.	
9	Information and records	Regulation 9 inserts regulation 11A into the 2005 Regulations in relation to record keeping requirements for self-employed drivers.	Department of the Environment
11	Requires Member States to prescribe penalties	Regulation 2 amends the definition of “relevant requirements” in the 2005 Regulations. Under regulation 17 of the 2005 Regulations, penalties are imposed for failure to comply with the relevant requirements.	