

2012 No. 991

TRANSPORT

**The Road Transport (Working Time) (Amendment) Regulations
2012**

<i>Made</i>	- - - -	<i>2nd April 2012</i>
<i>Laid before Parliament</i>		<i>4th April 2012</i>
<i>Coming into force</i>	- -	<i>11th May 2012</i>

The Secretary of State for Transport makes the following regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(a).

The Secretary of State is a Minister designated^(b) for the purposes of the European Communities Act 1972 in relation to measures relating to the organisation of working time.

Citation and commencement

1. These Regulations may be cited as the Road Transport (Working Time) (Amendment) Regulations 2012 and they come into force on 11th May 2012.

Amendment of the Road Transport (Working Time) Regulations 2005

2. The Road Transport (Working Time) Regulations 2005^(c) are amended as follows.

3. In regulation 2 (interpretation)—

- (a) in the definition of “period of availability”—
 - (i) after each occurrence of the phrase “mobile worker” insert “or self-employed driver”;
 - (ii) delete the phrase “but is required to be available” and replace it with “but—
“*(a)* in the case of a mobile worker, is required to be available; or
(b) in the case of a self-employed driver, makes himself available;”
- (b) in the definition of “relevant requirements” insert “4(9)”, “7(6)”, “8(3)”, “9(5)” and “11A” after 4(8), 7(5), 8(2), 9(4) and 11 respectively;
- (c) In the definition of “worker” after “means an individual” insert “who is not a self-employed driver and”;
- (d) Delete the definition of “working time” and substitute —
““working time” means the time from the beginning to the end of work during which —

(a) 1972 c.68. Section 2(2) was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51).
(b) S.I. 1997/1174.
(c) S.I. 2005/639, as amended by 2007/853.

- (a) the mobile worker or self-employed driver is at his workstation;
- (b) the mobile worker is at the disposal of his employer, or (as applicable) the self employed driver is at the disposal of the client; and
- (c) the mobile worker or self-employed driver is exercising his functions or activities, being:
 - (i) time devoted to all road transport activities, including, in particular—
 - (aa) driving;
 - (bb) loading and unloading;
 - (cc) assisting passengers boarding and disembarking from the vehicle;
 - (dd) cleaning and technical maintenance;
 - (ee) all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operation under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs, immigration officers and others; or
 - (ii) time during which the mobile worker or self-employed driver cannot dispose freely of his time and is required (or, in relation to a self-employed driver, chooses) to be at his workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under collective agreements or workforce agreements;

but, in relation to self-employed drivers, general administrative work that is not directly linked to the specific transport operation under way is excluded from working time.”

- (e) in the definition of “workstation”—
 - (i) insert “in relation to a mobile worker” at the beginning of paragraph (a);
 - (ii) insert “or” after “its head office or its main place of business;” at the end of paragraph (a);
 - (iii) insert “in relation to a mobile worker or self-employed driver” at the beginning of paragraph (b);
 - (iv) insert “in relation to a mobile worker or self-employed driver” at the beginning of paragraph (c).

4. In regulation 3 (application)—

- (a) after paragraph 3(1), insert—

“(1A) These Regulations also apply to self-employed drivers who are established in, or who do work for undertakings established in, a Member State of the European Union, and to whom paragraph (2) or paragraph (3) applies.”
- (b) In paragraph 3(2)—
 - (i) after “mobile workers”, insert “or self-employed drivers”; and
 - (ii) for “that employment or work”, substitute “their employment or working activities”.
- (c) For paragraph (2)(c) substitute—

“which are not vehicles exempted from the provisions of that Regulation under regulation 2 of the Community Drivers’ Hours and Recording Equipment Regulations 2007(a)”.
- (d) In paragraph 3 (3)—
 - (i) after “mobile workers”, insert “or self-employed drivers”; and

(a) S.I. 2007/1819.

- (ii) for “that employment or work”, substitute “their employment or working activities”.
- (e) Delete paragraph 3(4)(a).
- (f) In the opening words of subparagraph 3(4)(b), and in paragraphs (i) and (ii) of that subparagraph, for the word “worker” each time it occurs substitute “mobile worker or self-employed driver”.

5. After regulation 3 insert—

“Duty to Review Regulation 3(1A)

3A.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulation 3(1A),
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Directive 2002/15/EC, in so far as it applies to self-employed drivers (which is implemented by means of regulation 3(1A)), is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by regulation 3(1A),
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which regulation 3(1A) comes into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”

6. In regulation 4 (working time)—

- (a) In paragraph (1), after “mobile worker” insert “or self-employed driver”.
- (b) In paragraph (2), for “a mobile worker’s working time”, substitute “the working time of a mobile worker or self-employed driver”.
- (c) In the opening words of paragraph (3), delete “in the case of a mobile worker”.
- (d) For paragraph (3)(a) there is substituted—
 - “(a) in the case of a mobile worker—
 - (i) where a collective agreement or a workforce agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
 - (ii) in a case where there is no such provision, and the employer gives written notice to the mobile worker in writing that he intends to apply this subparagraph, any period of 17 weeks in the course of the worker’s employment.”.
- (e) For paragraph (3)(b) there is substituted—
- (f) “(b) in the case of a self-employed driver who elects to apply this subparagraph in relation to any period of 17 weeks or to successive periods of 17 weeks, each such period,”.
- (g) at the beginning of paragraph (3)(c), after “in any other case”, insert “for a mobile worker or self-employed driver,”.
- (h) After paragraph (4) insert—

“(4A) The reference period may be extended in relation to self-employed drivers for objective or technical reasons or reasons concerning the organisation of work, by the substitution for 17 weeks of a period not exceeding 26 weeks in the application of paragraphs (2) and (3)(b) above.”

- (i) In paragraph (5)—
 - (i) at the beginning, delete “A mobile worker’s” and insert “The”;
 - (ii) for “ $(A+B)÷C$ ” substitute—
 - “ $(A+B)÷C$ for mobile workers, or
 - $A÷C$ for self-employed drivers”; and
 - (iii) in the passage beginning “A is the aggregate”, delete “the mobile worker’s”.
- (j) After paragraph (8) insert—

“(9) A self-employed driver must take all reasonable steps, in keeping with the need to protect his health and safety, to comply with the limits specified above.”.

7. In regulation 6 (periods of availability)—

- (a) In paragraph 6(1), after “mobile worker” insert “or self-employed driver”.
- (b) In paragraph 6(2), after both occurrences of “mobile worker” insert “or self-employed driver”.
- (c) In paragraph 6(4), after both occurrences of “mobile worker” insert “or self-employed driver”.

8. In regulation 7 (breaks)—

- (a) In paragraph 7(1), after “mobile worker” insert “or self-employed driver”.
- (b) For paragraph (2) substitute—

“Where the working time of a mobile worker or self-employed driver exceeds six hours but does not exceed nine hours, the mobile worker or self-employed driver must take a break lasting at least 30 minutes and interrupting that period.”.
- (c) For paragraph (3) substitute—

“Where the working time of a mobile worker or self-employed driver exceeds nine hours, the mobile worker or self-employed driver must take a break lasting at least 45 minutes and interrupting that period”.
- (d) After paragraph (5) insert—

“(6) A self-employed driver must take all reasonable steps, in keeping with the need to protect his health and safety, to comply with the limits specified above.”.

9. In regulation 8 (rest periods)—

- (a) in paragraph (1), after “apply to other mobile workers”, insert “and self-employed drivers”;
- (b) after paragraph (2) insert—

“(3) A self-employed driver must take all reasonable steps, in keeping with the need to protect his health and safety, to ensure that he complies with the provisions applied by paragraph (1).”.

10. In regulation 9 (night work)—

- (a) in paragraph (1) after “mobile worker” insert “or self-employed driver”;
- (b) after paragraph (2) insert—

“(2A) A self-employed driver may elect to extend the period of 10 hours for objective or technical reasons or reasons concerning the organisation of work.”;
- (c) in paragraph (3) after “mobile worker” insert “or to a self-employed driver”;
- (d) after paragraph (4) insert—

“(5) A self-employed driver must take all reasonable steps, in keeping with the need to protect his health and safety, to ensure that the limit specified in paragraph (1), or extended in accordance with paragraph (2A), is complied with.”.

11. After regulation 11, insert—

“**11A.** A self-employed driver must—

- (a) keep records which are adequate to show whether he is complying with the requirements of these Regulations;
- (b) retain such records for at least two years after the end of the period covered by those records;
- (c) provide to an enforcement officer copies of such records as the officer may require.”.

12. In regulation 13(2), substitute “employers, workers and self-employed drivers” for “employers and workers”.

Signed by authority of the Secretary of State for Transport

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

2nd April 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Road Transport (Working Time) Regulations 2005 (“the 2005 Regulations”) (S.I. 2005/639) as amended by S.I. 2007/853, to implement Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities (OJ No. L80, 23.3.2002, p.35)(‘the Directive’) in respect of self-employed drivers.

The 2005 Regulations are amended by extending their provisions to self-employed drivers (in accordance with article 2.1 of Directive 2002/15/EC), by inserting regulation 3(1A) into those Regulations. This amendment is enforced by new regulation 11A. Consequential amendments are made to regulations 2, 3, 4, 6, 7, 8, 9 and 13. In addition, a consequential amendment has been made in regulation 3(2)(c) to reflect the fact that regulation 2 of the Community Drivers’ Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986 has been replaced by regulation 2 of the Community Drivers’ Hours and Recording Equipment Regulations 2007.

A new regulation 3A is inserted in the 2005 Regulations which requires the Secretary of State to review the operation and effect of regulation 3(1A) and publish a report within five years after it comes into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether regulation 3(1A) should remain as it is, or be revoked or be amended. A further instrument would be needed to revoke regulation 3(1A) or to amend it.

An impact assessment of the effect this instrument will have on the costs for the business and voluntary sectors has been produced and is available from the Operator Licensing and Roadworthiness Division, Department for Transport, Zone 2/24 Great Minster House, 33 Horseferry Road, London SW1P 4DR and may also be accessed on the Department’s website at www.dft.gov.uk. A copy has been placed in the library of each House of Parliament.

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STATUTORY INSTRUMENTS

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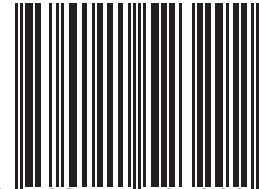
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