Title: The Road Transport (Working Time) (Amendment) Regulations 2011	**Impact Assessment (IA)**
IA No: DfT00119	**Date:** 07/10/2011
Lead department or agency: Department for Transport	**Stage:** Final
Other departments or agencies:	**Source of intervention:** EU
	Type of measure: Secondary legislation
	Contact for enquiries: David Glinos 020 7944 5813

Summary: Intervention and Options

RPC: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£0m	£0m	£0	No	NA

What is the problem under consideration? Why is government intervention necessary?

The Road Transport (Working Time) Regulations 2005 ("the Regulations") implement the European Working Time Directive for Mobile Workers (Directive 2002/15/EC, "the Directive") in Great Britain. These are aimed at improving road safety by reducing the number of fatigued drivers. Self-employed drivers were initially excluded from the scope of the Directive under a sunrise clause, which has now expired. Even though evidence suggest that no problem exists in the UK regarding road safety and self-employed drivers, government intervention is necessary to amend domestic working time legislation to bring these drivers in scope in order to comply with EU requirements.

What are the policy objectives and the intended effects?

The original objective of the EU Directive aimed to reduce the number of fatigued drivers to improve road safety. The UK is now amending the Regulations to include self-employed drivers in the Regulations to ensure full compliance with EU requirements.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Policy options are limited due to the restraints of the Directive.

Option 1 is to introduce the proposed regulations bringing self-employed drivers in scope.

Doing nothing option is not to introduce the proposed changes.

The preferred option is Option 1 as this is the only option that will achieve the objective stated above.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/2017

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** 0	**Non-traded:** **0**	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Mike Penning Date: 14/11/11

URN 11/1109 Ver. 3.0

Summary: Analysis & Evidence

Policy Option 1

Description: Amend the Regulations to bring self-employed drivers within their scope

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	**High:** 18.5	**Best Estimate:** 0

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	0		£95.4m	**£806m**
High	0		£95.4m	**£806m**
Best Estimate	0		£95.4m	**£806m**

Description and scale of key monetised costs by 'main affected groups'

There will be a cost to drivers currently working over 48 hours a week. We estimate a total loss of income of £106m a year for these drivers. As explained in the evidence base, we believe there will be no change in hourly pay.

Other key non-monetised costs by 'main affected groups'

Costs to new/starter self-employed driver businesses who may be disincentivised to start businesses.

Costs for self-employed drivers to comply with the required limit on working time for mobile workers who work at night.

Risk of reduced road safety for road users caused by drivers absorbing work from self-employed drivers.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	0		£95.4m	**£806m**
High	0		£97.7m	**£825m**
Best Estimate	0		£95.4m	**£806m**

Description and scale of key monetised benefits by 'main affected groups'

There will be benefits for those currently working less than 48 hours a week on average and new entrants as they will be able to absorb some of the hours freed up by those currently working over 48 hours (see costs). These benefits are a transfer from those drivers currently working over 48 hours. Despite firm evidence, in the high case scenario, we estimate the possible benefits from a reduction in the number of accidents caused by fatigue. The best estimate is the central scenario and not the high/low average.

Other key non-monetised benefits by 'main affected groups'

For self-employed drivers, benefits from improved productivity, improved work / life balance, reduced sick leave, reduced workplace accidents and improved health. For employers/employees already in scope of the Regulation, there may be benefits of fairer competition.

Benefits for the UK Government of avoiding Francovich claims for failure to fully implement the Directive.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

There will not be a reduction in the total supply of hours. In this situation, a reduction in the supply of hours by those currently working over 48 hours would be followed by an increase in the supply of hours by those currently working below the 48 hour threshold and by new entrants. We have no information to determine which percentage of these excess hours would be taken up by incumbents or new entrants.

Risk: Infraction

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**In scope of OIOO?**	**Measure qualifies as**
Costs: NA	**Benefits:** NA	**Net:** NA	No	NA

Evidence Base (for summary sheets)

Introduction

1. This implementation stage Impact Assessment (IA) relates to the proposed amending Regulations to bring self-employed drivers in scope of the Road Transport (Working Time) Regulations 2005 (as amended). A previous IA was prepared in 2009 to accompany a consultation (see references on page 4 of this IA).

2. The Regulations implement the EU Working Time Directive for Mobile Workers (Directive 2002/15/EC, “the Directive”) in Great Britain and do not currently cover self-employed drivers. A summary of the main provisions of the Regulations can be found at Annex 2. The Regulations restrict the working time of drivers and travelling crew operating under the separate EU drivers’ hours rules (Regulation (EC) 561/2006) and set minimum break requirements, provisions for night-time working and annual leave entitlements.

3. Article 2(1) of the Directive states that the Directive shall apply to “self-employed drivers” from 23 March 2009. Following the rejection of a proposal by the European Commission ("the Commission") in June 2010 to exclude self-employed drivers from the Directive’s scope, the original wording of the Directive stands and self-employed drivers are now covered by the Directive.

4. The European Commission has recently rejected the Department’s response to an EU Pilot Case on the subject and indicated its intention to proceed with infraction proceedings. The UK therefore now has no choice but to amend domestic working time legislation to include self-employed drivers in order to avoid infraction, which would result in large fines against the UK.

Preparing the Impact Assessment

5. This IA has been based on the current understanding of the Directive and informal discussions with stakeholders and other Member States. Previous IAs on the Regulations, undertaken in 2004-05 and 2008-09 have also been considered.

6. These Regulations and this IA apply only to Great Britain. The Directive is implemented in Northern Ireland by the Road Transport (Working Time) Regulations (Northern Ireland) 2005. We are in contact with the Department of the Environment in Northern Ireland who are responsible for this legislation.

Policy Options

7. The only way the Government can avoid infraction is to amend domestic working time legislation to bring self-employed drivers in scope. The alternative ‘do nothing’ option would mean the UK has not fully implemented the Directive and will lead to infraction.

8. The UK has explored an alternative option of lobbying the Commission to release a new proposal permanently excluding self-employed drivers from the Directive. The UK, along with a number of other member states, wrote to the Commission requesting a new proposal excluding self-employed drivers. However, the Commission replied that they have no plans to start work on a new proposal and that they would make sure the EU legislation was properly applied. This has been further emphasised by the launch and rejection of the response to an EU Pilot Case.

Numbers affected by the current implementation of the Directive in Great Britain

9. The Directive applies to mobile workers who operate on vehicles subject to the EU drivers’ hours rules. These rules apply to drivers of most heavy goods vehicles over 3.5 tonnes (HGVs) and drivers of most vehicles with more than 8 passenger seats, although there are a number of exemptions and national derogations.

10. Previous IAs relating to the Directive have used Labour Force Survey (LFS) data[1] to calculate the numbers of mobile workers who are in scope of the Directive in Great Britain. These statistics have again been used to calculate the numbers in scope of the Regulations as they currently stand.

Number of Drivers in the Goods Sector affected by the Regulations

11. The LFS statistics for April – June 2010 show that there are a total of 256,350 "employee" HGV drivers in Great Britain.

12. This number does not include drivers of goods vehicles between 3.5 and 7.5 tonnes who are also in scope of the Regulations, as the LFS defines a HGV as a vehicle over 7.5 tonnes. Drivers of all goods vehicles under 7.5 tonnes are counted as light goods vehicle (LGV) drivers in the LFS.

13. The total number of LGV drivers identified by the LFS is 164,602. It is not known how many of these are drivers of goods vehicles under 3.5 tonnes who are not included in scope of the Regulations. The actual number of goods vehicle drivers in scope is therefore between 256,350 and 420,952.

Number of Drivers in the Passenger Sector affected by the Regulations

14. The LFS statistics for April – June 2010 show that there are a total of 123,151 bus or coach drivers in Great Britain who state that they are of "employee" status.

15. The Confederation of Passenger Transport (CPT), the main trade association responsible for the passenger transport industry, has previously estimated during the 2008 review of the implementation of the Regulations that 70 per cent of passenger drivers identified by the LFS could be considered out of scope of the Directive due to exemptions from the EU drivers' hours rules[2]. This has previously been agreed by the Department. As the Directive only applies to mobile workers operating under these rules, this would suggest that 30 per cent, or 36,946 bus or coach drivers, are covered by the Regulations at present. This was confirmed by the CPT in February 2011 as a fair estimate given that there has been no significant changes to the balance of in scope and out-of-scope work.

Number of other workers affected by the Regulations

16. The Regulations already apply to all non-driving travelling crew, regardless of employed/self-employed status.

17. Having analysed the LFS statistics from April – June 2010, it was found that 6,413 workers in other categories may also already be in scope of the Regulations in Great Britain. This is made up of workers in the "other passenger land transport" and "freight transport by road" categories of six other occupations (motor mechanics, vehicle repairers, vehicle painters, assemblers of vehicle and metal goods, storage and warehouse managers, and mobile machine drivers and operatives) who may be in scope of the Regulations at present.

18. By adding the numbers of employed drivers outlined above, **the total number of workers currently in scope of the Directive's implementing Regulations can be said to be <u>between 299,709 and 464,311</u>**.

Number of self-employed drivers affected by the Directive

19. Self-employed drivers are now in scope of the Directive but were not included in the estimate of 299,709 - 464,311 workers currently in scope of the Directive's implementing Regulations presented

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[1] The LFS is a survey of households living at private addresses in Great Britain. In spite of its large sample size (55 thousand responding households), data for falling below the 10 thousand LFS reliability threshold is not shown.

For further information on notes and definitions of the Labour Force Survey, please see:
http://www.statistics.gov.uk/statbase/Source.asp?vlnk=358

[2] Article 3(a) of Regulation (EC) 561/2006 exempts "vehicles used for the carriage of passengers on regular services where the route covered by the service in question does not exceed 50 kilometres". Other exemptions also apply.

above. As a result, additional LFS data has been reviewed in order to ascertain how many drivers are currently self-employed and would come in scope of the Regulations under policy option 1.

20. The Department's guidance on the Regulations makes clear that even if a mobile worker regards themselves as self-employed for the purposes of taxation or other employment legislation, this does not mean that they can necessarily claim self-employment status for the purposes of these Regulations.

21. Due to the difference between the definition of "self-employed"[3] in the Regulations and the way self-employed drivers may actually operate (i.e. the definition in the Regulations is relatively tight which means that most goods drivers would not qualify for self-employed status). It has therefore previously been presumed by the Government and Industry stakeholders that the vast majority of goods vehicle drivers have not been able to claim self-employment status under the Regulations.

22. The information provided in paragraphs 20 and 21 above means that the self-employed drivers identified by the LFS are already highly likely to operate in scope of the implementing Regulations, although whether they are aware of this and are compliant is not known. Therefore, even if the numbers identified below overestimate the true number of "self-employed" drivers, some of these drivers may only become aware that they are in scope, and therefore start to comply with the Regulations, if the Directive is fully implemented and self-employed drivers are brought in scope of the Regulations.

Number of self-employed drivers in the Goods Sector affected by the Directive

23. The April - June 2010 LFS statistics give the number of HGV drivers identifying as self-employed as 29,903. This includes 2,193 who are paid by an employment agency and cannot be counted as "self-employed" under the Regulations' definition. A further 611 identified do not have any paid hours information (and have therefore been excluded from the calculations below).

24. As previously explained in paragraphs 20 to 22, it is possible that a large proportion of these drivers are already in scope of the Regulations due to the specific definition of "self-employed" in the Regulations. Therefore the maximum number of self-employed HGV drivers to be brought into the Regulations' scope is up to 27,099.

25. The number of LGV drivers in the April – June 2010 LFS statistics stating that they are self-employed is 18,388. Of these, none said that they were paid a salary by an employment agency. It is not known how many of these 18,388 drive goods vehicles over 3.5 tonnes and are subject to the Directive. It is also not known how many of these 18,388 are already in scope due to the Regulations' definition of "self-employed". Therefore the maximum figure of self-employed LGV drivers to be brought into the Regulations' scope is up to 18,388.

26. Assuming that all of the LGV drivers identified could drive goods vehicles over 3.5 tonnes, and that all of the LGV and HGV drivers could be "self-employed" under the Regulations' wording, the total number of self-employed goods vehicle drivers that could be brought in scope of the Regulations under policy option 1 is up to 45,487.

Number of self-employed drivers in the Passenger Sector affected by the Directive

27. The number of bus/coach drivers identifying as self employed in the April – June 2010 LFS statistics is 3,707, with none being paid by an employment agency. This includes 1,500 who said for the purposes of the LFS that they worked in the "urban and suburban passenger land transport" industry; it is therefore likely that these drivers operate on local routes which are exempt from the EU drivers' hours rules, and therefore remain out of the Directive's scope. This provides a figure of 2,207 self-employed bus/coach drivers likely to be brought in scope of the Regulations under policy option 1.

28. The definition of "self-employed" in the Regulations may apply in practice to those self-employed bus or coach operators who drive their own vehicle and work for different clients, as required. This is compliant with the Regulations' wording of "self-employed" (unlike in the goods sector where there is a significant difference between the definition of "self-employed" in the Regulations and the way self-

[3] SI 2005/639 Regulation 2: "'Self-employed driver' means anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out such transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom, individually or through a co-operation between self-employed drivers, to have commercial relations with several customers".

employed drivers may actually operate). Therefore, the Department's view is that approximately 2,207 genuine self-employed drivers will be brought in scope of the Regulations under policy option 1. Previous consultation with Industry during the 2008-9 IA provided a similar figure for the level of "self-employed" drivers in the passenger sector.

Summary

29. As outlined above, some drivers identifying as self-employed for the LFS statistics in the goods sector may already be in scope of the Regulations as they do not fulfil the Regulations' wording of "self-employed". However, there is an assumption under policy option 1 that, within the ranges given, there will be drivers in this category who will only now accept/realise that they are in scope and adjust their working time at this point rather than when the Regulations were brought into force.

30. **Assuming that the figure of 2,207 genuinely self-employed drivers in the passenger sector is correct for the purposes of this IA, and that the numbers of drivers in the goods sector is between 0 and 45,487, the total numbers of self-employed drivers being brought in scope is between <u>2,207 and 47,694</u>.**

31. Therefore, as a result of this policy option, the total number of mobile workers covered by the Regulations will be 301,916 – 512,005 if the directive is implemented and self-employed drivers are brought in scope. This would represent an increase of between 0.7% and 10% of those in scope of the Regulations.

Summary table

	Drivers already in scope	Self-employed drivers not yet in scope	TOTAL	Increase (%)
HGV	256350	0 - 27099	256350 - 283449	
LGV	0 - 164602	0 – 18388	0 - 182990	
BUS/COACH	36946	2207	39153	
OTHER MOBILE WORKERS	6413	-	-	
Total DRIVERS	293296 - 457898	2207 - 47694	295503 - 505592	0.7 – 9.4%
TOTAL mobile workers	**299709 - 464311**	**2207 - 47694**	**301916 - 512005**	**0.7 - 10%**

Data and Assumptions

32. We have used the April – June 2010 LFS statistics which provide information on the numbers of hours worked each week for self-employed drivers of HGVs (table 1 below) and LGVs (table 2 below).

33. The numbers of self-employed bus/coach drivers fall below the LFS reliability threshold of 10,000. Therefore, the costs of hours worked by **employed** bus/coach drivers (not in the urban/suburban passenger transport categories and thus more likely to be in scope of the Regulations) have been used (see table 3 below) to estimate the hours worked by self-employed bus/coach drivers who may come in scope of the Regulations under this policy option.

34. Tables 1 to 3 below show the average number of hours worked in a week by self-employed drivers of HGVs, LGVs and buses and coaches. The second column from the right shows the number of hours worked over the 48 hour average and the column on the far right shows the additional hours that drivers currently working under 48 hours on average could take up.

<u>**Table 1**</u> **(Self-employed HGV drivers, excluding those paid a salary or wage by an employment agency).** Columns with green heading come from LFS statistics, whereas columns in white heading are our own calculations based on LFS statistics.

Paid hours per week (hours)	Average hours per week	Jobs ('000)	% of drivers doing these hours	% of all hours worked	Excess hours: % of hours >48 per week	% hours > 53 per week	Total average hours per week	Percentage hours per tier	Total excess hours per tier if capped at 48 hrs	Additional hours drivers could take up up to 48hrs
Up to 40	25.9	4.6	16.9%	9.8%			118523	9.8%	0	101,413
40 to 48	40.7	6.8	25.2%	23.0%			278350	23.0%	0	49,874
48 to 53	49.7	4.0	14.8%	16.5%	26.2%		199804	16.5%	6940.0	0
53 to 58	54.7	1.7	6.1%	7.5%	12.5%	17.0%	90642	7.5%	11154.0	0
58 to 65	60.0	4.5	16.7%	22.4%	34.1%	46.3%	271140	22.4%	54228.0	0
Over 65	69.9	3.6	13.2%	20.7%	27.1%	36.8%	250753	20.7%	78481.0	0
All bands[1]	**48.0**	**27.1**					1209212	100.0%	**150,803**	**151,287**

[1] Includes where paid hours information is not given

<u>Table 2</u> **(Self-employed LGV drivers).** Columns with green heading come from LFS statistics, whereas columns in white heading are our own calculations based on LFS statistics.

Paid hours per week (hours)	Average hours per week	Jobs ('000)	% of drivers doing these hours	% of all hours worked	Excess hours: % of hours >48 per week	% hours > 53 per week	Total average hours per week	Percentage hours per tier	Total excess hours per tier if capped at 48 hrs	Additional hours drivers could take up up to 48hrs
Up to 40	25.1	6.1	33.0%	22.4%			152684	22.4%	0	138,868
40 to 48	41.5	3.3	18.2%	20.4%			138900	20.4%	0	21,708
48 to 53	50.0	2.2	11.7%	15.8%	32.1%		107600	15.8%	4304.0	0
53 to 58	56.0	0.5	2.7%	4.1%	7.5%	11.0%	28168	4.1%	4024.0	0
58 to 65	60.0	3.0	16.3%	26.4%	44.6%	65.7%	179700	26.4%	35940.0	0
Over 65	70.0	1.1	5.8%	10.9%	15.8%	23.2%	74130	10.9%	23298.0	0
All bands[1]	**42.2**	**18.4**					681182	100.0%	**67,566**	160,576

[1] Includes where paid hours information is not given

<u>Table 3</u> **(Employed bus/coach drivers not in the urban/suburban passenger transport category).** Columns with green heading come from LFS statistics, whereas columns in white heading are our own calculations based on LFS statistics.

Paid hours per week (hours)	Average hours per week	Jobs ('000)	% of drivers doing these hours	% of all hours worked	Excess hours: % of hours >48 per week	% hours > 53 per week	Total average hours per week	Percentage hours per tier	Total excess hours per tier if capped at 48 hrs	Additional hours drivers could take up up to 48hrs
Up to 40	27.1	18.8	51.2%	39.8%			507973	39.8%	0	392,795
40 to 48	42.8	7.1	19.4%	23.8%			303978	23.8%	0	36,918
48 to 53	49.5	3.7	10.0%	14.2%	39.5%		181386	14.2%	333.9	0
53 to 58	54.6	1.7	4.6%	7.2%	21.6%	35.8%	91910	7.2%	670.8	0
58 to 65	60.0	1.8	4.9%	8.4%	22.9%	37.9%	107040	8.4%	1285.2	0
Over 65	68.1	1.2	3.4%	6.6%	15.9%	26.3%	84180	6.6%	1491.9	0
All bands[1]	**37.3**	**36.6**					1276467	100.0%	**3,782**	**429,713**

[1] Includes where paid hours information is not given

35. The Annual Survey of Hours and Earnings was used to provide median hourly gross earnings for these drivers. However, earnings data for self-employed workers is not collected by this survey. Therefore for the purposes of calculating self-employed drivers' earnings, median hourly earnings data from employed drivers will be used (see table 4 below). Trade Associations have indicated that the industry is extremely competitive and so they do not expect any (or very minimal) movement in pay as a result of hours being freed by self-employed drivers currently working over 48 hours per week.

<u>Table 4 – Earnings for employed drivers</u>

Category	Median gross hourly earnings
Employed HGV drivers	£9.74
Employed LGV drivers	£7.88
Employed passenger vehicle drivers	£9.43

36. Following further consultation with the major trade associations (including the Confederation of Passenger Transport, Freight Transport Association and Road Haulage Association) we have made the following **assumptions**:

i) There will not be a reduction in the total supply of working hours. The reason for this is that evidence suggests that the road freight market is highly competitive with little regulatory barriers to entry[4]. In this situation, a reduction in the supply of hours by those currently working over 48 hours would be followed by an increase in the supply of hours by those currently working below

[4] "Integration and Competition between Transport and Logistics Businesses", OECD/ITF (2010), p. 27 and OECD Main Economic Indicators http://stats.oecd.org/Index.aspx?DataSetCode=MEILABOUR

the 48 hour threshold and by new entrants. This evidence is supported from our conversations with Industry who have indicated that there is not a current shortage in drivers. This is also supported by data taken from Nomis[5] (an Office for National Statistics website for official labour market statistics), which shows that nearly 5,500 HGV drivers are currently claiming Job Seekers Allowance (see table at Annex 3). We have no information to determine what percentage of these excess hours would be taken up by incumbents or new entrants. However, it is likely that existing drivers working less than the maximum 48 hours will be provided with an opportunity to undertake additional work. If they choose not to, then this work will be met by new entrants.

ii) In our central and low scenario we assume no impact on road safety. In our high scenario, we assume that there is a reduction in the number of accidents caused by fatigue. This reduction equals the assumed increase in the number of drivers brought in scope of this legislation, i.e., 6.5% (see paragraph 46).

[5] https://www.nomisweb.co.uk/Default.asp

Costs of the preferred option

Cost of limiting the average working week of self-employed drivers to 48 hours

37. The main quantifiable costs of policy option 1 will be as a result of the maximum average weekly working limit of 48 hours required under the Regulations. Self-employed drivers who currently work a longer average week will have to limit their hours of work, which could lead to a loss of earnings for these drivers.

38. Self-employed drivers will also have to comply with a maximum weekly working limit and limits on night work as prescribed in the Regulations. The maximum weekly working limit will restrict their weekly working time to a maximum of 60 hours. However, a maximum of 60 hours a week would be a 'one-off' and it is not possible to get weekly statistics on working time, only quarterly. The night work limits will restrict their working time to 10 hours in every 24 hour period they work between 00.00-04.00 (goods vehicle drivers) or 01.00–05.00 (passenger vehicle drivers). We are not aware of statistics that measure which specific hours of the day self-employed drivers work. Therefore it is not possible to calculate the costs imposed by the night work limits of the Regulations. It is possible to 'opt out' of this 10-hour limit, and it is envisaged that any self-employed driver currently working at night will use this provision if necessary and therefore the costs are likely to be minimal.

39. However, we have been able to estimate the costs of working within a 48 hour average working week limit. This makes more sense than calculating the cost of the 60 hour maximum working week as we have quarterly statistics on working time which roughly equates to 17 weeks (the reference period used to calculate the average working week).

40. We have estimated that total lost income for those drivers currently working more than 48 hours a week on average would be £106m a year. This lost income will be a transfer to those incumbents or new entrants that take up the excess hours.

41. To estimate the £106m a year loss for these drivers, we multiplied the weekly excess hours (67,566 for LGVs, 150,803 for HGVs and 3,782 for coaches) by the hourly earnings for each group (as in table 4 above), which resulted in an aggregate weekly loss of £2,036,905. Multiplying this figure by 52 weeks, we obtained the £106m figure in paragraph 40.

42. Haulage / transport rates will remain unchanged as the costs base for operators will remain unaltered (including driver pay) and, therefore, consumers will not be affected.

Enforcement costs

43. The costs of enforcement under this policy option will be met by existing resources. The Regulations are currently enforced by the Vehicle and Operator Services Agency (VOSA) who, following the 2008 review of the implementation of the Directive, moved to a new enforcement regime whereby all formal complaints regarding working time abuses are investigated fully. The enforcement budget for the Regulations in 2009/10 was **£575,000** and there are no plans to change this as a result of the implementation of the Directive. Therefore, there is no incremental cost of Option 1 compared to the Do Nothing. .

Unquantified costs

44. Unquantified costs identified are:

- Possible costs associated with reduced incentive for new/starter self-employed driver businesses as limits on their working time will limit their income.
- Possible costs associated with the required limit on working time for mobile workers who work at night (see paragraph 38).

Benefits of the preferred option

Road safety benefits

45. Please note that there are some discrepancies in the numbers listed below due to the manner in which the LFS data is collected (i.e. the numbers are not always rounded up to the same decimal place).

Additional drivers falling in scope

46. The number of workers currently in scope of the Regulations is estimated to be between 299,709 and 464,311 (see paragraph 18). The number of self-employed drivers who would be brought in scope under this policy option is estimated to be between 2,207 (0.5% increase) and 47,694 (10% increase) (see paragraph 30). The higher the number of self-employed drivers brought in scope, the greater the liklihood of higher benefits materialising. For the purpose of calculating the benefits in this impact assessment, we have taken the median average of self-employed drivers which may be brought into scope, 24,832 (47,456 - 2,207 / 2 + 2,207). We have also used the median average of the total number of in-scope workers 382,010 (464,311-299,709 / 2 + 299,709). Using this methodology,a 6.5% increase in the numbers of drivers with limits on their working time (24,950/382,010 x 100/1 = 6.5%) will occur.

47. One of the main objectives of the Regulations is to improve road safety by limiting the working time of mobile workers and thus limiting the number of road accidents caused by the fatigue of drivers who have been working excessive hours. Bringing self-employed drivers in scope of the Regulations could therefore bring a further improvement to road safety as, for some, their working hours will be reduced which could result in a reduction of fatigue and fatigue-related road accidents.

48. In order to accurately quantify the likely benefits that will arise as a result of the inclusion of self-employed drivers, knowledge of the impact of fatigue on road accidents is required. Previous studies (referenced on page 4) on fatigue have been closely analysed, but these do not provide any significant information on which to base a calculation of the benefits that may arise as a result of the reduction of working hours for some drivers. As highlighted by the reports, fatigue is a complex issue that cannot be attributed to a single factor, but has a number of variables. Age, individual susceptibility to sleep loss, lifestyle factors such as new parenthood, personality and mood can all influence fatigue. There is evidence, for example, that the number of young male drivers involved in driver fatigue crashes is high, but the reason for this is unknown, whilst older drivers appear to better cope with the onset of tiredeness.

Road Accident Data

49. According to STATS19[6], in 2009 there were 327 reported casualties resulting from accidents where fatigue was attributed to the drivers of HGVs, LGVs, buses or coaches *(Reported Road Casualties Great Britain 2009: Annual Report)*. The injury severity breakdown of these 327 casualties is shown in Table 5 below. The number of casualties resulting from accidents with drivers affected by this regulation was therefore 327 in 2009. Of these and as outlined in the table below, 9 were fatal, 56 were serious and 262 slightly injured.

Table 5: Casualties resulting from reported personal injury road accidents[1] where at least one driver was attributed with a contributory factor of fatigue by vehicle type and casualty injury severity, GB 2009

Number of casualties

	Casualties resulting from accidents with fatigue attributed to the driver of a(n)			
Casualty severity	HGV	LGV	Bus/coach	HGV/LGV/bus/coach
Killed	4	5	0	9
Serious	26	29	1	56
Slight	104	132	26	262
Total casualties	134	166	27	327

1 only includes accidents where a police officer attended the scene and reported at least one contributory factor.

6 STATS19 is a data collection system the police uses to collect details of all incidents which they attend or become aware of within 30 days which occur on the highway in which one or more person is killed or injured and involving one or more vehicles.

Source: STATS19

Calculation of Road Safety Benefits

50. One method of calculating the benefits that will arise therefore, is to use the estimated 6.5% increase in the number of drivers that may fall in scope (see para 46 above), and assume that a similar percentage decrease in the number of fatigue-related accidents will occur. This would lead to a reduction in the number of accidents to 305.7 (327 - (327 x 0.065)). It would also lead to a reduction of 0.58 in the number of fatal casualties, 3.64 in the number of seriously injured and 17.03 in the number of slightly injured. However, this assumes that a reduction in driving hours for this 6.5% would lead a corresponding decrease in fatigue and therefore accidents.

51. Additional informal consultation has also taken place with the sector's main trade associations. Industry has clearly indicated that the inclusion of self-employed drivers is unlikely to generate any quantifiable benefits in terms of road safety. This is partly due to the marginal effect that working a small number of reduced hours would have on fatigue (other life-style factors, not covered by this Regulation, are more likely to have a greater impact).

52. As a result of the additional analysis of research into fatigue, analysis of accident data and liaison with Industry, we have therefore concluded that in both the low and best case scenario there will be no safety benefits. In the high case scenario, which we do not think is likely, we have assumed the reductions in accidents outlined in Paragraph 50 (above).

53. Table 6 below shows the average value of the prevention of road accidents by severity and element of cost (Source: http://www.dft.gov.uk/webtag/documents/expert/unit3.4.1.php#02)

Table 6 - Average value of prevention of road accidents by severity and element of cost

	Casualty related costs			Accident related costs			£ June 2009
Accident severity	Lost output	Medical and ambulance	Human costs	Police cost	Insurance and admin	Damage to property	TOTAL
Fatal	596,674	5,615	1,175,101	1,848	291	10,674	1,790,203
Serious	23,767	14,244	1,175,101	245	181	4,907	205,056,
Slight	2,959	1,253	161,713	557	110	2,903	21,372
All injury	13,225	3,055	3,055	105	122	3,270	68,323
Damage only	-	-	-	3	52	1,828	1,883

54. As table 6 above uses 2009 prices, we have used the 2011 prices based on HMT deflators in table 7 below to ensure we are using the most up-to-date figures.

Table 7 - Updated to 2011 prices based on HMT deflators

	Casualty related costs			Accident related costs			£ June 2011
Accident severity	Lost output	Medical and ambulance	Human Costs	Police costs	Insurance and admin	Damage to property	TOTAL
Fatal	626,996	5,900	1,234,812	1,942	306	11,216	1,881,169
Serious	24,975	14,968	169,930	257	190	5,156	215,476
Slight	3,109	1,317	14,806	60	116	3,051	22,458
All injury	13,897	3,210	51,013	110	128	3,436	71,795
Damage only	-	-	-	3	55	1,921	1,979

55. By multiplying the estimated reduction in the number of accidents (Para 50) in the high case scenario by the average value of the prevention of road accidents (table 7) we estimate that the cost of the total number of accidents could be reduced by £2.26m a year (£22.6m over ten years, not in present value terms). As outlined above, additional analysis and evidence shows that the most likely outcome in the low and central scenarios will be zero impact. The high scenario estimates average annual benefits (cost savings) of £2.26m. The probability distribution of the low and high scenarios occurring is not symmetrical; therefore, the best estimate is not an average of the two scenarios (also see page 2).

Injury type	Injury value	Number per annum	Cost per annum
Fatal	£1,881,169	0.58	£1,098,498
Serious	£215,476	3.64	£784,333
Slight	£22,458	17.03	£382,460
		Total	**£2,265,291**

Other monetised benefits

56. As mentioned previously, some drivers will benefit from this Regulation as they will be able to take up those excess hours freed up by self-employed drivers currently working over 48 hours a week on average. Also new entrants may benefit as they may enter the market to supply some of these excess hours. However, we have no information to determine the percentage of hours taken up by each of these groups.

57. The total benefit to those drivers (either incumbents or new entrants) that take up the hours freed up as a result of the introduction of this legislation would equal the loss income to those drivers currently working more than 48 hours, i.e., £106m a year.

Unquantified Benefits

58. Unquantified benefits (i.e. difficult to quantify) identified are:

(i) Possible increase in road safety due to limits on 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 work life due to required limits on working time.

(v) Possible avoidance of damages paid for Francovich claims (see paragraph 61).

(vi) Possible uptake of work and increased earnings for drivers working under 48 hours per week on average.

Summary of net benefits

59. In our central and low case scenario we have estimated nil net benefits. In our high case scenario, the net present benefit over ten years is £18.5m.

Risks and Assumptions

60. The Commission has now rejected our response to the Pilot Case so they will start infraction proceedings shortly against the UK for failure to properly implement the Directive. The costs of infraction vary but under the implementation of Article 260 of the Treaty of the European Union (the 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).

61. There is also a risk that an employer competitor in the road transport industry could claim for damages against the UK for failing to fully implement the Directive into the Regulations (known as a “Francovich” claim). It would be a matter for the Courts to decide whether such a claim would succeed, and how much could be awarded in damages.

62. The calculation of costs and benefits under this policy option rely on a number of assumptions and raise a few risks, which have been identified as follows:

(i) There is an assumption that there are variations in both the current numbers of workers under the Regulations, and the numbers of self-employed drivers coming in scope of the Regulations under policy option 1. This is in part due to the Labour Force Survey statistics only counting drivers of vehicles over 7.5 tonnes, whilst the Regulations cover most drivers of vehicles over 3.5 tonnes.

(ii) Similarly, the definition of self-employed contained in the Regulations is different to the definition used in other aspects of employment legislation. Thus, there is an assumption that a proportion of those identified as ‘self-employed’ under the LFS statistics are not counted as self-employed under the Regulations (and will thus already be in scope).

(iii) However, there is a further assumption that in reality, a number of these drivers will not be aware of the Regulations’ wording, and thus currently work under the assumption that the Regulations do not apply to them. Assuming that changes to legislation are suitably publicised, a number of these drivers will amend their working time at this point.

(iv) As data from the LFS statistics does not reliably provide working time information for self-employed passenger vehicle drivers who may come in scope of the Regulations under this policy option, more reliable statistics relating to employed passenger vehicle drivers’ working time have been used instead. This assumes that self-employed and employed passenger vehicle drivers work proportionately equal hours.

(v) Similarly, earnings data for self-employed drivers is not readily available, so earnings for employed drivers has been used. This assumes that employed and self-employed drivers earn equal salaries per hour.

(vi) There are assumptions that certain costs/benefits, such as the night working limits and the possible uptake of work by drivers working under the weekly working time limit, have been accepted as unquantifiable.

Sensitivity analysis

63. OECD indicators show the UK’s road freight market with very little entry regulation, so it is assumed that all excess hours resulting from the introduction on this regulation are taken up by current incumbents or new entrants and, therefore, consumers will not be affected.

Wider Impacts

64. Adopting policy option 1 means that the Regulations will now cover all drivers in scope of the EU drivers’ hours rules. This should simplify enforcement for VOSA 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.

65. This policy option is not likely to lead to a distortion of competition as it reduces any competitive advantage to self-employed drivers. In reality, applying the Regulations to self-employed drivers balances competition between drivers employed by companies and self-employed drivers.

66. Applying the Regulations to self-employed drivers may lead to improvements in these drivers’ working conditions, health and wellbeing.

67. This policy option will impact on small firms as self-employed drivers fall into this category. It may also affect firms employing up to 20 employees as they may sub-contract self-employed drivers.

One In One Out

68. This measure is outside the scope of One In One Out as it is of a European origin and it does not go beyond the minimum European requirements.

Implementation Plan

69. Under policy option 1 the Directive will be implemented in the domestic Regulations through secondary legislation.

Annex 1

References

No.	Legislation or publication
1	Impact Assessment on proposal to exclude self-employed drivers from the Directive: http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/consultations/archive/2009/mobile/annexc.pdf
2	Report on the review of the UK's implementation of the EU road transport working time Directive: http://dft.gov.uk/pgr/freight/road/workingtime/rptworkingtimedirective
3	Final Regulatory Impact Assessment on the transposition of the Directive: http://webarchive.nationalarchives.gov.uk/+/http://www.dft.gov.uk/consultations/archive/2004/rtfguid/regulatoryimpactassessment.pdf
4	Fatigue and Road Safety: A Critical Analysis of Recent Evidence http://assets.dft.gov.uk/publications/fatigue-and-road-safety-a-critical-analysis-of-recent-evidence/rswp21report.pdf
5	Fatigue risk management systems: a review of the literature - Road Safety Research Report 110 http://www.dft.gov.uk/publications/rsrr-theme3-literature-review/
6	Interviews with Operators, Regulators and Researchers with Experience of Implementing Fatigue Risk Management - Road Safety Research Report No. 120 http://www.dft.gov.uk/publications/rsrr-120

Annex 2

Working Time Rules

EU Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities

The Directive sets break requirements for all workers and allies rules on rest (which already applied to drivers) to crew members when operating on in scope vehicles.

“Working time” includes activities such as:

- driving;
- loading and unloading;
- cleaning and technical maintenance; and
- assisting passengers boarding and disembarking the vehicle.

"Working time" excludes activities such as :

- mandatory breaks and rest periods; and
- waiting time known about in advance (called “periods of availability”).

"Working time" for mobile workers must not exceed:

- An average 48 hours week (normally calculated over a 4 month reference period);
- 60 hours in any single week; and
- 10 hours in any 24 hours period, if working at night.

Application
The Directive applies to the drivers and crew of most:

- goods vehicles over 3.5 tonnes (e.g. a large and heavy van); and
- passenger carrying vehicles with 10 or more seats (e.g. a minibus)

Exemptions
There are some EU - wide exemptions and national derogations relating to the type of vehicle and / or its use such as, mini buses used for non-commercial purposes.

Job Seekers Allowance claimant count by usual occupation (Source: ONS)

Number

		HGV drivers	Van drivers	Total
2008	Jan	3,030	29,760	827,805
	Feb	3,375	30,910	845,895
	Mar	3,195	30,800	839,730
	Apr	3,195	30,675	832,485
	May	3,215	30,560	828,870
	Jun	3,045	30,560	830,825
	Jul	3,335	31,755	867,825
	Aug	3,720	33,790	920,845
	Sep	4,080	34,830	941,540
	Oct	4,760	36,530	967,120
	Nov	6,780	41,215	1,052,980
	Dec	8,930	45,630	1,149,695
2009	Jan	11,460	50,535	1,278,880
	Feb	14,815	57,135	1,455,610
	Mar	15,305	59,460	1,518,535
	Apr	14,945	60,670	1,552,895
	May	14,160	60,670	1,560,100
	Jun	12,945	59,560	1,548,260
	Jul	11,940	58,610	1,567,890
	Aug	11,165	58,615	1,596,905
	Sep	10,380	57,735	1,585,735
	Oct	10,160	57,570	1,576,935
	Nov	10,335	57,735	1,563,170
	Dec	10,570	58,020	1,560,305
2010	Jan	11,740	60,890	1,647,130
	Feb	11,775	60,895	1,650,225
	Mar	10,820	59,590	1,607,940
	Apr	9,730	57,735	1,561,500
	May	8,760	55,205	1,496,210
	Jun	7,760	52,605	1,438,795
	Jul	7,165	51,110	1,435,970
	Aug	6,690	50,720	1,451,035
	Sep	6,250	49,620	1,434,770
	Oct	6,120	48,870	1,411,650
	Nov	6,105	48,940	1,407,975
	Dec	6,430	49,415	1,420,125
2011	Jan	7,185	51,615	1,499,130
	Feb	7,525	52,380	1,532,775
	Mar	7,165	51,785	1,521,840
	Apr	6,635	50,630	1,516,005
	May	6,215	49,820	1,500,190
	Jun	5,865	48,985	1,488,660
	Jul	5,620	48,650	1,537,450
	Aug	5,485	48,865	1,572,490
Change from last month				
		-2.4%	*0.4%*	*2.3%*
Change from same month last year				
		-18.0%	*-3.7%*	*8.4%*

Source: Office for National Statistics