
STATUTORY INSTRUMENTS

2005 No. 639

The Road Transport (Working Time) Regulations 2005

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Road Transport (Working Time) Regulations 2005 and shall come into force on 4th April 2005.

(2) These Regulations extend to Great Britain only.

Interpretation

2. In these Regulations—

“AETR” means the European agreement concerning the work of crews of vehicles engaged in international road transport⁽¹⁾ of 1st July 1970;

“collective agreement” means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁾, the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

“the Community Drivers' Hours Regulation” means Council Regulation (EEC) No.3820/85⁽³⁾ of 20th December 1985 on the harmonisation of certain social legislation relating to road transport;

“employer” in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;

“employment” in relation to a worker, means employment under his contract, and “employed” shall be construed accordingly;

“goods” includes goods or burden of any description;

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted;

“inspector” means a person appointed under paragraph 1 of Schedule 2;

“mobile worker” means any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;

“night time” means in respect of goods vehicles the period between midnight and 4 a.m. and in respect of passenger vehicles the period between 1 a.m. and 5 a.m.;

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;

“night work” means any work performed during night time;

“passenger vehicle” means a motor vehicle which is constructed or adapted to carry more than eight seated passengers in addition to the driver;

⁽¹⁾ Cmnd 7401 and Cmnd 8572.

⁽²⁾ 1992 c. 52.

⁽³⁾ O.J. No.L370, 31.12.1985, p.1.

“period of availability” means a period during which the mobile worker is not required to remain at his workstation, but is required to be available to answer any calls to start or resume driving or to carry out other work , including periods during which the mobile worker is accompanying a vehicle being transported by a ferry or by a train as well as periods of waiting at frontiers and those due to traffic prohibitions;

“reference period” means the period for calculation of the average maximum weekly working time;

“relevant requirements” means regulations 4(8), 7(5), 8(2), 9(4), 10, 11 and 12;

“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;

“vehicle” means a goods vehicle or a passenger vehicle;

“week” means a period of seven days beginning at midnight between Sunday and Monday;

“worker” means an individual who has entered into or works under (or, where employment has ceased, worked under)—

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract;

and any reference to a worker’s contract shall be construed accordingly;

“workforce agreement” means an agreement between an employer and mobile workers employed by him or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied;

“working time” means the time from the beginning to the end of work during which the mobile worker is at his workstation, at the disposal of his employer and exercising his functions or activities, being

- (a) time devoted to all road transport activities, including, in particular—
 - (i) driving;
 - (ii) loading and unloading;
 - (iii) assisting passengers boarding and disembarking from the vehicle;
 - (iv) cleaning and technical maintenance;
 - (v) 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
- (b) time during which the mobile worker cannot dispose freely of his time and is required 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;

“workstation” means

- (a) the location of the main place of business of the undertaking for which the person performing mobile transport activities carries out duties, together with its various subsidiary places of business, regardless of whether they are located in the same place as its head office or its main place of business;
- (b) the vehicle which the person performing mobile road transport activities uses when he carries out duties; or
- (c) any other place in which activities connected with transport are carried out.

Application

3.—(1) These Regulations apply to mobile workers who are employed by, or who do work for, undertakings established in a Member State of the European Union, and to whom paragraph (2) or paragraph (3) applies.

(2) This paragraph applies to mobile workers who in the course of that employment or work drive, or travel in, vehicles

- (a) which fall within the meaning of ‘vehicles’ in Article 1 of the Community Drivers' Hours Regulation;
- (b) which are not referred to in Article 4 of that Regulation; and
- (c) in respect of which exemption from provisions of the Community Drivers' Hours Regulation has not been granted by regulation 2 of the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations 1986(4).

(3) This paragraph applies to mobile workers, to whom paragraph (2) does not apply, who in the course of that employment or work drive, or travel in, vehicles

- (a) which fall within the meaning of a “vehicle” in Article 1 of the AETR;
- (b) which are not referred to in Article 2(2)(b) of the AETR; and
- (c) which are performing international transport.

(4) These Regulations do not apply to—

- (a) self-employed drivers, or
- (b) any worker who does work which is included in the calculation of working time—
 - (i) where the reference period is shorter than 26 weeks, on fewer than 11 days in a reference period applicable to that worker, or
 - (ii) in any other case on fewer than 16 days in a reference period applicable to that worker.

Working time

4.—(1) Subject to paragraph (2) below, the working time, including overtime, of a mobile worker shall not exceed 60 hours in a week.

(2) In any reference period which is applicable to his case, a mobile worker’s working time shall not exceed an average of 48 hours for each week.

(3) The reference periods which apply in the case of a mobile worker shall be—

- (a) 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,
- (b) in a case where—

(4) [S.I.1986/1456](#); the relevant amending instrument is [S.I.1987/805](#).

- (i) there is no such provision, and
- (ii) 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, or
- (c) in any other case, the period ending at midnight between Sunday 31st July 2005 and Monday 1st August 2005 and thereafter, in each year, the successive periods beginning at midnight at the beginning of the Monday which falls on, or is the first Monday after, a date in column 1 below and ending at midnight at the beginning of the Monday which falls on, or is the first Monday after, the date on the same line in column 2 below.

Column 1 (beginning)	Column 2 (end)
1st December	1st April
1st April	1st August
1st August	1st December

(4) The reference period may be extended in relation to particular mobile workers or groups of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement or a workforce agreement, by the substitution for 17 weeks of a period not exceeding 26 weeks in the application of paragraphs (2) and (3)(a) above.

(5) A mobile worker's average weekly working time during a reference period shall be determined according to the formula—

$$(A+B) \div C$$

where—

A is the aggregate number of hours comprised in the mobile worker's working time during the course of the reference period;

B is the number of excluded hours during the reference period; and

C is the number of weeks in the reference period.

(6) In paragraph (5), "excluded hours" means hours comprised in—

(a) any period of annual leave taken by the mobile worker in exercise of entitlement under regulation 13 of the Working Time Regulations 1998(5);

(b) any period of sick leave taken by the mobile worker;

(c) any period of maternity, paternity, adoption or parental leave taken by the mobile worker;

(7) For the purposes of paragraph (5), the number of hours in a whole day shall be eight and the number of hours in a whole week shall be forty-eight.

(8) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that the limits specified above are complied with in the case of each mobile worker employed by him.

5. The times of breaks, rests and periods of availability shall not be included in the calculation of working time.

(5) [S.I.1998](#); the relevant amending instrument is [S.I.2001/3256](#).

Periods of availability

6.—(1) A period shall not be treated as a period of availability unless the mobile worker knows before the start of the relevant period about that period of availability and its reasonably foreseeable duration.

(2) The time spent by a mobile worker, who is working as part of a team, travelling in, but not driving, a moving vehicle as part of that team shall be a period of availability for that mobile worker.

(3) Subject to paragraph (4) a period of availability shall not include a period of rest or a break.

(4) A period of availability may include a break taken by a mobile worker during waiting time or time which is not devoted to driving by the mobile worker and is spent in a moving vehicle, a ferry or a train.

Breaks

7.—(1) No mobile worker shall work for more than six hours without a break.

(2) Where a mobile worker's working time exceeds six hours but does not exceed nine hours, the worker shall be entitled to a break lasting at least 30 minutes and interrupting that time.

(3) Where a mobile worker's working time exceeds nine hours, the worker shall be entitled to a break lasting at least 45 minutes and interrupting that period.

(4) Each break may be made up of separate periods of not less than 15 minutes each..

(5) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that the limits specified above are complied with in the case of each mobile worker employed by him.

Rest periods

8.—(1) In the application of these Regulations, the provisions of the Community Drivers' Hours Regulation relating to daily and weekly rest shall apply to all mobile workers to whom they do not apply under that Regulation as they apply to other mobile workers under that Regulation.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that those provisions are complied with in the case of each mobile worker employed by him, to whom they are applied by paragraph (1).

Night work

9.—(1) The working time of a mobile worker, who performs night work in any period of 24 hours, shall not exceed 10 hours during that period.

(2) The period of 10 hours may be extended in relation to particular mobile workers or groups of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement or a workforce agreement.

(3) Compensation for night work shall not be given to a mobile worker in any manner which is liable to endanger road safety.

(4) An employer shall take all reasonable steps in keeping with the need to protect the health and safety of mobile workers to ensure that the limit specified in paragraph (1), or extended in accordance with paragraph (2), is complied with in the case of each mobile worker employed by him.

Information and records

10. An employer of mobile workers shall notify each worker of the provisions of these Regulations and the provisions of any collective or workforce agreement which is capable of application to that worker

11. An employer of a mobile worker shall

- (a) request from each mobile worker details of any time worked by that worker for another employer;
- (b) include time worked for another employer in the calculation of the mobile worker's working time;
- (c) keep records which are adequate to show whether the requirements of these Regulations are being complied with in the case of each mobile worker employed by him to whom they apply;
- (d) retain such records for at least two years after the end of the period covered by those records;
- (e) provide, at the request of a mobile worker, a copy of the record of hours worked by that worker;
- (f) provide to an enforcement officer copies of such records relating to mobile workers as the officer may require;
- (g) provide to a mobile worker or enforcement officer copies of such documentary evidence in the employer's possession as may be requested by the worker or officer in relation to records provided to him in accordance with paragraph (e) or (f) above.

12. A mobile worker shall, at the request of his employer under regulation 11(a), notify his employer in writing of time worked by the worker for another employer for inclusion in the calculation of the mobile worker's working time.

13.—(1) The Secretary of State shall arrange for the publication, in such form and manner as he considers appropriate, of information and advice concerning the operation of these Regulations.

(2) The information and advice shall be such as appear to him best calculated to enable employers and workers affected by these Regulations to understand their respective rights and obligations.

Agency workers not otherwise mobile workers

14.—(1) This regulation applies in any case where an individual ("the agency worker")—

- (a) is supplied by a person ("the agent") to do the work of a mobile worker for another ("the principal") under a contract or other arrangements made between the agent and the principal; but
- (b) is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer or any profession or business undertaking carried on by the individual.

(2) In a case where this regulation applies, the other provisions of these Regulations shall have effect as if there were a contract for the doing of the work by the agency worker made between the agency worker and —

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or

(b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work,

(c) and as if that person were the agency worker's employer.

Individual carrying on trade or business

15.—(1) This regulation applies in any case where an individual, who is not a self-employed driver, drives a vehicle described in regulation 3(1)(b) for the purpose of a trade or business carried on by him.

(2) Where this regulation applies—

(a) subject to paragraph (b), the other provisions of these Regulations shall have effect as if—

(i) the individual were a mobile worker, and

(ii) the individual were the employer of that mobile worker;

(b) regulations 10, 11(a) and (e) and 12 shall not have effect.

(3) This regulation shall not apply in any case where regulation 14 applies.

Enforcement

16.—(1) It shall be the duty of the Secretary of State to enforce the requirements of these Regulations.

(2) Schedule 2 shall apply in relation to the enforcement of the relevant requirements.

17.—(1) Any person who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The provisions of paragraph (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 2.

(3) It is an offence for a person —

(a) to contravene any requirement imposed by an inspector under paragraph 2 of Schedule 2;

(b) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of paragraph 2(2)(e) of Schedule 2 require an answer;

(c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice referred to in paragraphs 3 and 4 of Schedule 2 (including any such notice as is modified on appeal);

(d) intentionally to obstruct an inspector in the exercise or performance of his powers;

(e) to use or disclose any information in contravention of paragraph 7 of Schedule 2;

(f) to make a statement which he knows to be false or recklessly to make a statement which is false where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations.

(4) Any person guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(5) A person guilty of an offence under paragraph (3)(b) or (d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) A person guilty of an offence under paragraph (3)(c) shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine or both.
- (7) A person guilty of an offence under paragraph (3)(a),(e) or (f) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment—
 - (i) if the offence is under paragraph (3)(e), to imprisonment for a term not exceeding two years or a fine or both,
 - (ii) if the offence is under paragraph (3)(a) or (f), to a fine.
- (8) The provisions set out in regulations 18 to 22 shall apply in relation to the offences provided for in paragraphs (1) and (3).

Offences due to fault of other person

18. Where the commission by any person of an offence is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with the conviction of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Offences by bodies corporate

19.—(1) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Restriction on institution of proceedings in England and Wales

20. Proceedings for an offence shall not be instituted in England or Wales except by an inspector or by, or with the consent of, the Director of Public Prosecutions.

Prosecution by inspectors

21.—(1) If authorised in that behalf by the Secretary of State an inspector may prosecute proceedings for an offence before a magistrates court even though the inspector is not of counsel or a solicitor.

(2) This regulation shall not apply in Scotland.

Power of court to order cause of offence to be remedied

22.—(1) This regulation applies where a person is convicted of an offence in respect of any matter which appears to the court to be a matter which it is in his power to remedy.

(2) In addition to or instead of imposing any punishment, the court may order the person in question to take such steps as may be specified in the order for remedying the said matters within such time as may be fixed by the order.

(3) The time fixed by an order under paragraph (2) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(4) Where a person is ordered under paragraph (2) to remedy any matters, that person shall not be liable under these Regulations in respect of that matter in so far as it continues during the time fixed by the order or any further time allowed under paragraph (3).

Signed by authority of the Secretary of State for Transport

10th March 2005

David Jamieson
Parliamentary Under Secretary of State