

EXPLANATORY MEMORANDUM TO
THE ROAD TRANSPORT (WORKING TIME) REGULATIONS 2005

2005 No.639

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

These new Regulations implement Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport services. Their main effect is to restrict mobile workers, notably drivers of commercial goods and passenger vehicles, to an average working week of 48 hours and an absolute average of 60 hours.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Background**

- 4.1 These new Regulations implement Directive 2002/15/EC of the European Parliament and the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport services.

- 4.2 Directive 2002/15/EC is a new, free-standing Directive, but there are important inter-relationships with two other pieces of EU legislation: Council Directive 93/104/EC (the 1993 Directive) which applied working time rules to all sectors except transport, sea fishing, other offshore activity and doctors in training; and Council Regulation 3820/85 which lays down rules relating to the time commercial vehicle drivers may spend at the wheel, and the minimum breaks and rest periods they must take.

- 4.3 The key matters addressed in the new Regulations are set out below

- 4.4 The Regulations apply to mobile workers who are subject to the EU rules on driver's hours as set out in Regulation 3820/85, or, failing that, the European agreement concerning the work of crews of vehicles engaged in international road transport (AETR). They apply to agency

workers and those who drive a vehicle for the purpose of a trade or business carried on by them, but not to self-employed drivers, as defined in the Directive.

- 4.5 The Regulations require that a mobile worker's average working time should not exceed 48 hours per week over a reference period of 17 weeks, or up to 26 weeks where agreed between worker and employer. For the purposes of clarity the Regulations set dates to establish fixed reference periods. But employers and workers may agree different fixed dates, or employers may choose the more complex system of calculating the reference period set out in the Working Time Regulations 1998 enabling them to apply the same system to mobile and non-mobile workers
- 4.6 In no circumstances may a mobile worker work for more than 60 hours in any one week.
- 4.7 The new Regulations provide for rests and breaks from working time and for periods of availability. None of which are to be included in working time.
- 4.8 Employers must keep records of time worked. They must request details of any work done for another employer, and employees must provide these. There are provisions relating to retaining records and making them available to enforcement agencies.
- 4.9 The new Regulations provide for enforcement and for penalties for breach of the requirements.
- 4.10 A Transposition Note, and a brief scrutiny history of when the Directive was considered by EU Scrutiny Committees, is provided in **Annex A**.

5. Extent

This instrument applies to Great Britain.

6. European Convention on Human Rights

David Jamieson, Parliamentary Under Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Road Transport (Working Time) Regulations 2005 are compatible with the Convention rights.

7. Policy background

- 7.1 The stated purpose of Directive 2002/15/EC is to establish 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.

- 7.2 EU rules on working time were first established in 1993. Under Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, employees are entitled to:
 - (a) a maximum average 48 hour week
 - (b) a minimum 11 hour rest period each day
 - (c) an average 8 hour daily limit for night workers
 - (d) a rest break during working periods over 6 hours
 - (e) four weeks paid leave.
- 7.3 The 1993 Directive also allowed member states, where they so decide, to permit workers to exceed some of the limits, notably the 48 hour week, where workers agree.
- 7.4 The 1993 Directive applied to all sectors except transport, sea fishing, other offshore activity and doctors in training (the excluded sectors). For each there were practical difficulties in applying the rules. When the 1993 Directive was adopted, the European Commission said it would come forward with proposals to cover the excluded sectors. Their proposals led to:
 - (a) an amendment to Directive 93/104/EC (through Directive 2000/34/EC) to cover all the excluded sectors except merchant seamen; and
 - (b) specific provisions for junior doctors, sea fishermen, offshore workers and mobile workers in the transport sector. Directive 2002/15/EC contains the specific provisions for mobile workers in the road transport sector.
- 7.5 Directive 2000/34/EC made clear that where more detailed provisions were laid down in other instruments, those more detailed provisions take precedence. Directive 2002/15 is such an instrument.
- 7.6 It should be noted that, whereas the main purpose of Directive 93/104/EC was employee protection, Directive 2002/15 is also motivated by a desire to improve road safety and align conditions of competition.
- 7.7 The other relevant piece of legislation is Regulation (EEC) 3820/85 on the harmonisation of certain social legislation relating to road transport. This regulates driving time, breaks and rest periods, but does not cover other aspects of working time. Workers covered by Regulation 3820/85 are also covered by Directive 2002/15.
- 7.8 The implementation of Directive 2002/15/EC has been the subject of two consultation exercises. In October 2003 the Government sought views on how the various areas of flexibility in the Directive should be

used. Between 1 November and 12 December 2004 the Government consulted on the draft implementing Regulations and draft guidance. A summary of responses and the Government's conclusions has been published and copies have been placed in the House libraries. The first consultation yielded over 100 responses and the second over 50. Broadly speaking, employers accepted our proposals to offer flexibility where allowed by the Directive. The main concern from the Trade Unions related to the interpretation of "Periods of Availability", where they feel there is too much scope for employers to circumvent the purpose of the Directive. The Government has undertaken to keep the application of the Regulations under review.

7.9 The Department for Transport has prepared formal guidance on the application of these Regulations. Copies have been placed in the House libraries.

8. Impact

A Regulatory Impact Assessment is attached to this memorandum

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TRANSPOSITION NOTE

DIRECTIVE 2002/15/EC CONCERNING THE ORGANISATION OF THE WORKING TIME OF PERSONS PERFORMING MOBILE ROAD TRANSPORT ACTIVITIES			
Article	Purpose	Implementation	Responsibility
2	Sets scope of the Directive	Regulation 3 provides for the application of the new Regulations to mobile workers, who are not self-employed drivers Regulation 3 also excludes those doing relevant work on fewer than 16 days in a 26 week reference period or on fewer than 11 days in a shorter reference period.	Secretary of State
3	Definitions	Definitions are contained in Regulation 2. Regulation 5 provides for the part of the Directive's definition of "working time", which excludes breaks, rests and periods of availability. Regulation 6 provides the requirements in the Directive's definition of "periods of availability". Regulation 14 supplements the definition of "mobile worker" by identifying the employer of agency workers. Regulation 15 provides for any workers driving for themselves who do not fall within the Directive's definition of "self employed driver".	Secretary of State
4	Prescribes the maximum, and the average, weekly working time	Implemented by Regulation 4, which includes the permitted derogation, and by Regulations 11(a) and 12 of the new Regulations	Secretary of State
5	Prescribes minimum break requirements	Implemented by Regulation 7 of the new Regulations	Secretary of State
6	Applies rest periods contained in the Community Drivers' Hours Regulation	Implemented by regulation 8 of the new Regulations	

	(Council Regulation (EEC) 3820/85)		
7	Night work	Implemented by Regulation 9 of the new Regulations, which includes the permitted derogation	Secretary of State
8	Derogations	Derogation from Article 4 is contained in Regulation 4(4) of the Regulations, which provides that a reference period not exceeding 26 weeks may be substituted by agreement. Derogation from Article 7 is contained in Regulation 9(2) which provides that the period of 10 hours may be extended by agreement.	Secretary of State
9	Information and records	Implemented by Regulation 13. of the new Regulations	
11	Requires Member States to prescribe penalties	Implemented by Regulations 16 to 22 of the new Regulations. Regulation 16 and Schedule 2 provide for enforcement of the Regulations. Regulation 17, provides for offences and penalties for their breach. Regulation 18 provides for the liability of third parties and Regulation 19 for offences by bodies corporate. Regulations 20 and 21 deal with proceedings. Regulation 22 empowers the court to order a remedy in addition to, or instead of, punishment.	

Scrutiny History

On 20 January 1999 (6th Report, session 1998-99 reference 19641), the House of Commons Select Committee on European Scrutiny considered EM 13526/98 (which related to the Commission original proposals for all sectors excluded from the Working Time Directive). The Committee recommended that the document was politically important and requested further information. The House of Lords Select Committee on the European Union referred EM 13526/98 to sub Committee B and

Sub Committee F on 11 January 1999. It was cleared by Sub Committee F on 5 February 1999 and Sub Committee B on 26 January 2001.

The Commission's proposals for a draft Directive on working time for road transport mobile workers were set out in an unnumbered EM submitted by the Department of Trade and Industry on 29 February 2000. The House of Commons Select Committee considered the EM on 8 March 2000 (11th report, session 1999-00, 21010). The Committee recommended that the document was politically important and requested further information. The House of Lords Select Committee referred the EM to Sub Committee B (1024th sift, 7 March 2000) which cleared it on 20 December 2000.

On 19 July 2000 (25th report session 99-00), the House of Commons European Scrutiny Committee considered a letter sent by the Minister for Competitiveness at DTI on 11 July. The Committee maintained its recommendation that the document was politically important and did not clear it, requesting further information. On 13 December 2000 (1st Report, Session 00-01) the Committee considered a letter sent by Lord Whitty, DETR on 7 December 2000. The Committee maintained its recommendation that the document was politically important, but cleared it.

On 4 April 2001 (11th report session 00-01), the House of Commons European Scrutiny Committee considered EM 13792/00 together with a Ministerial letter sent on 30 March 2001. The Committee recommended that the document was politically important, but cleared it. The House of Lords Select Committee cleared the EM on 29 January 2001 (1056th sift).

Explanatory Memorandum COM (2001) 415 final was submitted by the Department for Transport, Local Government and the Regions on 11 October 2001. The House of Commons European Scrutiny Committee considered the EM on 7 November 2001 (4th Report, Session 2001/2002, reference 22663) and recommended that it was of political importance but cleared it. The House of Lords Select Committee on the European Union cleared the EM at their 1078th sift on 23 October 2001.

A Ministerial letter was sent to both Committees on 21 February 2002 to report the outcome of the Conciliation procedure. The House of Commons European Scrutiny Committee considered the letter on 13 March 2002 (21st Report, Session 2001/2002) and recommended that it was of political importance but cleared it. The House of Lords Select Committee on the European Union replied to the letter on 5 March 2002 thanking the Minister for the information.

REGULATORY IMPACT ASSESSMENT FOR THE ROAD TRANSPORT DIRECTIVE

Title: Transposition into UK law of EU Directive 2002/15/EC on the organisation of the working time of persons performing mobile and road transport activities

Purpose and intended effect of the measure:

Purpose: The proposed regulation will transpose into UK law the provisions of EC Directive on the organisation of working time for mobile workers in the road transport sector (2002/15/EC), also known as the Road Transport Directive (RTD). The RTD affects mobile workers (mainly drivers and accompanying crew) who are involved in road transport activities covered by The Community Drivers' Hours Regulation (320/85/EEC). It provides additional working time requirements over and above those that were implemented in August 2003 under the Horizontal Amending Directive (2000/34/EC).

Intended Effect: to establish minimum requirements in relation to the organisation of working time in order to improve the health and safety protection of workers performing mobile road transport activities, to improve road safety and align conditions of competition.

Full details are set out in the accompanying Consultation Document. However the main limits under the directive for mobile workers include:

- An average 48 hour working week, typically calculated over a four month reference period.
- Workers can work up to 60 hours in a single week, (providing their average working week does not exceed 48 hours)
- A 10 hour limit for night workers over a 24 hour period.

Unlike other working time legislation, individuals will not be allowed to "opt-out" of the average 48 hour working week. The RTD is required to be implemented by 23 March 2005, but will not apply to the self-employed until 2009.

Scope of the Regulatory Impact Assessment (RIA)

This RIA examines the impact of the RTD on drivers subject to The Community Drivers' Hours Regulation (the number of accompanying workers is likely to be small, but this issue is raised specifically in the Consultation Document). This assessment only applies to employees. The self-employed represent about 10% of haulage drivers in this sector and will be subject to the RTD from March 2009.

This assessment does not consider the impact of other working time legislation, such as the Horizontal Amending Directive (2000/34/EC) which is due to come into force

on 1 August 2003. The Department of Trade and Industry have published a separate RIA on the Horizontal Amending Directive.

Numbers affected

We estimate that about **525,000** full, or part-time employee drivers will be affected by the new regulation.

Estimating the number of workers affected by the RTD is not straightforward because the activities covered by the RTD take place in many different sectors of the economy. There are over 900,000 HGV licence holders and we are aware that Industry Training Council has estimated that around 550,000 use their HGV licences vocationally. However is not clear how many of these 550,000 would be affected by the WTD at any time. Based on Labour Force Survey (LFS) data, we have assumed that the figure is about **465,000** employee HGV drivers (510,000 including the self-employed) and about 430,000 vehicles. Some of these vehicles may have an exemption from the EU drivers' hours. In which case the vehicles and their drivers fall outside the scope of the Road Transport Directive.

The LFS estimates 121,000 bus and coach drivers. There is no data indicating how many of them will be affected by the RTD, but we do know that local bus services are not subject to EU drivers' hours rules. As a result, we have assumed that about half the drivers (60,000), will be affected by the RTD.

Options

Four main options were identified:

- i). To implement the RTD, taking up all the available derogations in order to allow employers flexibility.
- ii). To implement the Directive by taking up the night work derogation.
- iii). To implement the Directive by taking up the derogation extending the reference period to up to 6 months.
- iv) To implement the RTD, but without taking up the available derogations

Although we have identified 4 options, there is not enough suitable data available at this stage to quantify the costs and benefits for each option. Instead, the main focus has been on the cost and benefits of implementing the average 48 hour week, (compared with non-implementation). There is no individual opt-out of the 48 hour working week; so most of the compliance costs arise from having to employ extra drivers and encourage existing drivers to work longer hours up to the 48 hours per week maximum.

In practice, non-implementation is not a realistic option - as this leaves the UK open to infraction procedures leading to substantial fines being imposed by the European Court of Justice. The Government could also face claims for compensation from workers for non-implementation.

In comparison with the 48 hour average week, permitting either derogation is likely to have a relatively modest impact on the overall cost structure which industry faces. Nevertheless, their impact will be significant for firms which have extensive night work operations, or which have a surge in demand for 2-4 months in the year. Our survey indicates that about 31% of operators would benefit significantly from an extension to the reference period. 21% indicated to night work derogations would be a significant benefit for their business. These derogations would provide additional flexibility for some companies, which in turn may reduce their costs. Without a derogation from the night work limit, there could at the margin, be a shift to more day time working - increasing the pressure on congested road space during peak periods.

Hours worked:

None of the working limits under the RTD include break periods or periods of availability. According to the results of the Impact Group Survey, a more typical picture of what drivers may experience under the directive, suggests they may average about 5 hours of availability time each week (see annex A). For illustrative purposes in the table below (and based on the results from the Impact Group Survey), we have assumed an average availability time of 1 hour for each 10 hours of working time. This equals the amount of time on duty that the average driver might expect. (although some drivers will experience more and others experience less than this figure).

Table 1:

Working time (WT) limits (excluding breaks / availability):	Availability (for illustration)	W.T. Duty time limits (including availability, but excluding mandatory breaks)	Driving time limits (EU drivers' hours regulations - excludes breaks)
Ave 48 hour week	5 hours	53 hours	45 hours
60 hour max week	6 hours	66 hours	56 hours
10 hour limit for night workers every 24 hours	1 hour	11 hours	9 -10 hours per day

Average hours currently worked:

Goods Vehicles: Data¹ in the table below refers to **usual** hours for all employees who drive vehicles over 3.5 tonnes. Annex A includes other tables showing the

¹ Labour Force Survey (LFS) - Spring 2002

breakdown of average hours between drivers in transport industries / non-transport industries.

Table 2		Drivers of Small & Large GV's (Full time & Part Time, Employed only Main job) Usual Weekly Hours				
Working Time per Week (hours)	Average hours per week	Jobs ('000)	% of drivers doing these hours	% of all hours worked	Excess hours	
					% hours >48 per week	% hours >53 per week
Up to 40	29.6	69.2	14.9%	9.2%		
40 to 48	42.6	151.4	32.5%	28.8%		
48 to 53	49.9	88.8	19.1%	19.8%	3.8%	
53 to 58	55.1	56.7	12.2%	14.0%	12.9%	3.8%
58 to 65	59.9	66.8	14.4%	17.9%	19.9%	11.5%
Over 65	70.5	32.9	7.1%	10.4%	31.9%	24.8%
All Bands	48.0	465.8			9.4%	5.2%

Based on the usual weekly hours that drivers work, the average hours worked by goods vehicle drivers (excluding breaks) equals 48 hours a week. On the basis of existing work patterns, a 48 hour week would result in 9.4% of existing hours being performed in excess of the 48 hour limit, or 5.3% of existing hours being performed in excess of a notional 53 hour week (assuming 5 hours of availability).

Second jobs: The LFS identifies about 20,000 drivers who either have second jobs in another occupation or are drivers in their second occupation. If these extra hours in second jobs are included in the hours that count against limits in the RTD, there may be a small increase in excess hours. However, we do not know how many extra hours work is being performed in these second jobs, nor do we know if the impact of any reduction in hours would be felt in the road haulage job or in the other job.

Buses: The average weekly hours worked by bus and coach drivers are estimated to be just over 43 hours. In total the average individual weekly hours in excess of 48 hours make up about 5% of all hours worked by bus and coach drivers. The weekly hours in excess of 53 hours are about 2.5% of all hours worked.

Benefits

There are benefits as well as costs associated with the directive although these are inevitably more difficult to quantify. The RTD should ensure that employees are provided with basic minimum rights through a legal framework, providing minimum standards combined with some flexibility for employers. There are benefits to drivers and to society at large. There should be benefits to employers as well, although this was not reflected in results of the **Impact Group Survey**, which revealed that most employers think there would be no benefits for them at all. However, a sizeable minority (38%) thought it would lead to a modest improvement in long term recruitment and retention of drivers.

<u>Benefit</u>	<u>Main Beneficiary</u>
Fewer accidents in the workplace	Employer / worker
Fewer accidents on the highway	Society / worker/employer
Less sick leave and improved driver longevity	Employer / worker
Improved image for the industry – making it more attractive for new recruits	Employer
A better balance for workers between work and home	Society / worker
Efficiencies gained by reorganisation (e.g.... reducing non-driving activities)	Employer
Increased productivity (due to less fatigue)	Employer

Costs

Most of the identified compliance costs arise from the increase in driver wages required to increase the supply of hours. Given that employers cannot discriminate between drivers, the increase in wage rates has to be paid to all drivers. (see Annex A - Costs).

The figures in table 3 assume that the regulation of hours is accompanied by an increase in wage rates paid to all drivers, such that existing drivers, as a whole, are no worse off.

Overall benefits and costs (to industry / society) are set out in table below:

Table 3

£m	48 hour limit (no PoA)		53 hour limit (incl 5 hours PoA)	
	Recurring [annual]	Non-recurring	Recurring [annual]	Non-recurring
Staff costs (are an average of all drivers no worse off)	1052	-	552	-
Additional Equipment (leasing costs)	0 - 35		0 - 35	
Administrative costs (recruitment ²)	5	50	3	25
Other administrative costs - e.g monitoring hours worked	Some cost - difficult to quantify		Some cost - difficult to quantify	
Reduced accidents in the workplace	Some improvement - difficult to quantify	-	Some improvement - difficult to quantify	-

² Assumes 50% of excess hours taken up by new recruits costing £2000 each.

£m	48 hour limit (no PoA)		53 hour limit (incl 5 hours PoA)	
	Recurring [annual]	Non- recurring	Recurring [annual]	Non- recurring
Improved image, recruitment & retention.	Probably a significant benefit but difficult to quantify	-	Some benefit but difficult to quantify	-
Increased efficiencies	Probably a significant benefit but difficult to quantify	-	Some benefit but difficult to quantify	-
Improved productivity, sick leave	Some improvement - difficult to quantify	-	Some improvement - difficult to quantify	-
Reduction in road accidents (due to 60 hour max & 10 hour night work limit)	15 - 30	-	15 - 30	-
Better balance between home & work life	Significant benefit for employees but difficult to quantify	-	Some improvement for employees - difficult to quantify	-
Total quantified costs	1057 - 1092	50	555 - 590	25
Total quantified benefits	15 - 30	-	15 - 30	-
Difference – (excludes unquantified costs & benefits)	1027 - 1077	50	525 - 575	25

We have not been able to come to a view on the degree to which the costs are shared between drivers and employers (see Annex A - Costs). The Impact Group Survey suggests the ratio is 60:40, with most of the burden on the employer. Other research suggests employees will bear most of the cost. We have followed the split used in the RIA for the Horizontal Amending Directive and split costs 50:50 between workers and employers.

Net costs to Employers:

Table 4 £m	48 hour limit (no PoA)		53 hour limit (incl 5 hours PoA)	
	Recurring [annual]	Non- recurring	Recurring [annual]	Non- recurring
Staff costs (are an average of all drivers no worse off; then costs split 50:50 between employers & employees)	525	-	275	-
Total Cost (excluding unquantified costs and benefits to employers)	530 - 565		280 - 315	

Extra Drivers: If 50% of excess hours are covered by drivers working longer, or by reallocating non-driving duties to other staff, then the remaining 50% will come from new recruits. A 48 hour limit with no PoA would mean the industry requires an extra 21,900 new drivers (almost 5% of the current workforce). A 53 hour limit equals a shortfall of 12,300 new drivers (over 2.5% of the current workforce).

Cost for a typical business: It is very difficult to estimate the costs to a 'typical' business. Many businesses could be totally unaffected, while others will face the possibility of having to make significant changes to their current working arrangements and practices. Some of those changes may involve little cost; others could be more substantial. To the extent that employers recruit drivers from a common labour market, they will all be affected by the increase in hourly wage rates.

Consultation with small business: the small firms impact test

Small firms (those with fewer than 50 employees) currently employ about 28% of the total HGV labour force but 44% of drivers work for companies with more than 500 employees (including non-drivers).³ The average hours worked by lorry drivers in companies with fewer than 50 employees are 51 hours. This is not very different from the average hours worked by all drivers (48 hours). We do not know how the other elements of the RTD will affect small companies. The results from the Impact Group Survey only highlighted one significant difference between small firms and medium / large firms; small firms are less likely to benefit from a derogation from the 10 hour night work restriction. Only 14% of small firms thought this derogation was significant compared with 27% for medium and large firms.

On the basis of available information we do not think there is likely to be a disproportionate effect on small firms. However, problems may arise in micro companies (up to 10 employees) where it would be more difficult to redistribute hours among workers to keep within the 48 average.

Competition assessment

The proposed regulations should not affect the structure of competition in the sectors affected. They apply to all EU Member States and therefore should not affect the relative position of companies in tradable sectors such as road haulage. We considered the impact of an increase in wages on the road freight sector, of up to 10%. We looked at whether freight will change mode (mainly to rail or shipping), change route and to some extent change vehicle type. The result of our analysis confirmed there was no significant change in mode share of freight traffic due to higher wage cost.

Conventional logic might dictate that a higher road cost would limit growth in

³ According to the *Spring 2002 Labour Force Survey*

road traffic. This may still occur at the more time-sensitive end of the market, but our model is not capable of predicting how logistics might change in response to a change in transport costs.

Finally, before March 2009 there may be an impact on competition vis-à-vis the 10% of UK self-employed drivers and other foreign self-employed drivers. Not all of this 10% will meet the narrow criteria for a "self-employed driver" under the RTD. The narrow definition is also likely to frustrate attempts by employers (or employees) to switch to self-employed status. Drivers who do not meet the criteria, will be covered by the RTD from 2005. Nevertheless, drivers who do meet the criteria for self-employed under the directive, may gain a modest competitive advantage until 2009.

Equity and Fairness

The workforce in the road transport sector is predominantly male and the average age of drivers (and presumably possibly other mobile workers) has been increasing over the past decade. Reduced hours and improved working conditions might attract a wider variety of workers into this industry (e.g. more part-timers and female drivers). This regulation will have no impact on race equality.

Enforcement and Sanctions

Under the new regulations, most provisions of the RTD would be enforced by sanctions that are imposed on the firm or individual by an enforcement officer. The Government's preferred option is that where possible, enforcement should mirror the existing procedures that are used by HSE Officers to enforce working time legislation in other employment sectors. Currently, the enforcement of working time rules is targeted, by receiving complaints from individual employees.

Using the same methodology that has been applied to previous working time legislation, we estimate that annual enforcement will cost between £120,000 - £217,000.

Consultation

The Department has run two consultation exercises on the implementation of the Road Transport Directive. The first was launched in October 2003, ran for three months and sought views on our overall approach to implementation, as well as comments on the partial RIA. We received over 100 replies to the exercise. Thirteen specific questions that were raised, covering:

- the scope of the directive (notably the impact on occasional drivers and other non-mobile workers)
- the effect of the definitions (notably Working time, Periods of Availability and Self-employed driver) in the RTD
- Whether to implement the two derogations
- What should be the core night time period

- How the reference period should be calculated
- How the directive should be enforced
- Whether the costs and benefit identified in the partial RIA were realistic.

Not surprisingly, the overwhelming majority of employers and trade associations wanted the 2 derogations in the directive to be implemented. Most of unions however, were either opposed to the derogations, or stipulated that they should be subject to agreements between both sides of industry. On 29 April 2004, we published a press notice⁴ confirming the new regulations would allow employers to use both derogations, providing there was a collective or workforce agreement in place.

With regard to the cost and benefit figures in the RIA, several hauliers gave estimates about how much the new directive would cost their company. The Quarry Products Association gave detailed figures about the impact on the members in their organisation. The FTA was the only organisation to provide a detailed commentary on the figures used in our RIA. They thought we had under-estimated the cost on industry by between 15 - 65%. The unions thought the cost figures were too high and that insufficient weight had been placed on the benefits.

A summary of the results from the latest consultation exercise will be published separately.

Monitoring and Review

The Department will keep the legislation under review.

March 2005

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Declaration

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

Signed

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⁴ Can be found under the Working time / drivers hours section of the DfT website (under the Freight Logistics and Road Freight section) - http://www.dft.gov.uk/pns/DisplayPN.cgi?pn_id=2004_0052

Date:

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Definitions and Assumptions Used in Calculating the Number Who Benefit and Compliance Costs:

Data sources:

a) Labour Force Survey (LFS): This is a household sample survey covering employment patterns of individuals. Respondents to the LFS are asked a series of questions enabling the identification of both their usual hours and their actual hours during the reference week, excluding meal breaks, but including paid and unpaid overtime. The difference between actual hours and usual hours (which we are using) might be accounted for by holiday leave, sick leave, training etc. The hours worked refer to the main job, LFS collects data separately on employed and self employed, but sample sizes for the latter are too small to give reliable results. The self-employed have not been included in our estimates. Also for bus and coach drivers the sample sizes for some of the working time bands are too small to give reliable results.

b) New Earnings Survey (NES): Based on a 1% sample of employees who are members of a PAYE income tax scheme. Employers complete survey forms. The survey concerns the earnings of employees in employment and is designed to represent all categories of employees in businesses of all kinds and sizes. Data are collected on hours worked, industry, occupation, place of work, sex, age, about the levels, distribution and make-up of earnings of employees in all industries and occupations. The Survey covers Great Britain.

c) Impact Group Survey: In 2003, the Department invited a group of key stakeholders to provide view on the assumptions, methodology, costs and benefits required to produce a partial Regulatory Impact Assessment for the RTD.⁵ The Group decided to conduct a survey to help plug some of the gaps in their knowledge and get a better idea of the costs and benefits of the RTD. The Road Haulage Association, the Freight Transport Association and the British Association of Removers circulated the survey to their members. About 200 replies were received - most of which were completed by the owner or transport manager. A summary of findings is attached at annex B, and a sample questionnaire is attached at annex C.

Estimating the number of workers affected by the RTD is not straightforward because the activities covered by the RTD take place in many different sectors of the economy. Official national statistics, particularly the Labour Force Survey identify employment in particular industries and occupations, but these do not necessarily match the definitions of the RTD. In addition, the definition of hours worked in the LFS and other sources may not be entirely consistent with the definition of hours in the RTD, for example the treatment of breaks and availability. Nevertheless, the LFS is probably the most reliable source available; one which DTI have used for their assessments. Industry surveys, such as the one by the Industry Training Council

⁵ It should not be inferred that stakeholders on the Impact Group have approved or endorsed the assumptions, methodology or conclusions reached in this document.

could have been used, but their coverage and degree to which they represent all activities covered by the RTD is not known with certainty.

HGVs: The RTD will apply to drivers of vehicles over 3.5 tonnes. The LFS survey for Spring 2002 estimates that there are 319,000 drivers of large goods vehicles (defined in the LFS as vehicles over 7.5 tonnes) and 192,000 drivers of small goods vehicles (defined by the LFS as vehicles under 7.5 tonnes). The estimated number of drivers for the larger goods vehicles seems to be consistent with the number of goods vehicles over 7.5 tonnes, i.e. 272,000. The LFS does not record whether drivers hold HGV licences or not, so it is not possible to directly match the number of drivers in the LFS with drivers of goods vehicles over 3.5 tonnes. However given that there are 430,000 goods vehicles over 3.5 tonnes (or 158,000 between 3.5 and 7.5 tonnes) it is likely that most of the drivers of smaller goods vehicles identified in the LFS, do indeed drive goods vehicles over 3.5 tonnes.

We know there are over 900,000 HGV licence holders and we are aware that industry training council has estimated that around 550,000 use their HGV licences vocationally. It is not clear how many of these 550,000 would be affected by the WTD at any time.

For the purposes of this assessment we have worked on a figure of about 500,000 HGV drivers (470,000 employees) and about 430,000 vehicles.

Buses: The LFS estimates 121,000 bus and coach drivers. Local bus drivers will not be affected by the new directive, unless their journey is longer than 50km. However, bus drivers on inter-urban routes and coach drivers are likely to be affected. We have no information about how many drivers will be affected, so we have had to assume that roughly half (60,000 drivers), would be affected.

How Many Hours Do Drivers Currently Work?

These tables are derived from data in the Labour Force Survey (LFS), showing the "usual hours" worked by drivers. They cover both lorry driver occupations and other drivers. The LFS records occupation and industry, so that it is possible to show separately the average and distribution of hours of drivers within and outside the transport sector. Table B shows the average and distribution of hours for all drivers who work in the transport and communications sector, and table C the same data for those drivers working outside that sector. All tables refer to employees.

Table A gives figures for all employed drivers

Table A	Drivers of Small & Large GV's (Full time & Part Time, Employed only Main job) Usual Weekly Hours					
	Average hours per week	Jobs ('000)	% of jobs with identified hours	% of all hours	% hours >48 per week	% hours >53 per week
Working Time per Week (hours)						

Up to 40	29.6	69.2	14.9%	9.2%		
40 to 48	42.6	151.4	32.5%	28.8%		
48 to 53	49.9	88.8	19.1%	19.8%	3.8%	
53 to 58	55.1	56.7	12.2%	14.0%	12.9%	3.8%
58 to 65	59.9	66.8	14.4%	17.9%	19.9%	11.5%
Over 65	70.5	32.9	7.1%	10.4%	31.9%	24.8%
All Bands⁶	48.0	465.8			9.4%	5.2%

This table shows that the LFS records about 465,000 employed drivers in total working on average 48 hours per week. 53% of drivers work, on average, more than 48 hours per week, and these hours make up 62% of all hours. The average individual weekly hours in excess of 48 hours make up 9.4% of all hours worked by drivers.

Table B shows figures for drivers in the transport industry.

Table B	Drivers of Small & Large GV's (Full time & Part Time, Employed only Main job, Employed in Transport Industries) Usual Weekly Hours					
Working Time per Week (hours)	Average hours per week	Jobs ('000)	% of jobs with identified hours	% of all hours	% hours >48 per week	% hours >53 per week
Up to 40	30.7	14.9	6.9%	4.0%		
40 to 48	42.7	48.4	22.3%	18.1%		
48 to 53	50.0	47.6	21.9%	20.9%	4.0%	
53 to 58	55.2	32.3	14.9%	15.6%	13.0%	4.0%
58 to 65	59.9	47.9	22.1%	25.1%	19.9%	11.5%
Over 65	71.3	26.0	12.0%	16.3%	32.7%	25.7%
All Bands⁵	52.6	217.2			13.2%	7.7%

This table shows that the average working time for drivers in the transport industry is **52.6 hours** per week.

Table C shows "own account" drivers (e.g. drivers working for a supermarket - or for any other company outside the transport sector).

Table C	Drivers of Small & Large GV's (Full time & Part Time, Employed only Main job, not Employed in Transport Industries) Usual Weekly Hours					
Working Time per Week (hours)	Average hours per week	Jobs ('000)	% of jobs with identified hours	% of all hours	% hours >48 per week	% hours >53 per week
Up to 40	29.4	53.8	21.6%	14.4%		
40 to 48	42.4	102.2	41.1%	39.5%		
48 to 53	49.8	41.4	16.6%	18.7%	3.6%	
53 to 58	54.9	24.5	9.9%	12.3%	12.6%	3.5%
Over 58	62.0	26.9	10.8%	15.1%	22.6%	14.5%

⁶ Total includes a small number of drivers who did not record their weekly working time. These drivers have been distributed between existing bands on a pro-rata basis.

All Bands⁵	44.2	248.7			5.6%	2.6%
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This table shows that the average working time for own account drivers is 44.2 **hours** per week.

The number of drivers working inside and outside transport industries is fairly similar. Average hours worked in the transport and communications sector are longer (52½ hours) than outside the sector (44 hours). The average individual weekly hours in excess of 48 hours make up 13.2% of all hours worked by drivers in the transport and communications sector, but only 5.6% outside the sector.

Table D shows bus and coach industry drivers (only half of whom are likely to be affected by the RTD).

Table D	Bus Drivers (Full time & Part Time, Employed only Main job, All Industries) Usual Weekly Hours					
Working Time per Week (hours)	Average hours per week	Jobs ('000)	% of jobs with identified hours	% of all hours	% hours >48 per week	% hours >53 per week
Up to 40	30.1	35.0	29.0%	20.3%		
40 to 48	42.8	41.9	34.8%	34.5%		
48 to 53	49.3	24.3	20.3%	23.2%	2.7%	
Over 53	59.8	19.2	15.9%	22.0%	19.7%	11.4%
All Bands⁵	43.1	120.4			5.0%	2.5%

The average weekly hours worked by bus and coach drivers in the sample week is 37.61 hours, and usual average weekly hours are estimated to be just over **43 hours**. On the basis of the latter about 30% of all drivers work, on average, less than 40 hours per week, and these hours make up just over a fifth of all hours. At the other end of the scale 36% of drivers average more than 48 hours per week and contribute 45% of the hours. In total the average individual weekly hours in excess of 48 hours make up about 5% of all hours worked by bus and coach drivers.

Costs:

a) Total staff cost for industry as a whole:

Most of the compliance cost arises from having to increase wage rates in order to increase the supply of hours. These higher wage rates are assumed to be paid to all drivers, as there is no obvious way in which employers could discriminate between new and existing drivers and between drivers who work more or less 48 hours.

Table 3 of the RIA shows two overall staff cost figures for industry (although not all of this will be borne by the employer):

⁵ Total includes a small number of drivers who did not record their weekly working time. These drivers have been distributed between existing bands on a pro-rata basis.

- a) £1052m if drivers are restricted to an average 48 hour week
- b) £552m if drivers are restricted to an average 53 hour week.

To calculate these figures, we have identified the number of hours required to make up lost hours following the implementation of the 48 hour week (based on analysis of LFS data). Wage costs come from New Earnings Survey, plus 22% employment cost overhead (similar to the figure used by DTI for its impact assessments).

For example, implementing the 48 hour limit (no periods of availability) results in the loss of 9.4% of existing hours. If existing drivers as a whole are to be no worse off wage rates will have to increase by 10.3%. In effect, the average wage bill for existing drivers remains unchanged even though they work (as a whole), 9.4% fewer hours. Extra funds are required to pay new drivers, or existing drivers within the 48 hour limit to mop up the 9.4% of additional hours. Assuming we cannot discriminate in wage rates between existing and new hours, and between existing and new workforce, it is this higher wage rate paid on all hours that leads to the increased cost.

The current wage bill including employment on-costs of affected labour force is estimated at £10.1bn calculated from LFS total hours for goods vehicle drivers and NES wages rates (average for different hours bands of goods vehicle drivers including overtime) and 22% employment overheads (similar to figure used in Horizontal Amending Directive). A 10.3% increase in wage rates on £10.1billion equals a £1052m increase in employment costs.

As far as DfT is aware, there are no recent publicly available figures on turnover or labour costs in the Road Haulage industry. Input - output tables compiled by the Office of National Statistics show inland transport, but this covers some non-road haulage activities and only includes companies whose main business is identified as road haulage. It misses out most, if not all of the road haulage activity undertaken by companies whose main business is not road haulage. It would also be necessary to split out drivers and non-drivers labour costs in order to get the impact of the Directive.

b) Financial burden for employers and employees:

One crucial assumption is the degree to which wage rates have to be increased to attract the extra hours either from existing workers or from new workers. Ideally we would use an estimated relationship between driver's hourly wages rate and the supply of hours. Unfortunately, this does not appear to be available at least for the UK. A recent US study⁷, which deployed enormous research resources, could not find a definitive answer for their drivers either. They concluded that their labour market was elastic, so the financial burden of restricting hours will fall mainly on drivers. In effect, only a small increase in wages by the employer would be enough to cover the extra hours.

⁷ Regulatory Impact Analysis and Small Business Analysis for Hours of Service options (Dec 2002) – US Department of Transportation.

The US data would not necessarily apply to the UK, but in the absence of any other relevant labour market evidence, it does suggest both sides of UK industry will share the burden. Our **Impact Group Survey** suggests that employers will have to absorb most (but not all) of the burden. The results show a 60:40 split - between employers and employees. However, in the absence of a robust relationship we have decided to split the costs 50:50 between employers and drivers. This at least is consistent with the assumption used by DTI for assessing the impact of other Working Time legislation. A cost split of 50:50 between drivers and employers would result in employers paying between £526m and £276m per annum in staff costs. We have not made any assessment of effects on other labour markets from which additional drivers might be recruited.

Table 1: Effect on Labour Costs where 48 Hours in LFS = Limit

	% increase in wage rates	Absolute increase in labour costs (including 22% overhead) £m - Extra hours by existing and new workers
As a whole, drivers are no worse off	10.3%	1052
As above – but drivers have to absorb 50% of the costs (cost to employers)	5.2%	526

Table 2: Effect on Labour Costs where 53 Hours in LFS = Limit

	% increase in wage rates	Absolute increase in labour costs (including 22% overhead) £m - Extra hours by existing and new workers
As a whole, drivers are no worse off	5.3%	552
As above – but drivers have to absorb 50% of the costs (cost to employers)	2.7%	276

These figures are calculated using hourly wage rates (including overtime) by bands of weekly hours from the NES. These figures are as follows:

< 40 hours £7.36 per hour
 40 to 48 hours £7.14 per hour
 48 to 53 hours £7.09 per hour
 53 to 58 hours £7.51 per hour
 58 to 65 hours £6.93 per hour
 > 65 hours £6.93 per hour

Extra drivers: Based on extra staff costs, we can estimate the number of extra drivers would be required as follows:

	48 hour limit (no PoA)	53 hour limit (incl 5 hours PoA)
If new recruits cover <u>all</u> excess hours	43,800	24,700
If new recruits cover <u>only 50%</u> excess hours	21,000	12,300

There is some anecdotal evidence that suggests there is a shortage of drivers. The road haulage industry currently estimates there is a shortage of drivers of around 50,000 (about 10% of the existing workforce). It is not clear how this shortage manifests itself - (e.g. whether freight is not moved, or is delayed or moved less efficiently), or how the 50,000 figure is derived. But the severity of the problem varies by region; employers in the South East for example, pay higher wages than those in other parts of the country to attract drivers. In our analysis we have assumed the observed wage rate is the equilibrium wage rate (i.e. the wage rate equates supply and demand).

Will workers who currently work less than the limits under the RTD, be willing to work longer hours?

If hourly wages increase there might be some incentive for those working less than 48 (or 53) hours a week to work more hours up to the 48 hour limit. On the other hand those working well in excess of 48 hours may take the view that the increase in wage rates is not sufficient compensation, and leave the industry altogether. Their decision may depend on what alternative suitable employment is available. Realistically, we might expect some increase in hours, but other drivers may choose not to work extra hours. It is possible that drivers who currently work less than 48 hours may have second jobs as well. The LFS estimates that 20,000 drivers may have second jobs. It is difficult to know if a driver with a second job would be prepared to give it up. However, If they get a higher wage rate for driving, they may choose to drop their other job, if offered longer hours as a driver. If we assumed that 53 recorded working hours was equivalent to a 48 hours limit there might be more scope for existing drivers to increase their hours in response to a wage increase.

However, for the purpose of estimating recruitment costs, we have assumed that 50% of the excess hours will be made up from new recruits. The rest would come from existing drivers, agency drivers and training up other workers to become drivers.

How many extra vehicles are required?

In April 2003, DfT published results of two surveys that examined the key performance indicators for the Food Supply Chain and the non-food Retail Distribution Sectors. The surveys found that vehicles typically remained idle (empty and stationary) for 28% and 21% of the time respectively. Although, we would expect vehicle utilisation to increase during peak periods (most notably, towards the end of the year), there is clearly a significant amount of under-utilised capital for the rest of the year.

Additional drivers are required for the RTD but it is not clear whether these would use existing vehicles, or whether more vehicles are required. The Impact Group Survey indicated that about 45% of operators thought they would require more equipment or vehicles because of the RTD. This may be a little pessimistic with regard to additional vehicles; in our view, most companies should have a financial incentive to ensure additional drivers use existing vehicles wherever possible. In addition, unlike in other sectors of employment, purchasing new vehicles cannot be used as a substitute for recruiting more staff. So there would be little incentive in purchasing or leasing another vehicle, if this cannot be used to offset an increase in other costs caused by the RTD.

Nevertheless, there may be occasions when additional vehicles are necessary. If industry does require any new equipment, most of this will come from leasing vehicles rather than purchasing new vehicles. The cost / benefit summary table shows the annual cost of additional equipment as between £0-35m. The illustrative figure of £35m assumes an extra 3% of vehicles are required (12,600 vehicles), each leased for 6 months (i.e for the busiest period) at £500 per month.

Effects on logistics – e.g. location of depots?

It is not clear what, (if any) impact this would have on the logistics supply chain. Although the RTD does not necessarily affect the amount of driving that can be performed, the limits will reduce the amount of other work that can be performed – reducing the amount of flexibility for the employer. At the margins, some companies may find some of the RTD limits (particularly the 10 hour night work limit) will make it more difficult for drivers to perform other tasks at their most distant depots.

Benefits:

The RIA of the HAD carried out by DTI mentions benefits but says they are difficult to quantify. Mention of better life-work balance, greater choice of hours worked, improvements in health and safety and a more committed workforce. Those workers covered by HAD have particular benefits as they are more likely to work long hours and undertake shift work in situations that have higher health and safety risks associated with them.

Results from the Impact Group Survey clearly show that most operators / employers are sceptical about getting any benefits from the RTD. Nearly all the benefits that

were identified were classified as 'modest'. The least beneficial category was for fewer accidents in the workplace, where only 11% indicated a benefit. The most beneficial aspect of the RTD according to operators, was for long term recruitment and retention of drivers. 37% thought there would be some improvement following the implementation of the RTD.

1. Fewer Accidents in the workplace: Reductions in stress and fatigue (which may be caused by excessive hours), should lead to benefits including, reduced risk of accidents and fewer mistakes made in the workplace.

2. Fewer accidents on the highway: EU Drivers' Hours rules are a vital piece of legislation for maintaining road safety. It limits driving time (calculated over a 2 week reference period), prescribes minimum break and rest periods and is enforced by the tachograph. The **night work provisions** and the **60 hour maximum week** under the RTD, should also have some road safety benefits in preventing accidents. However, the 4 month reference period that is used to calculate the 48 hour average week, makes it unlikely that this provision will have any significant road safety benefits.

On this basis we have calculated illustrative benefits which may occur from a reduction in road accidents related to driver fatigue, see table:

Cost of Sleep Related Vehicle Accidents (whole network)

Table E				Possible reduction under the RTD	
£m	Value of preventing all accidents (col 1) ⁸	Value of preventing SRVA involving RTD drivers (2) ⁹	(of which) SRVA at night (30% of total) (3)	60 hour week - (assume 5% reduction on figures in col 2)	10 hour night work - (assume 10% reduction in col 3 figures)
Fatalities	4340	87	26	- 4	- 3
Serious	5080	102	30	- 5	- 3
Slight	3110	62	19	- 3	- 2
Damage	4890	98	29	- 5	- 3
Total	17420	348	105	- 17	- 10

Column 3 - "Night" is midnight - 06.00

3: Sick leave and improved driver longevity and productivity: There is some evidence that suggests working and driving long hours may be detrimental to health and driver longevity. A higher incidence of sick leave, back problems and cardiovascular diseases amongst drivers, has been associated with long working hours in the cab of a vehicle. The Department has also received anecdotal evidence from older drivers, who believe their health is being affected by poor working conditions and the long hours they are forced to work. The extent to which these health problems can be attributed to the stresses of driving and current working conditions is

⁸ Highways Economics Note No.1 2001 Valuation of the Benefits of Prevention of Road Accidents and Casualties (Nov 2002)

⁹ Road safety Report 21 - Driver Sleepiness (2001): SRVA account for 15-20% on monotonous roads (motorways and trunk roads). Across the network, DfT estimate SRVA account for around **10%** of accidents. Commercial vehicles involved in 40% of SRVA of which about 50% of these drivers are subject to the RTD.

a mute point. Other factors, such as smoking, lack of exercise, poor diet etc, may also contribute to poor health.

In other sectors, the introduction of working time legislation has contributed to better relationships at the workplace, leading to improvements in workforce commitment, morale and performance¹⁰.

4: Improved image for the industry - making it more attractive for new recruits: Long anti-social hours and poor working conditions are often cited as two of the reasons why the haulage and bus industries find it difficult to attract new recruits and retain existing drivers. The implementation of the RTD should bring about an immediate improvement in the length of hours worked. In the long run, this should improve the image of the industry, making it more attractive to new recruits.

5: A better balance for workers between home and work: The main beneficiary would be for employees who wanted to work shorter hours, although much would depend on personal circumstances. This could allow more time to spend on aspects of life that are important to them outside of work including allowing parents to better manage their time to avoid conflict between home and work.

Other drivers have indicated however that they would prefer to work longer, particularly if this would guarantee retaining their current level of take home pay. Following the implementation of the RTD, but not enough for drivers working the longest hours to retain their current. Overall, the basic rate of pay should rise, but not all drivers will maintain their current levels of take home pay. Ultimately however, an individual's pay will continue to be a matter for negotiation between employer and employee.

6: Efficiencies gained by reorganisation: By itself, the road transport directive does not reduce the amount of driving time that can be performed, as these limits are less than the new limits under the road transport directive (see Table 1). Drivers may continue to drive up to the prescribed limits under EU drivers' hours rules, although some will need to curtail some of their non-driving activities, in order to comply with the RTD. Companies affected by the RTD need to consider how they would benefit (or at least, minimise their costs) by reorganising their activities. One obvious example would be reduce the amount of other (non-driving) work that their drivers currently do. Other non-mobile workers such as warehouse staff, may be able to perform some duties currently performed by drivers - such as cleaning the vehicle. Warehouse staff are not subject to the RTD and can choose to work longer than an average 48 hour week if they wish. They also tend to have a lower rate of pay.

In theory, there is nothing to stop firms reorganising on this basis without being prompted by the RTD; indeed some may have done so already. Other operators may be unwilling to reorganise even when it pays them to do so. One operator told us that drivers who are willing to perform other work (such as cleaning, loading and unloading vehicles), tend to make the best employees. Their willingness to be flexible and their commitment were seen as an asset, which ultimately might outweigh any benefits or reduction in costs gained from a reorganisation.

¹⁰ Neathey, F, & Arrowsmith, J. (2000) Implementation of Working Time Regulations, Employment Relations Research Series 11, Department of Trade & Industry.

IMPACT GROUP - SUMMARY OF SURVEY RESULTS

Earlier this year, the Department of Transport invited representatives from trade bodies, unions and other key stakeholders to discuss the cost and benefits of the Road Transport Directive. One of the aims was to identify and review the sources of information, which the Department could use to support figures in its Regulatory Impact Assessment. It quickly became apparent however; that there were significant gaps in the information that was needed. The Group decided to produce a survey that could be circulated to industry representatives in order to plug some of these gaps.

The survey took place between March - May 2003. The Freight Transport Association, Road Haulage Association and the British Association of Removers sent the questionnaire to their members. The Department received about 200 replies from companies affected by the Road Transport Directive.

The main results are as follows:

1. The average working time for drivers under the survey was about 54 hours per week, higher than the 48 hour figure shown in the LFS, but only a little higher than the average for operators 52.6 hours.
2. There was no consistency in how operators expected drivers to record waiting, availability time and other work on the tachograph. The survey presented 5 scenarios. A delay resulting in the driver waiting in the canteen (whilst waiting for his vehicle to be loaded / unloaded), was most consistent with 79% thinking this would be recorded as a break/rest period; 16% as availability time and a further 6% as other work.
3. Around 70% of replies said their drivers took over 5 hours *mandatory* breaks per week. Nearly 50% expected their drivers to have about 5 hours or more periods of availability per week.
4. 82% thought they would need more staff and 55% thought they'd need more equipment following implementation. 17% expected no additional cost, but 20% expected staff costs to increase by over 25%.
5. 68% of employers thought they would absorb all or part of the additional cost of the directive. 17% thought the driver would absorb all the cost.
6. Over 50% of replies said they could pass on less than 25% of the cost of the directive to their customers.
7. June - November are the months where operators are most likely to experience a peak in demand. January to March tend to be quiet months.
8. Extending the reference period for calculating the 48 hour average week from 4 to 6 months would significantly benefit 31% of operators. 21% of all operators indicated significant benefits if night workers were allowed to work longer than 10 hours for each 24 hour period. Figures for small firms (less than 50 employees) show a similar result for extending the reference period (30%), but only 14% identified longer night working as significant.

9. About 40% of replies said demand increased more than 25% during their peak period.
10. Few operators expected to see any benefits from the RTD, although nearly 40% expected a modest improvement in long term recruitment / retention of drivers.

Questionnaire circulated by the Impact Group

Working Time Directive Questionnaire

The Working Time Directive for Mobile Workers in Road Transport (2002/15/EC) is due to be implemented in March 2005. The Department of Transport (DfT), along with the trade associations, the TGWU and other key stakeholders, are assessing the likely impact of the new directive on the road transport sector. Some of the data for producing this assessment is readily available in existing publications - but not all. In particular, there is very little information available that will allow us to compare the costs and benefits of the different options that Member States, or individual companies may pursue, once the directive has been implemented.

To help plug the gaps, we are circulating the attached questionnaire. We have tried to keep it as brief as possible and some of the questions can be answered by simply ticking a box. However, we would also very much appreciate your comments and most of the questions have a space for you to elaborate on the answers you have provided. After you have completed details of your company, please read the "definitions" before completing the remaining fifteen questions. You should allow yourself about 30 minutes to complete the questionnaire.

There is also summary of the main points of the new directive at the back of the questionnaire that you can refer to. Most of the data and comments you provide will be aggregated and used to assist the DfT produce a draft regulatory impact assessment, that will be published later this year.

Thank you in advance for your assistance. This is an opportunity for all of us to influence the way the directive will be implemented in the UK. Any information that you provide will be treated in confidence.

Questionnaire:

Name of Company.....

Nature of Business.....

...

.....

.....

How many employees do you have in total?

Of these, how many of them are drivers ?

Of these, how many drivers are subject to European Drivers' Hours Rules (i.e. drive vehicles with a tachograph)?

How many vehicles with tachographs do you have in your fleet?

Are you Hire and Reward? Y / N (delete)

Own Account? Y / N (delete)

In which sector(s) of the economy do you operate? (tick one or more relevant boxes)

A Agriculture, Hunting, Forestry, Fishing

B Mining and Quarrying

C Manufacturing

D Electricity, Gas and Water Supply

E Construction

F Wholesale and retail trade:

G Carriage of passengers

H Other

If "H" please elaborate.....

Definitions:

"**Working Time**" is not the same as time spent in attendance at work (spreadover). It includes driving, loading, unloading (goods/passengers), cleaning, technical maintenance etc. It also includes other time when the driver is at his workstation, at the disposal of his employer and cannot freely dispose of his time. It includes periods of waiting where the foreseeable duration is not known in advance. It does not include **breaks** or **rest** periods. It does not include **Periods of Availability** -

"**Periods of availability**" basically unproductive time or waiting time which the driver knows about in advance (along with the approximate duration). Time in which the driver is not required to remain at his workstation, but must be available to answer calls, to resume driving or carry out other work. These periods and their foreseeable duration should be known in advance - at the beginning of the shift or at the start of the period in question.

"**Night work**" means any work performed during the night time period (probably Midnight to 04.00am). A night worker is any driver who works during all (or some) of the night time period. Under these conditions, a driver who starts work at 04.00am is not a night worker; but he is if he starts at 03.55am. Night workers can only do 10 hours of working time in every 24-hour period.

The "**Reference period**" (Q2) refers to the calculation of the 48 hour average working week. Under existing working time legislation, this is a rolling week calculated over a 17-week (4 month) reference period. The new Directive can permit (under certain circumstances by workplace agreement) the use of longer reference periods - up to 26 weeks (6 months), to calculate the average week.

Q1: According to the above definition, how much working time do your drivers typically¹¹ do each week?

- At or below 48 hours
- over 48 hours and up to 55 hours
- over 55 hours and up to 60 hours
- over 60 hours and up to 65 hours
- Over 65 hours

¹¹ i.e. the **average** (total hours over the reference period divided by number of weeks in the reference period)

Q2: How would you expect your drivers to record the following on the tachograph - (where A = other work B = on duty available for work, and C = rest/break)

	A	B	C	Not applic
Waiting in your cab/coach at a port or border crossing due to delays				
There is delay in unloading your cargo - (so you go to the canteen / restroom)				
A delay in unloading your cargo - (so you stay in you cab/coach)				
On duty, waiting at your base - but there is a delay in assigning you your duties				
Vehicle breaks down - so you wait in the cab/coach until the recovery vehicle arrives				

Please elaborate if necessary

.....

.....

.....

.....

Q3: Typically, how many hours a week do your drivers record as (i)"breaks" and how many hours might they count as a (ii)"period of availability" when the new directive comes into force?

(i) Breaks

(ii) Period of Availability

- Up to 5 hours a week per driver
- Between 5 & 10 hours a week per driver
- Over 10 hours

- None
- Up to 5 hours a week per driver
- Between 5 & 10 hours a week per driver
- Over 10 hours

Please elaborate if necessary

.....

.....

.....

Q4. To maintain your current level of turnover under the new directive, will you need to...

a) Purchase more vehicles / equipment? Y / N (delete) If so, how much?

.....

..

b) Hire additional drivers Y / N (delete) If so, how many

c) Make changes to daytime distribution patterns Y / N (delete)

d) Make changes to night time distribution patterns Y / N (delete)

Please elaborate or give other examples.....

.....

.....

.....

.....

Q5 What increase (if any) will the directive have the overall staff cost for your business.

- None Up to 10 % increase 11-15% increase 16-20% increase
- 21-25% increase Over 25%

Q6 Who (if anyone) will shoulder the burden of paying the additional staff costs?

- The driver - a shorter working week will result in proportionately less take home pay for the driver
- Shared between driver and employer: A compromise, in which the driver accepts a small reduction in take home pay, but not as much as is warranted by his reduced hours
- The employer - drivers take home the same amount of pay, despite working a shorter week
- Not applicable

Q7 What proportion of the cost resulting from this directive can you pass on to your customer (if any) - bearing in mind that all your competitors will also be affected by the Directive?

- 100% +
- 99 - 75%
- 74 - 50%
- 49 - 25%
- Less than 25%

Q8: Assuming a night time period is set between midnight - 04.00am, what impact would a 10 hour daily limit (on working time) for night workers have on your company?

- No impact
- Minor impact (modest one-off costs)
- Significant impact

Please give the reason for your answer

.....
.....
.....
.....

Q9: Is work fairly constant all year around? If not, what is the busiest and quietest time of the year for your company?

- fairly constant all year round

Busiest period

Quietest period

Q10: How long does the peak period last for?

- 5 weeks or less
 6-10 weeks
 11-15 weeks
 16-20 weeks
 21-25 weeks
 Not applicable - no peak period

Q11: During the peak period, how much extra demand for your services do you receive (compared with the average levels of demands for the rest of the year)

- None - 10%
 11-25%
 26-40%
 41-60%
 Over 60%

Q12: Would a longer reference period for calculating the 48 hour average working week, provide benefits and flexibility for your company? *[e.g. if it was increased from 4 to 6 months following a workplace agreement]*

- None
 Minor benefit
 Significant benefit in peak periods

Please give the reason for your answer.....
.....
.....
.....

Q13: What benefits (if any) do you expect for your company once this directive is implemented in 2005? (please tick)

	None	Modest gain	significant improvement
Fewer road accidents			
Fewer accidents in the workplace			
Less sick leave			
Increased productivity from employees			
Improved longevity - drivers less likely to retire early due to ill health			
In the long term - better recruitment and retention of drivers			

Wider variety of workers (i.e. more chance of getting part-timers, female drivers etc)			
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Please elaborate or give other examples.....

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Q14: Typically, how many agency drivers do you have? and how many hours do they work?.....

Q15: Typically, how many agency drivers do you have during peak periods?

..... and how many hours do they work?.....

Do you have any other comments?

Thank you once again for your help...