

**EXPLANATORY MEMORANDUM TO**  
**THE ROAD TRANSPORT (WORKING TIME) (AMENDMENT)**  
**REGULATIONS 2012**

**2012 No. 991**

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This instrument amends the Road Transport (Working Time) Regulations 2005 ("the principal Regulations") to apply to self-employed drivers following their inclusion in the European Working Time Directive for Mobile Workers (Directive 2002/15/EC) ("the Directive") which the principal Regulations implement.

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

3.1 None.

4. **Legislative Context**

4.1 The Road Transport (Working Time) Regulations 2005 (SI 2005/639) (as amended) came into force on 4 April 2005. They implement Council Directive 2002/15/EC concerning the organisation of the total working time of persons performing mobile road transport activities. The definitions used in this Directive are not to constitute a precedent for other Community regulations on working time.

4.2 The Directive applies to mobile workers (mainly drivers and accompanying crew) operating on vehicles in scope of the EU drivers' hours rules (Council Regulation (EC) No. 561/2006) or the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR).

4.3 These Regulations are made under the powers set out in section 2(2) of the European Communities Act 1972. We have used s. 2(2) European Communities Act 1972 powers, adopting the negative resolution parliamentary procedure, to make this instrument.

4.4 A Transposition Note is at **Annex A**

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The stated purpose of the Directive 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. The Directive is sector-specific to the road transport industry and separate legislation to the main Working Time Directive.

7.2 The main effect of the Directive is to restrict mobile workers, notably drivers of commercial goods and passenger vehicles, to an average working week of 48 hours, along with requirements as to the provisions of breaks, and maximum limits on night work.

7.3 The Directive originally excluded self-employed drivers until 23 March 2009 and could only be changed following a proposal from the European Commission and with the agreement of a majority of Member States and the European Parliament. In October 2008, the Commission put forward a proposal to definitively exclude self-employed drivers. However, this proposal was rejected by the Parliament at their plenary session on 28 April 2010 and the Commission subsequently withdrew the proposal. The UK is therefore legally required to apply the existing Directive to self-employed drivers and the Commission has indicated that it will take all steps to ensure the proper application of the Directive.

7.4 Consequently the Directive now applies to self-employed drivers and the UK must amend its domestic implementing regulations - The Road Transport (Working Time) Regulations 2005 (SI 2005/639) (as amended) - to include self-employed drivers.

## **8. Consultation outcome**

8.1 A formal consultation on the Commission proposal to permanently exclude self-employed drivers was undertaken in January / February 2009. Industry was generally supportive of the continued exclusion of self-employed drivers, whilst the Trade Unions wished to see such workers included.

## **9. Guidance**

9.1 The Department will publish on its website the changes resulting from this instrument.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies under the best estimate scenario is expected to be nil. However, there is likely to be an impact on some self employed drivers who currently work longer than the maximum stipulated under the Directive, and also the clients of such self-employed drivers.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment is attached to this memorandum.

## **11. Regulating small business**

11.1 The legislation applies to small business.

## **12. Monitoring & review**

12.1 A review of the regulations will be carried out 5 years after the implementation date. The review will set out the objectives intended to be achieved by the inclusion of self-employed drivers in the regulations, assess the extent to which those objectives are achieved, and assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

## **13. Contact**

13.1 Helen Grech at the Department for Transport, Tel: 020 7944 2123 or e-mail: [helen.grech@dft.gsi.gov.uk](mailto:helen.grech@dft.gsi.gov.uk) can answer any queries regarding this instrument.



## 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 4 amends Regulation 3 of the 2005 Regulations <sup>1</sup> to apply the regulations to self employed drivers.	Secretary of State
3	Definitions	Regulation 3 amends Regulation 2 of the 2005 Regulations to include a definition of a 'self employed driver' and to include self employed drivers within the definition of 'period of availability'. It also amends the definition of "worker" and substitutes the definition of "working time".	Secretary of State
4	Prescribes the maximum, and the average, weekly working time	Regulation 6 amends Regulation 4 of the 2005 Regulations applying the working time provisions to self employed drivers.	Secretary of State
5	Prescribes minimum break requirements	Regulation 8 amends Regulation 7 of the 2005 Regulations applying the minimum break requirements to self employed drivers.	Secretary of State
6	Applies rest periods contained in the Community Drivers' Hours Regulation (Council Regulation (EEC) 3820/85)	Regulation 9 amends Regulation 8 of the 2005 Regulations applying the rest period requirements to self employed drivers.	Secretary of State
7	Night Work	Regulation 10 amends Regulation 9 of the 2005 Regulations applying maximum night time working hours to self employed drivers.	Secretary of State
8	Derogations	No amendments made to 2005 Regulations.	
9	Information and records	Regulation 11 inserts Regulation 11A into the 2005 Regulations in	Secretary of State

<sup>1</sup> The Road Transport (Working Time) Regulations 2005

		relation to record keeping requirements for self employed drivers.	
11	Requires Member States to prescribe penalties	Regulation 3 amends the definition of 'relevant requirements' in the 2005 Regulations. Under Regulation 17 of the 2005 Regulations, penalties are imposed for failure to comply with the relevant requirements.	