

Title: The Road Transport (Working Time)(Amendment) Regulations 2012 PIR No: DfTPIR0031 Lead department or agency: DfT Other departments or agencies: Driver and Vehicle Standards Agency (DVSA) Contact for enquiries: Helen Grech (Helen.Grech@dft.gsi.gov.uk)	Post Implementation Review
	Source of intervention: EU
	Type of regulation: Secondary legislation
	Type of review: Statutory - other
	Date of implementation: 11/05/2012
	Date review due (if applicable): 11/05/2017
Summary: Intervention and Review	RPC Opinion: GREEN

1a. What were the policy objectives and the intended effects? (If policy objectives have changed, please explain how).

Summary

The objective of Directive 2002/15/EC (“the Directive”), on the working time of mobile road transport workers, was to improve the working conditions of commercial drivers and reduce fatigue-related road accidents. Self-employed drivers were initially excluded under a sunrise clause which expired in March 2009. The objective of the inclusion of self-employed drivers was to reduce fatigue-related road safety risks posed by self-employed drivers, and to help protect such drivers’ welfare in the context of the apparent rise of “false self-employment”.

On 11 May 2012, self-employed drivers were brought in scope of the Directive in the UK, under the Road Transport (Working Time) (Amendment) Regulations 2012. This remains an EU requirement under the Directive.

Background

Drivers in scope of the EU drivers' hours rules (Regulation (EC) 561/2006) also come in scope of the Working Time Directive for Mobile Workers (Directive 2002/15/EC), which is implemented in Great Britain by the Road Transport (Working Time) Regulations 2005, as amended. These rules limit the total amount of work that can be carried out in one week – including driving, but also any other work carried out (e.g. the loading and unloading of vehicles). The average weekly limit on working time is 48 hours per week, calculated over a specific reference period (normally 17 weeks), although in any particular week the limit can be 60 hours.

When the Directive was negotiated there was disagreement between the Council, where most Member States felt that it should not apply to self-employed drivers, and the European Parliament, where the majority felt that it should. As a compromise, the Directive excluded self-employed drivers from the scope of working hours requirements until 23 March 2009 and included a provision that this exclusion could be maintained if a proposal from the Commission making the case received the necessary support in Council and from the European Parliament. The Commission brought forward such a proposal in 2008 which was backed by UK and the majority of Member States.

The UK has always supported the Directive applying in full to drivers employed by transport operators, as the legislation protects employees through restrictions on the overall amount of work they can do. However, our position was that it is not appropriate to apply regulations designed to protect employed people to those that are self-employed. There is no precedent for regulating the working hours of the self-employed, who are exempt from the general working time directive.

In addition, as self-employed drivers are responsible for monitoring their own working time, this Directive is potentially challenging to enforce as these drivers are unlikely to record non-compliance. It is difficult to gain evidential material to successfully obtain convictions in a court of law for such false record making.

However the Commission’s proposal was rejected by the European Parliament in 2010 after lengthy consideration and the scope of the Directive was hence widened to include self-employed drivers. Therefore, to comply with EU legal obligations, self-employed drivers were brought in scope of the EU working time rules in the UK in these amendment Regulations in 2012.

1b. How far were these objectives and intended effects expected to have been delivered by the review date? If not fully, please explain expected timescales.

Self-employed drivers were required to adhere to the regulations immediately on implementation and the intended effects were also expected to occur from the date of implementation. There is no evidence that there were any delays.

2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.

A “Low Evidence” approach was adopted for the completion of this PIR for the following reasons:

- (i) The societal impact of the regulations is relatively narrow.
- (ii) There is limited scope to measure the impact of the regulations on road safety, especially over the relatively short period of time that has elapsed since implementation.
- (iii) Whilst the Impact Assessment (IA) forecast a transfer of driving hours from self-employed commercial drivers to employed drivers, there was not expected to be any change in the overall quantity of hours worked as a result of the regulations and the net costs/benefits were expected to be nil.

The evaluation was completed using resources within DfT.

3. Describe the principal data collection approaches that have been used to gather evidence for this PIR.

Primary data

Like the original IA, the PIR has sought to use Labour Force Survey (LFS) data to consider the number of drivers that have been impacted by the regulations and the extent to which driver working patterns have changed over the period since implementation. However, after careful consideration it was concluded that it was not possible to draw any conclusions from this analysis as several of the estimates produced were based on sample sizes below the ONS recommended threshold. The PIR also assessed the trends in fatigue-related accident data to try to provide an insight into whether there has been an improvement in road safety outcomes. However, because of the wide range of factors which can contribute to road safety outcomes it was not possible to isolate any impact of the regulations.

Therefore, as the conclusions that can be drawn from these primary data sources are limited (more detailed information given below), the PIR has also sought to use evidence from stakeholder feedback directly. This was difficult to do as self-employed drivers are not represented by any trade association or trade union.

Stakeholder feedback

Since the 2012 regulations came into force, DfT has not received any representations (e.g. treat official correspondence, ministerial correspondence or parliamentary questions) - either positive or negative – about these Regulations. Therefore, in order to try and understand the effect on self-employed drivers, we believed the only way to do this was to contact a sample of them directly.

Therefore, we contacted the office of the Traffic Commissioners (who issue operator licences) who provided the contact details of 100 drivers who operate just one vehicle (so could be assumed to be self-employed) and who had an operator’s licence before the Regulations came into force. A Questionnaire was sent to these 100 self-employed drivers under a covering letter; see **Annex A** for copies of both. 19 self-employed drivers responded.

Although self-employed drivers are not represented by any trade associations or trade unions, we contacted our main stakeholders; the Road Haulage Association, the Freight Transport Association, the Confederation of Passenger Transport, UNITE the union and the United Road Transport Union, to ask if they had any evidence they could share. All responded with nil returns.

As only a modest number of responses were received, the views expressed may not be representative of all self-employed drivers and so limited reliance can be placed on the survey evidence.

Driver and Vehicle Standards Agency (DVSA)

As DVSA are responsible for enforcing the working time rules for road transport workers, we contacted DVSA colleagues requesting any information they had on enforcement data covering working time records for self-employed drivers. DVSA acknowledge that this is challenging to enforce as the driver is responsible for keeping their working time records in any form they see fit and these can obviously be easily manipulated to comply. However, they have informed us that since self-employed drivers were brought into scope of the Directive in 2012; DVSA have been checking self-employed drivers' working time records in the same way as employed drivers, as part of a general compliance visit at their premises or in response to a complaint. Unfortunately the data they have does not differentiate between employed and self-employed drivers so they were unable to give us specific data or comment on the compliance level of self-employed drivers.

4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?

Drivers in scope

The following tables show the number of drivers that were expected to be in scope at the time of the IA and the number of drivers in scope in Q1 2017.

The regulations apply to self-employed drivers of most heavy goods vehicles (HGVs) >3.5 tonnes and drivers of most vehicles with more than 8 passenger seats. As outlined in the IA, the LFS defines a HGV as a vehicle over 7.5 tonnes. Drivers of all goods vehicles under 7.5 tonnes are counted as light goods vehicle (LGV) drivers in the LFS. It is not known how many of these are drivers of goods vehicles under 3.5 tonnes who are not included in scope of the Regulations and so we are only able to indicate a range for the number of drivers affected.

A range is also needed for the number of self-employed HGV drivers as it is not possible to distinguish how many of these drivers would already have been in scope of the Regulations due to the specific definition of "self-employed" in the Regulations.

Table showing the number of drivers covered by the regulations in the 2012 IA:

	Drivers already in scope	Self-employed drivers brought into scope	TOTAL	Increase %
HGV	256,350	0 – 27,099	256,350 – 283,449	
LGV	0 – 164,602	0 – 18,388	0 – 182,990	
BUS/COACH	36,946	2207	39,153	
OTHER MOBILE WORKERS	6,413	-	-	
Total DRIVERS	293,296 – 457,898	2,207 – 47,694	295,503 – 505,592	0.7 – 9.4%
TOTAL mobile workers	299,709 – 464,311	2,207 – 47,694	301,916 – 512,005	0.7 - 10%

Source: IA 2012, LFS Apr-Jun 2010

Table showing the number of drivers covered by the regulations for the quarter Jan-Mar 2017:

	Drivers already in scope	Self-employed drivers brought into scope	TOTAL	Increase %
HGV	287,083	0 - 34,791	287,083 - 321,874	

LGV	0 - 194,397	0 - 46,007	0 - 240,404	
BUS/COACH OTHER MOBILE WORKERS	41,222 6,985	1,348 -	42,570 -	
Total DRIVERS TOTAL mobile workers	328,305 - 522,702 335,290 - 529,687	1,348 - 82,146 1,348 - 82,146	364,444 - 604,848 371,429 - 611,833	11.0 - 15.7% 10.8 - 15.5%

Source: LFS Jan-Mar 2017

The data shows that there has been an increase in drivers across all categories except self-employed Bus/Coach drivers. The range for the total number of self-employed mobile workers believed to be within scope of the regulations (1,348 to 82,146) is wider with an upper limit which is 72% higher than that presented in the IA. This is primarily driven by an increase in LGV drivers.

LFS data on the number of hours worked

It was intended that the analysis completed in the IA outlining the number of hours worked by drivers using data from the LFS would be replicated in the PIR for the five years since the Regulations came into force. However, after careful consideration it was concluded that it was not possible to draw any conclusions from this analysis as several of the estimates produced were based on sample sizes below the ONS recommended threshold.

It has therefore not been possible to directly observe how working hours of self-employed drivers have changed since the regulations were introduced. However, it should be noted that even if data based on a robust sample size was available, there would still be material concerns over the validity of the data given that respondents may have an incentive not to self-incriminate by admitting to driving for a number of hours which would put them in breach of the working time restrictions.

Stakeholder survey

As outlined above, the views of 100 self-employed drivers were sought by means of the survey included in Annex A.

19 self-employed drivers responded. Only four respondents said they had lost income as a consequence of the Regulations (15 said they hadn't lost income), but they did not specify how much this was. One respondent didn't give any reasons for their answer, the other three said:

- “[I] Cannot always work on Saturdays now”;
- “to keep to average hours and within limits [I] have to turn work away which I would not have done before”;
- “...work has been turned down on rare occasions”;

Only three respondents said the requirement to retain working time records for two years caused them difficulties. One stated that he had to build specific storage area for the records since his house is his office. Another said it was more administration to add to other obligations such as VAT/TAX invoicing etc. A third said it entailed extra working time for no benefit.

Two respondents said that having their weekly working hours limited has benefited them, with one stating that he sees more of his family as a consequence.

Road safety outcomes

A core objective of the regulations identified in the IA was a reduction in fatigue-related accidents. A wide range of factors contribute to road safety outcomes and in-depth analysis seeking to isolate a causal impact of the regulations on road safety is considered impractical – the scope of the regulatory change is relatively narrow and the possibility of identifying a meaningful impact on road safety would likely require a much longer period measurement period since the changes were implemented.

However, in line with the approach adopted in the IA, the high level trends in DfT road safety data (Stats19) have been considered. Data was obtained for the period 2005-2015 where fatigue was identified as a 'contributory factor'¹ attributed to the driver of an HGV² by an attending police officer.

There is no way to identify self-employed drivers within the data. To account for the wider long term downward trend in accident levels that have been experienced in the UK, consideration was focused on the percentage share of accidents with fatigue attributed to the driver.

There was no evidence of a significant deviation in the trend line since the regulations were introduced in 2012. This is not surprising given the fact that self-employed drivers make up a relatively small proportion of total HGV drivers. Given the modest number of fatigue-related HGV accidents (70 accidents and 94 casualties in 2015) and the manner in which fatigue is attached as a 'contributory factor', a large change in the data would be needed before it could be considered statistically significant.

It has therefore not been possible to conclude whether there has been an improvement in road safety based on the primary data available.

Unintended consequences:

The stakeholder survey invited drivers to raise any further issues that they had identified resulting from the regulations.

Only two respondents to the questionnaire mentioned any potential unintended consequences of complying with the working time rules. One respondent said compliance caused conflict with the management he deals with. When he tells them that working time rules don't allow him to do something, their attitude is not always sympathetic. Another gave an example of having to stop and then getting caught in traffic and being late home.

Four respondents didn't answer this question.

In addition, the Department has not been made aware of any other unintended consequences by way of correspondence from drivers.

EU Evaluation

Ricardo-AEA UK consultants were appointed by the European Commission (DG MOVE) to conduct an ex-post evaluation of the EU road social legislation (i.e. Regulation (EC) 561/2006 -EU drivers' hours rules; Directive 2002/15/EC -sector specific working time; and Directive 2006/22/EC - minimum enforcement requirements). The aims of the evaluation was to provide a better understanding of the actual performance of these road transport social rules in terms of achieving their objectives, as well as the overall impacts (both intended and unintended) on societal, economic and environmental issues.

The "Ex-post evaluation of social legislation in road transport and its enforcement - Final report" was published in June 2016. The report stated that:

"The overall disadvantages and advantages of inclusion or non-inclusion of self-employed drivers within the scope of the Directive 2002/15/EC were seen to be mixed: On the one hand, working time rules were seen as having positive impacts on health, safety and working conditions of drivers. On the other hand, working time rules were also seen to bring negative side-effects, such as loss of salary, shortage of drivers and increase in costs. This would be especially relevant in case of self-employed drivers whose entrepreneurial advantages lie in being able to make their own decisions concerning

¹ Contributory factors provide some insight into why and how road accidents occur. They are designed to give the key actions and failures that led directly to the actual impact to aid investigation of how accidents might be prevented. When police officers attend the scene of an accident, they are able to select up to six factors they believe contributed to the accident (for each vehicle and casualty involved). Please note that this does not assign blame for the accident to any specific road user, but gives an indication of which factors the attending officer thought contributed to the accident.

² Stats19 data defines HGV's as vehicles >3.5t

working time. However, as stated in Section 5.4.1, prior to 2009 it was observed that companies within the EU-15 had started to convert workers' contracts to "false self-employment", hereby undermining the objectives of Directive 2002/15/EC and endangering the health, safety and working conditions of the concerned drivers. Extending the scope to self-employed drivers was seen at the time to be a relevant and proportionate means to mitigate such developments. Given the increasing cost pressure on transport undertakings that incites (false) self-employment in order to cut labour costs – a phenomenon that was increasingly observed for example in France, after the financial crisis (see Section 5.1.4) – the inclusion of self-employed drivers can still be seen as a relevant measure to avert driver's fatigue resulting from working excessive hours."

The report also states that data or literature on the compliance of self-employed drivers with working times could not be identified from the literature, nor from stakeholders. The extent to which such working times decreased in practice can therefore not be established specifically for self-employed drivers.

The report concluded that the scope of road social legislation to include self-employed drivers appears to be still relevant today, particularly because the needs of such drivers in terms of health, safety and working conditions are the same as for employed drivers. However, it acknowledges that the cost pressures combined with the high probability that non-compliance remains undetected puts them at a higher risk of infringing the rules.

Overall impact evaluation

In summary, LFS data for 2017 indicates that there may be more self-employed drivers within scope of the regulations relative to the numbers outlined prior to implementation. This primarily reflects the increase in the number of drivers (especially LGV drivers) in the UK over this period. Compliance with the working time rules for self-employed drivers is dependent upon appropriate self-reporting. It is not been possible to directly observe what has happened to the number of hours worked by self-employed drivers given data limitations and so it has not been possible to comment on the level of compliance. Similarly, it is not possible to draw any firm conclusions on what impact the regulations have had on road safety outcomes.

A minority (21%) of the drivers that responded to the stakeholder survey did indicate that they had lost income as a result of the regulations which provides some evidence in support of the expected transfer of earnings from self-employed drivers working more than 48 hours a week on average to new entrants and those currently working less than this threshold.

5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA)

The assumptions made in the original IA were that the impact on business, charities or voluntary bodies under the best estimate scenario would be nil. However, the IA also assumed that there was likely to be an impact on some self-employed drivers who currently work longer than the maximum average number of hours stipulated under the Directive. The IA estimated that total lost income for those drivers currently working more than 48 hours a week on average would be £106m a year. It should be noted however, that this income would not be lost to the economy as the income is transferred to existing drivers working less than 48 hours a week or new entrants.

5b. What have been the actual costs and benefits of the regulation and its effects on business?

As outlined above, it has not been possible to replicate the approach adopted in the IA to calculate the actual number of drivers' hours that have been transferred from self-employed drivers working more than 48 hours a week on average to new entrants and those currently working less than this threshold.

For the purpose of this PIR we have considered all self-employed drivers to represent a 'small business'. We have not evidence form stakeholder feedback to suggest any significant impacts on businesses (either on the self-employed drivers themselves or on those who use their services).

We do not have any information about how other Member States have implemented the requirement to include self-employed drivers into the working time Directive, so cannot make a comparison in terms of costs to business. In addition, the EU consultants final report on the "Ex-post evaluation of social legislation in road transport and its enforcement" was not able to quantify from the evidence provided by Member States the 'costs to businesses of bringing self-employed drivers in scope of the working time rules.

The evidence has not identified any opportunities for reducing the burden on business. The Directive was implemented with no 'gold-plating', so no other opportunities available to reduce burdens.

6. Assessment of risks or uncertainties in evidence base / Other issues to note

The evidence available to evaluate the regulations is limited. As outlined above, it is only possible to identify a range for the number of drivers that are within scope of the regulations. It has not been possible to draw any firm conclusions from the primary data about the level of compliance with the regulations, the extent to which there has been a change in driving patterns among self-employed drivers or the impact on road safety.

The stakeholder feedback responses have provided useful supplementary evidence. However, the number of responses is relatively low at 19 and a higher response rate would have been preferable to provide a more detailed and representative evidence base. It should also be noted that all evidence dependent on survey responses related to driving patterns are subject to potential biases. Respondents may have an incentive not to self-incriminate by admitting to driving for a number of hours which would put them in breach of the working time restrictions.

7. Lessons for future Impact Assessments

This PIR has considered the evidence available related to the implementation of the Directive. The lack of baseline data on some of the key outcomes coupled with the fact that many of the outcomes are affected by numerous other factors has made firm conclusions hard to draw. Future impact assessments should set out a clear plan for monitoring and evaluating the regulations in question, prioritising the collection of baseline data on key costs and benefits of the regulations.

8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?

We do not have any evidence to suggest that they have had a material adverse effect on these drivers or caused disproportionate burdens. It was also not possible to conclude whether there had been an improvement in road safety or driver welfare due to the restriction on the working time of self-employed drivers.

In addition, this remains an obligation under Directive 2002/15/EC. The government respected the EU referendum result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in the future once the UK has left the EU.

The PIR recommendation is therefore that the regulations should **remain** in place at this time.



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29 November 2016

Dear Sir or Madam,

Review of the Road Transport (Working Time) Amendment Regulations 2012

I am writing to you as I understand you are a self-employed driver of a large commercial vehicle.

As you may be aware, The Road Transport (Working Time) Amendment Regulations 2012 ('the 2012 Regulations'), which came into force on 11 May 2012, brought self-employed drivers into scope of the sector specific working time rules.

These rules limit the overall working time (i.e. including both driving and non-driving work) for drivers operating vehicles subject to the EU drivers' hours rules. Therefore, since 11 May 2012 self-employed drivers have been restricted to working an average of 48 hours per week over a specific reference period (with no opt out available). In any particular week the limit can be 60 hours, provided the average is no more than 48 hours.

As is standard practice with all new regulations, we are reviewing how the 2012 Regulations have affected self-employed drivers in the five years since implementation. I would like to make clear that the current regulations have not been changed and remain a legal obligation.

The review may also provide us with evidence for approaching the European Commission, with the aim of asking for self-employed drivers to be taken out of scope of the Directive. As you may know, the UK has always believed that it is not appropriate or proportionate to apply legislation designed to protect employed people to those that are self-employed.

If you are a self-employed driver, who was driving for a living before May 2012, we would really appreciate your comparison of before and after your working time was limited. Please complete the attached questionnaire and send it back to me in the enclosed stamped addressed envelope provided, or you can email me at helen.grech@dft.gsi.gov.uk to request an electronic copy.

I would be grateful for completed questionnaires by close of play 22 December 2016.

Yours faithfully,

Helen Grech

Review of the Road Transport (Working Time) Amendment Regulations 2012

Questionnaire

1. Name (optional)

2. Have you lost any income from being restricted to working an average 48 hours per week?

Yes No Please explain your reasons below?

3. Can you estimate the amount of time it takes you each week to record your working time and whether this has caused you any problems?

4. Has the requirement to retain working time records for two years caused you any difficulties?

Yes No If 'Yes', please explain your reasons below?

5. Have your working time records been checked by an enforcement officer in the past five years?

Yes No If 'Yes', please give details below?

6. Do you feel that having your weekly working hours limited has benefited you in any way. For example, are you less tired while driving than before?

Yes No Please explain your reasons below?

7. Have there been any unintended consequences of complying with the working time rules?

Yes No If 'Yes' please explain your reasons below?

8. Please use space below to provide any further information you believe would be helpful?

Please send/email completed questionnaire by 22 December 2016 to:

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Sign-off for Post Implementation Review:

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the policy.

Signed: Nicola Stirling

Date: 06/10/2017