STATUTORY RULES OF NORTHERN IRELAND

2008 No. 315

TRANSPORT

The Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008

Made - - - -	*23rd July 2008*
Coming into operation	*1st October 2008*

The Department for Regional Development(**1**), being a Department designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to measures relating to the organisation of working time, in exercise of the powers conferred by that provision makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Cross-border Railway Services (Working Time) Regulations (Northern Ireland) 2008 and shall come into operation on 1st October 2008.

Interpretation

2.—(1) In these Regulations—

"collective agreement" means a collective agreement within the meaning of Article 2(4) of the Industrial Relations (Northern Ireland) Order 1992(**4**), the trade union parties to which are independent trade unions within the meaning of paragraph (2) of that Article;

"cross-border worker" means any worker who is a member of a train crew and who is assigned to interoperable cross-border services for more than one hour on a daily shift basis;

"driver" means a cross-border worker in charge of operating a traction unit;

"employer", in relation to a cross-border worker, means the person by whom the worker is (or where the employment has ceased, was) employed;

"employment", in relation to a cross-border worker, means employment under the worker's contract, and "employed" shall be construed accordingly;

(**1**) S.I.1999/283 (N.I. 1)
(**2**) S.I. 1997/1174
(**3**) 1972 c. 68
(**4**) S.I. 1992/807 (N.I. 5)

"the Executive" means the Health and Safety Executive for Northern Ireland referred to in Article 3(1) of the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998(**5**);

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

"interoperable cross-border services" are services to the Republic of Ireland, in respect of which at least two safety certificates are required, as stipulated by Article 10 of Directive 2004/49/EC of the European Parliament and the Council of 29th April 2004(**6**);

"leave year" for a cross-border worker begins on—

(a) such date as is provided for in a relevant agreement, or

(b) if there are no provisions of a relevant agreement which apply, on 1 January;

"relevant agreement", in relation to a cross-border worker, means a workforce agreement which applies to the worker, any provision of a collective agreement which forms part of a contract between the worker and the worker's employer, or any other agreement in writing which is legally enforceable as between the worker and the employer;

"relevant training" means work experience provided pursuant to training course or programme, training for employment, or both, other than work experience or training—

(a) the immediate provider of which is an educational institution or a person whose main business is the provision of training, and

(b) which is provided on a course run by that institution or person;

"rest period" means any period which is not working time;

"week" means a period of seven days which starts at such time as is determined for the purposes of these Regulations by a relevant agreement, or in default of such a determination at midnight at the beginning of Monday;

"workforce agreement" means an agreement between an employer and workers employed by the employer or their representatives in respect of which the conditions set out in Schedule 1 are satisfied; and

"working time" in relation to a cross-border worker, means—

(a) any period during which a cross-border worker is working, at the employer's disposal and carrying out the worker's activities or duties,

(b) any period during which the worker is receiving relevant training, and

(c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement.

(2) The Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Daily rest

3.—(1) A cross-border worker is entitled in each 24 hour period to a rest period that is a minimum number of consecutive hours ("daily rest period").

(2) In the case of a daily rest period that can be taken at the cross-border worker's normal place of residence ("a daily rest period at home") the minimum is twelve hours, but this is subject to paragraphs (3) and (4).

(**5**) Formerly known as the Health and Safety Agency for Northern Ireland which was established under Article 12 of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)). Article 3(1) of the Health and Safety at Work (Amendment) (Northern Ireland) Order 1998 (S.I. 1998/2795 (N.I. 18)) changed its name to the Health and Safety Executive for Northern Ireland

(**6**) O.J. No. L164, 30.4.04, p. 44

(**7**) 1954 c. 33 (N.I.)

(3) Once a week a daily rest period at home may be reduced by the employer of a cross-border worker to a minimum of nine hours, but this is subject to paragraph (7).

(4) If a daily rest period at home is reduced by the employer below twelve hours, the minimum for the next daily rest period at home is increased by the number of hours, including any part of an hour, by which the earlier period was less than twelve hours.

(5) In the case of a daily rest period that cannot be taken at the cross-border worker's normal place of residence ("a daily rest period away from home") the minimum is eight hours.

(6) When there is a daily rest period away from home the cross-border worker is entitled to work that is scheduled to enable the worker to take the next daily rest period as a daily rest period at home.

(7) If a daily rest period at home is scheduled to be between two daily rest periods away from home, the daily rest period at home must not be reduced under paragraph (3) below ten hours.

Break for sole driver

4.—(1) Where there is only one driver and the driver's scheduled daily working time is six or more hours the driver is entitled to a break, but this paragraph and paragraphs (2) to (4) are subject to paragraphs (5) to (7).

(2) The minimum length of the scheduled break must be 30 minutes, but this is subject to paragraph (3).

(3) In the case of a driver whose daily scheduled working time is more than eight hours the minimum length of the scheduled break is increased to 45 minutes.

(4) At least 15 minutes of the break must be scheduled to be taken between the third and sixth hour of the working time.

(5) If a train service is delayed the time and duration of a driver's entitlement to a break under this regulation may be adapted during the working day.

(6) If possible under the timetable for the train service the total time of the adapted break entitlement must be at least equal to the minimum scheduled break entitlement under the relevant paragraph of this regulation.

(7) The time and duration of the adapted break entitlement must be sufficient to ensure the effective recuperation of the worker.

Breaks for drivers

5.—(1) A driver who is not entitled to a break under regulation 4 and whose scheduled daily working time is more than six hours is entitled to a break, but this paragraph and paragraphs (2) and (3) are subject to paragraph (4).

(2) The details of the break to which a driver is entitled under paragraph (1), including its duration and the terms on which it is granted, must be in accordance with any provisions for the for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.

(3) Subject to the provisions of any applicable collective agreement or workforce agreement, the break provided for in paragraph (1) is an uninterrupted period of not less than 20 minutes.

(4) The employer of a driver may require the driver to work during a period that would, but for this paragraph, be a time when the driver is entitled to a break under this regulation; and when a driver is required to do so—

(a) the employer must wherever possible allow the driver to take an equivalent period of compensatory rest, and

(b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, the employer must afford the driver such protection as may be appropriate to safeguard the driver's health and safety.

Breaks for other workers

6. A cross-border worker who is not a driver and whose scheduled daily working time is more than six hours is entitled to a break that must be scheduled to be for at least 30 minutes.

Weekly rest

7.—(1) A cross-border worker is entitled every week to a rest period of 24 consecutive hours (a "rest day") in addition to the minimum daily rest entitlement under regulation 3 and any days taken as part of the worker's entitlement to annual leave.

(2) A cross-border worker is entitled to 104 rest days each leave year, but this paragraph and paragraphs (3) and (5) are subject to paragraph (6).

(3) A cross-border worker is entitled each leave year on at least 24 occasions to take a rest day that is immediately followed by another rest day (together a "two-day rest period"), but this is subject to paragraph (4).

(4) If there are more than two consecutive rest days in a row, each rest day only counts towards one two-day rest period.

(5) A cross-border worker is entitled each leave year on at least twelve occasions to take a two-day rest period over a week-end, so that the period includes a part or the whole of a Saturday and a part or the whole of a Sunday.

(6) Paragraphs (2), (3) and (5) only apply to a person who is a cross-border worker throughout a complete leave year that begins after 30th September 2008, but this is subject to paragraphs (8) to (11).

(7) If a leave year of a person who was a cross-border worker on 1st October 2008 begins before that date, but has not ended by that date, the entitlements under paragraphs (2), (3) and (5) apply proportionately to the relevant part year, but this is subject to paragraphs (10) and (11).

(8) If a person's employment as a cross-border worker begins after 30th September 2008 and part way through a leave year, the entitlements under paragraphs (2), (3) and (5) apply proportionately to the relevant part year, but this is subject to paragraphs (10) and (11).

(9) The "relevant part year" means—

(a) in paragraph (7), the period beginning on 1st October 2008 and ending when the leave year ends; and

(b) in paragraph (8), the period beginning on the date that the person's employment as a cross-border worker begins and ending when the leave year ends.

(10) If applying paragraphs (2), (3) and (5) proportionately would, but for this paragraph, result in an entitlement to a number of rest days or a number of two-day rest periods that is not a whole number, the entitlement is to the number rounded down to the nearest whole number.

(11) Paragraphs (7) and (8) only apply if the person is a cross-border worker throughout the relevant part year.

Driving time

8.—(1) Between two daily rests taken in accordance with regulation 3 a driver's scheduled driving time must not exceed—

(a) in the case of a shift that is scheduled to include at least three hours of night time, eight hours; and

(b) in any other case, nine hours.

(2) In any period of two weeks a driver's scheduled driving time must not exceed 80 hours.

(3) The employer of the driver must take all reasonable steps to ensure that this regulation is complied with.

(4) In this regulation—

"night time" means a period which—

(a) is not less than seven hours,

(b) includes the period between midnight and 5am, and

(c) is determined for the purposes of this regulation by a relevant agreement, or, in default of such a determination, the period which is between 11pm ands 6am; and

"scheduled driving time" means the time scheduled for when the driver is to be in charge of the traction unit, excluding the scheduled time to prepare or shut down the unit, but including any scheduled interruptions for when the driver is to remain in charge.

Records

9.—(1) The employer of a cross-border worker must—

(a) keep records which are adequate to show whether these Regulations are being complied with in respect of that worker, including information as to actual hours worked; and

(b) retain those records for at least one year after the end of the period covered by those records.

(2) The employer of a cross-border worker must provide a copy of the records retained in accordance with paragraph (1) in respect of that cross-border worker—

(a) at the request of the worker, to the worker; and

(b) at the request of the Executive, to it.

Enforcement

10.—(1) It shall be the duty of the Executive to make adequate arrangements for the enforcement of regulations 8(3) and 9.

(2) The provisions of Schedule 2 shall apply in relation to the enforcement of regulations 8(3) and 9.

(3) Any function of the Department of Enterprise, Trade and Investment under the Health and Safety at Work (Northern Ireland) Order 1978(**8**) which is exercisable in relation to the enforcement by the Executive of the relevant statutory provisions (as defined in paragraph 8(1) of Schedule 2) shall be exercisable in relation to the enforcement by the Executive of the regulations 8(3) and 9.

Offences

11.—(1) An employer of a cross-border worker who fails to comply with regulations 8(3) or 9 is guilty of an offence.

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

(**8**) S.I. 1978/1039 (N.I. 9)