STATUTORY RULES OF NORTHERN IRELAND

2005 No. 241

EUROPEAN COMMUNITIES TRANSPORT

The Road Transport (Working Time) Regulations (Northern Ireland) 2005

Made - - - -	*4th May 2005*
Coming into operation	*16th June 2005*

The Department of the Environment, being a Department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures relating to the organisation of working time, in exercise of the powers conferred on it by that section and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Road Transport (Working Time) Regulations (Northern Ireland) 2005 and shall come into operation on 16th June 2005.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**3**) shall apply to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations –

"AETR" means the European agreement concerning the work of crews of vehicles engaged in international road transport(**4**) of 1st July 1970;

"collective agreement" means a collective agreement within the meaning of Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992(**5**), the trade union parties to which are independent trade unions within the meaning of section 6 of that Order;

(**1**) S.I.1997/1174
(**2**) 1972 c. 68
(**3**) 1954 c. 33 (N.I.)
(**4**) Cmnd 7401 and Cmnd 8572
(**5**) S.I. 1992/807 (N.I. 5)

"the Community Drivers' Hours Regulation" means Council Regulation (EEC) No. 3820/85(**6**) of 20th December 1985 on the harmonisation of certain social legislation relating to road transport;

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

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

"goods" includes goods or burden of any description;

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

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

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

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

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

"night work" means any work performed during night time;

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

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

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

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

"self-employed driver" means anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out such transport, who is entitled to work for himself and who is not tied to an employer by an employment contract or by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom, individually or through a co-operation between self-employed drivers, to have commercial relations with several customers;

"vehicle" means a goods vehicle or a passenger vehicle;

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

"worker" means an individual who has entered into or works under (or, where employment has ceased, worked under) –

(a) a contract of employment; or

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

(**6**) O.J. No. L370, 31.12.1985, p. 1

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

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

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

(a) time devoted to all road transport activities, including, in particular –

(i) driving,

(ii) loading and unloading,

(iii) assisting passengers boarding and disembarking from the vehicle,

(iv) cleaning and technical maintenance,

(v) all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operations under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs and immigration officers; or

(b) time during which the mobile worker cannot dispose freely of his time and is required to be at his workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under collective agreements or workforce agreements;

"workstation" means –

(a) the location of the main place of business of the undertaking for which the person performing mobile transport activities carries out duties, together with its various subsidiary places of business, regardless of whether they are located in the same place as its head office or its main place of business;

(b) the vehicle which the person performing mobile road transport activities uses when he carries out duties; or

(c) any other place in which activities connected with transport are carried out.

Application

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

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

(a) which are within the meaning of "vehicles" given by Article 1 of the Community Drivers' Hours Regulation;

(b) which are not referred to in Article 4 of that Regulation; and

(c) in respect of which exemption from provisions of the Community Drivers' Hours Regulation has not been granted by regulation 4 of the Community Drivers' Hours and Recording Equipment (Exemptions and Supplementary Provisions) Regulations (Northern Ireland) 1987(**7**).

(**7**) S.R. 1987 No. 218; regulation 4 was substituted by S.R. 1988 No. 297, regulation 2(1)

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

(a) which fall within the meaning of a "vehicle" in Article 1 of the AETR;

(b) which are not referred to in Article 2(2)(b) of the AETR; and

(c) which are performing international transport.

(4) These Regulations do not apply to –

(a) self-employed drivers; or

(b) any worker who does work which is included in the calculation of working time –

(i) where the reference period is shorter than 26 weeks, on fewer than 11 days in a reference period applicable to that worker, or

(ii) in any other case on fewer than 16 days in a reference period applicable to that worker.

Working time

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

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

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

(a) where a collective agreement or a workforce agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period;

(b) in a case where –

(i) there is no such provision, and

(ii) the employer gives written notice to the mobile worker in writing that he intends to apply this subparagraph,

any period of 17 weeks in the course of the worker's employment, or

(c) in any other case, the period ending at midnight between Sunday 31st July 2005 and Monday 1st August 2005 and thereafter, in each year, the successive periods beginning at midnight at the beginning of the Monday which falls on, or is the first Monday after, a date in column 1 below and ending at midnight at the beginning of the Monday which falls on, or is the first Monday after, the date on the same line in column 2 below.

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

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

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

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

where –

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

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

"C" is the number of weeks in the reference period.

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

(a) any period of annual leave taken by the mobile worker in exercise of entitlement under regulation 13 of the Working Time Regulations (Northern Ireland) 1998(**8**);

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

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

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

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

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

Periods of availability

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

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

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

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

Breaks

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

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

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

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

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

(**8**) S.R. 1998 No. 386 as amended by S.R. 2002 No. 93