

STATUTORY INSTRUMENT

S.I No. 2 of 2005

**European Communities (Organisation of Working Time of Persons
Performing Mobile Road Transport Activities) Regulations 2005**

**PUBLISHED BY THE STATIONERY OFFICE
DUBLIN**

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(PRN.A5/2143)

Price €02.54

I, Martin Cullen, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002¹ hereby make the following Regulations:

1. (1) These Regulations may be cited as the European Communities (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2005.

(2) These Regulations come into operation on 2 January 2006.

2. (1) In these Regulations -

"the Council Regulation of 1985" means Council Regulation (EEC) No. 3820/85 of 20 December 1985² as amended;

"the Directive of 2002" means Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002;

"AETR" means the European agreement concerning the work of crews of vehicles engaged in international road transport done at Geneva on 1 July 1970 as amended;

"Authorised Officer" means a transport officer appointed by the Minister pursuant to section 15 of the Road Transport Act, 1986 (No. 16 of 1986), any officer of Customs and Excise or any member of the Garda Síochána;

"collective agreement" means an agreement by or on behalf of an employer on the one hand, and by or on behalf of a body or bodies representative of the employees to whom the agreement relates on the other hand.

"contract of employment" means –

(a) a contract of service or apprenticeship,

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971, and is acting in the course of that business, to do or perform personally any work of service for a third person (whether or not the third person is a party to the contract), and

whether the contract is express or implied and if express, whether it is oral or in writing;

"employee" means a person of any age, who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee, employed by that employer.

¹ OJ No. L.80, 23.3.2002, p.35.

² OJ No. L.370, 31.12.1985, p.1.

"employer" means in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to in subparagraph (b) of the definition of "contract of employment" is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer;

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

"employment regulation order" means an order under section 48 of the Industrial Relations Act, 1990 (No. 19 of 1990);

"Minister" means the Minister for Transport;

"mobile worker" shall mean 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" has the meaning assigned to it by Article 1(2)(a) of the Council Regulation of 1985;

"night time" means in respect of motor vehicles used for carrying goods the period between 00.00 hours and 04.00 hours and in respect of motor vehicles used for carrying passengers the period between 01.00 hours and 05.00 hours;

"night work" shall mean any work performed during night time;

"period of availability" means a period during which the mobile worker is not required to remain at his or her workstation, but is required to be available to answer any calls to start or resume driving or to carry out other work, including but not limited to 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;

"person performing mobile road transport activities" shall mean any mobile worker or self-employed driver who performs such activities;

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

"registered employment agreement" has the meaning assigned to it by section 25 of the Industrial Relations Act 1946 (No. 26 of 1946);

"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 a contract of employment 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;

“week” means the period between 00.00 hours on Monday and 24.00 hours on Sunday;

"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 express, whether it is oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract,

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

"working time" means the time from the beginning to the end of work during which the mobile worker is at his or her workstation, at the disposal of his or her employer and exercising his or her 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 operation under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs, immigration officers and others; or
- (b) time during which the mobile worker cannot dispose freely of his or her time and is required to be at his or her 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 employment regulation orders or registered employment 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 or she carries out duties; or
 - (c) any other place in which activities connected with transport are carried out.
- (2) A word or expression that is used in these Regulations and is also used in the Directive of 2002 has, unless the contrary intention appears, the meaning in these Regulations that it has in the Directive of 2002.
- (3) (a) A reference in these Regulations to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulations is intended.
- (b) A reference in these Regulations to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.
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 (3) of this Regulation applies.
- (2) This paragraph applies to mobile workers who in the course of that employment or work drive, or travel in, vehicles -
- (a) which fall within the meaning of 'vehicles' in Article 1 of the Council Regulation of 1985;
 - (b) which are not referred to in Article 4 of the Council Regulation of 1985; and
 - (c) in respect of which exemption from provisions of the Council Regulation of 1985 has not been granted by the Minister.
- (3) This paragraph applies to mobile workers, to whom paragraph (2) of this Regulation 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.
4. Nothing in these Regulations shall prejudice a provision or provisions of a more beneficial kind to the employee concerned which is or are contained in –
- (a) a collective agreement,
 - (b) a registered employment agreement, or
 - (c) an employment regulation order.
5. (1) Subject to paragraph (2) of this Regulation, 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 or her 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 an employment regulation order or registered employment 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 or she 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 30th April 2006 and Monday 1st May 2006 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 January	1st May
1st May	1st September
1st September	1st January

- (4) The reference period may be extended in relation to particular mobile workers or a specified class or classes of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement or a registered employment agreement or an employment regulation order, by the substitution for 17 weeks of a period not exceeding 26 weeks in the application of paragraphs (2) and (3)(a) of this Regulation.
- (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 excluded hours during the reference period; and

C is the number of weeks in the reference period.

- (6) In paragraph (5) of this Regulation, "excluded hours" means hours comprised in –
- (a) any period of annual leave taken by the mobile worker in accordance with the Act of 1997 (save so much of it as exceeds the minimum period of annual leave required by the Act of 1997 to be granted to the mobile worker);
 - (b) any absences from work by the mobile worker concerned authorised under the Maternity Protection Act 1994 (No. 34 of 1994) or the Adoptive Leave Act 1995 (No. 2 of 1995) or the Parental Leave Act 1998 (No. 30 of 1998) or the Carer's Leave Act 2001 (No. 19 of 2001); and
 - (c) any period of sick leave taken by the mobile worker.
- (7) For the purposes of paragraph (5) of this Regulation, 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 ensure that the limits specified above are complied with in the case of each mobile worker employed by him.
6. The times of breaks, rests and periods of availability shall not be included in the calculation of working time.
7.
 - (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) of this Regulation 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.
8.
 - (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 ensure that this Regulation is complied with in the case of each mobile worker employed by him.
9.
 - (1) In the application of these Regulations, the provisions of the Council Regulation of 1985 relating to daily and weekly rest shall apply to the driver of the vehicle or a person carried in the vehicle in order to be available for driving.
 - (2) An employer shall ensure that this Regulation is complied with.
10.
 - (1) The working time of a mobile worker, who performs night work in any period of 24 hours, shall not exceed 10 hours during that period.
 - (2) The period of 10 hours may be extended in relation to particular mobile workers or a specified class or classes of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement or an employment regulation order or a registered employment agreement.

- (3) Compensation for night work shall not be given to a mobile worker in any manner which is liable to endanger road safety.
 - (4) An employer shall ensure that the limit specified in paragraph (1) of this Regulation, or extended in accordance with paragraph (2) of this Regulation, is complied with in the case of each mobile worker employed by him.
11. An employer of mobile workers shall notify each worker of the provisions of these Regulations and the provisions of any collective agreement or employment regulation order or registered employment agreement which is capable of application to that worker.
12. An employer of a mobile worker shall:
- (a) request from each mobile worker details of any time worked by that worker for another employer;
 - (b) include time worked for another employer in the calculation of the mobile worker's working time;
 - (c) keep records which are adequate to show whether the requirements of these Regulations are being complied with in the case of each mobile worker employed by him to whom they apply;
 - (d) retain such records for at least two years after the end of the period covered by those records;
 - (e) provide, at the request of a mobile worker, a copy of the record of hours worked by that worker;
 - (f) provide to an authorised officer copies of such records relating to mobile workers as the officer may require;
 - (g) provide to a mobile worker or authorised officer copies of such documentary evidence in the employer's possession as may be requested by the worker or officer in relation to records provided to him in accordance with paragraph (e) or (f) of this Regulation.
13. A mobile worker shall, at the request of his or her employer under Regulation 12(a), notify his or her employer in writing of time worked by the worker for another employer for inclusion in the calculation of the mobile worker's working time.
14. (1) This Regulation applies in any case where an individual ("the agency worker") is supplied by a person ("the agent") to do the work of a mobile worker for another ("the principal") under a contract or other arrangements made between the agent and the principal but –
- (a) is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal, and

- (b) is not a party to a contract under which he or she undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer or any profession or business undertaking carried on by the individual.
- (2) In a case where this Regulation applies, the other provisions of these Regulations shall have effect as if there were a contract for the doing of the work by the agency worker made between the agency worker and -
 - (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
 - (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work,

as if that person were the agency worker's employer.
- 15. (1) This Regulation applies in any case where an individual, who is not a self-employed driver, drives a vehicle described in Regulation 3(2) or Regulation 3(3) for the purpose of a trade or business carried on by him.
- (2) Where this Regulation applies –
 - (a) subject to subparagraph (b) of this paragraph, the other provisions of these Regulations shall have effect as if –
 - (i) the individual were a mobile worker, and
 - (ii) the individual were the employer of that mobile worker;
 - (b) Regulations 10, 11(a) and (e) and 12 shall not have effect.
- (3) This Regulation shall not apply in any case where Regulation 14 applies.
- 16. These Regulations shall apply without prejudice to any legislation that offers a greater level of protection to workers.
- 17. An authorised officer appointed by the Minister pursuant to section 15 of the Road Transport Act, 1986 (No. 16 of 1986) is an authorised officer for the purposes of enforcing these Regulations and may exercise any of the powers conferred on an authorised officer under section 16 of the said Act for the purposes of enforcing these Regulations.
- 18. (1) Any person who fails to comply with these Regulations shall be guilty of an offence.
- (2) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 6 months or both.

- (3) Where an offence under these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person being a director, manager, secretary or other officer of that body corporate, or a person who was purporting to act in that capacity, that person shall also be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (4) If the contravention in respect of which a person is convicted of an offence under these Regulations is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €1,000.
- (5) Proceedings for an offence under these Regulations including a further offence under paragraph (4) of this Regulation may be brought and prosecuted by the Minister.
- (6) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under these Regulations may be instituted within 24 months from the date of the offence.

GIVEN under my Official Seal,

_____ December 2005.

Martin Cullen

Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations transpose the provisions of Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities.

The effect of the transposition of Directive 2002/15/EC is to apply the maximum average working week of 48 hours to mobile road transport workers covered by that Directive. The Regulations also prescribe that the working time of such mobile road transport workers must not exceed 60 hours in any single week and contain provisions concerning minimum breaks and the amount of night work that can be performed.