



STATUTORY INSTRUMENTS.

S.I. No. 36 of 2012

EUROPEAN COMMUNITIES (ROAD TRANSPORT) (ORGANISATION
OF WORKING TIME OF PERSONS PERFORMING MOBILE ROAD
TRANSPORT ACTIVITIES) REGULATIONS 2012

(Prn. A12/0202)

EUROPEAN COMMUNITIES (ROAD TRANSPORT) (ORGANISATION
OF WORKING TIME OF PERSONS PERFORMING MOBILE ROAD
TRANSPORT ACTIVITIES) REGULATIONS 2012

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EUROPEAN COMMUNITIES (ROAD TRANSPORT) (ORGANISATION
OF WORKING TIME OF PERSONS PERFORMING MOBILE ROAD
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I, LEO VARADKAR, Minister for Transport, Tourism and Sport in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purposes 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:

Citation

1. These Regulations may be cited as the European Communities (Road Transport) (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2012.

Interpretation

2. (1) In these Regulations—

“AETR” means the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport done at Geneva on 1 July 1970;

“collective agreement” means an agreement between an employer and a body or bodies representative of the mobile workers to whom the agreement relates;

“contract of employment” means—

(a) a contract of employment or of service or of apprenticeship, or

(b) any other contract whereby—

(i) an individual agrees with another person personally to execute any work or service for that person, or

(ii) an individual agrees with another person carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 (No. 27 of 1971) to do or perform personally any work or service for another person (whether or not the other person is a party to the contract),

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

¹OJ No. L 80, 23.03.2002, p.35

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 7th February, 2012.*

“Council Regulation” means Regulation (EC) No. 561/2006 of the European Parliament and of the Council of 15 March 2006² as amended by Regulation (EC) No. 1073/2009 of the European Parliament and of the Council of 21 October 2009³;

“Directive” means Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002¹;

“employer”, in relation to a mobile worker, means the person with whom the mobile worker has entered into, or for whom the mobile worker 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 worker concerned in respect of the work or service concerned shall be deemed to be the individual’s employer;

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

“employment regulation order” means an employment regulation order within the meaning of Part IV of the Industrial Relations Act 1946 (No. 26 of 1946);

“enforcement officer” means—

- (a) a transport officer appointed under section 15 (inserted by section 117 of the Public Transport Authority Act 2008 (No. 16 of 2008)) of the Road Transport Act 1986 (No. 16 of 1986),
- (b) an officer of Customs and Excise, or
- (c) a member of the Garda Síochána;

“Minister” means Minister for Transport, Tourism and Sport;

“night time” means—

- (a) in relation to work involving the use of motor vehicles used for carrying goods, the period between 00.00 hours and 04.00 hours, and
- (b) in relation to work involving the use of motor vehicles used for carrying passengers, the period between 01.00 hours and 05.00 hours;

“night work” means any work performed during night time;

“reference period” means a period referred to in Regulation 4 used in calculating the average 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);

²OJ No. L 102, 11.4.2006, p. 1

³OJ No. L 300, 14.11.2009, p. 88

¹OJ No. L 80, 23.03.2002, p.35

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Directive.

Scope

3. These Regulations apply to—

- (a) mobile workers who are employed by or who do work for one or more undertakings established in a Member State, and
- (b) self-employed drivers,

participating in road transport activities to which either the Council Regulation or the AETR applies.

Reference period

4. (1) The reference period for a mobile worker shall be—

- (a) where a collective agreement, an employment regulation order or a registered employment agreement provides for the application of this Regulation in relation to successive periods of 17 consecutive weeks, each such period,
- (b) where a collective agreement provides for the application of this Regulation in relation to successive periods of 26 consecutive weeks, each such period,
- (c) in a case where—
 - (i) neither (a) nor (b) applies, 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 consecutive weeks in the course of the worker's employment, or

- (d) in any other case, each successive period in each year beginning at midnight at the beginning of the Monday which falls on, or is the first Monday after, a date in column (1) 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) in the Table to this paragraph:

TABLE

Beginning (1)	End (2)
1 January	1 May
1 May	1 September
1 September	1 January

(2) The reference period for a self-employed driver shall be—

- (a) each successive period of 17 consecutive weeks,
- (b) each successive period of 26 consecutive weeks, or
- (c) in any other case, the period referred to in paragraph (1)(d).

Working time

5. (1) Subject to any derogation under Article 8 of the Directive, a person performing mobile road transport activities shall not exceed—

- (a) a working time of more than 60 hours in a week,
- (b) an average weekly working time of 48 hours in any reference period.

(2) The average weekly working time of a person during a reference period shall be determined according to the formula—

$$\frac{(A+B)}{C}$$

where—

A is the aggregate number of hours comprised in that person'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.

(3) In this Regulation "excluded hours" means hours comprised in—

- (a) any period of annual leave taken by the person in accordance with the Organisation of Working Time Act 1997 (No. 20 of 1997) (save so much of it as exceeds the minimum period of annual leave required by that Act to be granted to the mobile worker),
- (b) any absences from work by the person authorised under the Maternity Protection Act 1994 (No. 34 of 1994), the Adoptive Leave Act 1995 (No. 2 of 1995), 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 person.

(4) For the purposes of paragraph (2), the number of hours in a whole day shall be 8 and the number of hours in a whole week shall be 48.

(5) An employer shall ensure that the limits specified in paragraph (1) are complied with in the case of each mobile worker employed by him or her.

Periods of availability, break times and rest times

6. Periods of availability, break times and rest times shall not be included in the calculation of working time.

Periods of availability

7. A period shall not be treated as a period of availability unless the person performing mobile road transport activities knows before the start of the relevant period about that period of availability and its reasonably foreseeable duration.

Breaks from work

8. (1) No person performing mobile road transport activities shall work for more than 6 consecutive hours without a break.

(2) Where the working time of a person performing mobile road transport activities exceeds 6 consecutive hours but does not exceed 9 consecutive hours, the person shall be entitled to a break lasting at least 30 minutes interrupting that time.

(3) Where the working time of a person performing mobile road transport activities exceeds 9 consecutive hours, the person shall be entitled to a break lasting at least 45 minutes interrupting that time.

(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 or her.

Application of Council Regulation in relation to daily and weekly rest

9. (1) In the application of these Regulations, the provisions of the Council Regulation 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 or self-employed driver, as the case may be, shall ensure that this Regulation is complied with.

Night work

10. (1) Subject to any derogations under Article 8 of the Directive, the working time of a person performing mobile road transport activities, who performs night work in any period of 24 hours, shall not exceed 10 hours during that period.

(2) Compensation for night work shall not be arranged by a self-employed driver or be given to a mobile worker in any manner which is liable to endanger road safety.

(3) An employer shall ensure that the limit specified in paragraph (1) is complied with in the case of each mobile worker employed by him or her.

Obligation to notify mobile worker

11. An employer of a mobile worker shall notify the worker of the provisions of these Regulations and the provisions of any collective agreement, employment regulation order or registered employment agreement which is capable of application to that worker and keep available for inspection at all reasonable times a copy of these Regulations and any applicable employment regulation order or registered employment agreement.

Obligations on employer

12. An employer shall do each of the following in relation to each mobile worker employed by him or her:

- (a) maintain a record of the working pattern of the mobile worker in relation to driving, other work, breaks, daily and weekly rest periods and periods of availability;
- (b) request from the mobile worker details of any time worked by that worker for another employer and of any periods of work coming within the scope of Regulation 6(5) of the Council Regulation;
- (c) include time worked for another employer in the calculation of the mobile worker's working time;
- (d) keep records which are adequate to show that these Regulations are being complied with;
- (e) retain records referred to in this Regulation for at least 2 years after the end of the period covered by those records;
- (f) provide, at the request of the mobile worker, a copy of the record of hours worked by that worker;
- (g) provide to an enforcement officer such records relating to the mobile worker or other mobile workers as the officer may require;
- (h) provide to the mobile worker or to an enforcement 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 or her in accordance with subparagraph (f) or (g).

Obligations on self-employed driver

13. A self-employed driver shall do each of the following:

- (a) include time worked for any employer in the calculation of his or her working time;
- (b) keep records which are adequate to show that these Regulations are being complied with;
- (c) retain records referred to in this Regulation for at least 2 years after the end of the period covered by those records;

- (d) provide to an enforcement officer such records relating to the driver as the officer may require.

Obligation on mobile worker to supply information to employer

14. A mobile worker shall, at the request of his or her employer under Regulation 12(b), notify his or her employer in writing of time worked by the worker for another employer and of any periods of work coming within the scope of Regulation 6(5) of the Council Regulation for inclusion in the calculation of the mobile worker's working time.

Agency workers

15. (1) This Regulation applies in any case where an individual ("agency worker") is supplied by a person ("agent") to do the work of a mobile worker for another ("principal") under a contract or other arrangement 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.

Powers of enforcement officers

16. An enforcement officer may exercise any of the powers conferred on him or her by the European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No. 62 of 2008) for the purposes of enforcing these Regulations.

Offences

17. (1) A person who fails to comply with these Regulations commits an offence.

(2) A person who causes, or purports to authorise, another person who is employed by that person or is under that person's control to contravene these Regulations commits an offence.

(3) In proceedings for an offence under paragraph (2) evidence that—

- (a) another person contravened the Regulation to which the proceedings relate, and
- (b) that other person was at the relevant time employed by, or under the control of, the defendant,

is, until the contrary is shown, evidence that the defendant caused or purported to authorise that other person to contravene that Regulation.

(4) A person guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.

(5) 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 similar 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.

(6) Proceedings for an offence under these Regulations may be brought and prosecuted summarily by the Road Safety Authority or a member of the Garda Síochána.

(7) Nothing in paragraph (6) limits any other power conferred by law to prosecute an offence under these Regulations.

Complaints to a rights commissioner

18. (1) A mobile worker (or, in the case of a mobile worker who has not reached the age of 18 years, the mobile worker's parent or guardian with his or her consent) or, with the consent of the mobile worker, a trade union of which the mobile worker is a member may present a complaint to a rights commissioner that the mobile worker's employer has contravened Regulation 5, 8, 10, 11 or 12 in relation to the mobile worker.

(2) Where a complaint is presented under subparagraph (1) the rights commissioner shall—

- (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
- (b) give a decision in writing in relation to it, and
- (c) communicate the decision to the parties concerned.

(3) A decision of a rights commissioner under paragraph (2) shall do one or more of the following:

- (a) declare that the complaint was or was not well founded;
- (b) require the employer to comply with the provisions of these Regulations that have been contravened;
- (c) require the employer to pay the mobile worker compensation of such amount (if any) as is just and equitable having regard to all of the circumstances, but not exceeding 104 weeks' remuneration in respect of the mobile worker's employment (calculated in accordance with requirements under section 17 of the Unfair Dismissals Act 1977);

and the references in clause (b) and (c) to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) Subject to paragraph (5), a rights commissioner shall not entertain a complaint under this Regulation if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates or the date of termination of the contract of employment, whichever is earlier.

(5) Where a delay by a mobile worker in presenting a complaint under this Regulation is due to any misrepresentation by the employer, paragraph (4) shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the mobile worker's notice.

(6) Notwithstanding paragraph (4), a rights commissioner may entertain a complaint under this Regulation presented to him or her after the expiration of the period specified in paragraph (4) but not later than 6 months after such expiration if he or she is satisfied that the failure to present the complaint within that period was due to exceptional circumstances.

(7) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Jobs, Enterprise and Innovation.

(8) A copy of a notice under paragraph (7) shall be given to the other party concerned by the rights commissioner.

(9) Proceedings under this Regulation before a rights commissioner shall be conducted otherwise than in public.

(10) A rights commissioner shall furnish the Labour Court with a copy of each decision given by him or her under paragraph (2).

Appeal to the Labour Court

19. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under Regulation 18 and, if the party does so, the Labour Court shall—

- (a) give the parties an opportunity to be heard by it and present to it any evidence relevant to the appeal,
- (b) make a determination in writing in relation to the appeal, affirming, varying or setting aside the decision, and
- (c) communicate the determination to the parties.

(2) An appeal under this Regulation shall be initiated by the party concerned giving, within 42 days (or such greater period as the Labour Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under paragraph (2) shall be given by the Labour Court to the other party concerned as soon as may be after receipt of the notice by the Labour Court.

(4) The following matters, or procedures to be followed in relation to them, shall be determined by the Labour Court namely:

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this Regulation;
- (b) the times and places of hearings of such appeals;
- (c) the representations of the parties to such appeals;
- (d) the publication and notification of determinations of the Labour Court;
- (e) the particulars to be contained in a notice under paragraph (2), and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Labour Court may refer a question of law arising in proceedings before it under this Regulation to the High Court for determination by the High Court and the determination of that Court shall be final and conclusive.

(6) A party to proceedings before the Labour Court under this Regulation may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

Labour Court power to take evidence, etc.

20. (1) The Labour Court shall, on the hearing of any appeal referred to it under Regulation 19, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation.

(2) A person who, upon examination on oath or affirmation authorised under paragraph (1), wilfully makes any statement which is material for that purpose

and which the person knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months or to both.

(3) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice and—

- (a) to give evidence in relation to any matter appealed to the Labour Court under Regulation 19, or
- (b) to produce any document specified in the notice relating to the matter in the person's possession or power,

or to do both.

(4) A person to whom a notice under paragraph (3) has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates commits an offence and is liable on summary conviction to a class A fine.

(5) A notice under paragraph (3) may be given either by delivering it to the person to whom it relates or by sending it by prepaid registered post addressed to such person at the address at which he or she ordinarily resides or carries on any profession, trade, business or occupation.

(6) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

- (a) a person named in the document was, by notice under paragraph (3) required to attend before the court on a day and at a time and place specified in the document, to give evidence or produce a document, or both,
- (b) a sitting of the Labour Court was held on that day and at that time and place, and
- (c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document

shall in a prosecution for an offence under paragraph (4) be evidence of the matters so stated without further proof unless the contrary is shown.

(7) A witness in a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.

(8) Where a decision of a rights commissioner in relation to a complaint under these Regulations has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision

has expired and no such appeal has been brought or if such an appeal has been brought it has been abandoned, the mobile worker concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid) make a determination to the like effect as the decision.

(9) The bringing of a complaint before the Labour Court under paragraph (8) shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

Publication of determination by Labour Court

21. The Labour Court shall publish, in such manner as it thinks fit, particulars of any determination made by it under subparagraphs (a), (b), (c), (e) and (f) of Regulation 19(4) (not being a determination as respects a particular appeal under this Regulation) and Regulation 20(9).

Enforcement of determination of Labour Court

22. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under Regulation 18 within 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- (a) the mobile worker concerned (or, in the case of a mobile worker who has not reached the age of 18 years, the mobile worker's parent or guardian with his or her consent), or
- (b) with the consent of the mobile worker, any trade union of which the mobile worker is a member,

without hearing the employer or any evidence (other than in relation to the matters aforesaid) make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in paragraph (1) to a determination of the Labour Court is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned, and the reference to the date on which the determination is communicated to the parties shall, in case where such an appeal is abandoned, be construed as a reference to such abandonment.

(3) The Circuit Court may, in an order under this Regulation, if in all the circumstances it considers it appropriate to do so, where the order relates to the payment of compensation, direct the employer concerned to pay to the mobile worker concerned interest on the compensation at the rate for the time-being standing specified under section 26 of the Debtors (Ireland) Act 1840 for each day or part of the day beginning 28 days after the date on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is complied with.

(4) An application under this Regulation to the Circuit Court shall be made to a judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade, business or occupation.

Costs of prosecution

23. (1) Where a person is convicted of an offence under these Regulations, the Court shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay the costs and expenses, measured by the Court, incurred by the relevant prosecuting authority in relation to the investigation, detection or prosecution of the offence.

(2) Costs and expenses referred to in paragraph (1) may include costs and expenses incurred in relation to any one or both of the following:

- (a) legal representation at Court, and
- (b) the remuneration and other expenses of enforcement officers, consultants or advisers.

Revocation

24. The European Communities (Organisation of Working Time of Persons Performing Mobile Road Transport Activities) Regulations 2005 (S.I. No. 2 of 2005) are revoked.



GIVEN under my Official Seal,
30 January 2012.

LEO VARADKAR,
Minister for Transport, Tourism and Sport.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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