

<b>Title:</b> The Road Transport (Working Time) (Amendment) Regulations 2012 <b>PIR No:</b> DfTPIR0081 <b>Original IA/RPC No:</b> DfT00119 <b>Lead department or agency:</b> Department for Transport <b>Other departments or agencies:</b> Driver and Vehicle Standards Agency (DVSA)  Contact for enquiries: Helen Grech ( <a href="mailto:Helen.Grech@dft.gov.uk">Helen.Grech@dft.gov.uk</a> ) & Lillian Lartey ( <a href="mailto:Lillian.Lartey@dft.gov.uk">Lillian.Lartey@dft.gov.uk</a> )	<b>Post Implementation Review</b>
	<b>Date:</b> 16/01/2024
	<b>Type of regulation:</b> EU
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 11/05/2012
	<b>Recommendation:</b> Keep
<b>RPC Opinion:</b> Choose an item. N/A	

## Recommendation and Summary of Justification

The review clause in the Road Transport (Working Time) (Amendment) Regulations 2012 (“2012 Regulations”) requires a review of Regulation 3(1A); which is the new Regulation added to the Road Transport (Working Time) Regulations 2005 (“2005 Regulations”), which brought self-employed drivers of vehicles (goods vehicles weighing over 3.5 tonnes and passenger vehicles with 10 or more seats) in scope of the assimilated EU drivers’ hours rules (Regulation (EC) 561/2006, as it has effect in the UK) into scope of the road transport working time rules.

The review clause states that the report must in particular:

- (a) set out the objectives intended to be achieved by the regulatory system established by regulation 3(1A),
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

The review clause states that the first report must be published before the end of the period of five years beginning with the day on which regulation 3(1A) came into force and then at intervals not exceeding five years.

The first PIR was completed in October 2017 (PIR No. DfTPIR0031) and was published on the Legislation.gov.uk website (link below)

[https://www.legislation.gov.uk/ukxi/2012/991/pdfs/uksiod\\_20120991\\_en.pdf](https://www.legislation.gov.uk/ukxi/2012/991/pdfs/uksiod_20120991_en.pdf)

The first PIR took a ‘low evidence’ approach as the original Impact Assessment (“IA”) concluded that the impact on business, charities or voluntary bodies under the best estimate would be nil. Please note that as a low impact, low risk measure, these regulations would qualify for a De Minimis Assessment (“DMA”), rather than an IA, if conducted today.

The first PIR recommendation was that the regulations should remain in place and concluded that the evidence available to evaluate the impacts of the regulations was limited. However, there was no evidence to suggest that they had a material adverse effect on self-employed drivers or caused disproportionate burdens. It was also not possible to conclude whether there

had been any improvement in road safety or driver welfare due to the restriction on the working time of self-employed drivers.

This second PIR also took a very light touch approach as it would not have been proportionate or effective to try and replicate the methodology used in the original IA or try and conduct a review using the plan for the first PIR, as it was not possible to draw conclusions from some of the data analysis undertaken in the first PIR and the evidence available to evaluate the impacts remains limited. Therefore, this second review was conducted using feedback from stakeholders. This again concluded that the regulations had not had any unintended adverse impacts on self-employed drivers or road safety.

Therefore, the recommendation is that the regulations remain in place at this time, particularly as the requirement that self-employed drivers remain in scope of the road transport working time rules is part of the EU/UK Trade and Cooperation Agreement (Section 3 of Part B of Annex 31)<sup>1</sup>. In addition, this is a safety measure which aims to ensure self-employed drivers do not drive and work long hours putting themselves and other road users at risk. The review concluded that the objective of the regulatory change was achieved and remains appropriate and did not identify any system to achieve the same objectives with less regulation.

The parent legislation, the 2005 Regulations, which limits the overall working time of drivers' in scope of Regulation (EC) 561/2006 as it has effect in the UK (assimilated EU drivers' hours rules), is secondary assimilated EU law and has been identified as a regulation up for review between 2024-26, so there is an opportunity to make amendments to the rules for drivers of vehicles used exclusively in the UK; including self-employed drivers, as part of this process.

## **1. What were the policy objectives of the measure?**

The 2012 Regulations added a new Regulation 3(1A) to the 2005 Regulations to bring self-employed drivers into scope of the road transport working time rules. This meant that from the implementation date of 11 May 2012, self-employed drivers were required to comply with all the requirements in the 2005 Regulations. This is a restriction to working an average of 48 hours per week over a specific reference period (with no opt out available), with a maximum limit of 60 hours in any particular week, provided the average is no more than 48 hours. This also includes a requirement to keep a record of their working time (for up to two years). Unlike employed drivers, where the onus is on transport operators to monitor and keep working time records for their employees, self-employed drivers monitor and keep their own working time records.

The policy objective of the measure was to improve the working conditions of self-employed drivers who come under scope of the assimilated EU drivers' hours rules, by limiting the amount of work (as well as driving) they are allowed to conduct in a week, bringing them in line with employed drivers also working under scope of the assimilated EU drivers' hours rules. This should also improve road safety by reducing the amount of time self-employed drivers spend behind the wheel and on other duties, reducing fatigue-related accidents.

## **2. What evidence has informed the PIR?**

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[https://assets.publishing.service.gov.uk/media/608ae0c0d3bf7f0136332887/TS\\_8.2021\\_UK\\_EU\\_EAEC\\_Trade\\_and\\_Cooperation\\_Agreement.pdf](https://assets.publishing.service.gov.uk/media/608ae0c0d3bf7f0136332887/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf)

The first PIR tried to replicate the data used in the original IA but was unsuccessful because of the lack of baseline data and the validity of the data which is reliant on self-employed drivers self-reporting on the number of hours they work. The survey sent out to 100 self-employed drivers did not get a very good response rate and due to a lack of demographic data on self-employed drivers, the survey results could not be treated as representative of the target population.

Therefore, this second PIR took a very light touch approach without trying to replicate the data from original IA (which was found to be unreliable) or conduct another survey of self-employed drivers but focused on getting feedback from our main industry stakeholders representing drivers and operators as well as the enforcement agencies.

Although self-employed drivers are not really represented by trade associations, we contacted the main ones representing transport operators (the Road Haulage Association, Logistics UK, Confederation of Passenger Transport; British Vehicle Rental and Leasing Association) for their views on whether they were aware of any adverse effects of the regulations on self-employed drivers. All confirmed that they were not aware of any self-employed drivers complaining about needing to comply with the road transport working time rules or of any unintended adverse consequences of the measure. One trade association commented that “Just because working time doesn’t necessarily only cover driving hours, if someone is doing other work for an unlimited amount of hours, it would still impact the safety of the time spent driving. Just because a self-employed driver wants to work longer hours doesn’t mean that they should”.

Again, self-employed drivers are unlikely to be members of the trade unions, but we contacted the main ones representing drivers (UNITE the union, United Road Transport Union) for their views. Both confirmed that they had not received any complaints or queries on the measure.

We contacted the Driver and Vehicles Standards Agency (“DVSA”) for their views, including if there had been any enforcement action taken against self-employed drivers. DVSA are responsible for enforcing the drivers’ hours and working time rules. Since the measure was introduced DVSA have not had any feedback, either negative or otherwise from self-employed drivers nor are they aware of any specific action taken against these drivers for failing to fulfil any of the requirements. DVSA receive very few queries about the subject, and they cannot find any complaints from self-employed drivers.

We also contacted the Office of the Traffic Commissioners (“OTC”) for their views. Traffic commissioners are responsible for licensing and regulating operators of heavy goods vehicles. They can also take action against drivers operating these vehicles and can call a formal public inquiry in a court to get more evidence to help them decide if they should grant or refuse licences or take action against a driver. OTC were not aware of self-employed drivers making representations on this measure and do not recall any drivers being referred for breaches.

In addition, a review was made of correspondence the Department has received in the last five years and there was none identified covering this issue.

### **3. To what extent have the policy objectives been achieved?**

The policy objectives were to bring self-employed drivers in-scope of the road transport working time rules; to ensure they do not drive and work long hours; to protect them and other road users. The measure achieved the objective of bringing self-employed drivers into the scope of road transport working time rules, however we do not have evidence of impacts as the measure is self-reporting and therefore difficult to enforce.

Like the first PIR, it was acknowledged that the lack of baseline data in the original IA coupled with the difficulty obtaining reliable data on the number of self-employed drivers and the hours they work, has made firm conclusions on the impacts impossible to estimate. However, as this is a measure brought in to protect the welfare of self-employed drivers and to protect road safety and there is no evidence to suggest otherwise, it would not be reasonable or justifiable to remove this regulation and the requirement for self-employed drivers to remain in-scope of the road transport working time rules.

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

Signed: ***Lexi Keegan*** *On behalf of Chief Economist*

Date: 30/01/2024

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### **4. What were the original assumptions?**

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 2005 Regulations. The IA estimated (using Labour Force Survey data) 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.

Like the first PIR, this second PIR was not able to determine how the working hours of self-employed drivers had changed since they were brought into scope in 2012, as the data available is limited. Particularly as any data from LFS could not be relied upon given that respondents may have an incentive not to self-incriminate by admitting to driving/working for a number of hours which would put them in breach of the road transport working time regulations.

### **5. Were there any unintended consequences?**

The review did not identify any unintended consequences because of these regulations. Although the stakeholders consulted as part of the review did not represent self-employed drivers and the evidence available was limited, there were no unintended consequences identified.

### **6. Has the evidence identified any opportunities for reducing the burden on business?**

The review did not identify any opportunities for reducing burdens on business. Although there was a lack of evidence to estimate the benefits and impacts of bringing self-employed drivers into scope of the road transport working time regulations, their inclusion should not have added any extra burdens on business, as they would not need to do anything differently because of a consequence of these regulations.

### **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?**

EU Member States have also been required to bring self-employed drivers into scope of the road transport working time rules since 2011 and all have done so under threat of infraction proceeding from the European Commission if they did not. Therefore, UK businesses are not put at a competitive disadvantage from keeping these amending regulations in place.

The 2005 Regulations, as amended, are EU derived domestic (secondary) legislation, incorporated as UK law by Section 2 of the European Union (Withdrawal) Act 2018, as amended.

The requirement to comply with the road transport working time rules (including that they apply to self-employed drivers) is part of the UK/EU Trade and Cooperation Agreement and applies to

international transport operations between the UK and EU. However, as we are no longer an EU Member State, there is scope to make deregulatory changes to the rules for domestic transport operations that would benefit UK drivers and operators. Therefore, the 2005 Regulations have been identified under the Retained EU Law process as regulations for possible reform in 2024-26 under powers in the Retained EU Law (Revocation and Reform) Act 2023.