

**EXPLANATORY MEMORANDUM TO**  
**THE CROSS-BORDER RAILWAY SERVICES (WORKING TIME) REGULATIONS**  
**2008**

**2008 No. 1660**

1. 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.  
  
1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Description**  
  
2.1 This instrument transposes into domestic law a Directive of the European Community implementing, for the Community's railway industry as a whole, the provisions of an agreement reached between the European railway employers' representative body and the European railway employees' representative body ("the Social Partners") on working conditions for railway workers engaged in interoperable cross-border railway services. It therefore amends existing domestic provisions on working time for railway workers for those workers engaged on international railway services.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**  
  
3.1 None.
4. **Legislative Background**  
  
4.1 Council Directive 2005/47/EC on the Agreement between the Community of European Railways (CER) and the European Transport Workers' Federation (ETF) on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector entered into force on 27 July 2005. Member States must transpose this Directive by 27 July 2008. A Transposition Note is attached at Annex A.  
  
4.2 The Working Time Directive 93/104/EC, implemented in Great Britain by the Working Time Regulations 1998 (SI 1998/1833, as amended by SI 2003/1684), has applied to the railway sector, including cross-border train crews, since 1 August 2003. Directive 2005/47/EC places stricter requirements on operators for the timing and duration of rest periods and breaks, limits on driving time and the need to keep records compared to those specified in the general Working Time Directive.

4.3 We intend implementing all the mandatory requirements of the Directive in full. There are two optional provisions applying the Directive to local and regional cross-border passenger traffic and freight traffic travelling no further than 15 kilometres beyond the border, and to trains on cross-border routes which both start and stop on the infrastructure of the same Member State and use the infrastructure of another Member State without stopping there. We will not be implementing these optional provisions, as neither situation occurs in Great Britain (our only international rail border is more than 15 kilometres within the Channel Tunnel).

4.4 Explanatory Memorandum EM6364/05 on the draft Directive was submitted to Parliament for scrutiny on 16 March 2005. The House of Commons European Scrutiny Committee considered the EM on 23 March 2005, and recommended that the dossier should be debated in European Standing Committee A. That debate was held on 14 July 2005, where a motion to give scrutiny clearance was passed. The House of Lords Select Committee on the European Union Sub-Committee B considered the EM on 4 April 2005 and 10 October 2005.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

6.1 The Secretary of State for Transport has made the following statement regarding Human Rights:

In my view the provisions of the Cross-border Railway Services (Working Time) Regulations 2008 are compatible with the Convention on Human Rights.

## **7. Policy background**

7.1 The main objectives of Directive 2005/47/EC are to develop safe cross-border traffic and protect the health and safety of mobile workers engaged in interoperable cross-border services. The Directive therefore places requirements on the timing and duration of rest periods and breaks, limits on driving time and the need to keep records for cross-border workers. This instrument implements these requirements in full.

7.2 Directive 2005/47/EC places a legal obligation on Member States to transpose its provisions. Therefore, there is no alternative but to implement the Directive in Great Britain by mean of secondary legislation.

7.3 There are currently only three train operators to whom this legislation will apply, as there is only one international rail border in Great Britain (which is within the Channel Tunnel). The level of public interest in the policy is negligible and no media attention was received in response to the consultation.

7.4 It is our opinion that the Directive may reduce the potential for a more flexible approach to crew working on the increasing number of through international services, and would therefore inhibit the potential for those services to claw back market share

from road. This in consequence inhibits the growth of the rail market and the possibility of increased employment opportunities. However, the European Commission, after consulting the Social Partners, will by 27 July 2011 report to the European Parliament and the European Council on the Directive in the context of its effect on railway development .

7.5 The Directive is not considered politically or legally important.

#### 7.6 *Consultation*

The public consultation on the draft regulations ran for 12 weeks from 25 February to 18 May 2008. The consultation paper was available via the Department for Transport's website and 14 stakeholder groups were specifically targeted. Six responses to the consultation were received. A summary of these replies can be found on the Department's website at [www.dft.gov.uk/consultations/closed/transportation/](http://www.dft.gov.uk/consultations/closed/transportation/)

#### 7.7 *Guidance*

The Department for Transport is not producing any specific guidance on this new obligation. Stakeholders will be able to obtain advice on the Regulations from the Advisory, Conciliation and Arbitration Service (ACAS).

### **8. Impact**

8.1 An Impact Assessment is attached to this memorandum at Annex B.

### **9. Contact**

Fran Queen at the Department for Transport Tel: 020 7944 5020 or e-mail: [fran.queen@dft.gsi.gov.uk](mailto:fran.queen@dft.gsi.gov.uk) can answer any queries regarding the instrument.

**TRANSPOSITION NOTE FOR COUNCIL DIRECTIVE 2005/47/EC ON THE AGREEMENT BETWEEN THE COMMUNITY OF EUROPEAN RAILWAYS (CER) AND THE EUROPEAN TRANSPORT WORKERS' FEDERATION (ETF) ON CERTAIN ASPECTS OF THE WORKING CONDITIONS OF MOBILE WORKERS ENGAGED IN INTEROPERABLE CROSS-BORDER SERVICES IN THE RAILWAY SECTOR**

These regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.

<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
4	Requires Member States to determine penalties for infringement of the national provisions implementing the Directive.	Regulation 10(1) and (2) and Schedule 2 provides for the Office of Rail Regulation to enforce the requirements of the Regulations relating to driving time and keeping records. Regulation 11(4)-(8) creates penalties for those found guilty of offences under Regulation 11(3).  Regulation 17(1) provides that a cross-border worker may present a complaint to an employment tribunal. Regulation 17(4)-(5) provides for the employment tribunal to award compensation where a complaint has been upheld.	Secretary of State, Office of Rail Regulation
5	Requires Member States to implement the Directive by 27 July 2008.	Regulation 1 provides that the Cross-border Railway Services (Working Time) Regulations shall come into force in Great Britain on 27 July 2008.  Separate legislation will be enacted for transposition in Northern Ireland.	Secretary of State  Northern Ireland Department for Regional Development
Annex 1, clause 1	Defines the scope of the Directive as applicable to mobile railway workers assigned to interoperable cross-border services carried out by railway undertakings.  Optional application for local and regional cross-border passenger traffic and freight traffic travelling no further than 15 kilometres beyond the border.  Optional application for trains on cross-border routes which	Regulation 2 provides a definition of a "cross-border worker".  This optional clause has not been specifically implemented as this situation does not apply in Great Britain.  This clause has not been implemented, as this situation	Secretary of State

Articles	Objectives	Implementation	Responsibility
	<p>both start and stop on the infrastructure of the same Member State and use the infrastructure of another Member State without stopping there.</p> <p>Provisions of the Working Time Directive 93/104/EC shall not apply to mobile workers engaged in interoperable cross-border services where this Directive contains more specific provisions.</p>	<p>does not occur in Great Britain.</p> <p>Schedule 3, paragraph 4 amends Regulation 18 of the Working Time Regulations 1998 (as amended) disapplying Regulation 24 to workers to whom the Cross-border Railways Services (Working Time) Regulations 2008 apply.</p>	
Annex 1, clause 2	Defines “interoperable cross-border services”, “mobile worker involved in interoperable cross-border services”, “working time”, “rest period”, “night time”, “night shift”, “rest away from home”, “driver” and “driving time”.	Regulation 2 provides definitions for “cross-border worker”, “driver”, “interoperable cross-border services”, “rest period” and “working time”. Regulation 3(5) provides an explanation for “rest away from home”. Regulation 8(4) defines “scheduled driving time”. Regulation 8(4) defines “night time”. Regulation 8(1)(a) refers to shifts containing three hours of night time (night shift).	Secretary of State
Annex 1, clause 3	<p>Requires that daily rest at home must be a minimum of 12 consecutive hours per 24-hour period. This may be reduced to a minimum of 9 hours once every seven-day period. In this case, the hours corresponding to the difference between the reduced rest and 12 hours will be added to the next daily rest at home.</p> <p>Requires that a significantly reduced daily rest shall not be scheduled between two daily rests away from home</p>	<p>Regulation 3(1)-(4) implements this requirement of the clause.</p> <p>Regulation 3(7) implements this requirement of the clause, by limiting the reduction in the daily rest to not less than 10 consecutive hours.</p>	Secretary of State
Annex 1, clause 4	<p>Requires that the minimum daily rest away from home shall be 8 consecutive hours per 24-hour period.</p> <p>Requires that a daily rest away from home must be followed by a daily rest at home.</p>	<p>Regulation 3(1) and (5) implements this requirement of the clause.</p> <p>Regulation 3(6) implements this requirement of the clause.</p>	Secretary of State

<b>Articles</b>	<b>Objectives</b>	<b>Implementation</b>	<b>Responsibility</b>
	Recommends that attention should be paid to the level of comfort of the accommodation offered to staff resting away from home.	Specific provision to implement is not necessary, as this is a recommendation and not a requirement.	
Annex 1, clause 5	Requires that breaks are given to drivers.  Requires that where there is a second driver, the conditions for granting breaks shall be set at national level.  Requires that breaks are given to other on-board staff.	Regulation 4 implements this requirement of the clause for sole drivers.  Regulation 5 implements, where there is more than one driver, the compensatory rest break provisions that would have applied under regulation 24 of the Working Time Regulations 1998 (as amended), but for regulation 24 not applying to cross-border workers.  Regulation 6 implements this requirement of the clause for other workers.	Secretary of State
Annex 1, clause 6	Requires that any mobile worker engaged in interoperable cross-border services is entitled to a weekly rest period.	Regulation 7 implements this requirement of the clause for cross-border workers.	Secretary of State
Annex 1, clause 7	Requires that driving time shall not exceed 9 hours for a day shift and eight hours for a night shift between two daily rest periods  Requires that the maximum driving time over a two-week period is limited to 80 hours.	Regulation 8 implements this requirement of the clause.  Regulation 8(2) implements this requirement of the clause.	Secretary of State
Annex 1, clause 8	Requires that records of actual daily working hours and rest periods taken should be kept for a period of one year.	Regulation 9 implements this requirement of the clause.	Secretary of State

## Summary: Intervention & Options

Department /Agency: <b>Transport</b>	Title: <b>Impact Assessment of Transposition of Directive on working conditions for cross-border train crews</b>	
<b>Stage:</b> Final proposal	<b>Version:</b> 1	<b>Date:</b>
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.dft.gov.uk>

**Contact for enquiries:** Deborah Phelan

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What is the problem under consideration? Why is government intervention necessary?

The European Council and Parliament have adopted a Directive implementing an Agreement of the Social Partners on certain aspects of the working conditions of mobile workers engaged in interoperable cross-border services in the railway sector. Member States are required to take the measures necessary to bring this Directive into effect in their territories, by 27 July 2008. For Great Britain, this will require an amendment to the existing legislation covering working conditions in the rail sector.

What are the policy objectives and the intended effects?

The Directive implements into European law a Social Partners' Agreement (SPA) concluded on 27 January 2004 between the European Transport Workers' Federation (ETF) and the Community of European Railways (CER) - respectively the social partners representing unions and employers in the rail sector - setting minimum requirements for certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services. The intended effect is to protect the health and safety of those workers.

What policy options have been considered? Please justify any preferred option.

1. Do nothing
2. Do the minimum needed to give effect to the Directive in Great Britain. This is the preferred option as it meets our Community obligations while minimising the impact on industry.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The European Commission and the Social Partners have undertaken to review the provisions of the Directive in 2010.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Tom Harris .....Date: 25 June 2008

## Summary: Analysis & Evidence

Policy Option: 2

Description: Do the minimum needed to give effect to the Directive in Great Britain.

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups'
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups' No significant costs arising from domestic transposition.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Implementation of the proposal into national law is unlikely to have any particular benefits for industry stakeholders. It will, however, avert the high risk of the Government being fined for failure to implement European legislation.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> £
Other <b>key non-monetised benefits</b> by 'main affected groups' No significant benefits arising from domestic transposition. It will in theory mean that overseas undertakings operating into GB are put on a level footing with GB operators overseas.			

Key Assumptions/Sensitivities/Risks Only two domestic rail operators currently directly affected by this Directive. Enforcement will be for breaches within GB only.

Price Base Year	Time Period Years	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	Great Britain
On what date will the policy be implemented?	27 July 2008
Which organisation(s) will enforce the policy?	ORR
What is the total annual cost of enforcement for these organisations?	£ n/a
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£
What is the value of changes in greenhouse gas emissions?	£
Will the proposal have a significant impact on competition?	Yes/No

Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes	Yes	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease £	<b>Net Impact</b>	<b>£ NIL</b>

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Council Directive 2005/47/EC implements an Agreement of the Social Partners (representing unions and employers in the rail sector) setting minimum requirements for certain aspects of the working conditions of mobile workers assigned to interoperable cross-border services. These are defined as "services for which at least two safety certificates as stipulated by Directive 2001/14/EC are required from the railway undertakings". The provisions are optional for local and regional cross-border passenger traffic and cross-border freight traffic travelling no further than 15km beyond the border.

For the workers concerned, the Directive establishes the following particular working conditions:

- Daily rest at home must be a minimum of 12 consecutive hours per 24-hour period, although it may be reduced to a minimum of nine hours once every seven-day period. In this case, the difference between the reduced period and 12 hours is to be added to the next daily rest at home. A significantly reduced daily rest is not to be scheduled between two rests away from home;
- The minimum daily rest away from home must be eight consecutive hours per 12-hour period. The Agreement rules that a daily rest away from home is to be followed by a daily rest at home (in other words, crews are not to be scheduled to be away from home for more than one night at a time) although it opens the possibility of renegotiation on this condition.
- The maximum driving time over a two-week period is limited to 80 hours.

There are also provisions on the length and timing of breaks, on the weekly rest period entitlements, on limits on driving time and on the keeping of records.

For Great Britain the Directive currently applies only to English, Welsh and Scottish Railways Ltd (EWS) and Eurostar (UK) Ltd (EUKL). It will also affect Europorte 2 if this company undertakes operations that extend more than 15km on to the domestic network.

Eurotunnel drivers and crews are not within the scope since the company operates within the scope of a single safety authorisation.

Although EUKL is theoretically covered by the Directive, it is unlikely in fact to be affected, since the principal provisions relate to lengths of shift and number of nights away from home.

Eurostar services "shuttle" between London and Paris or Brussels with a maximum scheduled journey time under three hours, and do not operate overnight, so it should be relatively simple for the company to manage the shift patterns ensure that its drivers and crews return to their base every evening.

The main impact will be on freight operators seeking to operate "long-haul" rail freight services across Europe. The requirement to repatriate crews every twenty-four hours, unless renegotiated, is likely to put rail at a significant disadvantage compared to road haulage where no such restrictions apply. The rules on driving time are also likely to increase the existing disparity with road haulage. A related impact may occur due to train drivers limited to 80 hours driving time in any 14 day period. Under the Working Time Directive, train drivers can currently

work to a maximum 48 hours per week. The new Directive may, therefore, potentially cut drivers' scheduled maximum driving time by 16 hours a fortnight. Possible implications are that employers may have to employ other drivers to work these hours, if any drivers are currently working more than the 80 hours a fortnight.

In their response to the consultation, Rail Freight Group stated that if operators have to employ more drivers or mobile staff, this will lead to more costs to the employer and a potential loss of rail competitiveness in perverse effect on modal-share and sustainability.

However, it is important to distinguish between the global impact of the Directive, and the impact of transposing it into UK law which is the subject of this Assessment. From the GB perspective the domestic implementation of this Directive will not place any significant additional burden on the freight operators since their need to comply with the provisions will arise from their operations overseas, and any likely challenges to their crews' working conditions will also arise in respect of operations overseas (for which there are no domestic enforcement powers).

The intention of this transposition is therefore to give effect to this Directive solely to the extent necessary to avoid infraction and to ensure that any inbound cross-border operators are bound by the same rules on working conditions within GB that apply to domestic operators on the European rail network.

In the event that the other member states, particularly France, transpose the legislation, there will be no incremental costs to the UK. There may be a small benefit, although it is not possible to monetise it, from ensuring that overseas firms with operations in the UK are subject to the same rules as UK firms operating abroad.

However, if the legislation is not transposed by the other member states then there will be some small incremental costs to the UK, which will fall on one or two firms that operate international rail services. The benefits of the legislation in these circumstances are unclear and therefore it is likely that there would be a small net cost to the UK. It is not possible to provide a monetised estimate of the costs or benefits under these circumstances at this stage.

In neither case would there be any costs to government.

## **Legal Aid**

The Directive and its implementing Regulations are likely to have no effect on the legal aid budget, as cross-border workers' working conditions that were previously covered by the Working Time Directive will move over to the new Directive.

## **Competition assessment**

The proposed legislation will affect the only two current cross border rail firms - one passenger operator and one freight operator. The effects on the passenger operator are believed to be very small and to have no impact on competition. In the rail freight sector, the legislation will not directly or indirectly limit the number or range of suppliers or reduce suppliers' incentives to compete vigorously. There may be a small reduction in the ability of the freight firm affected to compete with other modes, as it may have a small increase in wage costs as a result of limiting drivers' hours. This increase in costs will depend on the number of extra drivers required, which is currently unknown. However, this increase in cost is believed to be small and will be just one of many factors influencing the comparative prices of rail and other modes of freight transportation and therefore the ability of the rail freight operator to compete. Overall there is not expected to be a significant impact on competition.

## **Small firms impact test**

The proposed legislation will affect two firms, both of which are large rail operators. No impact on small firms is expected.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

## Annexes