



This response is submitted by Unite the Union, the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport and local government, education, health and not for profit sectors. The Passenger Transport (PT) and Road Transport Commercial (RTC) Trade Groups of Unite. Unite are the main trade groups representing professional drivers, although we also have significant professional driver membership in the food, drink and tobacco sector of the economy. This results in Unite being the largest trade union representing professional drivers in the United Kingdom.

*Q1). Do you claim self-employment status, do you employ anyone who claims self-employment status, or are you aware of, anyone who claims self-employed status for the purposes of the Working Time Directive for Mobile Workers? Please give details (including numbers of workers, occupation type, sectors of industry etc)*

We are aware that in the building industry, especially drivers of ready mixed cement vehicles. These drivers are claiming self-employed status, but they do not meet the existing definition of self-employment, let alone the revised version proposed by the Commission.

Also in the parcels sector, so called individual service providers, effectively owner drivers work for only one company, though in theory they can work for other companies.

*Q2). In your view are any of those workers identified above (other than you or, if applicable, those working for you), claiming self-employed status when they should not be?*

There are people claiming self-employed status, especially in the ready mixed cement sector who would not meet the existing criteria for self-employment, let alone the revised definition proposed by the Commission. In terms of number it is

difficult to estimate. However, there were approximately 5,000 Concrete Mixer<sup>1</sup> licensed in 2007.

These drivers own the vehicles but do not own the mixer drums on the back of the lorry. This is owned by the company, and these drivers cannot work for anybody else. Yet they claim to be self-employed, and as far as we are aware no driver has been identified by VOSA as being bogusly self-employed.

Similarly, drivers in the parcels sector work for one company, as they have to be on call when required. Again, as far as we are aware no driver in this category has been identified by VOSA as being bogusly self-employed under the present definition of self-employed.

*Q3). What difference (if any) do you think the change set out in the Commission's proposals above will make to the employment status of any of the individuals identified above?*

Given that they should already be classified as employed under the existing definition, then the changes set out in the Commission's proposals will make no difference to the employment status of concrete mixer drivers' or individual service providers in the parcels sector.

*Q4) Do you think this proposal will make it easier or harder for enforcement authorities to enforce the 2005 Regulations (which implement the Directive)? Please give details.*

Unite the Union believes that the proposals of self-employment will make it harder to enforce the 2005 Regulations.

Firstly, how will the self-employed, bogus or otherwise, be identified? If this can only be done by checking their official documentation, then this can only be done at their base. This would be possible, but how would they be selected? But what about a foreign based self-employed lorry driver? How could VOSA establish if they were bogusly self-employed?

But the details of the driver will need to be checked at the roadside to see if they are employed or self-employed to see if they come under the scope of the directive. In this situation how will it be possible for VOSA to establish if the person is genuinely self-employed? It is not clear how the person's employment status would be established except by asking them at the roadside.

We believe the importance of being able to establish the employment status of a professional driver, but especially a lorry driver at the roadside cannot be underestimated.

---

<sup>1</sup> Table 9.6 Goods vehicles over 3.5 tonnes licensed by body type: 2007 Transport Statistics Great Britain 2008.

*Q5) Overall do you agree or disagree with the proposal to permanently exclude the genuine self-employed?*

Overall we disagree with the proposal to permanently exclude the genuine self-employed.

The main reason is that the limit on working hours was originally brought in was in part for safety reasons. We do not understand why being self-employed, genuine or not, means you will not be affected by fatigue or tiredness by working longer hours than an employed lorry driver! According to various studies, fatigue is a major contributor for up to 25 per cent of road accidents

By not imposing working time limits for self-employed drivers, we believe it is falsely argued as a measure to encourage entrepreneurship and the growth of small business.

We believe in reality it is a means to give even more flexibility to the industry, at the expense of health and safety and the quality of jobs in a sector. It has to be remembered that this sector already faces shortage of skilled labour due to the anti-social and long hour's culture operating in the sector. Also the self-employed drivers are subject to constant pressure from their contractors, to lower their prices, at time when running an own business is becoming more and more expensive. By not enforcing the work time limits on the self-employed drivers this will mean that they will be forced to work even longer hours for the same amount of profit. But working an 84-86 hour week work will not make this profession more attractive to young people, women or members of the ethnic communities.

We are not sure if the Department for Transport has ever even considered how long a driver can continue working an 84-86 hour work week, every week of the year, without serious detrimental effects to their health, and without impairing their driving abilities. The Department must answer this question: does the Department put profit before road safety?

Also, as we understand the situation, self-employed lorry drivers in the UK are not currently working any longer hours than employed lorry drivers. If this is the case why then do they need to be excluded from the provisions of the Directive?

### **Night Work Limits**

*Q6) Is your work subject to the night work limits, or do you employ anyone whose work is subject to the night work limits?*

*Please give details (including numbers, type of operations, number of hours worked etc).*

Not Applicable

*Q7) Would changing the definition of night work (so that night work only occurs if 2 hours work takes place during the night work period) mean that new night-time operations would take place?*

Not Applicable

*Please give details (including numbers, types of operations and likely cost savings/revenue increases).*

Not Applicable

*Q8) Does your company/employer use a collective or workforce agreement which has the effect of increasing the night time working limits?*

*Please give details (including the maximum number of hours that have been agreed).*

Unite the Union has a number of agreements with employers for the derogation of the night time limit. In most cases these are limited to 12 hours, allowing 4 x 12 hours shifts. We are aware of some workplace agreements which allow drivers to work up to the maximum permitted under the drivers' hours regulations.

*Q9). Is this agreement solely in place to amend the night time working limits or would this agreement be in place anyway for other reasons?*

*Please give details (including what other aspects of the employee/employer relationship are managed by the agreement in addition to night work limits).*

Some agreements are also linked to extending the reference period.

*Q10). If the night work limits were changed as proposed above would such an agreement still be necessary?*

*Please give details.*

In the majority of cases an agreement to derogate the night time limit would not be needed. This would result in the issue becoming a collective bargaining issue. Currently, employers are required by law to reach an agreement with the trade union or unions where any of the employees terms and conditions of employment are determined by a collective agreement.

*Q11) Would the need to record whether or not mobile workers have worked for at least 2 hours within the night time limits present an additional administrative burden on you or your business?*

*Please give details (including an estimate of the additional administrative cost per worker of recording this information).*

Not Applicable

*Q12) Do you think this proposal will lead to any additional enforcement difficulties?*

*Please give details.*

Currently, the situation for employed drivers is quite clear, if you are driving during the night time period which is defined as 00.00-04.00 (for HGV mobile workers) or 01.00-05.00 (for PSV mobile workers). If any work is undertaken during the night time period, the mobile worker is brought within the scope of the night time limits. So any employed driver on the road during these times would come under the current night time limits, except where a collective or workplace agreement was in place.

Under the proposal, the enforcing authority would have to check every the records of every individually driver records to see if they had exceeded to the two hour limit. This we believe would result in an increase in enforcement difficulties.

*Q13) Overall do you agree or disagree with this proposal to amend the definition of night work?*

*Please give details*

Unite the Union disagrees with this proposal to amend the definition of night work.

We are deeply disappointed that the European commission has chosen to reopen the issue of the night work limits when there was no demand from stakeholders to do so. We are also disappointed the Government supports these changes.

However, the most serious impact would be on health and safety. In the Unite's view, these limits were already pared to the bone, and were really not robust enough to ensure that health and safety of the driver was properly protected. We believe that the Commissions' apparent concern about a few minutes work triggering the night work limits are largely a doctrinaire cloak for its deregulatory push.

Scheduling is an area where we have major concerns for both LGV and Bus and Coach drivers that work shift work, especially night-time driving, has on the driving standards of the drivers. Shift working limits the amount of sleep that workers are able to obtain to ensure that they are able to maintain sufficient alertness when at work. The risk increases considerably for night workers after the first night of the shift. So by accepting the two hour

Yet the road haulage industry, along with its customers, is calling for the reduction in the number of lorry curfew bans. So that more lorries can deliver goods at night to avoid congestion. For example, in a recent study by the South London Freight Quality Partnership came out in favour of increasing out-of-hours deliveries to South London shops, saying that it could improve freight efficiency, and environmental performance (Croner 2008:3). They would appear to be more concerned with economics than Occupational Road Risk!

Table 1 shows the percentage of accidents that occur between 02:00 and 06:00. Again the figures are variable, but in 2006 30.6 percent of HGV accidents occurred between 02:00 and 06:00. The period accounts for 16 percent of the hours.

	Fatal		Serious		Slight	
	Bus or Coach	HGV	Bus or Coach	HGV	Bus or Coach	HGV
2000	0.0	21.4	4.0	13.0	1.7	8.9
2001	0.0	17.0	5.0	13.7	1.2	8.1
2002	0.0	11.8	5.9	11.9	1.3	7.7
2003	0.0	26.2	2.3	13.2	1.1	7.8
2004	33.3	19.5	2.4	11.4	1.4	9.7
2005	0.0	29.2	9.7	14.7	1.7	9.5
2006	0.0	30.6	5.3	9.2	1.9	7.6

**Table 1:** Percentage of Accidents between 02:00 and 06:00 2000-06  
Source: Department of Transport.

### **Proposals to ensure more effective and harmonised enforcement of the Working Time Directive across Member States**

*Q14) Do you agree with the Commission's proposed requirements on working time enforcement?*

*Please give details including your thoughts as to whether or not enforcement can be made more effective across the European Community by such measures.*

Unite the Union agrees with the Commission's proposed amending Directive which requires Member States to introduce appropriate systems for monitoring working time enforcement; including a requirement that enforcement bodies have an adequate number of qualified inspectors and that they shall take whatever measures are appropriate.

We have constitutently argued that VOSA does not currently have sufficient resources to enforce the current driving hours and working time legislation.

Quite simply, we do not know the size of the problem, so until a proper assessment is undertaken to establish the size of the problem, how can the Government know what resources are needed?

If the Government will not make the resources available, then at least a minimum standard set by the Commission would give a level playing field across the EU.

Unite finds it difficult to understand the Governments logic in support for a tighter definition of bogus self employment which would be applied across the whole of the EU, while at the same time arguing against enforcement standards being set at an EU level. But that they should be set at the Member State level and this we believe could result in lower levels of resources going to the enforcement agencies than those proposed by the Commission.

For further information:

[Roger.sealey@unitetheunion.com](mailto:Roger.sealey@unitetheunion.com)

Tel: 020 7611 2862