



STATUTORY INSTRUMENTS.

S.I. No. 438 of 2022



EUROPEAN UNION (POSTING OF DRIVERS) REGULATIONS 2022

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I, EAMON RYAN, 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 purposes of giving effect to Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020¹ and giving full effect to Article 463(4) of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, which entered into force on 1 May 2021² approved, on behalf of the European Union, by Council Decision (EU) 2021/689 of 29 April 2021³, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Posting of Drivers) Regulations 2022.

Interpretation

2. (1) In these Regulations –

“Act of 2018” means the Data Protection Act 2018 (No. 7 of 2018);

“Annex” means Annex 31 Transport of Goods By Road of the Trade and Cooperation Agreement;

“competent authority” has the meaning assigned to it in section 69 of the Act of 2018;

“control officer” means –

- (a) a transport officer,
- (b) an officer of customs, or
- (c) a member of the Garda Síochána;

“Directive” means Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020¹;

“IMI” means the Internal Market Information System established by Regulation (EU) No. 1024/2012 of the European Parliament and of the Council of 25 October 2012⁴;

“Implementing Regulation” means Commission Implementing Regulation (EU) 2022/694 of 2 May 2022⁵;

¹ OJ No. L 249, 31.7.2020, p. 49

² OJ No. L 149, 30.4.2021, p. 10

³ OJ No. L 149, 30.4.2021, p. 2

⁴ OJ No. L 316, 14.11.2012, p. 1

⁵ OJ No. L 129, 3.5.2022, p. 22

“Minister” means Minister for Transport;

“officer of customs” has the meaning assigned to it in the Customs Act 2015 (No. 18 of 2015);

“personal data” has the meaning assigned to it in section 69 of the Act of 2018 and includes relevant records insofar as those records contain personal data;

“processing” has the meaning assigned to it in section 69 of the Act of 2018;

“posted driver” shall be construed in accordance with Regulations 4A, 4B and 4C of the European Union (Posting of Workers) Regulations 2016 (S.I. No. 412 of 2016);

“relevant records”, in respect of a transport operation taking place in the State, means –

- (a) a copy of a posting declaration submitted via IMI;
- (b) evidence of the transport operation, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009⁶;
- (c) the tachograph records and in particular the country symbols of the United Kingdom, or in the case of the European Union, of the Member State in which the driver of the vehicle was present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006⁷ and (EU) No 165/2014⁸ or Section 2 of Part B and Section 4 of Part B of the Annex, as the case may be;

“RSA” means the Road Safety Authority;

“Trade and Cooperation Agreement” means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, which entered into force on 1 May 2021² approved, on behalf of the European Union, by Council Decision (EU) 2021/689 of 29 April 2021³;

“transport officer” means a person appointed under section 15 of the Road Transport Act 1986 (No. 16 of 1986) or section 16 of the Road Transport Act 2011 (No. 31 of 2011);

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;

“WRC” means the Workplace Relations Commission.

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

⁶ OJ No. L 300, 14.11.2009, p. 72

⁷ OJ No. L 102, 11.4.2006, p. 1

⁸ OJ No. L 60, 28.2.2014, p. 1

(3) A word or expression that is used in these Regulations and is also used in the Trade and Cooperation Agreement and the Annex shall have in these Regulations the same meaning as it has in the Trade and Cooperation Agreement and the Annex unless the contrary intention appears.

Posted driver obligations

3. (1) A driver of a vehicle who is a posted driver shall keep and make available relevant records upon request from a control officer during a roadside check in the State.

(2) The records referred to in paragraph (1) can be in paper or electronic format.

Roadside checks

4. (1) The RSA shall, in consultation with the Garda Síochána or the Revenue Commissioners, where appropriate, organise a system of appropriate and regular roadside checks under these Regulations to establish whether the driver of a vehicle is a posted driver.

(2) A control officer shall perform the roadside checks in the State referred to in paragraph (1).

(3) A control officer may request and process relevant records during a roadside check for the purpose of establishing if a driver is a posted driver.

(4) Where a control officer considers that a driver is a posted driver and is failing or has failed to comply with Regulation 3 the control officer or another control officer shall –

- (a) cause to be recorded, in the risk rating system for undertakings established under Regulation 3 of the European Communities (Road Transport Activities Checks) Regulations 2007 (S.I. No. 545 of 2007), details of the infringement as specified in Section 14 (inserted by Annex I (6) to the Implementing Regulation) of Annex I to Regulation (EU) 2016/403 of 18 March 2016⁹, and
- (b) notify the WRC, as the competent authority in the State under the European Union (Posting of Workers) Regulations 2016 (S.I. No 412 of 2016), of that failure.

(5) Where a control officer considers that a driver is a posted driver and is failing or has failed to comply with Regulation 3 during a roadside check, he or she may request from the driver the following information:

- (a) the identity, the address of the residence and the number of the driving licence of the driver;
- (b) the registration details, including vehicle licence plate number, of the vehicle that was stopped for the purpose of the roadside check;

⁹ OJ No. L 74, 19.3.2016, p.8

- (c) the identity, including where available, the address, contact details and Community Licence number of the operator of the vehicle;
- (d) where available, the contact details of a transport manager or other appropriate contact person in the operator of the vehicle;
- (e) details on the type of transport operation being performed;
- (f) any other information that the control officer reasonably believes will assist the WRC in its function as competent authority under the European Union (Posting of Workers) Regulations 2016 (S.I. No 412 of 2016).

(6) The information requested under paragraph (5) may be disclosed by the RSA to the WRC for the purpose of complying with paragraph (4)(b).

(7) A control officer carrying out a roadside check, who is not a transport officer, may request the RSA to disclose the information specified in paragraph (5) to the WRC for the purpose of complying with paragraph (4)(b).

(8) For the purpose of ascertaining whether a driver of a vehicle is not to be considered a posted driver in accordance with Article 1(3) or (4) of the Directive or Article 6(3) of Section 2, Part A, of the Annex, as the case may be, a control officer may request the driver to make only the following documents available during a roadside check:

- (a) evidence of the international transport operation into the State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009⁶;
- (b) the tachograph records and in particular the country symbols of the United Kingdom, or in the case of the European Union, of the Member State in which the driver of the vehicle was present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulations (EC) No 561/2006⁷ and (EU) No 165/2014⁸ or Section 2 of Part B and Section 4 of Part B of the Annex, as the case may be.

(9) A driver may make the records referred to in paragraph (8) available to a control officer in either paper or electronic form.

(10) The RSA is a competent authority for the purpose of processing the personal data of a driver under these Regulations.

(11) The processing of personal data by the RSA for the purposes of these Regulations, and the Directive and the Trade and Cooperation Agreement insofar as those instruments relate to roadside checks for posted drivers, shall be lawful in accordance with section 70(1)(a) of the Act of 2018 and shall be done in accordance with Part 5 of that Act.

Powers of control officers

5. (1) A control officer who is a member of the Garda Síochána or an officer of customs may direct a driver of a moving vehicle, to which he or she

reasonably believes these Regulations apply, to stop the vehicle for the purposes of a roadside check, to be carried out by the control officer or another control officer, either alone or in conjunction with any other inspection, which may lawfully be carried out on such occasion and in such circumstances.

(2) For the purposes of enforcing these Regulations, a control officer may—

- (a) require the driver of a vehicle that is stationary to move the vehicle to a specified location within its immediate vicinity,
- (b) detain a vehicle for such time as is required for a control officer to exercise his or her functions under these Regulations, and
- (c) request from the driver of a vehicle relevant records and the information specified in Regulations 4(5) and (8).

(3) In the course of a roadside check carried out under these Regulations, a control officer may –

- (a) remove and examine relevant records or such documents relating to the information specified in Regulations 4(5) and (8) and retain copies of those records for such period as he or she reasonably considers necessary for the purposes of his or her functions under these Regulations, and
- (b) require the driver of the vehicle to answer such questions as the control officer may ask relative to the matters in relation to which the control officer has functions under these Regulations.

(4) A person who—

- (a) obstructs, interferes with, or fails to comply with a control officer in the course of exercising a power conferred on him or her by these Regulations,
- (b) impedes the exercise by the control officer of such a power, or
- (c) fails or refuses to comply with a requirement of a control officer pursuant to subparagraph (b) of paragraph (3), or in purported compliance with such requirement gives information or makes a declaration to the control officer that he or she knows to be false or misleading in any material respect,

commits an offence and is liable on summary conviction to a class A fine.

(5) Proceedings for an offence under this Regulation may be brought and prosecuted summarily by the RSA, the Garda Síochána or the Revenue Commissioners.

Administrative cooperation by the RSA and WRC

6. (1) The RSA shall, in so far as is consistent with the proper performance of its functions in relation to these Regulations, the Directive and Article 463 of the Trade and Cooperation Agreement, endeavour to secure cooperation between the RSA and the WRC, and may enter into one or more than one

arrangement (whether in the form of a memorandum of understanding or otherwise) with the WRC for the purposes of—

- (a) facilitating administrative cooperation between the RSA and the WRC in the performance of their respective functions, in so far as they relate to these Regulations, the Directive and Article 463 of the Trade and Cooperation Agreement,
- (b) avoiding duplication of activities by the RSA and the WRC, and
- (c) sharing information relevant to the enforcement of these Regulations and the European Union (Posting of Workers) Regulations 2016 (S. I. No. 412 of 2016).

(2) The parties to an arrangement under this Regulation may vary the terms of the arrangement by agreement.

(3) An arrangement under this Regulation, or any variation of such an arrangement, shall be in writing.

(4) An arrangement under this Regulation shall not operate to bind the RSA or the WRC.

(5) The RSA shall provide the Minister and any relevant Minister concerned with a copy of each arrangement under this Regulation and any variation thereof.

(6) An arrangement under this Regulation shall not operate to require—

- (a) the RSA to provide information to the WRC if the disclosure of that information by the RSA, or
- (b) the WRC to provide information to the RSA if the disclosure of that information by the WRC,

is prohibited by law.

(7) In this Regulation “relevant Minister” means, in relation to the WRC, any Minister of the Government who performs functions in relation to the WRC.



GIVEN under my Official Seal,
2 September, 2022.

EAMON RYAN,
Minister for Transport.

EXPLANATORY NOTE

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

The purpose of these Regulations is to give effect to Article 1 (11)(b) of Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 and Article 463 of the Trade and Cooperation Agreement which sets down minimum enforcement activities to be implemented by Member States concerning posted driver obligations and that certain documents should be available in the vehicle for inspection during roadside checks.

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