



STATUTORY INSTRUMENTS.

S.I. No. 320 of 2022

EUROPEAN UNION (POSTING OF WORKERS) (AMENDMENT)
REGULATIONS 2022

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I, LEO VARADKAR, Minister for Enterprise Trade and Employment in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020¹ laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, and for the purpose of giving effect to Section 2 of Part II of Annex 31 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, done at Brussels and London on 30 December 2020² hereby make the following regulations:

Citation

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

Definition

2. In these Regulations, “Principal Regulations” means the European Union (Posting of Workers) Regulations 2016 (S.I. No. 412 of 2016).

Amendment of Regulation 2 of Principal Regulations

3. Regulation 2 of the Principal Regulations is amended –

(a) in paragraph (1), by the insertion of the following definitions:

“ ‘IMI’ means the Internal Market Information System (‘IMI’), established by Regulation (EU) No 1024/2012 of the European Parliament and of the Council of 25 October 2012³ on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (‘the IMI Regulation’);

‘Posted Drivers Directive’ means Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020⁴ laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road

¹ OJ No. L 249, 31.7.2020, p. 49

² OJ No. L 149, 30.4.2021, p. 10

³ OJ No. L 316, 14.11.2012, p. 1

⁴ OJ No. L 249, 31.7.2020, p. 49

transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012;

‘Regulation (EC) No 1072/2009’ means Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009⁵ on common rules for access to the international road haulage market;

‘Regulation (EC) No 1073/2009’ means Regulation (EC) No 1073/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international market for coach and bus services, and amending Regulation (EC) No 561/2006;

‘relevant date’ means 2 February, 2022;

‘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, done at Brussels and London on 30 December 2020⁶.”, and

- (b) by the insertion of the following paragraphs after paragraph (3) (inserted by Regulation 3(c) of the European Union (Posting of Workers) (Amendment) Regulations 2020 (S.I. No. 374 of 2020)):

“(4) A word or expression used in Regulation 4A, 4B, 4C or 4D that is also used in the Posted Drivers Directive has, unless the contrary intention appears, the same meaning in that Regulation that it has in that Directive.

(5) A word or expression used in Regulation 4E that is also used in the Trade and Cooperation Agreement has, unless the contrary intention appears, the same meaning in that Regulation that it has in that Directive.”.

Amendment of Regulation 3 of the Principal Regulations

4. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 3:

“3. The Workplace Relations Commission is –

- (a) the competent authority in the State for the purposes of the Directive and the Framework Directive,
- (b) the central liaison office for the purposes of the Framework Directive, and

⁵ OJ No. L 300, 14.11.2009, p. 72

⁶ OJ No. L 149, 30.4.2021, p. 10

- (c) the competent authority in the State for the purposes of the posting of drivers under the Trade and Cooperation Agreement.”.

Amendment of Regulation 4 of Principal Regulations

5. Regulation 4 of the Principal Regulations is amended, in paragraph (1), by the substitution of “Subject to Regulations 4A, 4B, 4C, 4D and 4E, a service provider” for “A service provider”.

Amendment of Principal Regulations

6. The Principal Regulations are amended by the insertion of the following Regulations after Regulation 4:

“Posted drivers – bilateral transport operations for goods

4A. (1) Notwithstanding Article 2(1) of the Framework Directive, a driver shall not be considered to be posted for the purpose of that Directive when performing bilateral transport operations in respect of all goods.

(2) For the purpose of the Posted Drivers Directive, a bilateral transport operations in respect of goods means the movement of goods, based on a transport contract, from the Member State of establishment, as defined in Article 2(8) of Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009⁷ establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC, to another Member State or to a third country, or from another Member State or a third country to the Member State of establishment.

Posted drivers – bilateral transport operations for passengers

4B. (1) Notwithstanding Article 2(1) of the Framework Directive, a driver shall not be considered to be posted for the purpose of that Directive when performing bilateral transport operations in respect of passengers.

(2) For the purpose of the Posted Drivers Directive, a bilateral transport operations in international occasional or regular carriage of passengers, within the meaning of Regulation (EC) No 1073/2009, is when a driver performs any of the following operations:

- (a) picks up passengers in the Member State of establishment and sets them down in another Member State or a third country;

⁷ OJ No. L 300, 14.11.2009, p. 51

- (b) picks up passengers in a Member State or a third country and sets them down in the Member State of establishment;
- (c) picks up and sets down passengers in the Member State of establishment for the purpose of carrying out local excursions in another Member State or a third country, in accordance with Regulation (EC) No 1073/2009.

Posting of other drivers

4C. (1) Notwithstanding Article 2(1) of the Framework Directive, a driver shall not be considered to be posted for the purpose of that Directive when the driver transits through the territory of a Member State without loading or unloading freight or without picking up or setting down passengers.

(2) Notwithstanding Article 2(1) of the Framework Directive, a driver shall not be considered to be posted for the purpose of that Directive when performing the initial or final road leg of a combined transport operation as defined in Council Directive 92/106/EEC of 7 December 1992⁸ on the establishment of common rules for certain types of combined transport of goods between Member States, if the road leg on its own consists of bilateral transport operations, as defined in Regulation 4A.

(3) A driver performing cabotage operations as defined in Regulations (EC) No 1072/2009 and (EC) No 1073/2009 shall be considered to be posted under the Framework Directive.

Posting of drivers – requirement for documentation

4D. (1) An operator, established in another Member State, who temporarily posts a driver to the State shall submit a posting declaration to the Workplace Relations Commission no later than the date on which the driver is posted, using a multilingual standard form of the public interface connected to the IMI and consisting of the following information:

- (a) the identity of the operator, at least in the form of the number of the Community licence where this number is available;
- (b) the contact details of a transport manager or other contact person in the Member State of establishment to liaise with the Workplace Relations Commission and to send out and receive documents or notices;

⁸ OJ No. L 368, 17.12.1992, p. 38

- (c) the identity, the address of the residence and the number of the driving licence of the driver;
 - (d) the start date of the driver's contract of employment, and the law applicable to it;
 - (e) the envisaged start and end date of the posting;
 - (f) the number plates of the motor vehicles;
 - (g) whether the transport services performed are carriage of goods, carriage of passengers, international carriage or cabotage operations.
- (2) An operator shall ensure that the driver has at his or her disposal in paper or electronic form which the driver shall be obliged to keep and make available when requested at the roadside –
- (a) a copy of the posting declaration submitted via IMI,
 - (b) evidence of the transport operations taking place in the host Member State, such as an electronic consignment note (e-CMR) or evidence referred to in Article 8(3) of Regulation (EC) No 1072/2009, and
 - (c) the tachograph records and in particular the country symbols of the Member States in which the driver was present when carrying out international road transport operations or cabotage operations, in accordance with registration and record-keeping requirements under Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006⁹ on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 and Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014¹⁰ on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport.
- (3) An operator shall send via the public interface connected to IMI, after the period of posting, at the direct request of the Workplace Relations Commission –

⁹ OJ No. L 102, 11.4.2006, p. 1

¹⁰ OJ No. L 60, 28.2.2014, p. 1

- (a) copies of documents referred to in subparagraphs (b) and (c) of paragraph (2),
- (b) documentation relating to the remuneration of the driver in respect of the period of posting,
- (c) the employment contract or an equivalent document within the meaning of Article 3 of Council Directive 91/533/EEC of 14 October 1991¹¹ on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship,
- (d) time-sheets relating to the driver's work, and
- (e) proof of payments.

(4) An operator shall send the documentation specified in paragraph (3) via the public interface connected to IMI no later than 8 weeks from the date of the request.

(5) If an operator fails to submit the requested documentation within the time period specified in paragraph (4), the Workplace Relations Commission may request, via the IMI, the assistance of the competent authorities of the Member State of establishment in accordance with Articles 6 and 7 of the Directive.

(6) Where a request for mutual assistance is made by a competent authority in a Member State (other than the State) in accordance with paragraph (5), the Workplace Relations Commission shall provide the competent authority with such assistance as is required.

(7) The Workplace Relations Commission shall ensure that it provides any documentation requested in accordance with paragraph (5), within 25 working days from the date of the request for mutual assistance.

(8) A posting of a driver shall be considered to be ending when the driver leaves the host Member State in the performance of the international carriage of goods or passengers.

(9) That period of posting referred to in paragraph (8) shall not be cumulated with previous periods of posting in the context of such international operations performed by the same driver or by another driver whom he or she replaces.

(10) The information submitted from the posting declarations under paragraph (1) shall be saved in the IMI repository for the purpose of checks for a period of 24 months.

¹¹ OJ No. L 288, 18.10.1991, p. 32

United Kingdom Posted Drivers – requirement for documentation

4E. (1) A relevant operator shall submit a posting declaration, in relation to the posting of a driver, to the Workplace Relations Commission at the latest at the commencement of the posting, using from the relevant date, a multilingual standard form of the public interface connected to the IMI that posting declaration shall consist the information specified in subparagraphs (a) to (f) of Regulation 4D(1).

(2) A relevant operator shall ensure that a driver has at his or her disposal in paper or electronic form which the driver shall be obliged to keep and make available when requested to do so at the roadside –

- (a) a copy of the posting declaration submitted via IMI from the relevant date,
- (b) evidence of the transport operations taking place in the State, such as an electronic consignment note (e-CMR), and
- (c) the tachograph records and in particular the country symbols of the Member States in which the driver was present when carrying out transport operations, in accordance with registration and record-keeping requirements under Section 2 and Section 4 of Part B of Annex 31 of the Trade and Cooperation Agreement.

(3) A relevant operator shall send, from the relevant date via the public interface connected to IMI, after the period of posting, at the direct request of the Workplace Relations Commission –

- (a) copies of documents referred to in subparagraphs (b) and (c) of paragraph (2),
- (b) documentation relating to the remuneration of the driver in respect of the period of posting,
- (c) the employment contract or an equivalent document,
- (d) time-sheets relating to the driver's work, and
- (e) proof of payments.

(4) A relevant operator shall send the documentation specified in paragraph (3), from the relevant date, via the public interface connected to IMI no later than 8 weeks from the date of the request.

(5) If the relevant operator fails to submit the requested documentation within the time period specified in paragraph (4), the Workplace Relations Commission may request, via the IMI,

the assistance of the competent authorities of the Member State of establishment.

(6) Where a request for mutual assistance is made by a competent authority in a Member State (other than the State) in accordance with paragraph (5), the Workplace Relations Commission shall provide the competent authority with such assistance as is required.

(7) A relevant operator shall, from the relevant date, keep the posting declarations referred to in paragraph (1) up to date in the public interface connected to IMI.

(8) In this Regulation, ‘relevant operator’ means an operator, established in the United Kingdom, who temporarily posts a driver to the State.”.

Amendment of Regulation 5 of the Principal Regulations

7. Regulation 5 of the Principal Regulations is amended –

- (a) in paragraph (1), by the substitution of “Regulation 4, 4D or 4E” for “Regulation 4”, and
- (b) in paragraph (3), by the substitution of “Regulation 4, 4D or 4E” for “Regulation 4”.

GIVEN under my Official Seal,
13 June, 2022.

LEO VARADKAR,
Minister for Enterprise, Trade and Employment..



L.S.

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