

DfT Regulatory Triage Assessment

Title of regulatory proposal	Inland Waterways Working Time Directive
DfT RTA number	
Lead DfT directorate/Agency	Maritime and Coastguard Agency
Expected date of implementation	31/12/2016
Origin	EU
Date	23/09/16
Lead Policy	Julie Carlton
Lead Economist	David Osborne
Departmental Triage Assessment	Low cost regulatory

Rationale for intervention and intended effects

Background - Merchant Shipping (Working Time : Inland Waterways) Regulations 2003 (the 2003 Regulations)

The current EU Directive (implemented in the UK by the 2003 Regulations) for working hours in transport on the inland waterways of Europe set only broad limits for this sector which leaves significant scope for their interpretation and they are therefore difficult to enforce. This ambiguity has led to cases of inconsistent application between Member States causing difficulties for the industry on cross-border waterways. Additionally, in some sectors of the industry crews can work for long hours over extended periods contrary to scientific research which has shown that working long hours can have adverse effects on the health and safety of workers, including long term health.

Social Partners Agreement

The European social partners for the inland waterways transport sector, the European Barge Union, the European Skippers' Organisation and the European Transport Workers' Federation, developed a social partners' agreement (SPA) to address these issues, and this has been implemented as EU law via Directive 2014/112/EU

The UK regulations, implementing the SPA, will include a combination of employer duties and worker entitlements in relation to:

- a maximum reference period for calculating weekly hours of work
- maximum weekly and daily hours of work
- a limit on the maximum number of consecutive days worked
- minimum weekly and daily hours of rest

- rest breaks
- restrictions on night work
- annual leave
- protection of minors (under 18 years)
- record keeping
- exceptions for emergencies
- health checks.

The Agreement's main objectives are to:

- to harmonise rules on inland waterways across Europe;
- to improve living and working conditions of workers in the sector; and
- to improve the health and safety of workers in the sector.

Ultimately the Directive is intended to protect mobile workers from the harmful effects of long working hours, and to standardise provisions on working time, annual leave and other protections across the EU.

Although, in the EU referendum on 23 June 2016 the people of the United Kingdom voted to leave the European Union, until exit negotiations are concluded the UK continues to fulfil its existing obligation to comply with EU law.

Viable policy options (including alternatives to regulation)

0. "Do nothing" i.e. not implementing the Directive, is not considered a viable option, since the UK is obliged to implement the Directive in order to give it legal effect in the UK, otherwise the UK would face infringement proceedings.
1. Consideration was given to a short statutory instrument to implement the SPA by reference, supported by MCA guidance. Ultimately however, it was decided that this would not provide the desired level of legal certainty in respect of workers' entitlements.
2. Therefore only one policy option is being developed which will amend the 2003 Regulations in order to implement the Directive.

Copyout will be used where possible and appropriate, however, it is likely that some terms which are not defined in the SPA will require clear definitions in order to create legal certainty, and the wording of the current SI will be retained where this fulfils the Directive requirements.

Initial assessment of business impact

A stakeholder engagement exercise was carried out to gauge the potential impact and costs to industry (Annex A provides the summary). Industry was consulted through trade associations representing different sectors of the industry: passenger ships (both those carrying more than 12 passengers, and those carrying no more than 12), and cargo vessels – estimated to be well over 100 companies in total. There were 23 responses. When combining survey responses and its analysis, it is possible to arrive at a total cost for a company to implement the new requirements. The key points are as follows:

- The daily minimum rest hours may hinder the current pattern of cargo operations on small tidal rivers with a large tidal range, where water levels restrict times of operation, and we are working with social partners to minimise any possible impacts in this niche area. For example, on the tidal Trent, two or three companies are likely to be immediately affected by this.
- Employee Records System will have a minimal impact on industry and therefore a negligible cost.
- Annual Health Self Assessments will have a minimal impact on industry and can also be seen as having a negligible cost.
- The requirements for rest periods appear to have the largest impact on industry and can be estimated to cost £736,000pa.
- Assuming it takes one member of staff one hour per in-scope vessel to review the directive, familiarisation costs can be estimated to be £7,000 to £11,000 in the first year.

Overall, over half (59 per cent) of the companies surveyed already comply with all of the requirements and so there would be no additional cost associated with the rest period sections of the directive. For the rest, there would be a staff cost in order to become compliant. Based on the information provided, and also using the wage data provided in the survey, the cost could be estimated as being £18,000 - £30,000 per year, or £8-10 per hour, plus an uplift of 20.2% to account for non-wage costs. All of the companies that would need to pay additional staff costs were passenger vessel companies, and generally tended to be the companies with the highest numbers of vessels. Following from the stakeholder engagement survey and liaison with industry it can be assumed that only a small amount of over 12 passenger operators will not currently comply. Of those that do not currently comply an additional member of staff will require employing.

With the majority of the currently non-compliant operations being seasonal it can be assumed that the full annual salaries will not be required or paid and therefore the annual costs can be seen as worst case scenarios. The seasonal operations tend to be between April and October each year requiring half of the annual salary to be paid.

It is believed that 75% of the under 12 passenger vessel operators not already complying would require an additional member of staff to ensure compliance (10 operators). This combined with 24% of the over 12 passenger fleet being

affected could lead to the following potential costs (24 operators)¹. Stakeholder engagement has provided evidence that the companies that will be affected the most are the companies operating more than 10 vessels. Therefore it can be assumed that there will be at most, 34 companies affected and requiring additional staff.

Table1. Non-compliant costs – Full annual salary

Type	Numbers	Lowest	Highest	Average
PAX>12	24	£519,000, pa	£865,000pa	£692,000pa
PAX<12	10	£216,000pa	£361,000pa	£288,000pa

Table 2. Non-compliant costs – Seasonal salary

Type	Numbers	Lowest	Highest	Average
PAX>12	24	£260,000pa	£433,000pa	£346,000pa
PAX<12	10	£108,000pa	£180,000pa	£144,000pa

Table 3. Familiarisation costs (assuming 1 hour per vessel)

Type	Numbers of in-scope vessels	Lowest	Highest	Average
PAX>12	540	£4320	£5400	£4860
PAX<12	300 - 500	£2400	£5000	£3600
Cargo	50	£400	£500	£450

Summary of Costs

Tables 1, 2 and 3 highlight the potential costs with a best, worst and average scenario. Assuming 1 hour is spent reviewing the Directive per vessel, familiarisation costs are expected to be between £7,000 and £11,000, with an average cost of £9,000 in the first year. In addition, taking into account the average number of self-employed operators, those already compliant and the number of vessels per company it can be estimated that the costs for the transposition of the Directive could be between £490,000pa if exclusively seasonal salaries were paid and £980,000pa if exclusively full annual salaries were paid. The most likely scenario cost of £736,000, which assumes an equal split between seasonal and annual salaries though this is a conservative estimate.

¹ See Annex B for calculation

One-in, Three-out (OI3O) and Business Impact Target (BIT) status

The proposal is a Non-qualifying Regulatory Provision (NQRP) on the ground that it is an EU obligation (administrative exclusion A) and therefore any impact on business will not score against the BIT. The measure is also out of scope of One-in, Three-out in accordance with 1.1.10 of the Better Regulation Framework Manual, because it implements an EU Directive and does not gold plate.

Rationale for Triage rating

This measure is considered a low cost regulatory measure and qualifies under the Fast Track route where analysis of the available data has shown the average cost to industry to be £0.736 million per annum, as mentioned in the summary of costs..

Confirmation that the proposed measure is suitable for Fast Track

*Please note that sign-off has now **replaced RPC clearance** and must be G6 and above.*

Policy sign-off:

Signature

Date

Economist sign-off:

Signature

Date

Better Regulation Unit sign-off:

Signature

Date

Annex A

Inland Waterways Working Time Directive Stakeholder Questionnaire Summary

Company characteristics

The characteristics of the 23 companies that responded to the survey varied widely. Nearly two thirds had fewer than 25 employees, while just over 17 per cent had more than 100.

Nearly three quarters of the companies that completed the survey were either passenger vessel companies, charterers or both, with the remaining quarter including cargo companies, towage, maintenance and port authorities.

Of those companies that gave annual average wages of their employees, the majority paid their staff between £18,000 and £30,000 per year. For companies that gave wage information by the hour, most paid their crew around £8-10 per hour.

The number of vessels operated by the companies varied from 0 to 95, although almost 70 per cent operated fewer than ten.

Employee records

Most companies stated that they already had employee records of working patterns, with only 22 per cent saying that they did not. Of those who said that they already had these records, most (around 61 per cent) had comprehensive records, and all said they had data on shift patterns.

As most of the companies surveyed already have the employee data required, and few associated costs were given for implementing a new system, no clear cost emerged as a result. We could therefore conclude that the requirement for an employee record system would bring about a negligible cost.

Health assessment

Of those that were able to give an answer to this question, only 24 per cent said that their employees completed an annual self-assessment.

For the companies that said that their employees did not currently complete an annual self-assessment, the most common responses when asked what the cost of implementing one would be, were related to the cost being minimal to none. Most of the rest answered 'N/A', which could also be interpreted as no cost. The small number of companies that stated costs gave answers that varied widely, from a one-off fixed cost of several hundred pounds, to an annual cost of several thousand pounds, and several others said that they were unsure of what the cost would be.

This seems to show that most companies would either need to make no changes to their practices, or would have to pay a nominal amount to do so. Some companies may need to pay a considerable cost, but these are in the minority overall.

Rest periods

Four of the questions asked companies about the consequences of implementing mandatory minimum rest periods.

Daily rest: Around 82 per cent of companies said that they currently comply with the need to provide daily rest periods. The small number of companies that were not already compliant would need to pay additional staff costs or employ an extra member of staff.

Weekly rest: Over two thirds of companies said that they already comply with the weekly rest requirements, with the majority of the remaining companies saying that they would need to hire more staff.

Average weekly rest over twelve months: Just over three quarters of the companies stated that they already comply with the requirement for a mandatory average of 48 hours rest per week over a twelve month period. Most of those that

were not yet compliant with this would need more crew in order to be able to fulfil the requirement.

Rest days: More than two thirds of companies surveyed said that they already comply with the mandatory rest day requirements. Of the rest, most indicated that extra staff would be required.

Overall, over half (59 per cent) of the companies already comply with all four of the requirements and so there would be no additional cost associated with the rest period sections of the directive. For the remaining companies, there would be a staff cost in order to become compliant. This potential staff cost is unclear, but based on the information provided, and also using the wage data provided earlier in the survey, the cost could be estimated as being £18,000 - £30,000 per year, or £8-10 per hour, uplifted by 20.2% to account for non-wage costs. All of the companies that would need to pay additional staff costs were either passenger vessel companies or charterers (or both), and generally tended to be the companies with the highest numbers of vessels.

Conclusion

When combining the above survey responses and analysis, it is possible to arrive at a total cost for a company to implement the new requirements.

To bring in a system that records employee working patterns and to ensure that staff complete an annual self-assessment, the costs would be minimal. As many of the companies already comply with these requirements, this could be estimated as a zero cost overall, with a small number of companies needing to pay a couple of thousand pounds per year.

The rest period requirements seem to have the biggest potential impact. Although over half of the companies are already compliant with all four requirements, the cost for the others who are not yet compliant is not generally negligible, and could be estimated as costing around £18,000-£30,000 per year, or £8-10 per hour uplifted by 20.2% to account for non-wage costs.

Overall, there seem to be two groups of companies:

1. Companies that are already compliant with the rest period requirements: The directive would bring only a nominal total cost to most of these companies.
2. Companies that are not yet compliant with the rest period requirements: The directive would cost approximately the wages of one additional staff member for most of these companies.

Notes

The above analysis has been carried out on the questionnaire responses, and it is assumed that these are representative of the population as a whole. However, if these companies are not representative and provide a skewed picture of the impact of the directive, then these conclusions may not hold.

One company that was noted as being exempt from the rest period requirements has been excluded from the analysis on rest periods.

Annex B: Vessels and operators affected

Type	Number of vessels (or low estimate*)	High estimate (if no. not known)	Number of operators	% of operators affected	Number of operators affected
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PAX>12	540	N/A	32	75%	24
PAX<12	300	500	40	24%	10
Source	MCA Database	MCA Database	MCA (>12) Estimate* (<12)	FSB small business statistics	

* Given that there is no evidence on the amount of operators of vessels taking fewer than 12 passengers, we assume that the number of operators is equal to 10% of the average estimate of the number of vessels.