

Source: Text of Order in Council 15/6/2006

Section 2.1 Duty of Care

Article 2.1

2. The prevention or limitation of the occurrence of adverse effects on the environment means:

f. to limit the adverse effects on the environment from the traffic of passengers and goods to and from the establishment;

Section 2.7 Traffic and Transport

Article 2.16

(*** new addition ***) 1. If there are more than 50 employees working in an establishment, the establishment shall fulfil the two conditions as laid down by Ministerial Regulation. (***) end of new addition ***).

2. If more than 500 employees are working in an establishment and it is plausible that the provision laid down in Article 2.1 paragraph 2, (f), is not fulfilled, the competent authority may request the person who manages the establishment to carry out a study or have it carried out or make a plausible case, within a period to be specified by the competent authority, that the provision in Article 2.1 paragraph 2, (f), is fulfilled.

Explanation from the Core Group:

The existing draft text of Article 2.16 of the Order in Council lacks a ruling for establishments with between 50 and 500 employees. Such a ruling was not necessary, because originally there was no lower limit. The lower limit is now added as a new paragraph 1. By the way, the wording was chosen so that the provision also operates in establishments with more than 500 employees.

NB The provision in the old paragraph 1 is now under pressure because it only relates to the duty of care. The intended meaning of the new paragraph 2: 'If an establishment of more than 500 employees cannot demonstrate at the request of the competent authority that a reasonable effort is made in accordance with the duty of care according to the provision in paragraph 1, the competent authority may make additional requirements'.

It is investigated as to whether the two conditions, referred to in paragraph 1 of Article 2.16, must be included in this actual paragraph (or in Article 2.1, paragraph 2f) or can remain in the Ministerial Regulation. In any case, the minimum number of points to be gained per situation will not be included in the Order in Council (OIC) in order to simplify making any amendments.

It will remain possible in the future to compose a Ministerial Regulation for transporting goods or transporting visitors on the basis of Article 2.1, 2f. Another possibility is an official Guidebook for these two types of transport to and from the establishment.

According to the Core Group, the provision in the Duty of Care should be interpreted as saying that establishments with less than 50 employees cannot have any stricter rules imposed on them than establishments which come under this Ministerial Regulation.

Text Proposal for Ministerial Regulation (forming part of paragraphs 1 and 2 of Article 2.16)

Status: final text proposal (1/9/06)

Preamble

The regulation relates to Article 2.16, paragraph 1 (***) and paragraph 2 in the new Activities OIC. It regulates the enforcement in the field of “passenger transport” to and from the establishment. Passenger transport includes commuter traffic to and from the establishment and business traffic of the establishment’s own employees (see “Definitions”).

This Ministerial Regulation focuses on the environmental impact due to establishment-connected passenger transport. It has been set up from two governing principles. Firstly, a regulation has been chosen which is practical for the competent authority (usually municipalities) as well as the establishments, and points their benefits out to the municipalities and the establishments. The establishments’ obligation to conduct a study is to a large extent cancelled and the holders of an establishment decide themselves what will be for them the ideal effort. Negotiations with the competent authority are in principle no longer needed.

The second principle is that this Ministerial Regulation wants to offer maximum clarity without excluding completely the possibility of customization. An arrangement has been chosen in which most of the framework is already established. This creates a level playing field, and offers maximum clarity to the holders of the establishments. The possibility of customization exists in cases described in further detail.

An independent national forum acts as mediator in this. The extent to which the Equality of Treatment Committee can play a part will be investigated.

General Provisions

In any event, there will be compliance with Article 2.16, paragraph 1 if the establishment fulfils the following two conditions:

1. The establishment describes in its internal and external communication the accessibility by public transport, bicycle and other alternatives in a way at least equal to accessibility by car. Examples would be information in brochures, on the internet/intranet and in other parts of the company publications.

2. The establishment has taken the measures necessary to gain the applicable minimum number of points. The measures and the relevant number of points per measure are stated in Table 2 (see “1. List of Recognised Measures”). The minimum number of points to be gained depends on the applicable local regime and the size of the establishment (see “2. Regime Areas”). Table 1 specifies the minimum number of points to be gained.

	Normal regime	Light regime
0 - 49 employees	n/a (reverts to duty of care)	n/a (reverts to duty of care)
50 - 100 employees	35 points	25 points
101 - 500 employees	45 points	35 points
More than 500 employees	45 points + any additional requirements	35 points + any additional requirements

Table 1: minimum number of points to be gained per type of regime and size of establishment

Condition 2 is also fulfilled when the establishment can demonstrate that car use is proportionally very low in the establishment’s total commuter traffic. The principle is a car use ratio of 25 or less (see “Special achievements”).

Table 2 (List of Recognised Measures) is added to the regulation.

Table 2: List of Recognised Measures

List of Recognised Measures

This list contains a summary of the "Recognised Measures". These are measures which are unreservedly useable in the OIC/transport (Article 2.16, paragraph 1). As the environmental impact of the measures becomes greater, more points can be gained.

READ THIS FIRST – explanation about bonus points

Most of the measures will gain you 5 points. If the establishment can prove that the measure will be used a great deal, this will result in additional points. These bonus points are added to the points already counted.

For instance: an establishment has a home working scheme (A1) and a scheme for less travelling days (A2). The establishment can demonstrate that A2 will save 13% of the travelling days. Number of points for A: 5 + 5 + 10 (bonus) = 20.

Explanation of colours: measure relevant for ...	
.1	Commuter traffic
.2	Business traffic
.3	Commuter traffic as well as business traffic

A	Less movements	relevant for ...	points										
A1	Availability of an established scheme for home working and/or teleworking	1	5										
	Bonus points can be gained if the scheme is demonstrated as leading to a substantial proportion of home working												
	<table border="1"> <thead> <tr> <th>% home working</th> <th>unknown</th> <th>1% - 10%</th> <th>11% - 20%</th> <th>more than 20%</th> </tr> </thead> <tbody> <tr> <td>points</td> <td>0</td> <td>5</td> <td>10</td> <td>15</td> </tr> </tbody> </table>	% home working	unknown	1% - 10%	11% - 20%	more than 20%	points	0	5	10	15		
% home working	unknown	1% - 10%	11% - 20%	more than 20%									
points	0	5	10	15									
A2	Availability of another established scheme which leads to less travelling days .	1	5										
	Bonus points can be gained if the scheme is demonstrated as leading to substantially less travelling days ¹												
	<table border="1"> <thead> <tr> <th>% less travelling days</th> <th>unknown</th> <th>1% - 10%</th> <th>11% - 20%</th> <th>more than 20%</th> </tr> </thead> <tbody> <tr> <td>points</td> <td>0</td> <td>5</td> <td>10</td> <td>15</td> </tr> </tbody> </table>	% less travelling days	unknown	1% - 10%	11% - 20%	more than 20%	points	0	5	10	15		
% less travelling days	unknown	1% - 10%	11% - 20%	more than 20%									
points	0	5	10	15									
A3	Availability of facilities for teleconferencing in the office	2	5										

B	More travelling by bike	relevant for ...	points										
B1	Availability of an established employees' scheme based on " a company bike "	1	5										
	Bonus points can be gained if the scheme is demonstrated as leading to a substantial number of users (particularly in relation to target group)												
	<table border="1"> <thead> <tr> <th>results / savings</th> <th>unknown</th> <th>1% - 10%</th> <th>11% - 20%</th> <th>more than 20%</th> </tr> </thead> <tbody> <tr> <td>points</td> <td>0</td> <td>5</td> <td>10</td> <td>15</td> </tr> </tbody> </table>	results / savings	unknown	1% - 10%	11% - 20%	more than 20%	points	0	5	10	15		
results / savings	unknown	1% - 10%	11% - 20%	more than 20%									
points	0	5	10	15									
B2	Availability of an established scheme which supports the use of a bike.	1	5										
	Bonus points can be gained if the scheme is demonstrated as making cycling attractive (e.g. € 0.19 reimbursement, reference year 2006)												
	<table border="1"> <thead> <tr> <th>reimbursement</th> <th>unknown</th> <th>in full</th> <th>more than full</th> </tr> </thead> <tbody> <tr> <td>points</td> <td>0</td> <td>5</td> <td>10</td> </tr> </tbody> </table>	reimbursement	unknown	in full	more than full	points	0	5	10				
reimbursement	unknown	in full	more than full										
points	0	5	10										
B3a	Availability of good bicycle parking facilities at the workplace	1	5										
B3b	Availability of a bike pump and repair kit at the workplace, and a scheme for maintenance	1	5										
B3c	Availability of shower and changing rooms at the workplace	1	5										
B4	Full reimbursement of the bike parking charge at the station	1	10										
B5	Availability of pool bikes for business use or Public Transport bikes	2	5										
B6	Implementation of active communication about the possibilities of cycling (excluding the above mentioned possibilities)	3	5										

C	More travelling by train, bus or metro	relevant for..	points								
C1	Employer offers Public Transport season tickets	1	5								
	Bonus points can be gained if Public Transport costs are fully or more than fully reimbursed.										
	<table border="1"> <thead> <tr> <th>reimbursement</th> <th>unknown</th> <th>in full</th> <th>more than full</th> </tr> </thead> <tbody> <tr> <td>points</td> <td>0</td> <td>5</td> <td>10</td> </tr> </tbody> </table>	reimbursement	unknown	in full	more than full	points	0	5	10		
reimbursement	unknown	in full	more than full								
points	0	5	10								
C2a	Participation in a shuttle service during peak hours to Public Transport interchange	1	10								
C2b	Offer facilities of transport service during off-peak hours to Public Transport interchange for employees or visitors	1	5								
C3	Participation in vanpools for commuter traffic	1	5								
C4	Use of Public Transport combination card for business traffic	2	10								

E		More passengers in cars				relevant for ...	points
E1	Make car pool parking spaces available on good locations at establishment's own car park					1	5
		Bonus points can be gained if a substantial part of the car park is allocated to car poolers (for instance > 20%)					
		car pool P of total points	unknown	1% - 10%	11% - 20%	more than 20%	
			0	5	10	15	
E2a	Availability of employer's own car pool scheme					1	5
E2b	Availability of a Arrive Home Guarantee for participants in car pool scheme					1	5
E3	Employer offers car pool match facilities					1	5

F		Less business or commuter car kilometres				relevant for ...	points
F1	Availability of an established scheme which stimulates sustainable approach to company-connected car kilometres					2	5
		Bonus points can be gained if a substantial part of the kilometres is demonstrated as being saved (e.g. 20%) ²					
		results/savings points	unknown	1% - 10%	11% - 20%	more than 20%	
			0	5	10	15	
F2	Availability of one or more collective company cars for business use					2	5
		Bonus points can be gained if a substantial part of the kilometres is demonstrated as being saved (e.g. 20%).					
		results/savings points	unknown	1% - 10%	11% - 20%	more than 20%	
			0	5	10	15	
F3	Availability of an established relocation expenses scheme demonstrating that it encourages living closer to one's workplace					1	5
F4	Availability of a commuter expenses scheme that does not reimburse car expenses for a road distance above 30 km .					1	10
F5	Availability of a policy for employing new staff which is aimed at encouraging living in the same town or at locations with public transport					1	5

G		More attention to parking and organisation				relevant for ...	points
G1	The availability of less than 1 parking space for each 10 employees - there are points to be gained for situations from 1 parking space per 3 employees (70 m ² gross floor area) ³					3	
		applicable regime requirement: 25 points		applicable regime requirement: 35 points		applicable regime requirement: 45 points	
		employees per P	points	employees per P	points	employees per P	points
		unknown	5	unknown	5	unknown	5
		2	5	2	5	2	5
		3	5	3	10	3	10
		4	10	4	10	4	15
		5	10	5	15	5	20
		6	15	6	15	6	25
		7	15	7	20	7	30
		8	20	8	25	8	35
		9	20	9	30	9	40
		10 or more than 10	25	10 or more than 10	35	10 or more than 10	45
G2	The availability of an established parking policy					3	5
		Bonus points can be gained if the parking policy clearly has a pushing character (without the neighbourhood experiencing this as a nuisance)					
		results / savings points	keep out commuter traffic	paid parking			
			5	10			
G3a	Availability of an established transport plan with an implementation programme that fulfils minimum requirements.					3	5
G3b	Availability of a permanent contact for transport with clear responsibility for providing information and co-ordination: transport co-ordinator/manager					3	5
G4	Working with a mobility budget to control personal budgets					3	5
		Bonus points can be gained if the mobility budget demonstrates that it leads to less environmental impact (20% less car kilometres)					
		results / savings points	unknown	1% - 10%	11% - 20%	more than 20%	
			0	5	10	15	

Elaboration

1a. List of Recognised Measures

The establishment can select the measures from a list of Recognised Measures (Table 2). The list has been composed so that it will in principle encompass all measures that are reasonably considered appropriate¹.

The measures contained in the list fulfil the following conditions:

1. There is a plausible case that they will have a positive effect on the environmental impact of the passenger transport connected to the establishment.
2. There is a plausible case that they do not have an adverse effect on the business operations of an establishment (this will vary per case, that is why it is a selection list).
3. They can be described unambiguously and the burden of proof for the establishments is minimal.

All measures are described in detail on so-called Infomil sheets. The sheets are not part of this Ministerial Regulation.

Number of points per measure

The number of points that can be gained by implementing the measures is arranged in accordance with the following principles.

A Recognised Measure produces a standard 5 points. In a limited number of cases, more points are established. It concerns a measure which contributes by its nature more significantly towards reducing the environmental impact due to commuter traffic. A different number of points apply to a special measure (see below).

If an establishment can demonstrate that the measure is used intensively, then bonus points may be received (5, 10 or 15 points). These can be added to the basic number of points. In the table, the basic points and bonuses are established per measure.

Special measure: maximum available number of parking spaces

If the establishment has less than 1 parking space available for each 10 employees, then the establishment is considered to have a car use in accordance with the intended result of this Ministerial Regulation. It is the availability of parking spaces which almost directly determines the maximum number of cars around the establishment. Additional measures do not add to or subtract from this, and will often only be for the purpose of being able to function in such a situation.

¹ A company is at liberty to make it plausible that its own measure scores just as well. This is to be judged by the competent authority. The national forum will act as an independent mediator in this (see “3. Other matters”).

The limit is set at 1 parking space per 10 employees. Establishments located in most central urban areas (not having many parking facilities of their own) will on the basis of this measure automatically fulfil the minimum requirements.

The “maximum available number of parking spaces” means the parking spaces which the establishment has a free claim to. This also applies to places rented elsewhere within a radius of 500 metres. Therefore, this measure does not apply to parking spaces available in the immediate vicinity on the public road which are freely accessible (do not come under some form of regulation).

In cases where it can be demonstrated that a large number of parking spaces are reserved for visitors, the number of parking spaces to be used by the establishment’s own employees may be taken as the basic number.

Special achievement: demonstrable low proportion of car use

If an establishment can demonstrate that less than 25 cars per 100 employees are used daily in the commuter traffic, this establishment immediately fulfils condition 2 as it applies in this regulation. See further under “Explanation” below.

Demonstrability

The measures are also selected for their ability to be demonstrated. The establishment has carried out a demonstrable measure if:

1. The measure is directly visible or countable by the enforcer (e.g. number of parking spaces, presence of bicycle parking), or
2. The measure is included in the arrangements which apply to the establishment concerned (terms of employment, company rules), or
3. The existence of the measure or achievement is proven by a document that is dated and signed (by a manager).

It is usually not sufficient if an establishment makes it plausible in advance that a measure will be used a great deal. If it concerns a general mandatory measure, which is to be introduced within the foreseeable future, the usage can then of course be made plausible in advance.

The demonstrability of each measure is described in further detail on the Infomil sheets.

1b. Explanation of List of Recognised Measures

Environmental contribution of Recognised Measures

The list contains measures of which it can be reasonably expected that on their implementation the mobility-related environmental impact will be reduced. “Reasonably expected” can be determined by the number of users or the presence of a measure.

In its manual “The Environmental Management & Transport Management Act”², the VNG (Association of Netherlands Municipalities) mentions four fields in which a measure can contribute to an environmental effect.

1. Limit the use of fossil fuels. Each vehicle that is driven uses petrol or diesel. When fewer kilometres are driven, or fuel-efficient engines are used or more passengers travel in one vehicle, this contributes to restricting fuel consumption.

2. Limit the emission of hazardous substances. This too will become less when the kilometres driven are used more efficiently. Also the choice of fuel is relevant in this case (petrol engines are structurally cleaner than diesel engines) or the style of driving. In addition new technology of driving systems may lead to a reduced emission (hybrid cars, etc.).

3. Limit noise pollution due to traffic. Cars that drive through residential districts cause relatively more noise pollution than cars which drive on other roads (in absolute terms the production is the same when related to road surfaces or building types). Noise pollution may also occur around a parking site or around a loading and unloading area.

4. Use of space. The degree in which space is unnecessarily occupied, e.g. through extensive use of the plot or through too sparsely or too many parked cars.

The four criteria lead to a number of indicators which can be directly applied in the assessment of the measures:

- o Influence on the number of kilometres driven by car
- o Influence on the emission per kilometre (the engine used or driving style)
- o Influence on the noise production (in immediate vicinity)
- o Influence on use of space (no direct indicator)

The first two indicators have a direct relationship to air quality; the first indicators are to be considered core indicators.

The contribution to congestion or accessibility is therefore not valued in this setup. But it is a fact that the first (and indirectly also the second) indicator have a direct relationship with congestion and accessibility problems.

Special achievement and car use ratio

The Ministerial Regulation for Article 2.16, paragraph 1 is based on the obligation to perform to the best of one’s ability, put in concrete terms in the Recognised Measures. It is not necessary to demonstrate the result of that performance in terms of car use and car kilometres. This saves considerably on the administrative burden.

² VNG publication No. 13, *De Wet milieubeheer en vervoermanagement* [The Environmental Management and Transport Management Act]; VNG uitgeverij [publisher], The Hague 1999 (and VNG 14).

However, if an establishment can prove on the basis of a recent study that few or very few employees come to work each day by car, the condition will thus be fulfilled. The following concrete proof applies:

Recent study: a gate count or employee survey not older than 1 year.

The unit that applies to car use is the **car use ratio (CUR)**: ‘the number of cars used in the commuter traffic for each 100 employees’. The car use ratio takes into account both solo car use and car pooling.

The formula is: $CUR = \% \text{ (car, driver alone)} + 0.4 * \% \text{ (car pooling)}$.
The factor 0.4 corrects the average number of occupants in a car-pooling vehicle.
For instance, 100 employees, 50% solo car use, 10% car pooling, $CUR = 54$.

2. Regime Areas, Size of Establishment and Minimum Points to be Gained

Considerations about the number of points

Establishments are expected to have taken measures in the field of passenger transport until a minimum number of points have been gained. This minimum number of points varies per situation; it takes account of the size of the establishment (it is easier for a larger establishment to take measures) and the location. The following table applies to this (see “General Provisions”).

	Normal regime	Light regime
0 - 49 employees	n/a (reverts to duty of care)	n/a (reverts to duty of care)
50 - 100 employees	35 points	25 points ***)
101 - 500 employees	45 points	35 points
More than 500 employees	45 points + any additional requirements	35 points + any additional requirements

Table 1: minimum number of points to be gained per type of regime and size of establishment

Reasonable period

The number of points to be gained corresponds with an “average effort” as was measured in pilot-project companies. If a company falls below this average with its measures, the competent authority will establish a reasonable period within which the number of points must be gained. This period is a standard of 3 years.

Normal regime and light regime

The regulation provides for the assignment of municipalities with a light regime where the mobility-related environmental problems are less significant and where establishments also have fewer possibilities to take measures.

The indicator for the type of regime has initially been determined as follows:

The total number of jobs per hectare multiplied by the total number of jobs per municipality. If this indicator has a score lower than 500,000 these municipalities in principle qualify for a light regime³.

*** Enclose a map to give an overview of the municipal boundaries of 2003. ***

According to the indicator mentioned, the following municipalities have a normal regime (the remainder have a light regime):

Amsterdam, 's-Gravenhage (The Hague), Utrecht, Rotterdam, Haarlemmermeer, Eindhoven, Groningen, Zwolle, Arnhem, 's-Hertogenbosch, Nijmegen, Tilburg, Leiden, Breda, Leeuwarden, Haarlem, Maastricht, Amersfoort, Delft, Apeldoorn, Enschede, Dordrecht, Hilversum, Alkmaar, Rijswijk, Venlo, Zoetermeer, Capelle aan den IJssel, Nieuwegein, Zaanstad, Gouda, Amstelveen, Heerlen, Schiedam, Deventer, Almere, Almelo, Sittard-Geleen, Diemen, Leidschendam-Voorburg, Hengelo, Alphen aan den Rijn, Woerden, Ede, Assen, Oss, Roosendaal, Zeist, Roermond, Gorinchem, Doetinchem, Helmond, Goes, Velsen, Veenendaal, Hoorn, Veghel, Bergen op Zoom, Emmen and Westland⁴.

Arguments

- + The indicator gives a good indication of the concentration of jobs, and thus shows the intensity of the establishment-connected commuter traffic at the location. The idea behind this is that although mobility-related environmental pollution does concern the whole of commuter movement, it is concentrated where these commuter traffic movements come together. Municipalities with a low score have either few jobs or a very extensive use of land.
- + The indicator takes into account the total number of jobs as well as the density. Municipalities with a large and relatively empty territory (e.g. Ede and Apeldoorn) still come under the regime area because of the high number of jobs.
- + The basic statistics for this indicator can be easily obtained nationally and do not require much additional computation.

Procedure for the establishment of the regime areas

In accordance with the motion of Van der Ham and Dijksma and with the setup of this OIC, an important principle in the system of “passenger transport” is the desire to create a level playing field. It must be prevented that the municipalities will each have their own interpretation and decide their own limits. This would present an unworkable situation for the establishments.

On the other hand there is a great need for customization. Some situations need to be handled differently; decentralisation is an important element of the environmental policy as well as the mobility policy. In the end the competent authority (i.e. the municipal council) itself will want to give an optimal interpretation to the enforcement.

³ The most recent data from CBS [Statistics Netherlands] is to be used to determine the indicators.

⁴ Vlaarding, Houten, Heerhugowaard, Sliedrecht, Zwiindrecht, Waddinxveen, Leiderdorp, Weesp, Zoeterwoude, Papendrecht, Heemstede and Oegstgeest do not fulfil the conditions but they are such an integral part of a conurbation that a normal regime is recommended for enforcement.

Against this background, the presented map with the regime areas can form the starting point for the enforcement. It serves as the default. The regulation leaves the possibility open for the municipalities if they still want to depart from this. This is allowed when the arguments are adequate and on condition that an agreement be reached with the conurbation or province. This agreement can be reached, for instance, in the framework of a regional or provincial environmental policy plan or a regional/provincial traffic and transport plan. These procedures ensure that careful consideration is given to all the interests concerned (environment, mobility and economy).

3. Other matters

National framework and mediation

In the framework of this regulation, a national forum (details to be decided) will have responsibility for the list of Recognised Measures, and for the number of points to be gained. The forum will also mediate in conflicts between the competent authority and companies about the extent to which companies can make the requested effort in other ways. The forum will operate in an environment where companies who have already fulfilled their obligation will be encouraged to continue to make efforts in the field of transport. The system will in particular have to produce a stimulating effect.

The idea is to give SenterNovem this task. The extent to which the Equality of Treatment Committee can play a part will also be considered. This latter Committee will be set up by the Dutch Ministry of Housing, Spatial Planning and the Environment (VROM) for the new OIC in relation to the enforcement of the mandatory measures.

Scope and Definitions

This regulation is only directed at the establishment-connected passenger traffic. This means:

1. Commuter traffic to and from the establishment.
2. Business traffic to and from the establishment. Business traffic from home is also included in so far as this is not of a structural nature⁵. The following categories apply to business traffic:

Service traffic or utility companies' traffic does not come under "passenger transport" since tools need to be carried in the car on a structural basis (e.g. painters, house-builders, doctors and drivers). Delivery vans - in so far as they are not used for commuter traffic - belong to service traffic and do not come under this regulation.

Passenger transport with a "road site" as the only destination (e.g. road maintenance, inspection, breakdown and recovery services) comes under goods transport.

For a definition of the Recognised Measures we refer you to the explanation in Table 2 and the Infomil sheets.

⁵ Home workers who conduct more than 80% business traffic from home are no longer counted as belonging to the establishment and are outside the target group.