



Ending the opt-outs from the 48 hour week

Easy steps to decent working time

1: The end is nigh?

The European Commission has been conducting a review of the Working Time Directive (WTD) since 2004. After a long delay, this review is now close to its conclusion. The most controversial issue is the UK's longstanding individual opt-out from the EU's limit of 48 hours on the average working week.

The review must be jointly decided by the European Parliament and the Social Affairs Council, which brings together employment ministers from the EU nations (BERR in the UK).

The European Parliament is expected to conduct its second reading of the WTD review on Wednesday 17 December. If they do not change their official position, then they will vote for the opt-out to go.

However, the Social Affairs Council has previously voted for the opt-out to stay. A conflicting vote in the European Parliament would trigger a formal negotiation process with a short, fixed timetable.

Negotiations would have to conclude by early February 2009, with any agreed changes not taking effect until February 2012 at the earliest.

This TUC report shows that the WTD is an important piece of health and safety legislation and that the opt-outs have serious negative consequences.

It also analyses the exact position of those employees who work long hours, looking in particular at how many hours they work and whether they are paid for their extra work, in order to gauge how easy it will be to manage the end of the opt-out.

Some business leaders have made defence of the opt-out almost an article of faith. It is as though the opt-out were a sacred totem or shibboleth that must be defended whether it is really needed for business success or not. Faced with the possibility of the end of the opt-out, they will proclaim that "the end is nigh".

This report examines the case for a stricter limit on excessive working time and finds it to be soundly based on health and safety grounds.

It also looks at whether the UK economy can afford to make the change. It is important to note first that an end to the opt-out will be phased, giving employers and employees plenty of time to make the transition to a new system. Secondly the transition will only start when most expect the current recession to have ended. So:

- Ending long working hours is entirely consistent with business success; and;
- the transition can be easily managed.

We can afford to move away from long hours and give people time to reclaim their lives and reconnect with their families. We bring a message of hope – that we can change working time to make it fit peoples' wants and needs.

2: Sweated, stressed and slowing down – long hours are bad for us

All the evidence available confirms that working long hours increases the risk of developing a wide range of health and safety problems.

John Major's Conservative Government lost a European Court of Justice (ECJ) case that tried to prove that the Working Time Directive was not a health and safety measure (ICR 443, 1997). During the hearing, the UK Government's expert witness advised them to drop their case because it was so weak.

All the subsequent research on the dangers of working long hours has strongly reinforced the ECJ's conclusion.

The research available includes three reviews of evidence from around the world. These reviews were conducted by the US National Institute for Occupational Safety and Health¹ (2004), The International Labour Organisation (2003)², and the UK Health and Safety Executive (2002)³. These studies all point to the same conclusion - long hours are a real hazard

Working more than 48 hours per week strongly increases a number of health and safety risks. According to the Health and Safety Executive, the most widespread and serious are the risks of heart disease and stress related illness. Long hours workers will also be more likely to contract diabetes mellitus, suffer from diarrhoea and other bowel problems, musculoskeletal problems and serious recurring headaches.

Long hours are also likely to lead to poor diet and to increased smoking, drinking and drug taking.

In addition, the risk of Repetitive Strain Injury and health problems stemming from exposure to noxious chemicals and dust are much more likely to affect those who work long hours. The UK's occupational exposure limits for many chemicals and for noise have been set on the assumption of a work pattern of just 8 hours per day and 40 hours per week. The risks are greatly increased if longer hours are worked.

Furthermore, in some occupations where concentration is critical to safe working, excessive working time can lead directly to more accidents.

Professional drivers such as “white van man” are a good example of this effect. The big signs by the side of the road saying “Fatigue Kills” are there for a real purpose

¹ 'Overtime and Extended Shifts: Recent Findings on Illnesses, Injuries and Health Behaviours' US National Institute for Occupational Safety and Health, April 2004.
<http://www.cdc.gov/niosh/docs/2004-143/pdfs/2004-143.pdf> (38 pages)

² 'Working time: Its impact on safety and health', Anne Spurgeon, International Labour Organisation, 2003 <http://www.ilo.org/public/english/protection/condtrav/pdf/wtwo-as-03.pdf> (143 pages)

³ 'Working Long Hours', Health and Safety Laboratory, HSE, 2002
http://www.hse.gov.uk/research/hsl_pdf/2003/hsl03-02.pdf (84 pages)

However, in terms of the numbers affected, excessive working time is most likely to impact on managers and professionals, since they are most likely to work long hours. It follows that they also have most to gain by moving away from long hours.

A 2003 survey of 364 personnel professionals commissioned by the Chartered Institute of Personnel and Development⁴ found that one in four personnel managers who worked long hours reported that they had suffered a physical ailment as a result, whilst a further one in four reported that they had suffered from stress related illness or depression.

Excessive hours also squeeze the time available for family life, which can undermine general wellbeing.

The Government rightly points to the UK's good record on health and safety at work as it applies to whole working population. However, they have avoided examining specifically the health of long hours workers.

If they were to focus just on these workers, then the Government would have to concede that the evidence shows that the opt-out is undermining the Working Time Directive and putting UK workers at risk. It should be phased out as quickly as possible.

3: Can there a right to work dangerously long hours?

The opt-out cannot be allowed to remain, since it allows workers to ignore this important piece of health and safety legislation.

There are also some serious questions about the extent to which the opt-out is a free choice at the moment. Even the Governments' own studies have identified substantial pressure from employers, including the following disturbing facts⁵.

- 44% of those who have signed an opt-out say that it was a condition of their employment
- 23% of long hours workers have not signed an opt-out but have been put under pressure by their employers to work more than 48 hours
- 50% of the long hours workers who have either raised issues about the 48 hour limit or know that such issues have been raised by somebody else in their workplace say that the issue was not resolved. In other words, they have been unable to access their rights.

However, simply applying tighter conditions to the use of the opt-out would not of itself be likely to guarantee a free choice, since the enforcement regime in the UK is weak (see section 4 below).

⁴ CIPD, 'Living to Work', October 2003.

⁵ Source: A Survey of Workers Experiences of the Working Time Regulations, DTI Employment Relation Series No 31, 2004, pps 8 and 25.

But even if we could guarantee that every opt-out was a genuinely free choice, this would not remove the underlying issues. The right to work long hours has to be mediated by a duty to work safely and the state has the right to ensure that its citizens do not harm themselves or cause harm to anybody else.

- The long hours van driver who falls asleep at the wheel veers across the road and another motorist or a pedestrian gives them no choice.
- The worker who becomes ill or injures themselves through long hours may require lifelong health care from the NHS.

Of course it is right that health care should be available, but would it not be better for everybody concerned if we all concentrated on ensuring that work is safe and that workers can remain healthy.

4: The working time enforcement regime is weak in the UK

The 48 hour week and opt-outs are enforced by the Health and Safety Executive (HSE) in most workplaces, and by Local Authority Environmental Health departments in the following sectors: shops and retailing, offices, hotels and catering, sports, leisure and consumer services (see table below), and by specialist agencies for air and sea travel and for heavy goods vehicles and coaches.

However, the problem is that the HSE and local government do not see the issue as a priority, because the Government has told them not to do any proactive enforcement work⁶. Given the signals from government and the lack of extra resources granted for this work, it is perhaps not surprising that it has been said that the HSE will not inspect workplaces that have been the subject of working time complaints unless injury or death are involved⁷.

Some complainants have also argued that that local authority enforcement is even weaker than the HSE regime. It has sometimes been reported that local authorities have nobody trained to respond to queries about the WTR and most complaints are not investigated. Indeed, it has been alleged that some authorities still do not even know that they have the responsibility for enforcement of the 1998 regulations.

⁶ The agreement between the DTI and BERR is reflected in HSE internal circular OC 1/5, which limits the HSE to a reactive role in dealing with complaints.
http://www.hse.gov.uk/foi/internalops/fod/oc/001-099/1_5.pdf

⁷ see, for example 'The use and necessity of Article 18.1(b)(i) of the Working Time Directive in the United Kingdom' by Catherine Barnard, Simon Deakin and Richard Hobbs, European Commission, 2003, p.55 and 56.

UK enforcement agencies -sectoral coverage and long hours workers

	Employees (millions)	Per cent UK employees	Long hours employees (millions)	Per cent UK long hours employees
Health and Safety Executive	15.1	61.6%	2.3	69.7%
Local authorities	9.0	36.7%	0.9	27.3%
Transport authorities*	0.4	1.6%	0.1	3.0%
Total	24.5	100%	3.3	100%

Source: ONS Labour Force survey autumn 2006.

UK transport authorities: Civil Aviation Authority, Maritime and Coastguard Agency, Vehicle and Operator Services Agency (covers large good vehicles and passenger coaches).

As the HSE and local authorities have sole responsibility for enforcing the working time limits within their sectors, workers have no other way of getting their rights. The TUC has suggested that the WTR be amended to establish a second channel for enforcement by allowing individual workers to take Employment Tribunal cases on this issue. This idea is based on the current UK law on the minimum wage, which allows for enforcement either by government agency or individual worker. However, this suggestion has been rejected by the government.

5: Can we slay the long hours dragon?

Evidence from the official Labour Force Survey⁸ indicates that long hours are a much less fierce dragon than we are sometimes led to believe.

It is worth remembering that even if the opt-out goes, the Working Time Directive will still allow employers an enormous amount of flexibility.

- At the very least, the 48 hour week can be calculated over an average of 17 weeks (4 months).
- In some industries such as where more flexibility is most often required, the regulations allow for an averaging period of 26 weeks
- It is also possible to agree an averaging period of up to 52 weeks through collective bargaining with trade unions.

Many industries have peaks and troughs, but very few indeed really need long hours for longer than 17 weeks at a time.

Furthermore, it is likely that the opt-out will be phased out if it is to be ended. This process would commence in 2012 at the earliest and might be expected to run until 2015 or 2016. If we look in detail at how many hours these employees actually

⁸ The National Statistics Labour Force Survey, which is conducted every quarter, samples 100,000 people in 60,000 households. The latest data available is from the Summer Quarter (July-September) 2008.

work, then we can see how the individual tranches of a phase out will only lead to manageable incremental change.

At the moment, just over 3.25 million UK employees report that they work more than 48 hours per week (12.7%).

Despite the opt-out, things have improved somewhat since the Working Time Regulations came into force in November 1999, when 3.8 million employees (16.0%) worked more than 48 hours⁹.

However, the UK continues to have the highest incidence of long hours working in the European Union, and the initial reduction in hours has now run out of steam – although it does seem likely that hours will begin to fall again as the recession bites.

1: How much more than 48?

Hours per week	Number of employees	Per cent of long hours workers
49 – 50	1,222,813	37.6
51 – 55	893,839	27.5
56 – 60	675,365	20.8
61 – 65	159,525	4.9
66 - 98	299,952	9.2
Total	3,251,494	100.0

Source: LFS Summer 2008

- Note that more than 1 in 3 (37.6%) of those exceeding 48 hours only work 1 or 2 extra hours a week, so only a small change is needed for this group of workers
- However, nearly 1 in 8 (14.1) per cent are exceeding 60 hours per week. At this level of working, the risk from long hours is acute.

If the opt-out was phased out from 2012 onwards, as the European Parliament has suggested, it would mean that the hours of opt-out workers would be subject to a series of gradually reducing limits over a few years until the 48 hour week was fully applied. This would mean that we would be prohibiting the most excessive and most dangerous working practices first of all. We would also be dealing with the issue in relatively small and digestible chunks in all the regions and nations of the UK.

⁹ These figures have been revised downwards by National Statistics since the TUC's 2002 report 'About Time' – original estimate was 3.95 million.

2: Working more than 48 hours by region and banded hours (thousands of long hours workers and per cent of all employees in region)

	49 - 50	51 - 55	56 - 60	61 - 65	66 - 98	All more than 48
North East	39 (3.8%)	32 (3.1%)	21 (2.0%)	*	11 (1.1%)	110 (10.5%)
North West (inc Merseyside)	106 (3.9%)	78 (2.9%)	64 (2.4%)	11 (0.4%)	27 (1.0%)	288 (10.4%)
Yorkshire and Humberside	100 (4.7%)	69 (3.2%)	54 (2.5%)	16 (0.7%)	23 (1.1%)	263 (12.1%)
East Midlands	89 (4.7%)	78 (4.1%)	62 (3.3%)	14 (0.7%)	21 (1.1%)	263 (13.6%)
West Midlands	105 (4.9%)	79 (3.7%)	69 (3.2%)	12 (0.6%)	17 (0.8%)	283 (13.0%)
Eastern	132 (5.6%)	95 (4.0%)	70 (3.0%)	23 (1.0%)	26 (1.1%)	347 (14.3%)
London	200 (6.5%)	120 (3.9%)	99 (3.2%)	17 (0.6%)	46 (1.5%)	481 (15.3%)
South East	193 (5.4%)	151 (4.2%)	96 (2.7%)	25 (0.7%)	48 (1.3%)	513 (14.1%)
South West	100 (4.7%)	77 (3.6%)	54 (2.5%)	11 (0.5%)	25 (1.2%)	267 (12.3%)
Wales	38 (3.3%)	37 (3.2%)	24 (2.1%)	*	*	113 (9.7%)
Scotland	93 (4.2%)	62 (2.8%)	50 (2.2%)	16 (0.7%)	38 (1.7%)	260 (11.5%)
Northern Ireland	24 (3.7%)	16 (2.5%)	11 (1.7%)	*	*	62 (9.4%)
Grand Total	1,223 (4.8%)	894 (3.5%)	675 (2.6%)	160 (0.6%)	300 (1.2%)	3,251 (12.7%)

*results smaller than 10,000 omitted as not statistically robust

The majority of long hours employees (2,211,000 – 68.0% of long hours workers), are not paid for their extra hours, and thus have little to fear from the end of the opt-outs in terms of their earnings.

One reason for the UK's long hours culture is that many offices have a culture of "presenteeism", where employees are judged by hours that they spend in the office rather than on the quality or volume of their work. In other words people are rated by how long it takes them to get the job done, not how quickly.

A fixed limit on working time would help to focus minds on tasks rather than attendance. If the opt-outs were removed, these hours would simply vanish with no resultant drop in output or profitability.

Furthermore, the time and motion literature makes it clear that long hours have an adverse effect on productivity per hour. Indeed, common sense tells us that too many hours makes us tired, which then leads to slow-down, lack of concentration, more mistakes, so both the quality and volume of work suffers when work for too long..

In addition, long hours are associated with high staff turnover and sickness absence.

So if the opt out were to go, employers would be losing the hours of work that are worth least to them.

In contrast, there are currently 1,040,000 UK employees working more than 48 hours per week and receiving at least 1 hour of paid overtime. 325,000 of those working paid overtime (31.2%) are only one or two hours above the 48 hour limit, which would make for an easily manageable transition.

- More than half (56.6%) of those working paid overtime say that they want to cut their hours
- Unsurprisingly, a much smaller number (19.8%) say that they would like to cut their hours *even if this meant less pay*. However, it does mean that a significant minority - about 1 in 5 - of those who are paid overtime do not really have a free choice about their extra hours. Pressure to work extra paid hours can come from managers *or* work colleagues or both.

3: Working more than 48 hours by region and banded hours – paid overtime.

	49 - 50	51 - 55	56 - 60	61 - 98	All 48+
North East	11 (1.0%)	17 (1.6%)	*	*	43 (4.1%)
North West (inc Merseyside)	35 (1.3%)	32 (1.2%)	28 (1.0%)	*	103 (3.7%)
Yorkshire and Humberside	38 (1.7%)	27 (1.2%)	28 (1.3%)	17 (0.8%)	110 (5.0%)
East Midlands	32 (1.7%)	36 (1.9%)	20 (1.0%)	15 (0.8%)	102 (5.2%)
West Midlands	34 (1.6%)	34 (1.6%)	25 (1.1%)	11 (0.5%)	105 (4.8%)
Eastern	31 (1.3%)	33 (1.4%)	25 (1.0%)	21 (0.8%)	109 (4.5%)
London	24 (0.8%)	29 (0.9%)	16 (0.5%)	18 (0.6%)	88 (2.8%)
South East	40 (1.1%)	54 (1.5%)	28 (0.8%)	23 (0.6%)	146 (4.0%)
South West	29 (1.3%)	28 (1.3%)	16 (0.7%)	*	80 (3.7%)
Wales	10 (0.9%)	14 (1.2%)	*	*	36 (3.1%)
Scotland	35 (1.6%)	33 (1.5%)	17 (0.8%)	15 (0.7%)	100 (4.4%)
Northern Ireland	*	*	*	*	18 (2.7%)
Grand Total	325 (1.3%)	342 (1.3%)	219 (0.9%)	155 (0.6%)	1,040 (4.1%)

*results smaller than 10,000 omitted as not statistically robust

Table excludes paid overtime of less than 1 hour per week

It is obviously important to preserve earnings as far as possible. However, long hours are associated with low productivity, so a phased withdrawal of the opt-out

from, say 2012 to 2015/ 2016 would allow more attention to be given to improving productivity. This in turn would mean that the sum loss of earnings stemming from the end of the opt-out would be smaller than the total reduction in overtime hours.

We have already seen the application of this strategy in the road haulage industry, where the 48 hour average limit has been applied with no opt-outs when the Road Transport Working Time Directive took effect in 2005.

In some cases there was no loss of earnings at all. Productivity deals in the road haulage industry include those made by Wincanton Transport and the TGWU section of Unite and between ACC Transport and USDAW.

Successful productivity deals in the road haulage industry were generally supported by some reorganisation of the businesses, including moving to better placed depots, better use of telematic management systems (sophisticated satellite navigation and monitoring systems) and better driver training, including fuel efficiency training, which commonly reduces fuel consumption by 10 to 20 per cent.

In fact, the most successful companies across the economy have already moved away from long hours. In 2005 the Government combined with the CBI and TUC to run a series of master classes so that companies that had moved away from long hours as part of a new focus on increasing productivity could share their knowledge with those who wanted to follow in the footsteps¹⁰.

The TUC would work with the Government and employers' organisations to extend this project in order to provide road maps for change if the opt-out were to be phased out.

In conclusion, the TUC agrees with the following sentiment, which is taken from a piece of academic research commissioned by the Government:

“There was no sign that the extent of sustained long hours working was systematically associated with the business and financial needs of workplaces ... workplaces have organisational choice and are able to reduce the need for sustained long hours should they choose to do so”¹¹.

¹⁰ 'Managing change: practical ways to reduce long hours and reform working practices', DTI, 2005. <http://www.berr.gov.uk/files/file14239.pdf>

¹¹ 'The Business Context of Long Hours Working', T. Hogarth, W.W.Daniel, A.P. Dickerson, D.Campbell, M. Wintherbotham, D. Vivian, University of Warwick Institute for Employment Research, DTI Employment Relations Series 23, November 2003, p9.