

## REGULATORY IMPACT ASSESSMENT

i. The Working Time (Amendment) Regulations 2002 have two main aspects to them. The first of which is the end of the UK opt-outs for Young Workers and the second is a change to the way that night working hours are calculated. Part A of this Regulatory Impact Assessment considers the first and part B the second.

### A. YOUNG WORKERS DIRECTIVE – END OF UK OPT-OUTS

#### Issue

1. To amend the Working Time Regulations (WTR) to reflect the ending of the UK opt-out from the working time and night work provisions within the Young Workers Directive (YWD).

2. Although the UK has implemented the European Union Council Directive on the protection of young people at work, the UK retained opt-outs from certain provisions. The opt outs covered workers aged 16 and 17 who would otherwise, under the YWD, be restricted to working a maximum of 40 hours per week, with a maximum working day of 8 hours, and would not normally be allowed to work at night between 10pm and 6am (or 11pm to 7am). The opt-outs expired on 22 June 2000. Further details are contained in the consultation document 'Young Workers Directive - End of UK Opt-Outs' published by DTI on 19 December 2000.

#### Objective

3. To achieve benefits for young workers, including a better balance between work and family life, with commensurate improvements in health and safety. Young workers are particularly likely to benefit in terms of access to education and opportunities for personal development.

4. To comply fully with the EU Young Workers' Directive while retaining the maximum flexibility in its implementation.

#### Benefits

5. There are benefits as well as costs associated with the amending regulations, although these are inevitably more difficult to quantify. The existing Working Time Regulations<sup>1</sup> have ensured that employees are provided with basic minimum rights through a legal framework, providing minimum standards combined with flexibility for employers. The benefits included a better balance for workers between work and home, greater choice over hours worked and improvements in health.

---

<sup>1</sup> See 'Measures to Implement Provisions of the EC Directives on The Organisation of Working Time ("The Working Time Directive") and the Protection of Young People at Work ("The Young Workers Directive") Public Consultation', Department of Trade and Industry Employment Relations Directorate April 1998, URN: 98/645. Annex E contains estimates of the costs of compliance. The methodology and assumptions used in this earlier appraisal have generally been followed in the present assessment.

6. Appropriate restrictions on working time and night-work for young workers would be expected to mean that the workers concerned are more alert and therefore more productive while they are working. This would tend to reduce costs to business while producing benefits for the economy and employers in the longer term.

7. The benefits in terms of improvements to health and family life, which may be gained from restricting working hours and night working, apply as much to young workers as older workers. For young workers, however, there are likely to be particular benefits in terms of access to education and opportunities for personal development, again with benefits in the long term.

8. The Council of the European Union adopted the Young Workers Directive in order to adjust labour regulations applicable to young workers so that their specific developmental and vocational training needs were met. In particular, the effects of work on young people's health, safety and physical development were noted. Young workers are a particularly sensitive risk group who needed to be protected from dangers that specifically affect them. They need protecting from risks arising from their lack of experience, absence of awareness of risks, and from their immaturity. The working time of adolescents should not adversely affect their ability to benefit from education.

### **Risks**

9. One risk of ending the opt out are that some employers who currently employ 16 and 17 year olds in a training capacity may not wish to employ them under the new regulations, thus removing a training and development opportunity for some young people. On the other hand specified derogations (see below) are likely to exempt young workers from the YWD in industries where the requirement to work in a particular pattern, such as night work or extended hours, is an essential part of the job.

### **Options**

10. Regulation is the only means of compliance with these remaining provisions of the YWD. The UK has not sought renewal of the opt-outs. The available options for implementation are as follows:

- a blanket implementation without derogations
- b that the UK should authorise work by adolescents for more than eight hours on any day/40 hours in any week in a range of specified circumstances and that these circumstances should also apply for night working between midnight and 4am, which is only permissible in the following sectors:
  - in shipping and fisheries
  - in the context of the armed forces and the police
  - in hospitals and similar establishments
  - cultural, artistic, sports and advertising activities.
- c that the UK should further authorise derogations allowing working between 10pm to midnight and 4am to 7am in sectors likely to face particular

difficulties: agriculture, retail trading, a hotel or catering business (including restaurants or bars), a bakery and postal or newspaper deliveries and those listed as derogating from the midnight to 4am period. As with the other derogations the specified circumstances would also need to be met. Derogations of the type described above are available to all member states under the terms of the YWD (see 'derogations' below).

## **Costs - Restriction of working time to 40 hours per week**

### *Numbers*

11. According to the March to May 2001 Labour Force Survey around 30,000 persons in the UK aged 16 and 17 were in employment and working more than 40 hours per week. The average working week for those working more than 40 hours per week was 47 hours.

### *Compliance cost*

12. We can assume that the work in excess of 40 hours per week is essential to the employer's business and that if the work were not done by 16-17 year olds, workers in an adjacent age group would carry it out. If the average hourly pay of 16-17 year olds is £4.23 and that of employees aged 18-20 is £5.73<sup>2</sup>, then the compliance cost to the employers will be a function of the difference. If we assume, as in previous exercises, 22% for non-wage labour costs, we have a cost that can be attributed directly to the change in the regulations of around £18 million per annum ( $=30,000 \times 7 \times £1.50 \times 1.22 \times 48$ ). (The calculation assumes 4 weeks holiday per year). There are a number of reasons why the cost may be substantially less, however. While some of the work is likely to be redistributed to other workers in a higher wage band, some of it will be absorbed within the existing workforce. Some employers will be paying premium rates for overtime working, which could be done in normal time at equivalent or less cost. In theory, the more expensive workers will tend to be more productive than workers they replace, although age related pay structures may not reflect productivity differences precisely. One effect of switching the work to other groups may be that the cost of the older workers rises, as a result of the increased demand. The £18 million annual figure, along with other costs in this note, is believed to be a reasonable illustration of the potential cost, however.

13. It is not expected that there will be any significant administrative costs to employers.

## **Prohibition of night work**

### *Numbers*

14. About 35,000 employees aged 16 or 17 were recorded in the LFS as usually working at night. Detailed information on the actual hours worked is not available.

---

<sup>2</sup> See 'New Earnings Survey 2002' Office for National Statistics, 2002, Table A15.

### *Compliance cost*

15. As above, we assume that night work is essential to the employer's business and that if the work were not done by 16-17 year olds, workers in an adjacent age group would carry it out.

16. The average number of hours worked by young night workers is around 17 hours, but not all of these hours will be worked at night. Making a further allowance for this, the estimated compliance cost is:

$35,000 \times 17 \times 0.5 \times 1.50 \times 1.22$  (non wage labour costs)  $\times 48 = \text{£}26$  million per annum.

(35,000 workers at 17 hours each, assuming half of hours are worked at night, wage differential = £1.50 and non wage costs = 22%, annualised).

17. Again, we assume that the administrative cost of the necessary reorganisation is negligible.

### **Restriction of the working day to 8 hours**

18. There are no data available on the extent to which young workers work days of longer than 8 hours. Limitation of the working week to 40 hours will to some extent tend to reduce the number of long days worked. It may also be assumed that employers would deal with this limitation by re-organising work schedules. Compliance costs will therefore be negligible.

### **Derogations**

19. Under the terms of the YWD, it is open to the UK to exempt certain sectors from the arrangements for night work for young workers. In respect of the period from midnight to 4am these are specified in article 9(2) b of the YWD as shipping, fisheries, armed forces, police, hospitals and other related establishments, cultural, artistic, sports and advertising. For convenience we will refer to these as specified derogations.

20. Around ten per cent of young workers who usually nights work in industries to which these derogations may apply. Accordingly the compliance costs from implementing the restrictions on night working would be reduced by around 10%. The proportion of young workers who usually work more than 40 hours in a week in these industries is also about 10%.

21. In addition member states may authorise derogations from the period between 10pm to midnight and 4am to 7am by way of exception and where there are objective grounds for doing so. Such derogations are applied in industries concerned with agriculture, retail trading, a hotel or catering business (including restaurants and bars), a bakery and postal or newspaper deliveries which we shall refer to as objective derogations. Just over half of young workers who usually work at night work in agriculture, hotels and catering and postal services. About 15% of young workers who currently work more than 40 hours a week work in these industries. (See also, 'Impact on Industry Sectors', below.)

In tabular terms (annual costs)

Compliance cost due to:	Maximum working hours	Prohibition on night work
Without derogations	£18 million	£26 million
Specified derogations	£2 million	£2 million
Objective derogations	£3 million	£14 million
Cost less derogations	£14 million	£10 million

### **Impact on small businesses**

22. Just over half of young workers who currently work weeks of longer than 40 hours work at premises which employ fewer than 25 employees. Around 40 per cent of young workers who usually work night work in premises which employ fewer than 25 employees. Accordingly, just over half of the compliance cost for maximum working hours and around 40 percent of compliance costs for prohibition of night work will fall on small employers who currently employ about one third of the total labour force.

### **Impact on industry sectors**

23. According to the Spring 2002 Labour Force Survey, around a fifth of the adolescents usually working more than 40 hours a week, were employed in the wholesale, retail and motor trades. Similar numbers were employed in the manufacturing and construction industries.

24. About half the adolescents who usually worked at night worked in the hotel and catering trade (including restaurants and bars).

25. In both cases, numbers are small, however, and the Labour Force Survey cannot provide accurate estimates.

### **Securing compliance**

26. The revised regulations would continue to provide for workers entitlements and could be enforced by complaint to an Industrial Tribunal if denied. In addition limits on working time can be enforced by sanctions which could be imposed by health and safety at work authorities. The extra costs to HSE and Local Authorities of this enforcement activity are expected to be negligible.

### **Conclusions**

27. The total cost of compliance with the new regulations, if implemented, could be as low as 23 million per annum if derogations are applied which is 21 million per annum lower than the cost with no derogations. This is a negligible proportion of the annual UK labour bill of £556 billion in 2001 (wages and salaries plus employers' social contributions). While the compliance cost will fall to an extent on small business, it will still not be a significant extra burden for them.

28. The benefits of implementing the working time regulations include improvements to health and family life and apply more to young workers than to older workers because they need protecting from risks arising from their lack of experience, absence of awareness of risks, and from their immaturity. For young workers there are also particular gains in terms of access to education and opportunities for personal development. These will all be of benefit to employers in the long term.

## **B. CHANGES TO CALCULATION OF NIGHT WORKING HOURS**

### **Issue**

1. To amend the UK Working Time Regulations (WTR) to include all overtime in the calculation of maximum night working limits.
2. The maximum hours that a night worker can work should not exceed an average of eight hours for each 24 hours over a 17 week period (or longer if agreed by a collective or workforce agreement). Currently average night working hours are calculated excluding overtime (unless it is guaranteed). These amendments to the regulations will mean that all overtime is included when calculating night workers normal hours of work.

### **Objective**

3. To bring the UK regulations fully into line with the EC Working Time Directive (93/104/EC) and achieve an even better balance between work and family life with commensurate improvements to health and safety.

### **Benefits**

4. There are benefits as well as costs associated with the amending regulations although these are inevitably more difficult to quantify. The existing Working Time Regulations<sup>3</sup> have ensured that employees are provided with basic minimum rights through a legal framework, providing minimum standards combined with flexibility for employers. The benefits include a better balance for workers between work and home, greater choice over hours worked, improvements in health and safety and a more committed workforce.
5. These changes to the regulations will cause night workers' hours to be restricted further than has previously been the case. This will allow them to be more alert in the hours that they do work, bringing further improvements to health and safety as well as providing further improvements to work-life balance.

---

<sup>3</sup> See 'Measures to Implement Provisions of the EC Directives on The Organisation of Working Time ("The Working Time Directive") and the Protection of Young People at Work ("The Young Workers Directive") Public Consultation', Department of Trade and Industry Employment Relations Directorate April 1998, URN: 98/645. Annex E contains estimates of the costs of compliance. The methodology and assumptions used in this earlier appraisal have generally been used in this present assessment.

## **Risks**

6. There is a (small) risk that employers will be unable to adapt either their work scheduling, or their processes, or the number of workers they employ, in order to cover hours that workers will no longer be permitted to work. There is, as with all legislation, a risk that people will not change their work practices and lay themselves open to prosecution.

## **Options**

7. The only option available to bring the UK regulations fully into line with the EC Directive is to amend the Working Time Regulations accordingly. Knowingly remaining in breach of the Working Time Directive lays us open to infraction proceedings in the ECJ, and to criticism for our failure to provide workers with the protection to which they are entitled.

## **Numbers affected and estimated compliance costs**

8. Estimating the number of workers affected from the changes to the calculation of night work hours and the associated compliance costs is difficult because of the novelty of the regulations. A night worker, according to the regulations is someone whose daily working time includes at least three hours of night work (between 11pm and 6 am), on either a) the majority of the days they work, b) on such a proportion of the days they work as agreed between employer and workers in a collective or workforce agreement or c) sufficiently often that they may be said to work such hours as a normal course. A 'normal course' includes those workers who work at night on a regular basis including those on a rotating shift pattern that results in them working regularly at night as opposed to on an infrequent or ad-hoc basis.

9. The regulations require that employers ensure that during a reference period which excludes at least one day in seven, a night worker's normal hours of work do not exceed an average of 8 hours in a 24 hour period. Thus the maximum number of normal working hours allowed in a course of a week for night workers is an average of 48. Therefore, the number of usual night workers who reported 'usually' working over 48 hours a week in the Labour Force Survey (LFS) has been used as the basis to estimate the number who are likely to be affected by the changes to the existing regulations.

10. The number of workers who would be affected by the night working provisions was estimated in an original Regulatory Impact Assessment that was produced before the regulations were first introduced. This estimated that around 250 thousand employees would be affected by the restrictions on night working hours. For the purpose of compliance cost estimates the assumption was that the restrictions on night working for more than 48 hours per week would be approximately £180 million per annum. Updated estimates for Spring 2002 suggest that around 240,000 employees would be affected at an annual compliance cost of £210 million. The reason for the increase in costs is due to wage inflation over the period in question.

11. The numbers affected by the working hour restrictions for night workers in the original Regulatory Impact Assessment (and indeed the updated estimates above) included paid overtime in the calculations. For this reason they were (are) an overestimate of the numbers affected and annual compliance costs of the restrictions on night working. When only basic hours plus guaranteed overtime are used to estimate the night workers 'normal hours' of work then costs are lower. In affect then the above estimates are already an estimate of the numbers affected and compliance costs when overtime is included in the calculation of night workers hours.

*Definitions and assumptions used in calculations*

12. The calculations in this Regulatory Impact Assessment, and indeed past impact assessments, have had to assume that working time is equivalent to the number of hours respondents in the LFS report 'usually' work in a week excluding unpaid overtime and lunch breaks. This may not be exactly the same as the definition of 'working time' in the regulations.

13. It has not been possible to estimate the amount of paid overtime that is guaranteed to workers in their employment contract from official sources. Estimates in this impact assessment are based on the assumption that 10 per cent of paid overtime is guaranteed overtime. To the extent that this is an under or over-estimate is the extent to which the number of workers affected and the compliance costs will not be entirely accurate.

14. Those who currently work in the excluded 'sectors of activity' as well the armed forces, police, other civil protection services and junior doctors have not been excluded from the estimates in this impact assessment. Therefore these estimates are likely to overestimate the actual number of workers affected.

15. On the other hand it may underestimate the numbers affected by the changes to the regulations as the calculations are based on 'employees' rather than 'workers'. The LFS does not use the term 'worker' but uses the term 'employee' instead which is likely to define a narrower group of people.

*Numbers affected by changes to the regulations*

16. The numbers affected by the changes to the regulations will be the extra people that usually work over 48 hours per week when overtime is included in the calculation of their normal night working hours. Or put another way, the difference between the number of workers affected by the night working limits when their overtime hours are included and when no overtime (except guaranteed overtime) is included. Table 1 below shows the numbers affected and the annual compliance costs.

17. The number of extra workers affected by including all overtime in the night workers hours calculation is estimated at around 115,000. Note that the extra number of workers affected were already included in previous cost estimates as these included overtime (not just guaranteed overtime) in the calculations (see column 3 'including overtime' in table 1 below).

18. In order to estimate the number of employees working at night the Spring 2002 Labour Force Survey was used. The question on the current LFS differs slightly to the one asked several years ago and used in the original 1998 costings of the WTR. There they asked whether the respondent 'usually' or 'sometimes' worked at night but now they are asked whether in their normal pattern of work it is usual to work nights. This change in the question means that the number of people stating they usually work at night is around double what it was under the old question. In order to get a comparable estimate of 'usual night workers' the estimate from the new question was reduced by 50 per cent. A further downward adjustment of 10 per cent has been made as some workers who work shifts do not appear to be regular night workers (they mainly work evenings or split shifts) and are unlikely to benefit from the regulations.

#### *Compliance cost estimates*

19. We can assume that the overtime hours that night workers currently work over 48 hours a week are essential to the employer's business and if that work were not done by existing workers then other workers would have to carry it out instead. The extra cost of these amendments to the regulations is therefore derived by taking the difference between the weekly hours worked by self-identified "night workers" which exceed the 48 hour limit when overtime hours are included and when no overtime (except guaranteed overtime) is included (see column 4 'affect of changes to the regulations' in table 1 below).

20. It is assumed that:

- a) employers will bear half the costs of reducing working hours in order to comply with the regulations, with the remainder being made up from loss of earnings for employees and some increased productivity; and
- b) the effect of averaging night time working hours over a period of up to four months will reduce by 50 per cent the number of hours which would otherwise be a breach of the limit set by the regulations;
- c) a notional reduction in costs of five percent can be made in respect of the disapplication of these entitlements to employees doing work whose specific characteristics mean that their working time is not, or cannot be measured, or is determined by the worker themselves;
- d) the number of night workers has been weighted according to whether they always work at night or only on some occasions, (e.g. shift workers) in order to avoid overestimating this aspect of the Regulations.

21. For the purposes of the cost estimates, the assumption is that the changes to include all overtime in the calculation of night workers hours, and therefore include more workers working over 48 hours per week would cost approximately an extra £100 million per annum. This extra cost was already included in previous cost estimates as these included overtime (not just guaranteed overtime) in the calculations (see column 3 'including overtime' in table 1 below).

**Table 1: Number of workers affected and annual compliance costs of the Night Working restrictions**

	Excluding overtime (except guaranteed overtime)	Including overtime	Affect of change to the regulations
Numbers affected (000's)	125	240	115
Annual compliance costs (£m)	115	210	100

**Impact on Small Businesses**

22. Around 40 per cent of night workers who usually work more than 48 hours a week (including overtime) work at premises which employ fewer than 50 employees. Small businesses are therefore likely to bear around 40 per cent of compliance costs. However, it may be that where changes are needed to working practices small firms will find it more difficult to adjust than firms with larger numbers of employees.

**Impact on industry sectors**

23. According to the Spring 2002 LFS, over half of night workers working more than 48 hours a week work in the 'manufacturing', 'transport, storage and communication' and 'health and social work' sectors. It is likely therefore that these will be the industries that feel the greatest impact of these changes.

**Competition Assessment**

24. The proposed changes to the regulations should not have a negative affect on competition. The changes relate to all firms who use night workers and should not result in changes to the market structure or increase barriers to entry as established firms as well as new firms will have to meet these regulations.

**Compliance costs for a typical business**

25. It is very difficult to estimate the costs to a 'typical' business. Many businesses could be totally unaffected, while others will face the possibility of having to make significant changes to their current working arrangements and practices. Some of those changes may involve little cost others could be more substantial.

**Securing compliance**

26. The revised regulations would continue to provide for workers entitlements and could enforced by complaint to an Employment Tribunal if denied. In addition limits on working time can be enforced by sanctions that could be imposed by health and safety at work authorities. The original 1998 Regulatory Impact Assessment estimated the cost of enforcement to be between £3.5 – £6.3 million per annum. Night working restrictions only make up around one tenth of annual compliance costs therefore the extra costs to HSE and Local Authorities of enforcement activity due to the changes in the regulations are expected to be small.

I have read the Regulatory Impact Assessment` and I am satisfied that the balance between costs and benefits are the right ones in these circumstances.

Signed by the responsible Minister .....

Date .....

Contact point:

Stephen Hicks  
Employment Market Analysis and Research  
Department of Trade and Industry  
Room UG098  
1 Victoria Street  
London SW1H 0ET  
0207 215 5934