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IMPLEMENTATION OF THE WORKING TIME REGULATIONS

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Foreword

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The Department commissions an ongoing programme of evaluation and research in employment relations. In-house researchers, economists and policy advisors devise research projects to be conducted on our behalf by external researchers, who are chosen through a competitive tendering process. Projects typically look at areas where we are interested in identifying good practice, in assessing the impact of particular policies or regulations, or examining emergent trends. Details of the programme appear regularly in *Labour Market Trends* and can be found at <http://www.dti.gov.uk/er/emar>

The Research Series is where we disseminate the results of this work. The views expressed in these publications do not necessarily reflect that of the Department. We publish these reports as a contribution towards an open debate about how we might best achieve our overall aim of improving competitiveness.

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Director, Employment Market Analysis and Research Branch

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Executive Summary

This report sets out the findings of case study research in 20 organisations. Initial interviews were conducted in each of the organisations some six months after the formal implementation of the Working Time Regulations (WTR). These were followed-up 12 months later with return visits to 15 organisations. The sample of case studies is not statistically representative, and cannot therefore be interpreted as representative of the economy as a whole. However, the sample was selected to reflect a variety of organisations that adapted their working practices to comply with the Regulations. A qualitative methodology was chosen in order to gain an in-depth understanding of the issues associated with implementation of the WTR.

Our two-stage approach allowed us to revisit concerns raised when organisations were at the early stage of implementing the Regulations. This showed that in most cases key issues for informants in our initial interviews were seen as less problematic 12 months on. However, in a minority of organisations some new concerns were raised.

Impact of the Working Time Regulations

Ten of the 20 case study organisations indicated that the Regulations had had marginal or no impact when assessed against a range of criteria. Organisations citing little impact were: smaller establishments; organisations that had made extensive use of individual opt-outs, derogations and collective flexibilities; and those where working practices were already largely in line with the Regulations.

Where impact was felt, it included an impetus to review working practices and so to ‘work smarter’ (cited by seven organisations).

- For example, one company had found that operational efficiency and customer satisfaction had both increased as a result of the revised working patterns introduced to reduce the working hours of staff.
- Other firms had found that moving away from seven-day working had led to more efficient working over a six-day period.
- In addition, a number of organisations said that the need to implement the Regulations had encouraged them to take a more flexible and/or strategic approach to the organisation of working time.

Other areas of impact were:

- some increase in labour costs (cited in seven of the 15 organisations to which return visits were made); and
- a raised profile for the importance of working time in worker health and safety (10 out of the 15 followed-up cases).

Interviews conducted in the first stage of this two-stage project found considerable concern amongst employers about the costs and bureaucratic burden associated with new record-keeping requirements. However, our follow-up study indicated that, once established, these systems were viewed as less problematic and in some cases were seen to have positive operational benefits.

None of the organisations in this study had faced any collective disputes arising from their approach to the Regulations, and only one company had seen any formalised individual complaints. According to line managers and trade union representatives, most workers were unconcerned about the WTR. The view was that, where workers were interested in the Regulations, this interest generally took the negative form of fear of potential loss of earnings.

Implementing the Regulations

(For an outline of the WTR requirements and subsequent amendments to the Regulations, please refer to Chapter one.) The process by which organisations implemented the Regulations was largely a management-led one, usually guided by the personnel function.

In most (11 out of 20) of the organisations in which our research was conducted, the action taken to review existing working practices in respect of the requirements of the WTR was fairly superficial. It typically consisted of an evaluation of overtime payments, plus an assessment by the personnel manager (or equivalent) of other aspects of working time. However, we did find five examples of broad-ranging audits of existing working practices that had led, or would lead, to a major review of the organisation of work.

Five organisations with recognised trade unions had chosen to use the flexibilities associated with a collective agreement and three non-unionised establishments had signed workforce agreements. However, in most of these cases, the involvement of employee representatives took the form of consultation rather than negotiation.

Guidance on and interpretation of the Regulations

All but one of our case study organisations had faced some difficulties in interpreting the WTR for implementation in their workplaces. Areas where there was uncertainty included:

- the definition of working time – in particular how travelling time and on-call time are treated;
- coverage of the unmeasured working time derogation. Opinion was split on whether the amendment to this part of the Regulations had served to clarify or to complicate the situation;
- treatment of casual workers – especially ‘as and when’ casuals – for holiday and other purposes; and
- the issue of staff with more than one job.

We also found instances of significant misinterpretation of aspects of the Regulations even where employers seemed confident that they had taken the correct approach. The key areas of such misunderstanding were: the application of individual opt-outs; the definition of workforce agreements; and the application of the special cases derogation.

The 48-hour week

In most (15 out of 20) of the organisations involved in this project the proportion of the workforce regularly exceeding the limit set by the WTR was small. The major response to the Regulations was to encourage workers to sign forms opting-out of the 48-hour limit. A third had signed a collective or workforce agreement to vary the reference period and a similar proportion had made some changes to working practices to reduce the hours worked by individual workers. These included revised shift arrangements and increases in staffing levels.

Rest and recuperation

Almost all of our case study organisations were already providing workers with an in-work rest break. However, overtime working and shift patterns raised issues for a larger number in respect of the daily and weekly rest requirements (a total of 11 out of 20 were affected).

The responses to the changes necessary to comply with the Regulations included: compensatory rest provisions; new rest entitlement; reinforcing existing entitlements; an end to seven-day working; and revised shift arrangements. The follow-up study found that it was in the area of rest provision that practice, rather than formal policy, was most likely to be in contravention of the WTR.

Holidays

This was the least problematic aspect of the Regulations for our case study organisations. Only two companies had leave entitlement for a major group of workers that was below four weeks. The main issue raised by this research was the provision of leave for casual workers, especially ‘as and when casuals’, such as ‘bank’ workers in NHS trusts and other organisations. In addition, the definition of ‘pay’ that applies in respect of the WTR provisions for paid holiday had cost implications for four of the 15 employers involved in the follow-up study.

Night work

Fourteen of the case study organisations had some people working nights prior to the WTR. However, in only a few cases were the WTR night-work limits being exceeded. Where action was taken to comply with the limits, it involved a combination of using the WTR flexibilities and of changing working practices. The most significant part of the Regulations for most establishments with night workers was implementation of the health assessment requirements. However, in practice these assessments, once implemented, had not led to workers being moved away from night work.

Working time records

In the past, organisations had little reason to collect working time data for its own sake, except to record hours worked that were subject to payment and in so far as it was necessary to organise a shift working system. As a result, aspects of working time that should be counted to determine whether an individual’s working pattern complies with the Regulations had not been collected, or were collected via a number of different systems. This meant that complying with Regulations on record keeping was *initially* difficult for a number of organisations.

The case study employers fell into three groups:

- those who had made no changes to their recording systems, even though the data collected might not comply with the Regulations requirements;
- those where only minor modifications were seen to be required; and
- the largest group, where existing systems were subject to radical revision or had been or were to be replaced.

As a result a third of the employers interviewed in the first phase of our study said that the record-keeping requirements were the most onerous aspects of the Regulations. However, one year on when the systems set up in response the WTR had become more established and the requirements had been subject to amendment, this was an area of less concern.

Conclusion

This research was a two-stage project. Initial interviews were conducted in 20 organisations around six months after formal implementation of the Regulations. A follow-up study was conducted a year later involving further interviews in the 15 organisations which seemed to have been most strongly affected by the WTR.

Over the intervening period one case study had continued to develop a major programme of change associated with the Regulations. However, in other cases, including those where major issues were outstanding, there had been few developments and the issues seemed to have 'gone-off-the boil'. The findings of this research, combined with the analysis of the University of Warwick 1999 Pay and Working Time Survey in appendix 2 could indicate that, only when they coalesce with an agenda dictated by market pressures, will the Regulations impact further on working practices.

One

INTRODUCTION – THE WORKING TIME REGULATIONS

On 1 October 1998 new Regulations on working time came into force in the UK. These Regulations represented a dramatic change for the UK, where historically working time has been subject to little legal regulation, and where much of the regulation that did exist was repealed during the 1980s and early 1990s.

The EU Working Time Directive, to which the Regulations (WTR) (see below) are the UK response, have had more far-reaching implications for the UK than for any other European country.

This is due partly to the introduction of Regulations into a previously unregulated area and also to the working time patterns that operate in this country: full-time male and full-time female UK employees work on average considerably longer than those in other EU countries.

In February 1999 the Department of Trade and Industry commissioned IRS Research, in collaboration with colleagues from the Industrial Relations Research Unit at the University of Warwick Business School, to provide an assessment of the initial impact of the Regulations. This report contains the findings of a two-stage research project. The first stage of the research was based on detailed case studies of 20 organisations some six months after the implementation of the Regulations. We then returned to 15 of these organisations 12 months later.

WORKING TIME REGULATIONS: DTI SUMMARY*

Coverage

The Regulations apply to workers. The definition of worker covers those with a contract of employment plus a wider group who undertake work under other forms of contract (e.g. agency and temporary workers, freelancers etc.) but does not cover the self-employed. The Regulations exclude from scope workers involved in the following activities or sectors of activity: transport; sea fishing; other work at sea; and doctors in training.

There are some special provisions which relate to adolescent workers. These are workers who are over the minimum school leaving age but under 18.

Weekly working hours limits

The Regulations set a limit of an average of 48 hours per week. The standard averaging period is 17 weeks, but can be extended to 26 weeks if the workers are covered by derogations or up to 12 months through an agreement between employers and workers.

Individuals can voluntarily agree to disapply the weekly working hours limit.

Measures relating to night-time working

Night workers are subject to a limit of an average of eight hours in each 24-hour period. The standard averaging period is again 17 weeks but can be extended by the derogations or by an agreement between employers and workers.

Night workers whose work involves special hazards or heavy physical or mental strain are subject to an eight hour limit for each 24-hour period.

Adult night workers are entitled to a health assessment (an adolescent worker to a health and capacities assessment) before being required to perform night work and periodically thereafter.

Weekly rest periods

Adult workers are entitled to one day off each week. Adolescent workers are entitled to two days off. Both are subject to derogations in certain circumstances.

Daily rest periods

Adult workers are entitled to 11 hours consecutive rest per day. Adolescent workers are entitled to 12 hours consecutive rest per day. Both are subject to derogations in certain circumstances.

WORKING TIME REGULATIONS: DTI SUMMARY* *continued*

Rest breaks

Adult workers are entitled to a minimum 20-minute rest break if their working day is longer than six hours. Adolescent workers are entitled to a minimum 30-minute rest break if they work for longer than four hours. Both are subject to derogations in certain circumstances.

Paid annual leave

Workers are entitled to three weeks paid annual leave (rising to four weeks in November 1999). For workers who have just started work with an employer, their entitlement does not arise until a 13-week qualifying period has been completed.

Derogations

- *Unmeasured working time* – Covers workers whose working time is not measured or predetermined or can be determined themselves; or where the worker chooses to do work on top of measured working hours and that extra time is not measured or predetermined. Any unmeasured or predetermined working time does not count towards the 48-hour working time limit. In addition workers for whom all working time is unmeasured are also excluded from some other WTR provisions. Effectively these workers will only be subject to the paid annual leave provisions.
- *Specified circumstances* – Flexibility is on the basis that workers receive compensatory rest. The specified circumstances include security and surveillance activities, activities involving the need for continuity of service of production (such as dock work, hospital services, the provision of utilities, civil protection services, agriculture, etc.) and where there is a foreseeable surge of activity, such as in tourism.
- *Force Majeure* – Unexpected and unpredictable occurrences beyond an employer's control.
- *Employer / Worker agreements* – Collective agreements can be made with an independent trade union. 'Workforce' agreements can be made with workers where there is no recognised trade union. Where a firm employs 20 people or less, the workforce can individually sign the agreement. For larger firms, workforce representatives can be elected to negotiate on behalf of the workforce. The Regulations provide for a mechanism for representatives to be chosen. Collective and workforce agreements enable adaptation of entitlements to in-work, daily and weekly rest and night provisions, but not weekly working time or paid leave. The opt-out from the weekly limit is an individual voluntary decision.

Enforcement

The limits (e.g. the weekly working time and night work limits) in the Regulations will be enforced by the health and safety enforcing authorities, e.g. the Health and Safety Executive and Local Authorities.

Workers who feel their rights to entitlements (e.g. the rest periods and breaks and the paid annual leave) have been denied can seek redress by making an application to an Employment Tribunal, although ACAS initially has a duty to conciliate in claims under the Regulations.

**This summary has been supplied by the DTI and does not necessarily reflect the views of the report authors.*

Two

BACKGROUND: PRESSURES AND DEVELOPMENTS IN WORKING TIME

Working time, along with pay, is the defining feature of the employment-relationship. The starting point for most jobs is that time is bought for productive activity. The organisation of working time – how it is scheduled and utilised – are fundamental to productivity, motivation and performance. For employers, the arrangement of working time patterns helps determine the way in which goods and services can be provided. For employees, these working time patterns shape the very experience of work – its intensity and how it fits with domestic and social life – as well as being a major factor in compensation. It is therefore no surprise that the Workplace Industrial (later Employee) Relations Surveys show that ‘pay and the basic conditions of employment (such as hours of work) remained the primary focus of joint regulation between management and trade unions’ (Millward, et al, 1992: 352), and that working time is one of the areas which has a significant bearing on the job satisfaction, motivation and retention of employees (Cully, et al, 1998: 21-22).

In recent years, changes in the competitive and regulatory contexts have both intensified the interest in working time and shifted the focus. A harsh competitive environment has led management to see the organisation of working time as a major factor in performance (Blyton, 1995). At the same time, managers are having to respond to demands from an increasingly ‘feminised’ work force for ‘family friendly’ working hours. They are also considering the implications of a series of EU Directives dealing with working time, parental leave and the treatment of part-time workers. These pressures have already stimulated significant changes in working patterns as well as generating fresh controversies concerning the potential for further working time change and how it might best be managed.

Pressures for working time flexibility

Increasing competition in the private sector and a scarcity of resources and increasing ‘marketisation’ in the public sector have produced significant pressures to introduce greater and more cost-effective flexibility in working hours, as well as in many cases to an extension of operating times. In manufacturing, changes in production processes such as cellular teamworking and ‘just-in-time’ production have combined with the need to respond to the fluctuating volume and design

stipulations of customers to place an increasing emphasis on the flexibility of labour scheduling (Rojot, 1989). At the same time, increasing capital intensity provides greater pressures to more effectively amortise capital investments in order to reduce marginal costs (Bosch, 1995a and b). As a result, employers have simultaneously had to find ways to vary their labour inputs, through overtime, variable shift or annualised hours working, and to extend operational time by making additional changes to shift working arrangements.

Intensifying competition in private services has also had far-reaching implications for working time arrangements. In food retailing, for example, key developments have been the arrival of the discounters in the early 1990s and the deregulation of opening hours. In such a labour intensive industry, where union organisation tends to be low, managements have focused both on redistributing total labour hours to cover extended opening, through increased part-time working and the creation of new shifts, and on reducing labour costs, through the removal of hours premia and allowances. All of this has been facilitated by developments in new technologies such as EPOS (automatic scanning at the point of sale) and integrated staff scheduling systems, which have enabled companies to match working time more closely to the highly variable but generally predictable patterns of demand (for further details, see Deery and Mahoney, 1994). Similar trends can be found in financial services and the privatised utilities (gas, electricity, water and telephones), where increased competition following deregulation, coupled with the introduction of new technology, has been the stimulus to change (Walsh, 1997; Colling and Ferner, 1995).

In the public sector, it is budgetary flexibility resulting from tightening controls over public spending, together with the introduction of greater managerialism and market testing, that have been important catalysts for change, particularly in the NHS and local government (Bach and Winchester, 1994; IDS, 1997). Between them, these sectors employ a total workforce of over three million people with labour costs accounting for some 70 per cent of total costs. Working time flexibility was a direct concern of the 1997 national harmonisation deal for local government staff (IRS, 1997). The agreement allowed decentralisation to local level of arrangements for determining any premium rates for weekend, overtime and shift working. It also introduced the facility to average the newly reduced standard working hours over periods other than a week to meet varying demand for services.

In the NHS, working time flexibility has long been a prime concern due to the need to reconcile permanent opening with variable levels of demand. Also of increasing importance is the need to make working time arrangements more acceptable to the workforce owing to recruitment and retention problems associated with relatively low pay, demanding work and the high proportion of 'unsocial hours' (Audit Commission, 1997). In addition, the response of local managers to a regime of tight cash limits and highly centralised pay settlements for groups such as nurses has been a major driver of change. In effect, they have had little option but to focus on the variables in labour costs under their control, if they are to live within their budgets, which means the numbers of workers employed and the hours that they work.

Trends in working time

The anticipation of the Working Time Directive, and subsequently the Regulations, might have reasonably been expected to stimulate a wide review of working time arrangements. In fact, many employers have been making changes for some time, for precisely the reasons outlined above. There have been three main types of change in working time *duration* in recent years. The first, 'compressed working weeks', concentrates working time into longer shifts. The second, predominantly but not exclusively in the service sectors, involves the break up of working time into shorter blocks for part-time workers. The third relates to the duration of the contract for work rather than to the length of the working day or week itself.

The compressed week

A compressed week involves the reallocation of hours into fewer and longer blocks of time. For example, one reaction to reductions in the working week in engineering has been to reorganise on the basis of four-and-a-half days a week or nine days out of ten in a fortnight. Overall, however, the number of organisations with some form of compressed week in the UK is still small. According to Labour Force Survey data for Spring 1997, 2.1 per cent of employees worked a four-day week and only 0.3 per cent a nine day fortnight.

Part-time working

Part-time working is generally taken to mean hours less than the normal basic week, although official statistics often use a definition of thirty hours a week or less. The UK has the third highest proportion of part-time workers in Europe after the Netherlands and Sweden. The proportion of

women working part-time is especially high and is second only to the Netherlands. According to the most recent WERS data, two in five workplaces reported an increase in the employment of part-timers over the previous five years (Cully, et al, 1998: 9). One of the main benefits of part-time working is increasingly seen to be the greater flexibility it makes possible – especially in covering so-called 'key' periods of activity.

Temporary working

Temporary working enables employers to vary the total hours worked by changing the numbers employed on contracts of limited or pre-determined duration. It is an increasingly important means by which employers can respond to market pressures through numerical flexibility, reducing or increasing total hours worked through rapid and low-cost changes in employee numbers (Casey, Metcalf and Millward, 1997; Purcell and Purcell, 1998). Temporary employment is now fairly evenly distributed between the sexes, with over seven per cent of men and approaching nine per cent of women employees doing temporary work (including seasonal, casual or agency) or on fixed-term contracts.

Some of the main trends and developments in working time relate more to the *distribution* rather than duration of hours. Shift working has been the main way in which employers have sought to improve the distribution of working time.

Shift working

Shift working involves the working of two or more periods within the same 24 hours by different employees, usually organised in crews or teams. The aim is to increase the coverage of working time beyond the working day of the individual employee, even taking into account overtime. Shift working has long been a feature in many sectors in the UK. Historically, shift working has been mainly associated with manual workers, above all in transport and manufacturing. Increasingly, however, its net has spread to include non-manual workers in services. Shift working is now very common, for example, in sectors such as banking and finance and in retail, as well as the NHS where it has long been a feature. Approximately 3.6 million people 'usually' worked shifts in 1997. The largest numbers were involved in double day shifts, followed by continuous three-shift systems.

From fixed to variable hours

The arrangements considered so far involve essentially fixed hours worked on a weekly basis. Most attention, however, has focused on

arrangements under which hours worked are variable over the day, week or year. It is the extra flexibility variability brings which, in theory, management might be expected to find especially attractive.

Under *zero hours* arrangements, the employer calls in 'employees' at short notice as and when there is a need. Employees may even be asked to 'clock off' and so lose pay in quiet periods even though they are required to stay on the premises. The practice, which affected some 0.3 per cent of the workforce in 1997, came to prominence in the early 1990s in the retail and financial sectors especially (for further details, see Neathey and Hurstfield, 1996; Cave, 1997), and is essentially little different from the casual system prevalent in a wide range of industries in the last century.

There are two main forms of *flexible hours*. The first, popularly known as *flexi-time*, exists mainly for the benefit of employees. The second form of flexible hours primarily serves the employer rather than the employee. One variant, sometimes known as *minimum hours* or *mini-max hours*, is primarily found in retail and mainly affects part-time employees. Unlike zero hours, the employee has a contract for a fixed number of hours each week. By agreement with the employee, however, and subject to reasonable notice, the employer can increase the daily or weekly hours up to a pre-set maximum. For example, such arrangements have been introduced into multiple food retailing by Tesco: part-timers can opt to work a fixed 'core' of 10 to 16 hours a week on the understanding that they may be asked to work up to 31 hours a week to cover sickness and other absence. This is subject to special provisions designed to safeguard against casualisation, such as minimum guaranteed periods of work and notice required (for further details, see Employment Trends, 1996). Another variation involves *flexible rostering*. Under these arrangements, the employer can vary the daily or weekly hours around a range. A recent and major example of flexible rostering would be the Customer Service Improvement Programme introduced in BT and covering its engineers servicing domestic customers.

In the case of *seasonal hours*, employees work different hours depending on the time of year, with excess hours in one period 'banked' and taken off in lieu in another. Long a feature of agriculture, these have emerged in manufacturing and services more generally in recent years. In manufacturing, for example, Blyton (1995: 517-8) quotes in particular the example of Hitachi in South Wales. Previously, the especially busy period in the run-up to Christmas was covered by overtime and by

hiring temporary workers. However, since 1991 the standard working week of 39 hours has been modified to meet the demand pattern. Employees work a 42-hour week between August and December and 37 hours at other times. Pay, however, remains standardised at 39 hours per week throughout the year.

Arguably, *annual hours*, which bring together a number of practices discussed above, such as minimum hours, hours 'banking', and flexible rostering, represent the most advanced form of change to the management of working time. The basic principle is that working time is defined in terms of the year rather than the week. The employer is therefore better able to match working time to fluctuations in demand for products and services. Annualised hours working is an important way in which employers might respond to the Regulations. However, as yet in terms of coverage annual hours remain very much a minority practice. Moreover, if anything there appears to have been a decline in the number of employees covered in recent years. The LFS data for 1997 suggest that no more than 4.5 per cent of employees worked under such arrangements, whereas a detailed study based on LFS data for 1993 (Watson, 1994: 242-4) suggested that twice this number were involved. Why might this be the case?

Constraints on working time change

Significant though many of the changes are, they are clearly nowhere near as widespread as some pundits have proclaimed. Rojot's (1998: 193) judgement, that working time is 'probably one of the most difficult conditions of work to modify or regulate', seems wholly appropriate. A formidable obstacle in moving to annualised working time arrangements, for example, is the complexity of planning and agreeing a mutually acceptable system, one which is able to take account of the inevitable implications for wider pay and grading structures as well as for current working practices. Although difficulties can be minimised by using suitable software packages (IDS, 1996), the administration of annual hours can be complex, depending on the balance between fixed and flexible hours, the scope for employee choice over holidays and scheduled work shifts, and levels of employee turnover. The reaction of first-line managers and employees can also be off-putting: various worries have been reported about the inconvenience if banked hours are called in at short notice; working excessive hours at certain periods; the effect on earnings of loss of overtime and allowances; reductions in staffing levels; unaccustomed shift patterns; working with unfamiliar workmates; and the inflexibility of leave when it is rostered into the yearly cycle (see

IRS Employment Trends, 1998a and b). Awareness of the costs of change might therefore perpetuate a 'make do' approach to working time, especially in conditions of uncertainty, involving incremental rather than radical alterations. An additional consideration is that changes to established practice can be expensive if they have to be 'bought out' (Bosch, 1995a and b).

Yet perhaps the major factor constraining change is the certainty and legitimacy which existing arrangements can enjoy. Knowing that so many employees are going to be available between such-and-such and such-and-such hours is a necessary condition for the most basic forms of operations management. Moreover, any flexibility required is likely to be very specific to the particular types of operations. In an engineering company, for example, just-in-time production is likely to put a premium on extra hours being worked at very short notice, whereas in an industry such as chemicals, characterised by a continuous process, effective three-shift working round the clock is what is most valued. In retail, to quote yet another example, the peaks and troughs of demand over an increasingly lengthy cycle of seven days a week are massive but predictable, which encourages the development of a plethora of regular part-time shift patterns.

Sectoral differences in labour market characteristics can also be significant in defining the available options for change and reinforcing the operational requirements. Skilled engineering workers, for example, are overwhelmingly male workers looking for full-time secure employment and so part-time and temporary work is less likely to be feasible. In contrast, in the service sector a large proportion of the workforce – secondary earners and those with other household or educational responsibilities – might be willing only to work on a part-time basis. The obligation to tailor working time arrangements to the needs and preferences of the particular workforce will be even more pronounced in tight labour markets or where there are shortages of particular skills.

In these circumstances, as has been argued in detail elsewhere (Arrowsmith and Sisson, 1999), the durability of seemingly tried and tested arrangements can itself be a powerful force for conservatism. The outstanding example is overtime working, be it paid or unpaid, which is such a pervasive feature of British working life. The ease and simplicity of overtime working makes it appealing to managers and the premium rates which it can attract offer obvious benefits to employees. The organisation of overtime working, which is normally agreed on a voluntary rather than contractual basis, fits easily into the

decentralised and informal structure of British industrial relations. It is also supported by the short-term planning horizon of most British businesses and their emphasis on profitability rather than other performance measures such as market share. In theory, overtime is a very flexible working time arrangement – working hours can be increased to meet exceptional increases in demand without the costs and commitment involved in hiring additional employees. Just as importantly, overtime working can be cut back to respond to downturn periods without having to lose valued skilled staff.

In practice, the routine use of overtime, especially in combination with low basic rates of pay, risks creating what the DTI (1998a: 3) has called a 'long hours' culture in which long working hours become established not as the exception but as the norm, with workers depending upon the regular earnings it provides. The downside of such a culture is felt both by the organisation, which finds itself incurring the regular expense of premium rates for what may in fact be a less productive worked time, and for workers who have to repeatedly endure the demands of long working hours. In Whybrew's (1968: 63) words, 'overtime encourages people to waste time at work'. At the same time, workers can become resistant to change in order to protect their overtime earnings, and the very dependency on overtime removes from managers an immediate incentive to innovate. Routine overtime can thereby become a force for conservatism, inefficiency and rigidity in the workplace. In fact, for all the talk of technological revolutions, globalisation and rapid organisational change, it is extraordinary that the observation made by Flanders (1964: 59-60) some thirty five years ago should still ring true today:

What makes overtime systematic is the almost automatic adjustment in work habits and behaviour that its regular working induces among workers and supervisors alike... the existing level of overtime becomes one of the accepted facts of life. Everyone comes to count on it for the completion of tasks, rather than on some notional 'normal' week... The very regularity of overtime produces the attitudes that will ensure that it is continually needed.

True, many organisations have taken steps to limit the extent of overtime working in recent years (for further details, see IRS Employment Trends, 1996). These measures range from restraining strategies of imposing more precise conditions for authorisation, tighter budgetary controls and a closer monitoring of absence and scheduling of leave; to more radical elimination strategies

involving automation, increasing employment levels (including greater use of part-time, temporary contract and casual staff), new shift work patterns and, ultimately, annualised hours systems. Yet overtime working remains the practice most characteristically resistant to change (Roche, Fynes and Morrissey, 1996). In the form of 'presenteeism', i.e. unpaid overtime arising from the felt need to be at work (though not necessarily doing work), it has extended long-hours working from areas traditionally associated with high level of paid overtime – manufacturing and shop floor employees to services, professions and most grades from the bottom to the very top. Indeed, some chief executives feel that it goes with the job to be the first to arrive and the last to go (see, for example, Harvey, 1998).

The Warwick Pay and Working Time Survey

The Warwick Pay and Working Time Survey has been charting developments in pay and working time systems each year since 1995. A detailed questionnaire is distributed to senior managers in four sectors: printing, engineering, health and retailing. The 1999 survey contained a number of specific questions relating to the Working Time Regulations. Some of the main points from the 1999 research are summarised in Appendix 2. In brief the survey showed:

- employers had introduced a number of important changes to working time arrangements in recent years to improve performance and competitiveness,
- however, employers' activity in relation to the Regulations seemed to have focused on securing 'flexibilities' to minimise the impact of the legislation;
- as a result, long-hours working remained common and there was only limited sign of innovations such as annualised hours;
- nevertheless, the implications of the legislation were expected by employers to be much more significant in the medium to longer term, leading to increased costs and pressures for more efficient working practices.

Three

PROJECT OBJECTIVES AND METHODOLOGY

The aim of this project was to explore how organisations have adapted to the Regulations and to discover the impact of the WTR in workplaces whose working practices appeared to be affected by the Regulations.

To this end, its objectives were to examine:

- Employers' policies and practices on working time.
- The changes which employers needed to make to these practices in order to comply with the Regulations.
- How policies and practices in this area were developed and how the change process was being managed.
- The administrative implications of the record-keeping requirements of the Regulations.
- How workforce and individual agreements were being managed.
- Examples of innovative practice in implementing new working time arrangements.
- The views of employers and worker representatives on the impact of the WTR.

Methodology

The project was conducted by carrying out initial interviews in 20 case study organisations; and following these up 12 months later with return visits to 15 of the organisations. The sample of case studies is not statistically representative but was selected to reflect a variety of organisations which adapted their working practices to comply with the Regulations. Following discussion with the DTI the spread of sectors covered was expanded to include those where economic, market and production technologies impose real requirements on working time and patterns of work. The sample was designed to include the range of sectors to which this criteria applies and to ensure that organisations with small, medium and large workforces were included. We also wanted to cover the range of patterns of ownership and to ensure a mixture of unionised and non-unionised establishments.

Three sources were used to identify case study organisations.

- Respondents to the November 1998 IRS *Employment Trends* survey on the early implementation of the Regulations.
- Those involved in the University of Warwick Pay and Working Time survey, which is an

annual panel survey involving around 270 workplaces across the engineering, printing and health sectors and 22 national companies in the retail sector.

- The Employers' Forum on European Social Policy helped us to identify further case studies from amongst their membership, where the above list of contacts did not provide a suitable mix of case study organisations.

Following an initial telephone screening process 30 organisations were sent letters asking for their co-operation. Twenty of these participated in the project. Two companies withdrew an initial acceptance to participate, since negotiations on the Regulations that they had expected to be completed had not reached a conclusion. However, most employers who did not want to co-operate with the project said that this was because the Regulations had little significance for them. Table 1 summarises the characteristics of the organisations that formed the case studies for this project.

Our aim was that at least seven organisations would have utilised the flexibilities in the Regulations via collective or workforce agreements. This objective was achieved with five organisations having finalised collective agreements and three having reached workforce agreements.

We considered that the key unit for investigation should be the individual workplace, since it is at this level that details of working time arrangements are commonly determined and it was here that the practical implications of the Regulations were likely to be most strongly felt. However, since this devolved control raises particular issues for organisations attempting to ensure compliance and set policy from the centre, we also knew that corporate-level interviews would be required. Some of the larger organisations involved in the project had not fully implemented their approach to the Regulations when we conducted our first round of interviews, so the corporate-level interviews were the key source of data in these and other organisations. In each organisation we interviewed, as appropriate, the following:

- The HR manager or other responsible at workplace level for maintaining working time records.
- A line manager of workers whose working practices had been affected by the WTR.
- Between one and four employee representatives (in organisations with recognised trade unions or where employers had signed workforce agreements – conducted as a joint interview).

- The senior corporate-level manager responsible for policy on the implementation of the Regulations.
- Trade union representatives involved in any consultation or negotiations on the implementation of the WTR at corporate level.

The first set of case study interviews was conducted some six months after the formal implementation of the Regulations on 1 October 1998. At this point some organisations had yet to fully determine their approach to implementation. In addition, in most cases it was too early to assess the full impact of the Regulations. For these reasons around 12 months

later – between March and May 2000 – we returned to 15 of the case study organisations to conduct follow-up interviews. Our criteria in determining which of the case studies should have a follow-up visit were that:

- the Regulations did have some implications for the working/employment practices of the organisations concerned; and
- we were able to arrange interviews with either a line manager or an employee representative able to give us a picture of the impact of the Regulations ‘on the ground’.

Table 1: characteristics of case study organisations

<i>Size</i>	<i>Ownership</i>	<i>Sector</i>
0-49	I	Hospitality
	F	Pharmaceuticals
100-199	I	Retail/Wholesale
200-499	UK	Electronics Engineering Printing†
	I	Engineering† General manufacturing General services
	F	Food, drink & tobacco
	–	NHS† Voluntary†
500-999	UK	Utilities
1000 and over	UK	Construction (contracting)† Finance Finance† Hospitality Retail
	F	Security†
	–	NHS†

I = Independent, UK = UK owned, F = Foreign owned

† Organisation is unionised

Four

CHANGES IN WORKING TIME PRACTICES NOT RESULTING FROM THE REGULATIONS

Chapter two highlighted pressures for stability and change in working time practices in the UK. This analysis indicated that market factors had a much stronger impact on working time patterns than anticipated legislation.

So, in conducting the current research project it was clearly important to set our case study research in context by examining factors other than the Regulations which might have led to changes in working time practices over the last two years. Management and employee representatives were asked, both in the initial and the follow-up interviews, whether there had been any changes in the organisation's working time arrangements which were not directly prompted by the Regulations.

At our first visit eight of our case study organisations had seen recent changes to their working time arrangements that were unrelated to the Regulations. All but one of these were large organisations employing 1,000 or more people nation-wide. In addition, most were in the service sector. Small to medium manufacturing organisations had not seen working time change over the last two years. The subsequent twelve months saw change in four organisations – all of which had also reported working time changes not related to the Regulations at the time of our first visit.

In most cases, changes were prompted by competitive pressures to better meet customer needs, or in direct response to customer demand. The most common kinds of change made by the case study companies involved providing service coverage for a greater part of the day or night. So changes commonly took the form of new and more flexible shift arrangements. However, other changes involved reductions in working hours for health and safety reasons; or offering greater flexibility to workers in determining their working hours.

Responding to customer requirements

Two organisations, both contractors, had changed working time arrangements to meet the requirements of new contracts.

- The security company (case study 7) had won a number of contracts with a public sector employer that expected shorter working hours. So the company had seen an increase in the

proportion of its employees working 42 hours a week rather than the 50, 60 or 70 hours that was common previously. A line manager reported other changes to working arrangements as a result of customer-driven requests. At our second visit we were told of an increased move to contracts based on shorter hours, in cases where the premises being guarded were offices and the clients involved were concerned about their public image and the number of hours that people work.

- The construction contractor (case study 19) reported that most new contracts involved the introduction of new shift arrangements. For example, a client who awarded them a contract for trunk road maintenance would only allow 'traffic management' between 9.30am and 3.30pm and between 7.00pm and 10.00pm. So the shift pattern for workers on this contact became 6am to 3pm and 3pm to 12 midnight to enable the twice-daily assembling and removing of traffic management equipment as well as the maintenance work itself.

Providing an increased level of service to customers and clients was the major reason for change in the service sector.

- An NHS trust (case study 8) had extended the working day in its clinical support services such as radiology to enable longer opening hours for clinics. More recently, a flexible shift system was introduced for staff in operating theatres. This removed the need for stand-by arrangements. The change was made for two reasons: to meet demands for an extended patient day – for example operations now take place as late as 9pm; and to make it easier to recruit staff to theatre posts.
- At the housing association (case study 9) shift patterns had been changed in residential facilities to allow a higher level of staffing on a 24-hour basis. This was because there had been a change in client base meaning that a higher level of care was required. In addition the association had had negotiations with its staff body to change some of its fixed holidays into general leave in order to allow greater office opening during public holiday periods. A later change – prompted partly by the review of working practices which followed the WTR – was to alter catering staff rotas, replacing an arrangement of one-60-hour-week-on, followed by one week-off, with a system which offered better staffing cover and was less of a threat to health and safety.
- In one of the finance companies (case study 12) there had been a move to 24-hour opening in call centres and branches were opening for longer hours at weekends. This was in response to

changing patterns of demand on the part of customers and similar moves on the part of competitors in the market.

- In the other finance company (case study 16) operational requirements demanded that IT support staff should be able to provide 24 hour cover. As result a new shift system was introduced. The workers concerned work four, 12-hour shifts in a seven-day period, followed by three days off. However, the details of this system were determined with reference to the anticipated elements of the Regulations. So an employee preference for seven days on followed by seven days off was rejected on the basis that it was unlikely to comply.
- In the utility company (case study 11) a new 24-hour stand-by rota for customer services staff, plus extended day and evening cover, were introduced three months prior to our second visit. This followed an incident when customers in a local area were without services for a number of days and the company was criticised for its lack of out-of-hours cover.

Cutting costs

In the utility company (case study 11) earlier changes were made to cut staffing costs, however management also had in mind the Regulations when it determined the form of these cost-cutting arrangements. In the works department a 'dedicated' standby shift was introduced in August 1998. Previously staff called out for emergencies were often also doing 'planned' work, which meant that planned work was disrupted and got behind schedule with cost implications. In addition, there had been an increase in the work classed as emergencies requiring speedy attention as a result of changes by the industry regulator.

Health and safety issues

Working practices were changed in response to health and safety considerations in two organisations.

- In 1998 a report by a body monitoring one of its client areas suggested that the security company (case study 7) should look at its shift patterns. There was concern that the total number of hours worked was too many. This led to a reduction in the standard number of hours worked by employees in the area from 56 hours to 48 hours. The client organisation agreed to fund the increased staffing costs resulting from these changes. All changes were negotiated with the relevant trade union and fundamental to the reduction in hours was a commitment by the company to protect employee's earnings. According to the union representative the

company and the union had a long-standing agreement to cut working hours.

- Legal action against the construction contractor had highlighted that at least one driver was contravening drivers' hours Regulations by working excessive hours without a break. The company set up system to monitor and enforce breaks. The affect was a reduction in overtime earnings for the drivers concerned.

Worker demand

Finally, in two cases change was at least partly in response to worker demand for greater flexibility in their working patterns.

- A retailer (case study 15) had introduced a trial of term-time only working arrangements within a limited number of stores and had also provided the opportunity for employees to reduce their contractual hours on request.
- One of the finance companies (case study 16) had increased the bandwidth of its flexi-time system partly in response to employee demand, but also because expansion in the business meant that there was a shortage of office accommodation. The company wanted to spread occupancy over a larger number of hours.

Conclusion

Our research found working time change *not* associated with the Regulations to be concentrated in larger, service sector organisations. The small to medium manufacturing companies had seen little change in working time over the two years prior to the commencement of our research. In the following chapter we explore how each of the case study organisations decided whether the Regulations would require changes to their working arrangements and the process by which such changes were implemented.

Five

IMPLEMENTING THE REGULATIONS – THE PROCESS

The process by which organisations implemented the Regulations is shown by our research to be management-led and usually guided by the personnel function. This impression, given by interviewees in the HR function, was largely supported in both line management and employee representative interviews. Generally, implementation of the WTR has not been a source of conflict between employer and workers.

In most smaller organisations (11 of the 20 case studies) determining the company's approach to the Regulations was a simple process. The personnel manager or individual responsible for personnel issues carried out an initial assessment of the Regulations and conducted some evaluation of existing working time records – typically those relating to overtime. He or she then developed proposals, which were discussed and ratified at board level. Any worker consultation took the form of written communication or information circulated via a consultative structure.

However, in some larger organisations a much more extensive review and consultation process was carried out. In most cases the outcome of this process was either a collective or workforce agreement. In this chapter we include four examples of the approach taken by organisations which saw the Regulations as requiring a fundamental review of existing working practices. For two of these, finalisation of the approach resulting from this review was still some months off at the time of our first stage fieldwork (April/May 1999). In the two other cases, although the corporate policy had been finalised, local implementation was still in its early stages. In all cases our return visits gave us the opportunity to explore progress achieved twelve months later although, in one organisation (case study 8), final resolution of how the WTR should be implemented was still a long way off, and in some other companies reviews or changes originally planned had not taken place (for example case studies 9, 16 and 19).

Assessing existing practices

In most of the organisations in which our research was conducted, the action taken to review existing working practices in respect of the requirements of the Regulations was limited to an evaluation of overtime payments, plus an assessment by the

personnel manager (or equivalent) of other aspects of working time. A minimal analysis of this kind was conducted in 11 of the 20 case studies. Most of these were relatively small organisations where the individual taking the lead on implementing the WTR, together with the senior management team, was generally in a position to have a reasonably extensive knowledge of existing working practices. In some cases, however, information gathering was considerably more extensive. The case studies at the end of this chapter include examples of attempts to conduct a broad-ranging audit of existing working practices. This typically involved seeking information from those 'on the ground' in the organisation concerned; as well as reviewing existing data.

Other organisations that conducted special information-gathering exercises include the charity (case study 1) where a working time audit took the form of a questionnaire issued to all employees. In one of the NHS trusts (case study 14) the personnel manager and director of operations examined existing shift patterns and interviewed the relevant line managers. This revealed that in Regulations terms the biggest concern was the working patterns of portering staff, who were not getting adequate breaks between shifts.

One finance organisation (case study 16), where data on unpaid overtime had not been available, had planned to amend existing systems to enable this and other information to be collected, in order to comply with the Regulations. The company originally intended that its approach would be reviewed once the new system had been on-line for six months to see if any other action to comply with the Regulations was necessary. However, 12 months later the company was still waiting for its system suppliers to provide the necessary amendments to its time recording system and this factor, combined with more pressing organisational issues, meant that the review had not taken place.

The extent of consultation

For most organisations, establishing the approach to the Regulations was a centrally-led process determined by the HR function, with decisions typically made at board level. Line management and worker participation in decision-making was minimal. As we show below, even where the company adopted the approach of seeking a workforce or collective agreement, in some cases that process involved information provision and consultation but not negotiation. The following table shows the kind of involvement in the process given to different stakeholders in the case study organisations.

Table 2: information, consultation and decision-making on WTR implementation

<i>Form of involvement</i>	<i>Members of HR function</i>	<i>Other directors/ senior managers</i>	<i>Line managers</i>	<i>Union/ staff reps</i>	<i>Individual workers</i>
Led the process	16	6	–	–	–
Involved in decision-making	–	20	–	–	–
Negotiated	–	–	–	5*	–
Consulted	–	–	5	10**	3
Provided with information	–	–	5	1	17

*Includes one organisation where the staff representatives described the process as consultation

** Includes one company where union representatives described the process as information provision

In most cases, determining the organisation's approach to the Regulations was the responsibility of the senior member of the HR function, such as the HR Director. Other members of the HR function carried out information gathering and much of the day-to-day work. Where the process was led by other directors or senior managers, this was because the personnel/HR specialist was at a fairly junior level (case study 14), or because there was no HR function – the independent hotel (case study 6); the printing company (case study 4); and the food manufacturing company (case study 10).

Personnel professionals received the assistance of external expertise in two cases: one of the NHS trusts (case study 8) worked closely with an independent consultant and the housing association (case study 9) relied heavily on the help of a local ACAS official.

The process was generally a highly centralised one, so in only five cases did line managers say that they had been consulted during the process. This consultation typically took the form of discussion over existing working practices and the impact of potential changes. This approach is illustrated in three of the examples at the end of this chapter. Five companies that did not consult their line managers had, however, issued them with special information on the Regulations and the action required of them under the Regulations. Examples include one of the finance organisations (case study 16).

Eight of the twenty case study organisations recognised at least one trade union for negotiation purposes. A further two had long-standing in-house staff associations and another six had structures for employee consultation. However, in only five cases did employee representative involvement in the implementation of the WTR

amount to negotiation, in the sense that they were involved in determining the approach to the Regulations and that the implementation of that approach was dependent on their agreement. In an NHS trust (case study 8) trade union representatives were being involved in working parties examining aspects of the Regulations. The recommendations of these working groups were subject to negotiation through the normal collective bargaining machinery. There were still many key issues awaiting resolution at the time of our second visit.

Consultation with employee representatives over the WTR was more common and took place in half the case study organisations. The pharmaceuticals company (case study 5) established a kind of employee consultative structure specifically for the purpose of discussing implementation of the Regulations, even though the company was not seeking a workforce agreement. One of the company's directors called on staff to put themselves forward as one of two 'staff representatives'.

In three organisations, all with consultative structures, individual workers were given the opportunity of responding to the company's ideas on implementation of the Regulations: these were the food manufacturer; major retail organisation; and hospitality company. However, in most cases workers were simply provided with brief outline information on the main provisions of the WTR, typically accompanied by a form offering the opportunity to opt-out of the 48-hour limit. In one manufacturing company the information provided was limited to an erroneous interpretation of the rules relating to night work and an outline of the 48-hour limit. The notice advised workers to 'make themselves familiar with the Regulations

so that they are aware of their rights'. Generally, however, employers summarised the Regulations with a view to communicating individual entitlements.

Collective agreements

Five of the eight organisations with trade union recognition adopted the approach of reaching a collective agreement to take advantage of the flexibilities in the Regulations. In one case, that of the large NHS trust, the implementation process had yet to be completed at the time of our second visit. The trust was planning to use collective agreements, under the terms of the WTR, to deal with rest provisions where shift arrangements could not be adjusted quickly to meet the terms of this aspect of the Regulations. In the contracting company, negotiations with full-time officials of the recognised trade unions started in September 1998 and the collective agreement was finalised in June 1999. In the security company a collective agreement applying to the bulk of its workforce was finalised in 1998. Further details of each of these processes is given in the examples at the end of the chapter.

The fourth collective agreement identified by this research applies to the independent printing company. At our initial visit we were given information about a collective agreement relating to the reference period and to daily breaks. It was described as an agreement by both management and union interviewees. But that agreement drafted unilaterally by management had yet to be signed by employee representatives. It provided for a 52-week reference period. However, subsequent discussion between the father of the chapel and works director produced the decision that 17 weeks would be adequate and so this revision to the Regulations was not necessary. Instead a revised production schedule had been introduced to flatten-out workload over the year. The final agreement did, however, include the provision that daily breaks were to be taken in the form of two 10-minute breaks, rather than one of 20 minutes. This outcome followed a review of his members' preferences, conducted by the trade union representative.

In a fifth case – one of the NHS trusts (case study 14) – it seems that decision-making was effectively done by management, with an agreement to extend the reference period to 26 weeks 'rubber-stamped' by union members of the negotiating committee.

We asked corporate management interviewees in companies with trade union recognition to say why they had chosen or rejected the approach of negotiating a collective agreement on

implementation of the Regulations. Where the collective approach had been adopted, reasons for this choice were given as: a need for the flexibilities that this approach offers; and/or the fact that the organisation had a history of collective resolution of pay and conditions issues.

Three unionised companies were not pursuing collective agreements on working time. In each case this was because management did not see such an approach as necessary. This view was shared by union representatives in two cases.

- The charity HR manager said that this was because 'the Regulations do not impact a great deal on the organisation. Also the trade union expressed no interest in a collective agreement'. The union representative confirmed that 'there were no negotiations as such, because we had no major disagreement with HR proposals'.
- Similarly in a finance organisation no agreement was developed because 'We didn't see the need. We discussed it with the union and they agreed that there was no need. It was not contentious.' The union representative also said that 'there was no disagreement'.
- An engineering company said that although it was largely using worker opt-outs to meet the WTR requirements, it had attempted to discuss the Regulations with union representatives. They claimed that the union took the view that it was up to management to implement the directive and that any problems would be addressed as they occurred. However, the trade union representative said that there had been no action by the company to reduce long hours.

Workforce agreements

Three organisations visited for this project had drawn up workforce agreements as part of their implementation of the Regulations. As we set out in the next chapter, the legality of each of these agreements was made questionable by the form of employee representation used – none of which seemed to comply completely with the terms of the WTR. We set out below the processes used to reach these agreements.

- The housing association (case study 9) saw the Regulations as a basis for reviewing, and providing a 'health check' on all its working time practices. Management favoured a collective approach which would give the staff association, which usually only had a role during annual pay negotiations, involvement in decision-making. A working group was established to determine the organisation's approach to the Regulations in late summer 1998. This consisted of the HR manager; the senior manager responsible for the groups of

workers who would be most affected; one of the two care home managers; the personnel and training manager; and the manager of the control centre. The chair of the staff association was also involved, and discussed with senior management how to get representation from those groups of workers most likely to be affected. In the event six representatives were selected. This was not achieved by any form of election, instead individual members of staff in each of the relevant workplaces were asked by their line manager to volunteer. Finally, the organisation had a long-established working relationship with the local ACAS officer, and he was involved in the working group in an advisory capacity throughout the process.

The working group met around seven times between August 1998 and February 1999. It discussed the appropriate approach to each major element of the Regulations and collected data on the degree to which the organisation was currently complying with the Regulations.

During this period, management and staff members of the working group discussed developments with their colleagues at workplace level. The line manager of our case study workplace said that she regularly briefed staff on developments in the working group and consulted them about key decisions.

The process was described by management as one of negotiation. However, staff representatives did not agree that this was the case. The new chair of the staff association said: 'We were really only consulted; our power to change anything was minimal.' This picture was confirmed by one of the other employee representatives in the working group.

The workforce agreement was signed by members of the management team, the chair of the staff association and the six staff members who participated in the working group.

- In one of the finance companies (case study 16) the company decided that it needed an extended reference period to facilitate compliance with the 48-hour limit. The company staff association (not an independent trade union) had issued guidance to its members saying that it did not consider that the WTR raised any issues for the company. As a result, according to the HR manager, they had to be convinced of the need for negotiation around this issue. In the event the discussion took place between two full-time officers of the association and the member of the HR department with responsibility for health and safety issues. The Group Human Resources Committee – consisting of members of the senior management team – was kept informed of development and 'signed-off' decisions. The company had originally been seeking a

52-week reference period; however, this was opposed by the association and a compromise of 26 weeks was agreed in March 1999.

- The hospitality company (case study 18) decided to use its consultative machinery as the means of reaching a workforce agreement on aspects of the Regulations. The structure included committees at workplace, regional and national level. Workers were asked through staff council structure, if they would be happy to use the national level Council as the representational body for agreeing working time arrangements. The Council consists of staff representatives from each hotel, regional representatives and senior corporate managers.

Corporate HR briefed the Council on the details of the Regulations, together with an approach for compliance and likely exclusions. The WTR were discussed at the November 1998 meeting. The hotel staff representatives returned from the meeting with an explanatory letter, which was then circulated to all national hospitality company workers. The letter explained the main provisions of Regulations, and asked if workers had any objections to the way the company was interpreting and intending to enforce Regulations. Workers could make comments and raise objections via their staff representatives. The national council met again in January 1999 and ratified a workforce agreement.

Once the workforce agreement had been signed, hotels held departmental briefings to inform staff and managers of any new procedures arising from WTR.

However, most non-unionised organisations did not adopt the approach of drawing up a workforce agreement. The reason for not going down this path was generally as set out by the HR manager of a small retail/wholesale chain (case study 2): 'We had no representative structure in place and it didn't seem worth building any, given the relatively minor implications of the Regulations for the company.'

The degree of compromise

The implementation of the Regulations has not been a source of conflict between the organisations in this project and their workers. From our research there is little evidence of worker pressure to use the Regulations as a basis for changing a long-hours culture. The only exceptions were the security and contracting companies, where both sides say that they had compatible objectives to reduce working hours. These examples are explored in more detail at the end of this chapter.

The first phase of our research took place only six months after implementation of the Regulations. At that stage we thought it was possible that, once there was greater awareness and understanding of the WTR, this consensus would change. Or that the details of implementation could prove more contentious further down the road. In the event the second stage of our research found only a few examples of individual grievance arising from the Regulations. These are outlined below.

It could be argued that organisations that were facing difficulty over this issue would be the ones least willing to participate in research of this kind. Two companies did withdraw an initial acceptance to participate, since negotiations that they had expected to be completed had not reached a conclusion. However, most employers who did not want to co-operate with the project said that this was because the Regulations had little significance for them.

Negotiations inevitably involve compromise. However, in no organisation that had reached a workforce or collective agreement, did management interviewees say that they had been forced into compromises with which they had problems, and all said that they were satisfied or happy with the outcome of the negotiations. The picture was very similar for employee representatives, with the exception of the engineering company, which had not taken the approach of seeking a collective agreement, but where the union had wanted to use discussion of the Regulations as a way of reducing shift lengths and improving rest period provision.

Some areas of individual dispute

None of our case study organisations were involved in any collective disputes as a result of the Working Time Regulations. In a minority of cases (three), workers raised concerns, usually not formalised, concerning the actual or potential impact of changes in working patterns on their earnings.

Only one company (case study 7) faced any formalised individual grievance resulting from their approach to implementation of the Regulations.

- In one case an employee asked for a health assessment but was refused by his line manager on the basis that he was not a night worker. The collective agreement defined anyone working half or more of their shifts at night as a night worker. The HSE became involved in the case and advised the company of the judicial review in the High Court in Northern Ireland. The judgement in this case was that a worker doing one week on nights in every three-week cycle

would be defined as a night worker under the terms of the working time directive¹. The more general application of this principle, which would mean that around 90 per cent (rather than between 80 and 90 per cent) of all company employees were night workers, was a matter awaiting resolution at the time of our second visit.

- A member of staff who was also a trade union representative raised an individual grievance because he had lost money as a result of a cut in working hours to comply with the Regulations. The individual concerned had actually been involved in the negotiating team that agreed the collective agreement and its provision for changed working practices. There was concern that his individual complaint might undermine the agreement. However, in the event he was voted out of office by his members and the issues 'went away' according to the HR manager.
- The trade union representative mentioned individual grievances relating to the Regulations and aspects of interpretation of the collective agreement which, at our second visit, had yet to be resolved. In one area of the company employees had submitted formal grievances relating to the provision of daily rest breaks on 'one-man' sites. The other outstanding issue, following a grievance raised by a regular casual worker, was the provision of holiday pay to casual workers. The principle that these workers should get holiday pay had been agreed but it had yet to be incorporated into a formal collective agreement when we conducted our follow-up study.

The only issues raised in other case study organisations had not reached the status of a formal dispute /grievance.

- A line manager in the food manufacturing company reported that revised rotas, designed to reduce overtime working, were very unpopular with some of those affected, who threatened to leave. However, their earnings were protected under the new arrangement and in the end all the staff concerned accepted the new rotas.
- In case study 11 the personnel manager said that staff who had had their hours cut as a result of new working patterns, partially linked to the Regulations, had complained about the loss of earnings.
- In a finance company (case study 12) the union representative said that the union had received informal complaints from individuals who had seen their pay cut as a result of a reduction in overtime working. However, the union had maintained the position that people should not be working over 48 hours on a regular basis.

The costs of review

Towards the end of this report we explore the impact of the Regulations and set out the costs of implementation where they have been identified. In concluding this chapter we are interested simply in the costs of the review process by which companies established their approach to the Regulations. In those cases where a minimal approach of examining existing records had been used, employers said that the costs of review were minimal or none.

For other organisations, such as those set out below where more extensive information gathering consultation and negotiation had been used, costs must have been higher in management and staff time alone. However, only one organisation, an NHS trust (case study 8), expressed concern about, or was prepared to quantify costs of this kind: it was estimated that the auditing of existing working practices had cost between £5,000 and £7,000 in management time alone. This excluded other costs, such as the use of management consultants.

Conclusion

In most organisations research to assess compliance with the Regulations was undertaken by HR professionals. Implementing the WTR was a centralised, managerially led process, and line managers and employee representatives played a proactive role in only a minority of cases. Organisations that had conducted a major review of their working practices in light of the Regulations were in the minority.

End Note

¹ In the matter of application by Shirley Burns for judicial review, 15.3.99 High Court

Case studies: strategic response to the Regulations

EXAMPLE 1: An NHS trust (case study 8)

In the summer of 1998 the trust set up a project group and developed a project plan to address the issues raised by the Regulations. This group worked with the personnel manager and the local NHS consortium. It also received guidance from an external management consultant. The project plan included: collecting information on working practices across the trust; comparing working practices against the WTR; identifying patterns outside the Regulations and proposing solutions. It also looked at the costs of the recommendations.

The management consultant designed a questionnaire for structured interviews with NHS managers and 30 interviews were conducted with directors, clinical directors, and general managers, to collect the data on existing working practices. This audit was necessary because there was no centrally-held information on working patterns other than on the amount of work for which people were actually paid.

A confidential report was completed based on the data and the discussion of the project group. It identified problem areas and included recommendations on how to proceed. Further detailed investigation and a series of working parties including trade union representatives, produced a long list of measures required for full implementation of the Regulations. The trust is committed to implementation, but it has significant cost implications. As a result, full compliance with the WTR is expected to take several years. The following is a list of actions completed and those planned by the time we conducted our second round of interviews in the trust – some 18 months after the Regulations came into effect. In general, the process for reaching decisions on each required action has been discussion amongst the management team, working parties composed of both management and staff representatives, and finally negotiation via the usual collective bargaining machinery.

Actions completed during 1999/2000

- Night workers identified; health checks offered and a system of annual health checks implemented.
- Bank staff with 13 weeks service given holiday pay.
- Revised record systems devised and piloted.
- The trust explored the use of various computerised systems to support both working time records and the running of the nurse bank scheme.
- Enhanced holiday pay paid to night staff to take into account shift premiums etc, rather than simply basic pay.
- Working patterns in areas affected by the Regulations reviewed and proposals developed for revised working arrangements that meet the requirements of the Regulations.
- Consultants and senior medical staff asked to carry out monthly diary audits of their working time.
- A 'waiver clause' drafted for staff currently working on average in excess of 48 hours a week.

Further priority areas were identified for action during 2000/2001. These included a series of issues relating to working practices in key departments: pathology; operating theatres; radiography; and night portering. The trust also identified the need for

collective agreements to cover practices where breaks between shifts could not be brought quickly into line with the Regulations.

Finally, the implementation of the Regulations has staffing implications for a number of departments. The trust was planning to begin the process by recruiting additional consultants.

EXAMPLE 2: A retail organisation (case study 15)

In late 1997, corporate HR and company employment lawyers initiated discussion of the EU Working Time Directive. However, the full implications of the Directive were not considered until the draft Regulations were published in the spring of 1998.

During July and August 1998, corporate HR set up a working group, comprising management representatives from each area of the business, to discuss a company-wide response to the draft Regulations. The group reviewed the implications of the draft Regulations while conducting a 'reality audit' of actual hours of employees, and examining employee satisfaction with current working time practices, expressed through the company's two-yearly employee attitude survey.

A consultative process was established through the chain of management and members of the working group consulted with employees in their localities and reported views on working practices back to the central group.

The findings of the review of actual working time revealed that two groups of employees most often worked in excess of their contractual hours: retail managers and part-time retail employees. It also showed that in some areas, although company policy was compliant with the Regulations, local practice was not. For example, before the introduction of WTR, the company policy was to provide a minimum 12-hour break between working days. However, the audit revealed that significant numbers of employees were voluntarily working a late night duty followed by an early start, and so not getting a break of sufficient length. As a response to Regulations, the company has prohibited this practice.

An aspect of WTR requiring extensive consultation with staff was that relating to an adult worker's right to take a 20-minute rest break in every six hours. The reality audit suggested that in some instances, individuals working for more than six hours but less than eight hours, were only receiving a 15-minute paid break. Issues were:

- whether the additional rest period should be paid/unpaid;
- as rest breaks had always been paid, how would employees respond if the company introduced unpaid rest;
- the cost implications of extending the period of paid rest; and
- how compliance was to be managed.

Corporate HR began to cascade detailed information on the company approach to Regulations approximately four weeks before the 1 October deadline. Full details were announced to all employees during the week commencing 25 September 1998.

EXAMPLE 3: A security company (case study 7)

The issue of the implementation of the Working Time Directive was first considered by the personnel director around the time that the Directive was agreed by the Council of the European Union. At this time the company consolidated its overtime supplements in preparation for cutting hours, to protect workers' earnings in the long term.

The company had a clear view, well in advance of the Regulations becoming law, of the key issues on working time that needed to be addressed. Much of its workforce worked extremely long hours for low pay, often with few or no breaks. The implementation of the WTR provided the basis for the company to conduct a process of review and change of the working practices of their workers, especially those in mobile grades whose health and safety was seen as at risk under existing arrangements.

Decision-making has been carried out by the personnel director, managing director and personnel manager, while all regional directors have been consulted. The national secretary of the relevant section of the union recognised by the company, plus eight senior union representatives were also consulted via the national negotiating committee (NNC).

Agreement with the union on the list of issues to be covered by a working time agreement was reached in July 1998, before the Regulations were passed in parliament. Soon after this, both sides agreed that although the long-term objective was a reduction in working hours, low earnings would mean that many workers would wish to opt-out of the 48-hour limit. So opt-out forms were issued to staff in advance of the agreement being finalised.

According to the union representative, a small 'working party' was set up to discuss the directive. This was made up of the union national officer, two union representatives (including the interviewee), the HR manager and the commercial director. These people developed the collective agreement for negotiation in the NNC. The agreement was signed on 30 September 1998.

To implement the agreement, local managers have been given responsibility for cutting hours in response to the Regulations and in line with the collective agreement, which states that people should not work more than 48 hours a week averaged over a four-week period. Managers who do not take action in this area will be subject to disciplinary action.

Local implementation

The line manager interviewed said that in pursuing compliance in his area of responsibility he had examined all his contracts with customers. He looked at the current staffing levels and shift patterns – particularly at those that were in breach of the Regulations. These generally fell into three categories:

1. excessive shifts of over 13 hours;
2. those who were not getting the daily and weekly rest periods; and
3. lone workers who were not getting breaks during the day.

He then drew up a customer plan and identified which contracts needed changes made to their shifts. The plan also indicated where the minimum wage requirements were not being met. He met the customer and/or reduced shifts and increased the pay in line with the minimum-wage requirements. He also discussed increasing the use of part-timers to cover any shortening of shifts. He dealt with each client differently. He says that of the contracts where changes were made, in around 80 per cent of cases increased costs were passed to the customer. In 10 per cent of cases, they lost the contract because the customer was not prepared to pay more and in the remaining 10 per cent of cases the company has had to fund the changes.

Where staff contracts were changed, each line manager spoke to the relevant staff and this was reported to the area manager so that he knew the staff views. He says that it was important to get the staff's views and this helped when renegotiating the contracts with clients. The company nationally gave local managers guidance and time scales for compliance, plus suggestions and advice on how to deal with excessive hours and the rest requirements. But he says that implementation is down to him and 'it is not possible to impose one way of dealing with it'.

EXAMPLE 4: A contracting company (case study 19)

The company's personnel manager first considered the issue of how the Working Time Directive would affect the company in 1997. She issued regular updates to the management team on the likely form that the Regulations would take and on consultation documents and advisory documents received. However, it was not seen as appropriate to go any further until the precise details of the Regulations were clear.

Once the Regulations were finalised the starting point in the company was a discussion paper for the senior management team, which was followed by a similar paper issued to union full-time officials. The company has a long history of collectively-bargained responses to HR issues and it was always clear that the company's response to the Regulations would be determined via negotiation with the five unions represented in the company. The personnel manager had a total of five meetings with union full-time officers between September and December 1998. The results of these initial deliberations were taken to divisional negotiating committees – composed of lay representatives – in December. During the same period a series of training and consultation workshops with managers also helped to identify the issues that the Regulations raised for the company. A total of 46 managers were consulted in this manner. Both managers and shop stewards were asked for information on existing practice relating to, in particular, weekend working; night working; and excess hours. Some data was available in one division: the construction division had a computerised database of pay and working time which contributed to the auditing of the situation. In particular it held 'high earners data' – about a half of the workforce concerned was found to be high earners whose working overtime was probably in excess of 48 hours

The outcome of this process was a draft collective agreement covering all areas of the company's activity but with a section drafted to address the needs of each of the company's four divisions. These divisions were distinguished by very different working patterns. The first draft of this agreement was produced in March 1999 and it was finally agreed three months later. However, there remained issues relating to construction division working practices which were left to local negotiation or were awaiting discussion with customers. These issues were still unresolved when we conducted our second round of interviews in March 2000.

Six

GUIDANCE ON AND INTERPRETATION OF THE REGULATIONS

Most of our case study organisations faced some difficulties in interpreting the WTR for implementation in their workplaces. Only two organisations – a small hotel (case study 6) and a general manufacturing company (case study 13) – did not specify any areas of difficulty or confusion. In the latter case we found a number of instances in which the way that the Regulations had been implemented seemed to be based on misinterpretation of the requirements of the WTR. Below, we detail the issues over which organisations faced difficulties of interpretation and also show how, in some cases, the organisation’s interpretation appears to be based on misunderstanding. However, first we explore the sources of information and advice used by employers and workplace representatives, to determine their approach to the Regulations.

Guidance

Employers sought guidance from a range of sources. All but one referred to the DTI *Guide to Working Time Regulations*, and the opinions on that guide varied. For some organisations the guide was a ‘bible’ preferred over other written sources of information.

- The HR manager of a housing association (case study 9) said that she initially found the Regulations very difficult to understand and interpret. ‘We breathed a sigh of relief when the DTI guidance came out.’ The guide helped to clarify the Regulations and was treated as a ‘bible’ throughout the consultation process. She decided not to use the services of local solicitors. ‘While the Regulations were being prepared we received constant bulletins and ‘updates’ from local solicitors which just seemed to confuse rather than clarify the situation.’

Other organisations for which the guide was a key reference document in determining their approach to the Regulations were the security company (case study 7) and the small pharmaceuticals company (case study 5). Other positive comments on the guide were that it has helped to clarify some of the derogation issues (case study 4); and that it assisted understanding of what is meant by ‘managing executives’ (case study 2).

However, the bulk of organisations were less happy with the guide. A number commented that the guide had come too late to help them resolve

major concerns (case studies 3, 10, 15, 19). Another key criticism was that the guidance provided was not specific enough to deal with the particular concerns of the organisation (case studies 16, 17, 18). The human resources director of a hospitality company (case study 18) described the guide as ‘a reference document which had little practical use for myself or my industry’. Others felt that it was difficult to understand (case studies 12 and 20).

Other sources of guidance

Organisations sought guidance from a wide range of other sources including ACAS; HSE; the IPD; the Employers’ Forum on European Social Policy, (cited by all the organisations that were contacted via the EFESP); internal and external legal advisers; employers’ organisations; expert publishers and trainers such as Industrial Relations Services, IDS and Croners; and relevant trade press. In general, more than one source of advice was used. Four of the organisations referred to a body specific to their industry and this was generally seen as the most helpful source of assistance. The printing company (case study 4) used guidance from the British Printing Industries Federation; the hospitality company (case study 18) used the British Hospitality Association guide as a model for its workforce agreement and the same guide was referred to by the independent hotel (case study 6). One of the NHS trusts (case study 8) referred to guidance from the NHS Executive (NHSE).

The HSE and ACAS were each mentioned as sources of advice by three organisations. In case study 9 the local ACAS officer was a key adviser throughout the time that the organisation and its employee representatives were devising its workforce agreement. However, other employers were less positive.

Guidance received by worker representatives

As set out above (chapter 5), only eight organisations had completed, or were in the process of agreeing, collective or workforce agreements designed to make use of the flexibilities within the Regulations. In each of these organisations, we interviewed, in the first phase of our research, one or more worker representatives involved in developing these agreements. We also interviewed representatives in other organisations who had been involved in some form of consultation over the organisation’s approach to the WTR.

Representatives were asked whether they had received any guidance from the company, union or elsewhere, on implementation of the

Regulations. Generally the position was that worker representatives relied heavily on information and guidance provided by the company – this was particularly true in non-unionised workplaces.

- In the security company (case study 7) union representatives had access to published guidance from their national union. In addition, the union national officer brought a draft agreement (devised by the union centrally) to the first negotiating meeting on the Regulations. However, the union representative also mentioned helpful information provided by the company.
- In the large NHS trust (case study 8) written information had been received from the national offices of two of the main unions, which was being referred to by the staff-side representatives.
- The housing association (case study 9) had a long-standing staff association – representatives of which were among those workers involved in reaching a workforce agreement. As members of the working party drawing up the agreement these representatives received ongoing guidance from the ACAS local official. However, they did not have any other source of information or advice on the Regulations. This lack of supporting expertise was one reason why, at the time of our second visit, the staff association was consulting its members on joining an independent trade union.
- In one of the finance organisations (case study 16) staff were also represented by an in-house staff association. This association had long-established links with a major independent trade union, and this link provided the main source of guidance to association representatives in their negotiation of the workforce agreement. The association also exchanged information with staff bodies in other finance companies in the area.
- Workforce representatives in the hospitality company (case study 18) relied entirely on information provided by the company, which took the form of an information pack including a proposed workforce agreement.
- The union official involved in discussions around the collective agreement in the contracting company (case study 19) said that the union had provided ‘quite a lot’ of written guidance as well as training. He had also referred to guidance provided by the Labour Research Department. The workplace representative had received no formal guidance on the Regulations, but he said that this was because the full-time officials ‘did most of the work’.

Points requiring clarification

The need for advice on the WTR is clear given that all but two of the case study organisations found the Regulations difficult to interpret in at least one area. The most common areas were:

- the definition of working time – in particular how travelling time and on-call time are treated;
- coverage of unmeasured working time derogation;
- the implications of the amendment to that part of the Regulations;
- treatment of casual workers – especially ‘as and when’ casuals – for holiday and other purposes; although in most cases this issue had been clarified by the time we made our second visit;
- the issue of staff with more than one job; and
- the meaning of the continuity-of-service requirement in Regulation 21(c).

Other areas where some organisations required more clarity were: what form of health assessment should be provided for night workers; record-keeping requirements; special cases derogation; compensatory rest provision; and calculating holiday pay.

Definitions of working time

A total of seven case study organisations required specific clarification in defining what is and is not working time for the purposes of the Regulations. The most common concern related to the treatment of travelling abroad while on work duty. The DTI guidance states: ‘If a worker spends time working abroad, this time will count as working time for the purposes of the Regulations.’ A number of employers found some ambiguity in this statement: should all time abroad count as working time or only that where the individual is actually engaged in work activities?

- The charity (case study 1) was unclear about how the time of employees working abroad should be treated. In the event, the organisation decided that all time away on work business should be recorded.
- For the pharmaceuticals company (case study 5) the main problem was that of whether international travel constituted ‘work’. Often, overseas trips were a mixture of work and tourism. While it was clear that on some occasions the whole trip involved work; in others there was a significant amount of tourism and the work element was ‘optional’. This issue was resolved in the following terms: ‘Any travel time while on company business would be classified as working time. The exception to this was where staff were given the option to refuse travel overseas on ‘long haul’ trips. However, if

such travel was compulsory it may be claimed as working time.’

- In the electronics company (case study 17), the issue of foreign travel related to the taking of rest breaks by people working abroad: how was it possible to take these breaks when the company’s interpretation was that all time away from the country should be treated as working time? This issue had not been resolved at the time of our initial research. The company was not involved in the follow-up study.

The other issue in the definition of working time that caused difficulties for a number of organisations was how they should measure the working time of workers who were ‘on-call’ or ‘sleeping-in’. Generally the conclusion was that only time attending a call counts as working time. However, the two organisations which had staff sleeping-in took a contradictory view on whether or not that time as a whole should count as working time.

- Case study 8, an NHS trust, had major concerns about the definition of on-call and sleeping-in time. In the event it used the interpretation set out in guidance provided by the NHSE. So in the case of workers who are ‘on-call’ recorded working time starts at the point that the individual receives the call. However, all the time that a worker is required to sleep-in at their place of work is taken as working time because they are seen as ‘at their employer’s disposal and carrying out their duties’. This view seems to be in contradiction to the DTI guidance that ‘time spent asleep would not count as working time’.
- The above interpretation was also in contrast to that of the housing association (case study 9). The HR manager said that the ‘DTI guidance was very useful because it reassured us that sleeping-in would not count as working time’.
- The contracting company (case study 19) was also concerned about those who were on ‘stand-by’ – typically electricians involved in the maintenance of street lighting. In the event, it was resolved that only the time that workers were actually on-call would apply. This was in conflict with the practice for pay purposes whereby those involved were guaranteed a minimum of two hours pay for each call made.

Unmeasured working time

When our first round of case study visits was made the unmeasured working time derogation was in its original form and so applied to ‘workers whose working time is measured or predetermined or can be determined by themselves.’ Six organisations told us that they had had considerable difficulty in determining

which workers were exempt from the Regulations on this basis. As table 3 shows, the range of interpretations of this part of the Regulations was an area in which more clarification was clearly required.

When the Regulations were being drafted there was considerable speculation as to the extent to which employers would make use of this derogation. In fact, in nearly half the organisations the derogation was not used at all. So while at one extreme a quarter of the workforce in a small pharmaceuticals company were seen as exempt under this derogation, at the other a large finance company did not apply the unmeasured working time derogation to anyone in the organisation. Where the derogation was used, the main differences in interpretation related to middle and senior management and to field sales forces. The issue centred around what is meant by the provision in the Regulations that the WTR restrictions do not apply to a worker where ‘on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself.’

By the time our second round of interviews was conducted this aspect of the Regulations had been subject to amendments to extend the derogation to those workers who have an element of their working time nominally pre-determined but who, to all intents and purposes, decide how long they actually work.

We explored the impact of this change with the 15 organisations that participated in our follow-up study. In the majority of cases the change was seen as having little or no effect (seven cases) – typically because the organisation concerned felt that it had achieved all the flexibility it required via the opt-out provision. However, as table 3 shows, in four cases the change was seen as a helpful one, clarifying the coverage of the derogation and/or enabling the extension of the derogation to a lower tier of management within the organisation.

Less positive views were expressed by other informants in three organisations. One was the HR manager in case study 19. She felt that the amendment had ‘clouded the issue’. She questioned whether it was possible to be sure that extra hours worked are voluntary, when they are likely to be the result of work requirements imposed from above.

In case study 3, although the personnel manager was aware of the amendment, it was not seen as having clarified their uncertainty as to whether or not the senior management team was covered.

Finally, the large retail company (case study 15) did not make changes to its working time policies and procedures in response to the amendment. When the Regulations originally came into force the organisation decided that only its top 300 managers would be deemed to be managing their own working time. When the draft amendment was published, corporate HR circulated it to all HR managers within the organisation. Although there was not a great deal of feedback, it was felt that most HR managers were of the view that, as the company was trying to promote a cultural move away from long hours, it would not be sensible to change its policy on which employees manage their own working time, because this would

inevitably lead to more people coming within the definition. Additionally, the HR informant suggested that, if the company had loosened its policy on unmeasured working time, as permitted in the amendment, an unnecessary amount of ‘complication and confusion’ would arise, which would make demands on the work of HR.

According to the informant: ‘We made a business decision that we would continue along the lines of exempting only our senior managers, and we said to people, the legislation might allow us to squeeze the last few hours out of this derogation, but we are not going to take this line.’

Table 3: application of unmeasured working time derogation

<i>Case study, sector</i>	<i>Who does the exemption apply to?</i>	<i>Explanatory comments</i>	<i>Impact of the 1999 amendment</i>
1, charity	None	–	Not clear at the time of second visit.
2, retail	Directors, branch managers, heads of function (around 9% of the workforce).	Because these people ‘control other people’s rotas and are able to take time off in-lieu without getting permission from anyone else’.	Not involved in follow-up.
3, engineering	Unsure	–	None that they were aware of.
4, printing	None	Managing director not seen as exempt.	Aware of amendment but not using it.
5, pharmaceuticals	Directors and sales people (approximately 25% of the workforce).	Decided that managers are not exempt ‘even though they are responsible for their own working time’.	Not involved in follow-up study.
6, hotel	Members of owner’s family (around 9% of the workforce).	–	Not involved in follow-up study.
7, security	–	This issue has yet to be addressed, but is likely only to cover people at the most senior level in the organisation.	Meant that they no longer had to address the issue of the working time of senior managers.
8, NHS	None	Approach has yet to be finalised, but the view is that the only workers excluded from the Regulations are junior doctors, under the derogation which applies to that group.	Might apply to the margins of some of the work that consultants do – but will not affect the approach to the WTR.

9, housing association	Directorate and senior managers	The HR manager argued that this derogation could have been applied further down the organisation but that they chose not to do this 'because we didn't want to put the message out that we wanted to flaunt the Regulations'.	Awaiting DTI guidance to review implications.
10, food manufacturer	Two directors	–	Has clarified the situation and allowed extension to senior managers.
11, utility	Chief executive and finance director	We used the test question 'who could decide to play golf rather than come to work on a working day?'.	None – opt-outs used.
12, finance	None	'We discussed the possibility of excluding field consultants but we took the view that we set targets for them, so we were controlling their work'.	Has not led to any change in policy but 'the exemption makes more explicit what was only inferred before'.
13, general manufacturing	None	–	Not involved in follow-up study.
14, NHS	None	–	Not seen as affecting their approach.
15, retail	Top managers (about 2% of the workforce).	–	Decided not to use it.
16, finance	Six executives plus the company's field sales force (about 13% of the workforce).	Full-time field force and other specialists working most of the time away from the office are excluded on the basis that their hours are not supervised. 'They make meetings at a time that suits them and are able to take time-off without permission – as long as the necessary work is done'.	Seen as helpful – extending derogation to middle management team and ending the requirement to record their hours, which had been an unwelcome part to the WTR.
17, electronics	Senior management team; off-site sales staff and marketing staff (about 15% of the workforce).	'Most of this group work their working week as they see fit'.	Not involved in follow-up study.
18, hospitality	None	–	Still considered that the derogation does not apply to anyone at case study establishment.
19, contracting	None	'We decided that to exempt anyone would give the wrong message about our commitment to the Regulations'.	Seen as clouding rather than clarifying the issue – not likely to be used.
20, engineering	Director		None – opt-outs used.

As and when casuals.

The issue of how the Regulations should be applied to casual workers, particularly those employed on an ‘as and when’ basis, such as ‘bank’ workers in the health sector, was one raised in eight of the case study organisations. The specific issue for each of these (case studies 1, 7, 8, 9, 12, 14, 18 and 19) was if and how such workers should receive their entitlement to paid holiday. In most cases this issue, although unresolved at the time of our first visit, had reached a conclusion a year later. In all but one case the resolution was that casual workers should be entitled to accrue paid holiday entitlement in a pro rata proportion of the full-time Regulations entitlement of 20 days. However, there were some variations in the approach adopted. In particular, the issue as to whether the entitlement is to actual paid time-off, or whether, in respect of on-call casuals at least, the employer can simply provide the appropriate amount of holiday pay, was in dispute.

- The hospitality company (case study 18) decided that its casual workers – as many as 2,500 of whom might be employed in one year – are entitled to paid holiday as long as they have been employed on a continuous basis for at least 13 weeks. Hours worked in the previous quarter were calculated as a weekly average, this was then divided by the full-time figure of 39 hours to determine what proportion of the full-time leave entitlement of 5 days per quarter the individual should receive. Individuals were expected to take the leave as actual paid time-off.
- In the security company (case study 7) paid holiday for casuals was introduced following an individual grievance brought by a member of staff.
- One NHS trust (case study 8) had paid its bank staff holiday pay for the period since the implementation of the Regulations but had yet to put in place a scheme for regular in arrears payment of holiday pay at the time of our second interviews. The trust had made no requirement that staff should formally take leave in order to receive holiday pay. The housing association (case study 9) also took the view that entitlement should be in the form of holiday pay, rather than specifying that people should not be working for the paid period.
- The other trust (case study 14), originally took the same view but had subsequently revised this to say that, in order to receive holiday pay, bank workers must agree to take actual time off.

However the contracting company (case study 19) which had originally planned to allow its ‘on-call’ workers – casual workers employed from a central register – to accrue holiday

entitlement on the basis of time worked decided that this would not be necessary. All its on-call staff were given temporary employment contracts after eight weeks employment – five weeks before they would be entitled to holiday under the terms of the Regulations – and thereby attracted the same holiday entitlement as permanent staff.

Workers with more than one job

For some organisations the issue of responsibility for the working hours of people with more than one job was linked to their use of ‘as and when casual workers’. Four employers were concerned as to whether it was their responsibility or that of the worker to ensure that total time worked does not exceed an average of 48 hours a week. The DTI guidance states that ‘Employers are required to take all reasonable steps to ensure that workers do not exceed an average of 48 hours weekly working time’.

The housing association (case study 9) took the view that it had some responsibility for the total hours worked by an individual. So all of its bank workers who might exceed the 48-hour limit in a number of different jobs were asked to sign an ‘opt-out’ agreement. The same approach was taken by an NHS trust (case study 14). However, the contracting company (case study 19) decided that it only had responsibility in relation to time that individuals work for the company itself.

The issue of how to deal with workers with more than one job was raised as an outstanding concern when we conducted return interviews in case studies 8 and 10.

Special cases derogation – sectoral differences

Our two NHS trusts had used different interpretations of the application of the special cases derogation. Case study 8 followed guidance from the NHSE, based on nationally negotiated agreements. This took the view that the derogation, relating to workers’ involvement in activities that provide a need for continuity of service, was only applicable to senior doctors. However, case study 14 interpreted the derogation more widely to include its nursing staff. This difference seemed to be founded in conflicting views on whether the continuity of service need related to that provided by the individual worker, or just to the service in which the worker was employed.

Areas of misinterpretation

We have shown above that employers put a range of interpretations on aspects of the Regulations that they found unclear. We also found instances

of significant misinterpretation of aspects of the Regulations about which employers seemed confident that they had taken the correct approach. The key areas were the application of individual opt-outs (see summary on page 4); the definition of workforce agreements; and the application of the special cases derogation. It also appears that employers may not be aware of some of the flexibilities available to them – for example via the shift-working exemptions.

Opt-outs

In the chapter on the 48-hour week we discuss the use by employers and workers of individual opt-outs as a means of avoiding the WTR limit. We give below examples of employers who saw the scope of opt-outs as extending beyond that set out in the Regulations.

- One of the manufacturing companies (case study 13) interpreted the use of opt-outs as a means of avoiding obligations under other aspects of the Regulations. The opt-out provisions were described erroneously by management as a ‘workforce agreement’ and workers were not only being asked (on a voluntary basis) to opt out of the 48-hour limit, but also to say that they wished to opt-out of the limit on night work.
- In one company (case study 11) all workers were expected to sign an opt-out agreement. It was not seen by management as voluntary. All new recruits were obliged to sign the form before their appointment was confirmed. The personnel manager said that if an individual worker insisted on opting back into the WTR limit, then they would be asked to leave. This company considered that it fell under the terms of the ‘need for continuity of service or production’ derogation. Management had wrongly taken the view that this meant that its manual workers were not covered by the 48-hour limit. So even though these workers had been asked to sign the opt-out form along with their white-collar colleagues, it was considered that they had no legal entitlement to opt back in. The company still maintained the same view when we explored the issue at our second visit.
- A further employer (case study 18) took an approach to opt-outs which did not seem to comply with the spirit of the Regulations. Although it stressed that opt-outs were voluntary for existing employees, all new recruits received an opt-out form with their letter of appointment. This did not say that opting out was voluntary, although it did inform the individual of their right to opt back into the 48-hour limit.

Workforce agreements

None of the case study organisations that had reached a workforce agreement seemed to have fully complied with the detail of the employee-representation provisions set out in the Regulations. These provisions require the election of representatives for the purposes of negotiating the agreement.

- In one organisation most of the worker representatives involved in signing the agreement were encouraged to volunteer by management because the Regulations had particular implications for them. No elections were proposed or held.
- At the hospitality company, discussion of the workforce agreement was done through the company’s established structure for worker consultation. Workers were consulted via the staff council structure to determine whether they were happy for the company to use the national consultative council as the representative body for reaching the workforce agreement. Again no elections were held.
- In a finance company, negotiation on agreement to extend the reference period for calculating working time was done on behalf of workers by officers of the in-house staff association. There was no dedicated election process. However, management did issue staff with a notice to the effect that these individuals would be deemed to be elected for the purposes of signing the workforce agreement, unless an employee lodged an objection with personnel.

Failure to use shift exemptions

Some organisations seemed to be unaware of flexibilities within WTR provision on shift work, which they might have applied to avoid changes to their working patterns.

- In one organisation, shift patterns meant that shift workers might have breaks of as little as nine-and-a-half hours between shifts. The organisation took the view that, averaged over a 17-week reference period, the rest break was at least 11 hours and so was acceptable. It had not considered the option of applying shift-working exemptions.

Conclusion

Our research indicates that there are a number of areas in which the WTR and/or guidance on the Regulations would benefit from more clarification. Case study employers were uncertain about their obligations under the Regulations in a number of key areas, in particular the definition of working time and coverage of the

unmeasured working time derogation. Some employers found that the amendment to this part of the Regulations helped to clarify this issue; however, for others, it had added to the confusion.

In addition, by the time of our second visit most organisations had resolved their approach to the treatment of casual workers; however, differences in the approach adopted imply that this may still be an area requiring clarification. We also found evidence of continuing misinterpretation of the Regulations, especially in the use of individual opt-outs.

Seven

THE 48-HOUR WEEK

The Regulations require employers to take all reasonable steps to ensure that workers do not work more than an average of 48 hours a week. Unless amended by collective or workforce agreement, or subject to the special circumstances derogation, the ‘averaging’ reference period is taken as 17 rolling weeks. In most of the organisations involved in this project the proportion of the workforces regularly exceeding the limit was small. In most, the major response to the Regulations was to encourage workers to sign forms opting-out of the 48-hour limit. A third signed a collective or workforce agreement to vary the reference period and a similar proportion made some changes to working practices to reduce the hours worked by individual workers.

Practice prior to the Regulations

Table 4 provides summary information on contracted hours, overtime working and working in excess of 48 hours in the case study organisations.

In all but one company (in the security industry) contracted working hours were well below the 48-hour limit, ranging for full-time workers in most organisations from 35 to 42.5 hours a week. For workers at the higher end of this range the contracted period usually includes a lunch break, most commonly unpaid.

Where examples of workers doing 48 hours or more work a week were found, these people were generally working in excess of contracted hours on either a paid or unpaid basis.

As table 4 shows, at least some workers worked in excess of the 48 hours, limit on at least some occasions, in 18 of the 20 organisations. However, in only five organisations were there practices involving people in working 48 hours a week or more on a frequent basis. In three cases these were manufacturing companies; another case was the security company and the last was an NHS trust. In addition, two organisations saw high levels of overtime at certain times of the year. These were the contracting company and the print company.

Table 4: the working week prior to the Regulations

<i>Case study, sector</i>	<i>Full-time contracted hours</i>	<i>Overtime working. Extent of working in excess of 48 hours</i>
1, charity	35	20-25 people regularly worked over 40 hours a week – mainly senior managers – but difficult to measure since no overtime is paid.
2, retail	35-42.5	About 10% of workforce were doing regular overtime which almost always meant more than a total of 48 hours in a week.
3, engineering	37.5	Regular overtime on nights gave a figure of 46 hours normal working Also day and night shift workers regularly worked between seven and 10 hours overtime. This meant that some were in excess of 48 – night workers often did 52 or 54 hours a week.
4, printing	35/37.5	Gluers/printers worked up to 23.5 hours overtime a week in the peak period of October to December.
5, pharmaceuticals	35	About a quarter worked about 12 hours overtime a month. None regularly over 48 hours a week.
6, hotel	35-40	Chefs (10% of workforce) work in excess of 48 hours once a month.
7, security	35/40/42/ 56	Overtime tended to be compulsory or necessary to maintain adequate earnings so worked by most employees. Many worked between 58 and 60 hours a week and in some areas up to 84 hours a week.
8, NHS	35-40 hours	Effect of on-call stand-by and sleep-in probably brought hours of some staff over 48 a week, particularly radiographers, laboratory staff; and porters. Also consistent long hours of senior managers and some consultants: 50 to 60 hours a week. About 10% of staff did paid overtime; almost all did extra hours unpaid. Potential that bank staff might exceed 48 hours.

9, housing association	35/39	'Few' in excess of 48 hours; but potential problem with bank workers.
10, food manufacturer	40	Clause in contract with main customer sets maximum average hours as 56 a week. Just about everyone did some overtime. About 10% averaged 55 hours a week.
11, utility	36-40	Around a third of the workforce did overtime in emergencies and at peak time. Some problems with level of overtime of staff on stand-by duty thought to be 'excessive'.
12, finance	35/36.75	Technology operations did most overtime. Union said that in technology and banking area this averaged 5 hours a week.
13, general manufacturing	36/40	Production workers generally worked overtime on Friday and Saturday which were outside the normal production schedule. About 50% did nine or 18 hours overtime a week.
14, NHS	35-39 hours	Not much overtime working – though concern about those with dual employment.
15, retail	37.5/39	Those most often in excess of contracted hours were retail managers and retail staff. Workplace overtime averaged about 10% of total contracted hours. In the workplace, two out of 155 workers worked in excess of 48 on a regular basis.
16, finance	35/40/ a week. 48 hours in 8 days (nights)	About 50% of HQ staff (workplace) worked overtime – customer service staff contract requires reasonable overtime. Not many worked in excess of 48 hours.
17, electronics	37.5	About half the workforce did overtime fairly regularly – 20% of workforce at any one time. 'Some' in excess of 48 hours.
18, hospitality	8-39	Managers usually do more than their contracted hours. But not more than 45 on average.
19, contracting	37/39	In construction division most workers did 5-10 hours overtime a week. The 'core' of high earners did in excess of 48. The level of overtime varied with seasons.
20, engineering	37.5	All production workers did overtime. At peak times this was up to 70% above standard hours. At the time of our visit it was 13-20% above i.e. a total of about 45 hours a week.

What is working time?

The Regulations define working time as when a worker is 'working, at his employer's disposal and carrying out his activities or duties.' As the DTI guidance (p.16) points out, for time to be 'working time' all three elements must be satisfied.

Table 5 illustrates the approach to defining working time used by the case study organisations. Three were unable to provide us with a definition and are not included in the table. Others gave us a definition in one or two sentences, for example: 'Just time recorded on the time sheet. This includes all breaks' (case study 6); 'when people clock-in' (case study 10); and 'all of the time people are on site or undertaking company business' (case study 17). The Regulations' definition (above) was cited by nearly half (nine) of the organisations. A total of

13 organisations went beyond a simple definition to specify activities that were, or were not, included. The influence of the DTI guide, which aims to clarify the definition in the Regulations, was apparent in six of these (case studies 9, 12, 15, 16, 18 and 19.)

On-call and sleeping-in

Organisations generally stated that time on-call and time sleeping-in on work premises only count as working time when the individual concerned was actually working – just being available for work was not enough. The only exception was an NHS trust which, as mentioned in the previous chapter, had received advice that all time sleeping-in should be taken as working time.

Breaks

Organisations generally agreed that **unpaid** breaks are not working time. The only exception was a retail organisation which counted ‘meal breaks where colleagues are at our disposal’, as working time. There was greater difference in respect of those breaks that are **paid**. These were included as working time in three organisations. However, another three said that they are excluded. In addition, some employers specified that they counted ‘working lunches’ as working time, regardless of whether they are paid or unpaid. However, the contracting organisation made the distinction between corporate hospitality at the employer’s direction – which did count; and that resulting from a third party invitation, which did not.

Working at home

All but one of the organisations that had explored the status of time worked at home had taken the line in the DTI guide which is that ‘time worked would only count as working time where work was performed on a basis previously agreed with the employer.’ However, a retailer (case study 15) used the broader definition that ‘time working from home’ constitutes working time.

Travel for work

All the organisations that chose to specify their position on this issue said that time travelling on work business counts as working time. However, in a retail organisation the time involved must exceed two hours before it could be included. Employers did not generally include time travelling to and from home and work as travelling time. There were two exceptions amongst our case study organisations. In the construction contracting company the draft agreement on the WTR specified that ‘in cases where an employee’s place of work has been changed and they are entitled to excess home to office expenses, the travel time will be classed as working time for a period of a maximum of four years during which they receive payment.’ Meanwhile in the guide on the Regulations produced by a finance company ‘travelling between home and place of work when the employee is obliged to use the employer’s transport’ and ‘travelling in the employer’s time from home to a workplace other than the regular workplace’, were both counted as working time.

Time abroad

Four employers decided to include a statement in their working time definition that time working abroad should count as working time.

Training seminars and conferences

These were specifically included as working time by four organisations. In addition, the construction contracting company’s agreement specified that ‘study leave’ should also count.

The construction contracting company had drafted the most extensive definition of working time of all the case study organisations. Other included activities were: court appearances; time employed on trade union activities; and non-company activities. Those that were paid, including duties as a special constable or a reserve firefighter, were counted as working time. Voluntary duties with no pay were taken as personal time.

Complying with the Regulations

The most extensively used derogation in respect of the 48-hour week was that which applies to ‘unmeasured working time’. In the previous chapter we included a table which showed the range of definitions and applications in respect of this derogation (see page 26). As the table showed, while some organisations interpreted the derogation liberally to apply to as much as a quarter of their workforce, others did not think that it applied to any of their workers. In table 6 we summarise how organisations were seeking to comply with the 48-hour limit in respect of those workers who were not seen as excluded.

Using opt-outs

As table 5 shows, individual opt-outs were being used to comply with the 48-hour limit in all but four of the case study organisations. However, the extent to which employers’ strategies were based on these opt-outs varied considerably.

Table 5: activities included in and excluded from working

<i>Sector</i>	<i>WTR def.</i>	<i>Paid work</i>	<i>On-call</i>	<i>Sleep-in</i>	<i>Unpaid break</i>	<i>Paid break</i>	<i>Work lunch</i>	<i>Agreed home work</i>	<i>Travel for work</i>	<i>Time abroad</i>	<i>Training etc.</i>
Charity	✓										
Retail	✓			✗	✗	✓					
Engineering		✓			✗						
Pharmaceuticals								✓			
Hotel		✓				✓					
Security		✓				✓					
NHS	✓		✓*	✓							
Housing association	✓		✓*	✗	✗	✗		✓	✓		
Food manufacture		✓									
Utility											
Finance	✓		✓*	✗	✗		✓	✓	✓	✓	
NHS	✓		✓*								
Retail	✓		✓*		✓/✗†	✓/✗†	✓		✓		
Finance		✓	✓*		✗	✗		✓	✓	✓	✓
Electronics									✓		✓
Hospitality	✓		✓*	✗	✗	✗	✓	✓	✓	✓	✓
Contracting	✓		✓*				✓	✓	✓		✓

✓ = specifically included in working time

✗ = specifically excluded from working time

* = only time actually working on-call counts.

† = depends whether or not worker is at company disposal.

In table 4 we showed that frequent overtime in excess of 48 hours was an on going part of the working practices in five organisations, while two use overtime at this level to cover seasonal fluctuations in work. One NHS trust (case study 8) was planning, in the long-term, to recruit staff in specific areas to comply with the Regulations. An opt-out clause had been drafted but, at the time of our second visit, had yet to be used. In four of the other organisations, where high levels of overtime seemed to be part of the culture, opt-outs were the major method being used to comply with the Regulations. In the three manufacturing companies it was the only method used. However, in the security company (case study 7), as we set out below, it was seen as a necessary tool while measures to fundamentally reduce working hours were devised and implemented.

Two organisations with lower levels of overtime working still found it necessary to use opt-outs extensively. These were the electronics company (case study 17) and the utility (case study 11). In the utility company all workers were under strong encouragement to sign and those who decided to opt back in were likely to be asked to leave.

In the printing company, overtime working could lead to working hours averaging more than 48 in the

period from September to December. Rescheduling of some work to other parts of the year had reduced this, but a small number of staff had approached the limit and so signed opt-outs. The status of these opt-out agreements was perceived differently by management and union. The works director was of the opinion that, once signed, these agreements lasted until the employee specified that they wanted to opt back in. However, the union representative said that each opt-out applied only to working time in the reference period concerned.

In the two companies with seasonally high levels of overtime, opt-outs were not being used widely. Instead, reference periods of 52 weeks were used to cover seasonal fluctuations. Opt-outs were rejected by the contracting company as ‘inappropriate’. In addition, the personnel manager said that she thought it likely that this measure would be abolished by the EU.

Opt-outs were also discouraged, or were being used only as a last resort, in the two finance companies and the small retail organisation. In all cases this was because the organisation concerned wished to discourage long working hours.

Table 6: complying with the 48-hour limit

<i>Case study, sector</i>	<i>Opt-outs</i>	<i>Collective/ Workforce agreement</i>	<i>Ref. period (weeks)</i>	<i>Changes to reduce working hours</i>
1, charity	About 35% of workforce – mainly HoDs; and other managers.	No	Rolling 17	None
2, retail	Policy decision to avoid use even though some staff still in excess of 48 hours.	No	Rolling 17	Redistribution of overtime; using agency staff rather than in house.
3, engineering	Most of those at the plant where overtime worked.	No	Rolling 17	None
4, printing	Printers in a specialist area have signed opt outs – they want the overtime and the company needs them to do it. (2% of workforce).	Not an issue	17	None
5, pharmaceuticals	To cover particular circumstances.	No	Rolling 17	None
6, hotel	No	No	Rolling 17 weeks	None
7, security	Yes Over 80%	Collective	Four	Long term programme to reduce – responsibility given to regional directors. Increased staffing.

8, NHS	None, although clause drafted.	Collective	52*	Proposals to recruit new staff
9, housing association	All banks staff. All staff with more than one employer – 19% of workforce.	Workforce	Rolling 17 weeks	No
10, food manufacturer	None	No	Rolling 17	Changed shift arrangements. Reductions in length of shifts; end to Sunday working.
11, utility	All employees – in staff handbook.	No	26	Changed rota for dock workers. Later changed rotas and contractual overtime for engineering staff.
12, finance	None. Long hours actively discouraged by company and union.	No	17	Measures to reduce overtime of staff on stand-by underway prior to WTR.
13, general manufacturing	Probably signed by all staff.	No	17	Measures to keep track on overtime; and to reduce the levels of overtime by IT on-call staff. Planning audit of working hours.
14, NHS	Sent to all staff. Only a ‘tiny minority’ signed.	Collective	26	None
15, retail	Less than 1%.	No	17	None
16, finance	None	Workforce	Fixed 26	None as yet
17, electronics	Being used widely – opt-out rate of 60% of those covered by Regs.	No	17	None
18, hospitality	Not policy to allow people to work more than 48 hours. However, about 20% of employees in case study workplace have opted out.	Workforce	52	None
19, contracting	Not considered appropriate.	Collective	Fixed 52	Shift working changes yet to be implemented.
20, engineering	95% of workforce have signed.	No	17	None

*National agreement

How voluntary are opt-outs?

We asked worker representatives interviewed in our second round of visits to comment on the process by which workers were asked to opt out of the 48-hour limit, and the degree to which the decision to opt out is a voluntary one. We also asked all interviewees whether they were aware of any cases where individuals had decided to opt back into the limit.

In most organisations that were using opt-outs, the worker representative said that the process was a voluntary one. The impression given was that, in general, workers signed these agreements because they wanted to continue working long hours. The one exception was in the utility company (case study 11) where, although the representative did

not think people would necessarily have wanted to refuse, ‘people had the feeling that this is the way it is going to be, so there was no option’. Table 7 summarises responses to this question in organisations that participated in the second stage of this project.

In only one company (case study 7) were any cases noted of staff opting-back into the limit. Precise numbers were not available but the HR manager said that it was a small number which had not had any impact on the ability of local managers to organise rotas. However, the trade union representative pointed out that there would be serious problems for management if a member of staff on a site with minimum staffing refused to opt-out or wanted to opt back-in.

Table 7: worker representative views of opt-out arrangements

<i>Case study, sector</i>	<i>View of opt outs</i>
1, charity	Worker rep not interviewed.
3, engineering	Worker rep not interviewed.
4, printing	Overtime is sporadic. We sign if we are required to go over the limit. The company asks us to sign that we are happy... You have to sign every time it happens... I have done it once.
7, security	Most people opted out of the 48-hour limit in my area. They want to work 56 hours on average a week. They all got a form and a letter and now all new people joining the company get the form and letter when they start. Some people did say no and I know of a couple of people who have opted back-in. They have to give two months notice to personnel.
8, NHS	Opt outs not yet used. Likely to be discouraged by unions.
9, housing association	Most bank workers were sent a form, I had to ask for one. I did not want to say no – until I’d signed it I had to reduce the hours I was doing.
10, food manufacturer	Opt-outs not used.
11, utility	People had the feeling that this is the way it is going to be and so no option.... I would not have wanted to say no.
12, finance	Company and union discourage opt-outs. ‘Some members of the union do want to opt-out. But we advise them to average their hours’.
14, NHS	Letter given to staff and all starters. Only a few people have opted-out.
15, retail	Very little use of opt-outs.
16, finance	Opt-outs not used.
18, hospitality	People do not feel obliged to opt-out.
19, contracting	Opt-outs not used.
20, engineering	I disagree personally and said no to the opt-out. Most members were not bothered and so did opt-out.

Changes to working practices to reduce working hours

A third (seven) of the case study organisations examined their working practices to see if these could be changed to reduce the working hours of staff working in excess of 48 hours a week. As the table shows, changed shift-working arrangements were the strategies adopted in a finance company (case study 12) and in the contracting company (case study 19). A small retail company (case study 2) supplemented its workforce with agency staff to reduce its overtime bill. An NHS trust saw recruitment in areas with a history of long working hours as necessary in order to comply with the Regulations. Two other approaches are set out in more detail below.

- The food manufacturer made or planned a series of changes to shift-working patterns in order to comply with the Regulations. These started in the docking department of one of the two factories. In the same factory, from 1 January 2000, basic hours for engineering workers were reduced from 47.5 to 40 hours a week. Engineers were *contracted* to work one weekend in four as part of 40-hour week, where previously weekend working was non-contractual overtime. To compensate for loss of overtime earnings, a weekend premium is paid for contractual weekend working, resulting in the same level of pay for shorter hours. Engineers now worked on average one weekend in four and had two consecutive days off during the week. A similar rota was to be introduced for engineers at the other factory from summer 2000. The company was exploring the implications of introducing a new dock rota at one factory similar to that introduced at the other 18 months previously. Under this arrangement dock workers would have a basic week of 36 hours and average total hours of 39 (but be paid for 40).
- As table 4 indicated, the security company faced one of the biggest tasks of any of our case study organisations in aiming to reduce working hours, which for some workers were as high as 84 a week. The company had a long-term agreement with the recognised union to reduce the hours of its employees. The working time agreement which applied from 1 October 1998 states that ‘the company and the union agree that weekly working time will not exceed an average of 48 hours, averaged over a four-week period.’ This is the shortest reference period of any identified by our research. While opt-outs were being used in the short term, in the long term managers had responsibility for finding ways of implementing this agreement, typically by increasing staffing levels. The objective is, in so

far as possible, to protect the earnings of individuals. As stated in our example on page 34, in some cases the company persuaded its clients to bear the cost of increased staffing levels, in others it has borne the cost itself, and implementation of the Regulations meant lost business in other cases.

Conclusion

Almost all the case study organisations had some instances of people working more than 48 hours in a week, but in only a third of the total was long-hours working of this dimension a part of core working time practices. However, three-quarters of the case study organisations were using individual opt-outs to ensure that they complied with the 48-hour limit. In most cases, opt-outs were seen as voluntary by worker representatives in the organisations that use them. We found only one company seeking to fundamentally challenge its long-hours culture by changing its working practices; although changes geared at tackling pockets of extensive overtime were more common.

Eight

REST AND RECUPERATION

The Regulations provide adult workers with an entitlement to three kinds of break between working periods. These are:

- an in-work rest break of at least 20 minutes if the working day is longer than six hours;
- 11 hours' consecutive rest between each working day; and
- a rest of one day off a week or two days off a fortnight.

These entitlements do not apply to those covered by the unmeasured working time derogation. In addition, workers in a range of special circumstances may be excluded from the rest entitlements, as may shift workers. However, in these cases there is a requirement to make provision for 'compensatory rest'. The entitlements to daily, weekly and in-work rest may be modified or excluded by collective or workforce agreement but, again, compensatory rest provision is required.

Most of our case study organisations were already providing workers with an in-work rest break. However, overtime working and shift patterns raised issues for a larger number in respect of the daily and weekly rest requirements. The responses to the changes necessary to comply with the Regulations included: compensatory rest provisions; new rest entitlement; reinforcing existing entitlements; the end to seven-day working; and revised shift arrangements.

Practice prior to the Regulations

Table 8 sets out provision for rest in each of the case study organisations prior to the WTR.

As the table shows, almost all the case study organisations provided an in-work rest of at least 20 minutes for those working for six hours or more. In fact, provision was generally considerably in excess of this minimum standard, typically comprising a meal break of at least half an hour (usually unpaid) in the middle of the day and one or two, shorter paid breaks.

Table 8: rest and recuperation prior to the Regulations

<i>Case study, sector</i>	<i>In-work breaks</i>	<i>Daily rest</i>	<i>Weekly rest</i>
1, charity	One-hour lunch break (unpaid).	Usually 16 hours	Weekend
2, retail	One-hour lunch (unpaid); morning and afternoon breaks.	15 hours	2 days off a week.
3, engineering	Half-an-hour unpaid lunch break.; also 10 minute break morning and afternoon.	Night work extra overtime shift means some workers only get break of 8 hours.	Weekends – but overtime sometimes meant 6/7 day working.
4, printing	Two 'reasonable breaks' – length undetermined.	16.5 hours. – but union rep said would be only 9 hours if workers did overtime.	At least 2 days.
5, pharmaceuticals	One-hour lunch.	16 hours between shifts.	Weekends
6, hotel	Half-an-hour lunch; tea breaks for shifts of 4.5 hours or longer .	Usually 11 hours; could be 9 if extra work required.	Two days off a week for most.
7, security	Varied – no breaks provided in some areas.	Breaks between shifts might only be 8-10 hours.	Seven-day working the norm in some areas.
8, NHS	Staff in some departments were often unable to take rest breaks.	Always over 11 hours.	At least 1 day.
9, housing association	One-hour lunch unpaid – office staff; shift workers 45-min lunch plus 2 other breaks all paid.	As little as 9.5 hours.	2 days a week.
10, food manufacturer	Half an hour for lunch and two x 10-min tea breaks.	At least 12 hours (with one exception).	Weekends – most. Some usually worked 7-days.

11, utility	Half/one-hour unpaid break	At least 12 hours between shifts	At least 2 days in seven.
12, finance	One-hour lunch break. Printers only took 15 mins to allow early finish	11 hours at least	Two days – offices; 1.5 days – branches.
13, general manufacturing	During 12 hour shift, worker is entitled to 3 breaks – two x 15 mins; one x 30 mins	12 hours between shifts.	Four days.
14, NHS	Admin staff, 1 hour paid lunch break; nurses, 15 mins paid, 30 mins unpaid; portering staff, two x 15 mins plus a half-hour lunch (rarely taken)	Some staff did not get 11-hour break.	A least 1 day.
15, retail	One x 15 mins for those working for four hours or more; two x 15 mins and 1 hour unpaid lunch for those working 8 hours or more; 6/7 hour twilight shift, half an hour unpaid	Policy – minimum of 12-hour break, but not in practice.	2 days in every 7-day period.
16, finance	At least a half-hour lunch break, unpaid. No formal paid breaks	Normally at least 12 hours – but overtime outside flexi-band could cut this.	Weekend overtime meant no break for some.
17, electronics	Lunch breaks of half an hour to an hour (unpaid), plus morning and afternoon tea breaks	Shift workers, at least 16 hours between shifts; others, at least 12.	Weekend overtime could mean no day off.
18, hospitality	All those working at least 3 hours got 15-min break. 30-min break for those doing 4 hours or more	Minimum 12 hours	Two days rest per week – but some exceptions.
19, contracting	Unpaid lunch break of at least 30 mins; plus tea breaks which were paid for full-time; unpaid for part-time staff. Additional breaks in long shifts or before a period of overtime	Between shifts varied a lot – might be as little as 8 hours in rare cases and only 1 or 2 hours in crisis situations. Office workers would generally have a break of at least 14 hours.	Usually 2 days off a week or at least 2 days a fortnight – but exceptions with overtime working at weekends and some shift patterns.
20, engineering	Half an hour for lunch	Usually more than 11 hours. between shifts but not when changing shifts or doing overtime.	Generally 2 days a week. with exceptions of changing shifts and overtime working.

Cases where the WTR rest provision was not complied with included those where the employer provided breaks but staff found it difficult to take (case study 14, NHS trust); where length of breaks was not specified (case study 4, print); where people working between six and eight hours were not adequately covered (case study 15, retail); and where some staff did not have any break entitlement (case study 7, security).

Breaks between working days were less likely to comply with the Regulations. Although those working a fixed day would normally expect well in excess of 11 hours between days, this tended not to be the case in organisations operating rotating shifts, or where there was overtime working at the beginning or end of the day. Eleven of the 20 case study organisations had at least some workers not receiving the 11-hour break.

Although in the majority of companies workers got two days off in a seven-day period – typically the weekend – in six organisations some of the workforce were not even guaranteed a break of one day in seven. In two cases (case study 7 and case study 10), seven-day working was the norm for some workers. In addition, weekend overtime sometimes encroached on weekly breaks in case studies 16, 17, 19 and 20. In the engineering company (case study 20), shift changes could also mean a loss of the weekly break.

Complying with the Regulations

The following table summarises action taken by employers to comply with the rest provisions of the Regulations.

Derogations

Only a minority of case study organisations used either the special circumstances, or the shift-working exemptions to the Regulations in addressing rest-break requirements. As shown above, the shift-working exemption, which applies when change of shift means that taking full rest entitlement is not possible, was used by four organisations. Meanwhile, three organisations saw themselves as covered by one of the ‘special circumstances’ derogations. The utility and one of the NHS trusts (case study 14) had some workers exempted on the basis that their ‘activities involve the need for continuity of service or production’; while workers of the security company were classed as ‘engaged in security or surveillance activities’. As set out in chapter 5 the use of the special cases derogation in respect of nurses in case study 14 was in conflict with the national guidance provided by the NHSE.

However, not all companies chose to make use of the derogations available to them. For example, the contracting company decided that using any derogations would be inappropriate. In addition, the security company was only using the shift-work exemptions to apply to ‘very complicated shift patterns or split shifts’. The company also decided that it would not use any derogations that might apply to its mobile workers.

- The company used the Regulations to implement major changes for the mobile patrol teams. Their hours were reduced from 56 to 45 per week, plus a compensatory pay increase. The company was insistent that because these workers spend a lot of time driving, that the 48-hour limit should apply for health and safety reasons and that no derogations would apply to this group. To compensate, the company recruited more staff and all rest periods applied fully. It was considered unsafe to drive alone

regularly for 12 hours a night. The company created a new ‘image’ for this group of employees. They were now called the ‘patrol and response service’: the status of the staff was upgraded and they were given new vehicles.

Collective/workforce agreements

An appropriate workforce or collective agreement can modify or remove entitlements to rest breaks. This flexibility was used at the printing company and by the contracting company.

- The collective agreement at the print company formalised the unspecified break periods available previously. Management considered that this would enable break-taking to be subject to proper monitoring. The document proposing the collective agreement stated: ‘We agree with one 20-minute break for which, although they need not be paid, we will pay 8 minutes and put a compensatory amount at the end of the pay slip to cover the 12 minutes – nobody will be any better or worse off, so reducing the working week to 36 and a half hours. These breaks will be strictly monitored and any excess will be deducted from the weekly wage.’
- The contracting company finalised an agreement that ensured a guaranteed minimum daily break of seven hours for its workers. In addition, the agreement stated that working practices would be altered to meet the weekly break requirements. This would mean moving from seven- to six-day shift patterns in some areas.

Changing working practices

Changes in working practices to comply with the Regulations were set out in the table above. These can be summarised as follows:

- revised shift working arrangements (five organisations);
- an end to overtime working over seven days (four organisations);
- introduction of in-work breaks for some workers (three organisations); and
- reminders of legal rights together with instructions to workers to take the necessary breaks (three organisations).

The organisation in this research which faced the most complex challenges arising from the WTR rest provisions was one of the NHS trusts – case study 8. The size of the problem and the cost implications meant that most changes were only at the planning stage at the time of our second round of interviews. Changes planned or seen as necessary included:

Table 9: complying with the Regulations rest provision

<i>Case study, sector</i>	<i>Derogations used in respect of WTR rest provisions</i>	<i>Action to comply with the WTR</i>
1, charity	None	Instruction to take a break after 6 hours.
2, retail	None	None
3, engineering	None	None
4, printing	None	People no longer allowed to follow week-day nights with a Saturday late shift. Also ensure at least one day off a week.
5, pharmaceuticals	None	Informal arrangement for those who are away on business to have a 'day with the family' shortly after their return.
6, hotel	None	None
7, security	Special circumstances; shift working	Implementation of daily rest periods; reducing shifts to give necessary break between shifts (despite the derogation); end to 7-day working; introduction of compensatory rest; increased staffing to allow breaks.
8, NHS	Special circumstances – doctors	Changes planned to operating theatre shift pattern; exploring changed shifts and increased staffing in labs. Piloted night shift changes.
9, housing association	None	None – take the view that averaging over 17 weeks removes the need for change in this area. Looked at changing shift patterns but this was eventually rejected.
10, food manufacturer	None in relation to breaks	End to Sunday working; changes to shifts. New rota for engineers ensures 11-hour daily break.
11, utility	None in relation to breaks	None
12, finance	None	Monitoring of logging-off times in call centres to make sure breaks taken. Night shift reduced from 12 to 10 hours.
13, general man.	None	Staff no longer allowed to do overtime over 7 days.
14, NHS	Special circumstances – nurses	Rota changes to build in rest periods and breaks.
15, retail	None	Rescheduling of rest period – provision of at least one x 20-min paid break to those working over 6 hours. Prohibition of following a late duty with an early start. Increased minimum break from 15 to 30 mins for young workers working more than 4.5 hours.
16, finance	None	Workers informed of their rights; restrictions on weekend overtime
17, electronics	None	Trying to limit overtime to 1 day at weekend; also informing people that they must take at least 20-min lunch breaks
18, hospitality	Shift working	Allows flexibility re weekly breaks for some groups; compensatory rest provision.
19, contracting	None	Collective agreement flexibilities being used re daily breaks. There will be changes to ensure that staff get at least 1 day off in 7, or 2 in 14. Local compensatory rest provisions.
20, engineering	Shift working	Compensatory rest for untaken daily and weekly rest.

- Operating theatres: changing the shift pattern to introduce two crews of five people (nurses and support technicians) to work 12 hour shifts back-to-back. This would provide 24-hour cover, so no on-call working. The money saved from paying on-call time would help to part-finance the new shift pattern which involved recruiting five additional staff.
- In the laboratories: looking at the introduction of a partial shift system involving four additional staff.
- Nursing: piloting a system on one ward which changed the night shift so that it started half an hour earlier and finished half an hour earlier. This allowed the staff changing from a late to an early shift to get the 11-hour break. The day staff now finished at 8.30pm and started at 7.30 am. The trust was planning to extend this to other wards during 2000. However, there was a cost involved in having to pay the night shift premium for a longer period.
- Night shift porters: there was an unresolved problem in that they did not always get their 11-hour rest period because of a roster which involved providing cover for telephonists. The trust was considering an increase in the number of hospital porters but this would be a significant additional staffing cost.

Compensatory rest

Organisations where rest entitlement is modified by derogation or agreement must make provisions for 'an equivalent period of compensatory rest', except in exceptional circumstances. The DTI guide says that the rest should be provided within a reasonable time: within a couple of weeks for in-work and daily rests; and within a couple of months for weekly rests.

At our first visit this was an issue which a number of organisations were only just beginning to consider. A year later the picture was that most of the organisations whose use of WTR flexibilities required such provision had the issue under consideration or had finalised their approach. However, in two case studies (14 and 20) no action had been taken.

Four organisations with collective or workforce agreements included specific reference to compensatory rest provision.

- One collective agreement states that if the 11-hour rest period is encroached upon, 'the employee shall be entitled to an equivalent period of compensatory rest, normally to be taken within 24 hours. When it is not possible to grant such a period of rest in 24 hours, then this period will be granted as soon as possible and within seven days'. Where in-work breaks

cannot be taken, these must be provided within 24 hours of the entitlement (case study 7). However, when we explored how this provision had been implemented, the HR manager felt that it was unlikely that people were in practice receiving compensatory breaks. His view was that, if unpaid, it was unlikely that workers would want these breaks.

- In a workforce agreement, 'The entitlement to an uninterrupted weekly or bi-weekly rest period is expressly excluded in respect of all general management; assistant management; heads of department; and all shift workers.' Where the breaks are broken or not provided, the worker 'will be entitled to an equivalent period of compensatory rest wherever possible taking into account the operational needs of the company' (case study 18).
- The workforce agreement at the housing association (case study 9) includes the provision 'where in exceptional circumstances such breaks are not operationally possible, compensatory rest for an equivalent period will apply. Compensatory rest, where approved, will be taken as soon as practicable following the untaken rest period or break.' A line manager said that the practice was that 'we try to give compensatory rest on the same day as much as possible – for example by getting someone to finish their shift earlier to make up for that proportion of the break that has been lost.' The organisation had for a short period monitored the interruption to breaks suffered by staff who were sleeping-in. This indicated that regular interruptions to daily breaks did not occur and that the practice of simply providing compensatory rest for the part of the breaks that was lost, was adequate. The employee representative took a similar view of the practice to managers, but said that it was sometimes not possible to receive the compensatory breaks for several days.
- The contracting company (case study 19), decided to leave arrangements for compensatory breaks to negotiation between local management and shop stewards. The collective agreement simply stated that 'where the Regulations are disappplied under certain exceptions and the worker is required to work during a rest period, [the company] will provide an equivalent period of compensatory rest within a reasonable period.' In practice, the main issue was the treatment of staff on stand-by who were called out and so had their daily break interrupted. The HR manager said that the workers concerned had been unwilling to take the compensatory rest because it cut into the next day's work with a resulting loss of pay. As a result local negotiations were in progress, and central guidance was being drafted,

with the likely outcome that half the period of compensatory rest would be paid. It was important for the company to resolve this issue, otherwise it would be faced with workers unwilling to take on stand-by duties.

In the NHS, compensatory rest was an issue dealt with in a national agreement between the British Medical Association and the NHSE. This differentiates between ‘trivial’ and ‘significant’ interruptions. Where the interruption is seen as significant, doctors are entitled to compensatory rest equivalent to the full rest period. Case study 14 did not employ any senior doctors. However, in case study 8 this was an issue, and had yet to be fully addressed at trust level. It was of particular concern because of the considerable cost implications in terms of additional staffing, should consultants regularly require full compensatory rest. The trust had also yet to finalise arrangements for other staff.

Implementing rest provisions in practice

Returning to 15 organisations a year after our original visit allowed us to examine how the Regulations had been applied in practice. It was in the area of rest provision that there were most examples where policies to implement the Regulations were not always being applied. In-work breaks seemed to be particularly vulnerable to operational pressures; however, we were also told of instances where daily and weekly breaks were not being applied. In all nearly half (7) of the organisations involved in the follow-up study appeared to be having problems in the practical implementation of rest provisions.

- In the security company (case study 7) the collective agreement led to changes in working practices and HR, line management and trade union interviewees agreed that most people were getting the daily and weekly breaks to which they were entitled. However, in-work breaks seemed to be applied inconsistently across the company, especially at workplaces with only one or two staff. This had caused some worker concern. The trade union representative told us of an individual grievance on the issue. The HR manager was developing a proposal for discussion at the national negotiating committee. In the same company the union representative said that, on occasions, overtime meant that people still did not get their weekly break.
- The trade union representative in a finance company (case study 12) said that work pressure in call centres meant that in some cases people worked for six hours without a break. The company was planning to conduct an audit of its working practices to examine how well it is

complying with the Regulations. The union considers that this was one of the issues that should be explored as part of the audit.

- In the contracting company (case study 19) the local union representative told us that, although workers were supposed to take an unpaid break of 30 minutes during the day, in practice local management allowed people to ‘just get a cup of tea and then return to the job and carry on being paid’.
- At the engineering company (case study 20), the shop steward reported that in some areas people were working their meal breaks to boost their team’s production figures. This was in the context of a series of cuts in the workforce – ‘no one wants to be seen as less productive in a redundancy situation.’ He also said that, although rotas provided for the full daily rest, ‘supervisors have a habit of asking people to work another shift straight after one they have just finished.’ This was easier for supervisors than trying to contact another employee to work the shift who might be at home.

Other organisations where there were reports of occasional problems in ensuring the application of rest entitlements were case studies 3, 9 and 16.

Conclusion

Where companies’ existing rest provisions were not in line with WTR minima, this was predominately as a result of shift patterns or overtime working. In particular, weekend overtime working in a number of establishments meant that some workers did not get the weekly rest break. In addition, daily rest breaks tended to be shorter than 11 hours where individuals were changing shifts or doing week-day overtime. The flexibilities offered by collective/workforce agreements and/or one of the derogations were used by a number of companies to reduce the daily break requirement. However, employers seemed more inclined to implement the weekly rest provision in full and to use the Regulations to challenge seven-day-a-week working.

When we explored progress in this area 18 months after the implementation of the Regulations, it seemed that most organisations had in place formal provision to comply with the Regulations. However, there were a number of cases where operational pressures or employee concerns about loss of earnings meant that these provisions were not always applied in practice.

Nine

HOLIDAYS

The Regulations introduced entitlement to paid annual leave. Under this entitlement workers have a right to at least four weeks' leave each year (effective from 23 November 1999).

This was the least problematic aspect of the WTR for our case study organisations. Only two companies had leave entitlement for a major group of workers that was below four weeks. The main issue raised by this research was the provision of leave for casual workers, especially 'as and when casuals', such as 'bank' workers in NHS trusts and other organisations. In addition, by the time of our second phase of interviews, some employers had identified problems in their previous practice in respect of the calculation of holiday pay.

Practice prior to the Regulations

Table 10 sets out annual leave provision in the case study organisations.

As the table shows, all but two companies had minimum holiday entitlements for permanent workers equivalent to at least four weeks a year. In most cases, this entitlement rose with either grade or service. The two exceptions to the four-week rule were the security company (case study 7) and the hospitality company (case study 18).

Only three companies included statutory or bank holidays within their workers' leave allowance. Under the Regulations, statutory holidays are included in the minimum entitlement. There are between nine and 12 statutory days' holiday in different parts of the UK, which would indicate that in most cases workers were receiving paid holiday well in excess of the legal minimum. Service criteria aside, in only one company – the security company – was the leave allowance including public holidays below the WTR minimum for some workers.

Temporary and casual staff did not, however, always receive leave in line with WTR requirements. Casual workers – typically those called in as and when the employer wanted them – had no leave entitlement in five organisations and only three weeks' in one. In the electronics company, fixed-term contract staff did not get paid leave. Finally, in the small retail chain (case study 2), workers who were only employed to work on Saturdays did not get paid holiday.

Complying with the Regulations

The most common action taken by employers in implementing the holiday provisions in the Regulations was to consider how casual workers should be treated. As we explained in chapter 6, while all but one of the organisations concerned had decided that their casual workers, including on-call/bank casuals, should receive paid holiday, the way that provision had been implemented differed. On the one hand, there were those who considered that holiday pay needs to be linked to actual time-off. On the other hand, some organisations had taken the view that the requirement to take holiday is not appropriate for workers who are only called in when they are required, and so the key employer obligation is to pay holiday pay.

Two companies increased holiday entitlement for major groups of workers.

- In the security company, some workers who had transferred from another company under TUPE had no entitlement to holiday for the first year. Others transferring only received two weeks' holiday during their first year. Following the Regulations, the leave entitlement for those with two weeks' holiday was increased to three then four weeks. Holidays were also given from day one for those who were previously not entitled for one year.
- The hospitality company previously had a minimum holiday entitlement of 18 days. All entitlements were increased by two days, with implementation effective from 23rd November 1999, and all workers were entitled to at least 20 days' holiday from that date.

Two companies abolished the practice of buying-out of holidays.

- Before the Regulations, the security company allowed workers to be paid for a week's holiday rather than take the leave. This was abolished. Also previously, the company allowed staff to carry over all their holiday entitlement during a year. Following the Regulations, they could only carry over five days and for no longer than three months.
- The engineering company curtailed the occasional practice of buying holidays to ensure that all workers received an adequate amount of leave.

Finally, each of the retail companies needed to make minor changes to its annual leave provision.

- The larger company reduced the service qualification for paid leave from six to three months.
- The small retailer introduced a pro rata holiday entitlement for part-timers working only on Saturdays.

Table 10: annual leave prior to the Regulations

<i>Case study, sector</i>	<i>Full-time holiday entitlement</i>	<i>Inclusive/exclusive of statutory holidays</i>
1, charity	27 days, permanent and temporary staff; three weeks, casual.	Exclusive
2, retail	22 days – Saturday workers excluded.	Exclusive
3, engineering	20 or 25 depending on shift pattern.	Exclusive
4, printing	26 days.	Exclusive
5, pharmaceuticals	20-25 increases with service plus 4 Japanese ‘company’ days.	Inclusive
6, hotel	Four weeks – not calculated in terms of days.	Exclusive
7, security	Most have 23 days rising to 28 after three years’ service – but some only have two weeks; some no holiday in the first year.	Inclusive
8, NHS	22-30 days – tendency for workers not to take their entitlement. Issue of bank workers.	Exclusive
9, housing association	21-28 days and five associated days – bank workers not included.	Exclusive
10, food manufacturer	20 days, rising with service.	Exclusive
11, utility	25-29 days.	Exclusive
12, finance	22 days, rising to 30.	Exclusive
13, general manufacturing	Four weeks’ holiday for manuals (i.e. 12 days’ paid leave); 5 weeks for office staff.	Exclusive
14, NHS	4-6 weeks – varies with job and service. Problem with bank staff.	Exclusive
15, retail	22-27 days by grade – six-month service qualification.	Exclusive
16, finance	23-27 days.	Exclusive
17, electronics	25 days, plus two additional service-related days. Paid leave did not apply to fixed-term contract staff.	Exclusive
18, hospitality	18-24 days based on service – casual workers not included.	Exclusive
19, contracting	20-25 days – ‘as and when casuals’ not included.	Exclusive
20, engineering	30 days a year, rising to 33 with service.	Inclusive

Holiday pay

Under the terms of the Regulations, payment for leave is according to sections 221-224 of the Employment Rights Act 1996. A week’s pay for the purposes of that act is what the individual would earn for a normal working week. So, while it does not include overtime earnings (unless such overtime is contractual), it does include payments on top of basic pay such as shift premia.

It was only in our second round of interviews that this definition was found to pose problems for some of the case study organisations.

In particular, this definition of pay was contrary to that contained in the Greater Whitley Council handbooks, covering the terms and conditions of

some staff in the NHS. This definition does not include enhancements to basic pay. This difference in definition produced costs for both of the NHS trusts involved in this project, as they now pay holiday pay including enhancement for the first four weeks of the full-time leave entitlement.

Other organisations where a similar issue arose were the housing association (case study 9) and one of the finance organisations.

- The housing association had recently acquired a new establishment where, under previous terms and conditions, employees were in receipt of holiday pay based on basic pay alone, and did not take account of night work premia. The association changed this to calculate holiday pay for this group on the basis of average earnings.

- At the finance company the legal department had raised concerns about the payment of holiday pay to staff earning commission. At the time of our second visit the company was deciding whether holiday pay should now be determined by actual, rather than basic, earnings.

Conclusion

In most organisations, existing holiday entitlements for employees were in excess of the new statutory minimum. Most employers in this study provided at least four weeks' paid holiday and employees were also entitled to public holidays which were not generally part of the annual leave allowance. Where practice fell short of the Regulations this was generally in respect of casual workers, in particular 'on-call' or 'zero hours' workers. The differences in resolution of this issue suggests a continuing lack of clarity in what is required to demonstrate 'continuity of service'.

Ten

NIGHT WORK

The Regulations require employers to take reasonable steps to ensure that night workers do not work more than an average of eight hours in each 24-hour period. Unless amended by collective or workforce agreement or subject to the special circumstances derogation, the ‘averaging’ reference period is taken as 17 rolling weeks.

In cases where the night worker is undertaking activities involving special hazards (SH) or heavy physical or mental strain (HS), the eight-hour limit applies to hours actually worked, and no averaging is possible.

The DTI guidance says that night workers are those involved in night work ‘on the majority of the days that they work; on such proportion of the days they work as agreed between employers and workers in a collective or workforce agreement; or sufficiently often that they may be said to work such hours as a normal course.’ ‘A ‘normal course’ is on a regular basis, e.g. on a rotating shift pattern... as opposed to an infrequent or ad hoc basis.’

There is considerable scope for variation by collective or workforce agreement in this area, including in the definition of night-time and work

of special hazards/heavy strain; in modifying night-work limits; and in determining the reference period for averaging night work. In addition, the night-work limits do not apply to workers covered by the unmeasured working time and special circumstances derogations.

Fourteen of the case study organisations had some people working nights prior to the Regulations. A total of 12 considered that these were night workers as defined by the WTR, and therefore had taken action to implement the Regulations. In only a few cases were the WTR night-work limits being exceeded in the organisations concerned. Where action taken to comply with the limits involved a combination of using the WTR flexibilities and of changing working practices. The most significant part of the Regulations for most establishments with night workers was implementation of the health assessment requirements.

Night work prior to the Regulations

The following table summarises night-working arrangements in place in the 14 case study organisations that reported that they had any night workers. In addition, two other organisations – the charity (case study 1) and the engineering company (case study 17) – reported occasional night working to finish particular projects or in the case of emergencies.

Table 11: night working prior to the Regulations

<i>Case study number, sector</i>	<i>Period defined as night shift</i>	<i>Who works nights</i>	<i>Working pattern</i>	<i>Normal working hours</i>	<i>Night workers WTR def?</i>	<i>Work of special hazards?/ heavy strain?*</i>
3, engineering	10pm-8am	Production workers	Permanent nights	One x 9 hours; 3 x 9.5 hours in a week; plus ‘custom and practice’ of 1.5 or 2 hours overtime each night.	Yes	RA conducted – no SH/HS work
4, printing	9pm -6am	Production workers and despatch)	Permanent nights	9 hours, 4 nights a week.	Yes	RAs conducted – no SH/HS work
7, security	12am-7am (in response to WTR)	Majority ‘static’ and ‘mobile’ patrols; staff in resident institutions.	Permanent; some rotating	Typically 7 x 12 hours.	Yes	–

8, NHS	9pm-8am	About 20% of staff do some night duty – includes nurses and midwives, porters and catering staff.	Some permanent nights (some internal rotation)	Permanent nights, up to 10 contracted hours, up to 4 nights a week; Rotation – from 2 days to 2 weeks.	Yes	RAs conducted Workers in radiography and A & E do SH/HS work.
9, housing association	9.15pm-7am	Care home workers; those in 24-hour on-call unit.	3 shift system	9.75 hours, 4 nights a week.	Yes	Review concluded no SH/HS work.
11, utility	Not known	Control room staff	Rotating shifts	Usually 12-hour shifts	No	–
12, finance	7pm-7am; 6pm/8pm-3am	Some call centre workers; data-input workers; IT support.	Permanent nights	Twelve-hour shifts, 3 nights on, 3 nights off; others, 7 or 9 hours, four nights a week.	Yes	No SH/HS work identified.
13, general manufacturing	8pm-8am	Production workers	Permanent nights	12 hours, 3 nights a week.	Yes	RAs conducted – no SH/HS work.
14, NHS	8pm-8am	Nurses		Longest shift: 9.5 hours, 4 times a week.	Yes	RAs conducted – no SH/HS work.
15, retail	Adopted WTR definition	A few staff in large stores and distribution centres.	Not known	10 or 12-hour shifts four nights a week.	Yes	RA conducted – no HQ or retail jobs are SH/HS.
16, finance	8pm-8am	IT support staff (about 1% of workforce).	Rotating 2-shift system	4x12-hour night, 4 days off; 4 x12-hour days.	Yes	No RA conducted
18, hospitality	11pm-7am	Portering staff; some night work for bar staff/duty manager.	Permanent nights for porters	8 hours a night.	Yes	RA conducted – porters have SH/HS work.
19, contracting	7pm-7am	Construction staff involved in winter maintenance.	Many different shift pattern	12-hour shifts in some areas.	Yes	Some SH/HS work
20, engineering	8pm-6am	Production workers in 24 hour process.	3/4 rotating shifts	Varies	No	–

*RA = Risk Assessment; SH= Special Hazard; HS= Heavy strain

Defining night-time

When we asked the case study organisations how they defined night work prior to the Regulations, most gave us a broad time span of as much as 12 hours, often directly linked to the pattern for night-shift working.

Who works nights

The table shows the groups of workers involved in night working in each of the case study organisations. In only six cases were 20 per cent or more of the workforce defined as working nights. The occupational groups engaged in night work were those involved in 24-hour service provision or production process. Hence the main occupations covered were production workers; health care professionals; security workers; and maintenance workers.

Working patterns

In seven of the 14 organisations engaged in night work, at least some workers always worked nights; and in the same number, night workers were involved in some form of rotating shift arrangement that involved them in both day and night work.

Hours of work

In almost all the establishments, some night workers were engaged in shifts longer than eight hours. So if their work involved special hazards or heavy strain, their working patterns would not have complied with the Regulations. However, where work did not fall into that category, it appeared that working patterns generally averaged less than eight hours a night over a 17-week period.

Are workers 'night workers' as defined by the Regulations?

The 'normal course' provision (see above) was subject to varying interpretation by our case study organisations. Two companies with rotating shift patterns decided that their workers were *not* night workers in WTR terms (case studies 11 and 20). However, the remaining five that operated these patterns decided that their workers were covered by the night-work provisions; and one case study, the contracting company, considered that it had put a 'liberal' interpretation on this aspect of the Regulations, since its workers only worked nights regularly during the winter. As set out in chapter 5, the issue of who was a night worker caused some dispute at the security company, where the definition in place applied to all those working at least half their shifts at night.

Work involving special hazards/heavy strain

Seven organisations had either carried out a risk assessment or engaged in discussion with recognised trade unions to determine whether their night workers' roles involved special hazards of heavy physical or mental strain. Four had some workers in this category and a fifth anticipated that once the assessment process was complete its night workers would be seen to be subject to special hazards.

Complying with the Regulations

Table 12 shows how the 12 organisations that considered they had night workers as defined by the Regulations, sought to implement the night working Regulations.

Definitions

Where organisations put in writing their approach to the night-work provisions of the Regulations, they generally provided definitions of night-time and night worker that were close to the Regulations and/or relied heavily on the DTI guidance. This states that 'Night-time is a period of at least seven hours, which includes the period from midnight to 5am which can be determined by relevant agreement... In the absence of such an agreement it will be 11pm to 6am.' As the table shows, most organisations have adopted the default definition of 11pm to 6am. Two organisations, one with a workforce agreement and one with a collective agreement, had not specified which hours, beyond midnight to 5am should be included. The security company agreement defined night-time as the period from midnight to 7am.

Broad definitions of those workers who were night workers followed the WTR provision that they are those workers whose daily working time includes at least three hours of night-time. However, there was considerable variation in the degree to which this outline definition was clarified to determine how, for example, night work that was a 'normal course' was decided. The judgement in the Burns case cited in chapter 5 would indicate that a number of organisations may be operating a definition of night worker which is too narrow.

Using flexibilities

Where organisations took advantage of the flexibilities within the night-work provisions, most had used either a collective or workforce agreement rather than one of the other derogations. The most common modification was in respect of the reference period for averaging the night-working limit. This was modified from 17 weeks by agreement in five organisations.

In addition two companies had extended the limit on night working.

- The contracting company had a collective agreement to increase the night limit from eight to 11 hours.

- The hospitality chain finalised a workforce agreement that raised the night limit to an average of 10 hours.

Table 12: complying with the night-work provisions of the Regulations

<i>Case study, Sector</i>	<i>Written definition of night-time</i>	<i>Written definition of night worker</i>	<i>Reference period</i>	<i>Use of flexibility</i>
3, engineering	Not	Not defined	17 weeks	None
4, printing	defined	Not defined	52 weeks	Collective agreement
7, security	Not	Workers who work at least 3 hours of their daily time during night hours for at least 50% of rostered shifts averaged over a 4-week period – may be changed.	4 weeks	Collective agreement; special cases derogation
8, NHS	defined	All those working at least one night in 10.	52 weeks	Collective agreement
9, housing association	12am-7am	Any worker whose daily working time includes at least 3 hours of night-time: on the majority of days that they work; on any agreed proportion of the days they work; or sufficiently often that they may be said to work such hours as a normal course, i.e. those who work nights as part of a rotating shift pattern.	17 weeks	None used
12, finance	11 pm 6 am	Anyone who works at least 3 hours between 11pm and 6am on a regular basis. This includes rotating shift patterns where employees work nights on a regular rather than an infrequent or ad hoc basis.	17 weeks	None
13, general manufacturing	7-hour period to include 12-5am	Those working the 8pm-8am shift.	17 weeks	None
14, NHS	11pm-6am	Not defined	26 weeks	Special cases derogation
15, retail	Not defined	Someone who usually works at least 3 hours of his daily shift during night-time.	17 weeks	None
16, finance	7-hours include 12am-5am	An employee who works at least three hours of their daily working time during the period between 11pm and 6am.	26 weeks	None
18, hospitality	11pm-6am	A worker who works at least 3 hours of his/her daily working time during night-time.	52 weeks	Workforce agreement
19, contracting	11pm-6am	No written definition. Will be those doing regular night work in the winter.	52 weeks	Collective agreement

Both organisations that made use of the special circumstances derogation decided not to make full use of the opportunities to modify the night-working Regulations that this derogation offers.

- An NHS trust (case study 14) was using the extended reference period and rest exemptions in the special circumstances derogation in respect of its nurses. However, it decided not to take advantage of the provision that removes the limit on night working where the worker's activities involve the need for continuity of service or production.
- The security company decided that static security patrols were exempt from the daily night-work limit by derogation. However, the workers concerned were given 'appropriate time off and/or protection to safeguard health and safety'. The derogation was not to be used for mobile workers and an eight-hour limit was to be applied. Employees' wages were increased and more staff were taken on to move away from a pattern of 12-hour night shifts.

Only one other organisation was planning changes in night-working time arrangements to comply with the Regulations: the contracting company was likely to revise the shift patterns of its winter road maintenance teams. However, this was a contentious issue that had not been resolved in the 12 months between our first and second visits to the company.

Health assessments

The Regulations require employers to offer a free health assessment to any worker who is to become a night worker. They must also give night workers the opportunity to have further assessments at regular intervals. For the majority of our case study organisations the only change that they made to comply with the night-work provisions of the WTR was to introduce night-worker health assessments. Table 13 summarises how this aspect of the Regulations was implemented.

All but two of the employers offered assessments to workers starting night work and had provision for 'regular assessments' for all other night workers. The most common interpretation of 'regular' was on an annual basis. However, staff in the security company will wait three years between checks.

One company (case study 4) was unclear about its obligations under this part of the Regulations. The works director said that he and the night manager go in and 'ask the night workers how they are getting on'. He asked the interviewer for information on what was required by the Regulations.

In six organisations offering an assessment, that assessment was optional and it was for the individual worker to decide whether he or she would take up the opportunity. As the above table indicates, the level of take-up varied considerably. In some cases all, or almost all of those eligible for a health assessment, had taken up that entitlement; in others, such as the security company, only a few had done so. In the case of the security company this may be because the view was taken that the onus the employee to request an assessment, rather than the company to offer one.

One company where the assessment was compulsory was the contracting company. Management considered that this made record-keeping more straightforward and that otherwise there would be low levels of take-up. The company wanted to ensure that it was protected against any assertions of negligence – especially as the work involved was particularly hazardous and can involve people working alone on dark roads at night. Assessment was conducted by the outside medical adviser employed for other health checks. No member of staff had refused to have an assessment. Were they to do so the issue would be dealt with via the disciplinary procedure.

In only one company (case study 16) was medical examination an automatic part of the health assessment process. In this company, only a small number of workers were engaged in night work. In all other organisation the starting point was a health assessment questionnaire, to be followed up with face-to-face advice or medical examination, where the questionnaire responses lead to health concerns.

We asked both management and union interviewees to indicate whether any workers had been moved away from night work as the result of an assessment. None of our informants was aware of any cases of this kind. However, in some organisations they did not have access to the data, which were instead held by a occupational health specialist.

Conclusion

Only a small number of organisations were exceeding the WTR night-work limits, prior to the Regulations although half of the case study organisations had some night workers as defined by the Regulations. The introduction of health assessments for night workers seemed to be the most significant element of this part of the Regulations for companies with night work. However, when applied in practice we found no evidence that these had resulted in workers moving off night work.

Table 13: night worker health assessments

<i>Case study, sector</i>	<i>Frequency</i>	<i>Whether voluntary</i>	<i>Nature of health assessments</i>	<i>Take up</i>
3, engineering	Probably annual	Voluntary	Questionnaire followed up with personal discussion as necessary.	All but two staff
4, printing	–	–	Already carried out a health assessment for all new employees. Company unclear about obligations – nothing formal introduced.	–
7, security	Every 3 years	Voluntary	Offered to all night workers – takes the form of a standard pre-employment medical.	Very low
8, NHS	Annual	Voluntary	Starting point is a questionnaire.	Not known
9, housing association	Annual	Voluntary	Night workers given the chance to complete an annual health assessment questionnaire provided by a local OH provider. Any responses that indicate a problem area – individual concerned would be asked to attend an appointment with a physician.	Most
12, finance	To be determined following audit	Compulsory	Joint completion of health assessment form with line manager. Any doubts re fitness – more in-depth assessment by a doctor.	100%
13, general manufacturing	–	–	Not arranged (not involved in follow-up study).	–
14, NHS	Annual	Voluntary	Starting point health questionnaire.	Not known
15, retail	At least annual	Compulsory	Health questionnaire to all night workers. All employees get a free health assessment every year. Possibly more frequent for night workers.	100%
16, finance	Annual	Voluntary	Initial questionnaire followed by counselling by Occupational Health nurses and if necessary examination by Occupational Health physicians for all night workers.	100%
18, hospitality	Annual	Compulsory	Health screening questionnaire followed by medical examinations ‘as and where appropriate’.	100%
19, contracting	Annual	Compulsory	Questionnaire followed by examination by a medical practitioner if necessary.	100%

Eleven

WORKING TIME RECORDS

Employers are required by the Regulations to keep adequate records to show they have complied with the working time and night-work limits. The means by which these records are kept is left up to the employer, but the methods used to monitor working time need to be adequate to highlight instances of workers exceeding either limit. In addition, the employer was initially required to keep records of the number of hours worked by all workers who had opted out of the 48-hour limit. However, this aspect of the Regulations was subject to amendment between the two phases of our fieldwork. Finally, those companies with night workers are required to keep records of health assessments undertaken in line with the WTR (see previous chapter).

In chapter 12 we describe the impact of the Regulations on our case study organisations. As we explain, a third of the employers we interviewed in the first round of interviews said that the record-keeping requirements were the most onerous aspects of the Regulations. However,

they were less of a concern a year later, by which time most systems were established and were seen to have other advantages beyond those of monitoring the WTR.

Record keeping prior to the Regulations

Table 14 sets out systems for recording working time that were in place prior to the Regulations. The table shows that record keeping in respect of working hours traditionally had the following characteristics:

- working time data held centrally were generally kept for pay purposes only so that only hours for which an individual was to be paid were recorded. In only one of the case study organisations were records kept of time worked over contracted hours. This was an NHS trust where, although additional hours were recorded locally, there was no central collection or monitoring of that data;
- other aspects of working time were often the responsibility of local line managers, in particular shift rosters and records in respect of holidays taken by individuals;
- as a result, in almost all of the case study organisations some or all of the recording of working time was done manually.

Table 14: record-keeping prior to Regulations

<i>Case study, sector</i>	<i>Previous record keeping</i>
1, charity	Weekly attendance sheets were used which only indicated if people were working on or off site, on annual or sick leave or attending a training course. This was used mainly for fire evacuation purposes. as the organisation does not routinely pay overtime there was no need to keep detailed records.
2, retail	Just payroll. The largest branches had clocking-in for hourly-paid staff. Small branches used a clocking in book for hourly paid. The manager would interpret the clocking information locally and then send a weekly wage sheet to accounts. No monitoring of the hours of salaried staff.
3, engineering	For white-collar workers, the company used attendance sheets. All hourly paid workers had a clock card. It was a manual system, which is also used to calculate overtime.
4, printing	Clocking cards have been used for the last seven years but not for office staff. Also used daily work sheets.
5, pharmaceutical	No records kept.
6, hotel	Time sheets. However these recorded breaks as working time breaks and also involved 'double counting' to take account of the premia for Saturday and bank holiday working.
7, security	The great majority of staff are hourly paid. Their rosters were calculated on a computerised system which also calculated their pay. The only exception to this is that transferred staff who were salaried had manual records of any overtime. This was quite rare and it as unlikely anyone would exceed 48 hours a week.
8, NHS	Only rostering records and unpaid time which was recorded manually and the records not used.
9, housing association	Rostering records

10, food	Records on payroll of hours worked. All hourly workers clock on and off with 'swipe card'.
11, utility	Records of: <ul style="list-style-type: none"> • standard hours in contracts of employment • overtime hours for those who qualify for overtime payments.
12, finance.	The admin. centres which used flexitime kept records on it. Departments with regular overtime kept records, and the technology operations kept records of shift work.
13, general manufacturing	The company has a computerised data base of all hours worked by all employees. Workers 'clock on' and 'clock off' using a credit card swipe system. This monitors their hours and calculates their pay.
14, NHS	Prior to the WTR, time sheets recorded the number of hours worked. These were sent to the salaries department at the end of the month and a copy kept by the department. The personnel department kept a copy of the staffing rota.
15, retail	Before the introduction of WTR, working time records were kept solely for payroll purposes. In most retail locations a 'Time & Attendance' system remains in operation.
16, finance	Just flexi-system with a separate manual overtime recording system. Clocking in was via the internal phone system which included coding for the number of hours an individual was contracted to work and also their band widths. Work outside of the band width was not recorded in this way but was monitored via a manual overtime recording system. There were no records for those not covered by the flexi-system.
17, electronics	The only workers whose time was recorded would be those working overtime.
18, hospitality.	Kept time sheets based on work rotas.
19, contracting	Any office staff who were expected to exceed weekly hours completed a time sheet; all manual workers completed a time sheet for the hours worked that they are paid for – this was passed to and signed off by supervisor. In the construction division this fed into the computerised costing system. In catering/cleaning pay roll identified where full-time contracted hours were exceeded as this would mean overtime payments. However this was rare as most staff are part-timers.
20, engineering	Only records kept centrally were for overtime payment purposes. Sickness and holiday absence were kept by line managers on the shop floor.

Implementing the Regulations – some areas of difficulty

In the past, organisations had little reason to collect working time data for its own sake, except in so far as it was necessary to organise a shift working system. As a result, aspects of working time that should be counted to determine whether an individual's working pattern complies with the Regulations were not collected, or were collected via a number of different systems. This meant that complying with WTR record keeping was difficult for a number of organisations.

As we set out in chapter 6, the DTI guide was welcomed by a number of the case study organisations as clarifying the Regulations. However, it was criticised for not providing sufficient help in respect of record-keeping requirements.

- The personnel manager of the utility (case study 11), who was also responsible for keeping records, said that the recording of hours was a 'grey area'. She said that 'no one would tell me what had to be done'. For example, was it enough to give someone a contract which said they would work 40 hours a week and then leave it up to them?
- The HR manager of the electronics company (case study 17) said, 'Like many organisations we have had to interpret Regulations as we feel fit. As far as record-keeping requirements are concerned, the Regulations might have been a great deal more specific.'
- Finally, the personnel officer in the small retail chain (case study 2) was surprised by the implication in the guide that it may not be necessary to keep working time records for those who do not exceed the 48-hour limit: 'How can we know that without keeping records for everyone?'

It appears that a source of concern for some organisations was the description in the DTI guide of the formula for calculating working time. To use this calculation correctly, employers need records of any periods of absence during the reference period so that these can be discounted from calculations of average working time, via means of an appropriate extension to the reference period. As a result, a major area of change to record systems required by the Regulations was the centralised collection of holiday, sickness and other absence data.

However, despite making changes along these lines, one personnel officer (quoted above) admitted to not being able to fully comply with her understanding of the Regulations:

- ‘A lot of manual inputting is required due to the complexities of having a rolling reference period and not counting sickness/holidays. The issue of part-weeks is a particularly tricky one. I have decided to ignore these and just use a 17 full-week reference period.’ (case study 2)

Implementing the Regulations – the changes

There were two major ways that employers needed to change record-keeping arrangements in response to the Regulations. As indicated above, the first of these was the centralisation of absence data. The second was gathering information on aspects of working time that do not attract pay.

As table 16 shows, our case study employers can be seen to fall into three groups: those who made no changes to their recording systems; those where only minor modifications were required; and those where existing systems were subject to radical revision or were to be replaced.

No changes

The DTI guidance says, ‘In the case of hourly-paid employees, companies may find that keeping a worker’s pay records would adequately demonstrate a worker’s working hours.’ Three companies, where the workforce was predominately hourly paid, took the view that existing recording systems did not need to be changed to comply with the Regulations (case studies 3, 6, and 13). In two of these organisations substantial numbers of workers had decided to opt-out of the 48-hour limit, and so prior to the amendment (see below) records of their hours were required.

Minor amendments to existing systems

Six organisations (case studies 2, 7, 14, 17, 18 and 19) were able to use existing systems, but with amendments to comply with the Regulations.

Such amendments included extending recording to staff not previously covered (for example case study 2); or collecting a broader range of data using the same recording system (case study 14, for example).

One organisation (case study 16) was, at the time of our original visit, awaiting new modules for the time-recording system originally designed for its flexible working hours arrangement. It hoped that these additions would allow the recording of absences under that system, as well as extending it to staff for whom hours were not previously recorded. Following these revisions the company planned to monitor its own compliance with the Regulations. However, one year later these changes had not been made due to the failure of the system supplier to provide the necessary update. As a result, the planned review of WTR compliance had not taken place and the company still did not know how many of its workers were exceeding the 48-hour limit.

Introducing a new system

However, nearly half of the case study employers decided that they required a new method of recording working time to comply with the Regulations. One of these organisations deliberately sought to minimise ‘record keeping bureaucracy’ by only keeping records on those around or exceeding the 48-hour limit. However, in the remaining eight cases, new systems applied to all workers apart from those exempted by the unmeasured working time derogation. For four employers this meant or was likely to mean an investment in computerised recording systems (case studies 4, 8, 9 and 10).

Opted-out staff

In 1999 the Regulations were amended to remove the requirement on employers to keep detailed records of the working hours of workers who had decided to opt-out of the 48-hour limit. Prior to this change, in most cases working time recording systems were applied to the whole workforce and no special provisions were made in respect of opted-out workers. We asked employers involved in our follow-up study, whether and how they had decided to implement the amendment. In one company (case study 3) the change legitimised an earlier pragmatic decision not to record working hours for this group. In most cases we were told that no change had been made or was planned in respect of the amendment – typically because it was ‘simpler’ to use the same recording system for all workers (case study 9). Or because the change would cause unnecessary confusion (for example case study 1). An engineering company

(case study 20), which had previously established a separate recording system for opted-out staff, was continuing to use that system.

An NHS trust (case study 8) had yet to finalise its recording arrangements, but had taken the decision that it would keep full working-time records on its opted-out workers. It considered that this was important in terms of employer liability for the health and safety of the workers concerned.

However, the large retailer (case study 15) which had previously complained of the weight of bureaucracy associated with the Regulations, described the amendment as a 'big win' for the company.

Night workers

Few organisations specified recording systems for night work. In general, this was seen as covered by comprehensive time-recording systems (case studies 15 and 19), or addressed in current systems for recording shift work. Records of health assessments for night workers were generally being held by the organisation's HR function. But in the some cases (such as case study 9), they were held by the occupational health service provider.

Monitoring working time

Time-recording systems should provide the basis for employers and employee representatives, as well as regulatory bodies, to monitor the organisation's compliance with the Regulations. The table shows that in a number of organisations, aspects of data collection remained the responsibility of line management or individual workers (see for example case study 15). In our follow-up study we found some evidence of ambiguity as to who had responsibility for monitoring working hours on the basis of these records. In particular the respective responsibility of line and personnel management.

In some cases the HR function conducted its own monitoring and checks were also made by line management.

- For example, in the security company (case study 7), the electronic rostering system was used by the HR manager to 'check whether there are long hours on a particular contract, or whether an individual is regularly working long hours.' This was then raised with the relevant line manager. However, figures were also monitored independently by area managers and the company managing director.

However, in other cases there were indications that systematic monitoring might not be taking place, because line management and the HR function each expected the other to carry out that role (for example case studies 9 and 19).

Similarly, in a finance company where amendments to enable the proper centralised recording of working time were still awaited (case study 16), the personnel function was relying on line managers to monitor the hours of those for whom they were responsible. However, the line manager that we interviewed considered that, if any of his staff were exceeding the 48-hour limit then HR would warn him of this.

What the records show

When we conducted our initial interviews, few organisations were yet in a position to assess their working practices following implementation of the Regulations. Four had made an initial assessment. In case studies 15 and 18, there was no indication of 'excessive' working hours so far. However, both case study 2 and case study 5 had identified workers exceeding the 48-hour limit and had taken action to address the situation.

As table 15 shows, a year later six of the 15 organisations involved in the follow-up study were still unable to say whether any of their workers who had not opted-out of the WTR limit were working an average of more than 48 hours a week (case studies 3, 8, 9, 12, 16, 19).

Where records were available they were typically used for employers to identify those members of staff approaching the 48-hour limit, so that either they could be advised to sign an opt-out form (for example case study 4); or so that their working hours were controlled to keep them within the limit (including case studies 14 and 15).

Conclusion

Pre-existing time-recording systems generally recorded only paid working time, and so often required substantial amendment or replacement to address the requirements of the Regulations. As a result, for employers whose working time arrangements were not affected by the Regulations, or whose main strategy of compliance was the individual opt-out, the record-keeping provisions were potentially one of the most onerous aspects of the Regulations. As the next chapter indicates, these concerns had reduced by the time we conducted our follow-up study.

Table 15: how working time records are used for the Regulations

<i>Case study, sector</i>	<i>What records show</i>
1, charity	No changes identified for most people. Managers working long hours more likely to take time-off to recoup excess hours over contract.
3, engineering	No systematic monitoring, 'but overtime levels are a lot less and so it is unlikely that anyone is working over 48 hours in production.'
4, printing	Monitoring shows when people approaching the 48-hour limit averaged over 17 weeks – they are then asked to sign an opt-out.
7, security	Used to signal problems. Most staff have opted-out.
8, NHS	System not in place.
9, housing association	Not known.
10, food manufacturer	Highest average hours now 42 a week.
11, utility	System not in place – but not seen as necessary due to 100% opt-outs and derogation.
12, finance	Line management responsibility to send records to HR. No central monitoring but audit planned.
14, NHS	New system in place – but still difficult to keep central track of hours. Line managers expected to monitor and deal with individual cases of staff approaching 48-hour limit.
15, retail	Feeds into twice-yearly HR review. Departmental managers expected to interview those working an average of over 48 hours.
16, finance	System not in place.
18, hospitality	Everyone below 48 hours. Most do contracted hours; minority work an average of not more than 44 a week.
19, contracting	Systematic central monitoring on the basis of the records not conducted.
20, engineering	Due to reduction in orders individuals rarely exceed 48 hours in a week – even though more than 90% have opted out.

Table 16: changes to record-keeping systems to comply with the Regulations

<i>Case study, sector</i>	<i>Complying with WTR</i>
1, charity	Adapted the weekly attendance sheets to take account of how hours are recorded on a 17-week basis. Working hours information is then added to a spreadsheet for the whole organisation. Departments fill out weekly attendance sheets and return to HR and the data is double entered twice, once for monitoring absence and again for monitoring WTR. Departments decide whether form is filled in by the individual or a departmental administrator. At the end of the 17-week reference period a summary sheet is produced complete with calculations. Plan a system for working time that can be uploaded into the personnel database.
2, retail	Introduced a system for salaried staff – requires managers locally to produce an additional wages sheet. Managers are now also required to send a copy of each wage sheet to the personnel officer. Personnel officer produces a rolling 17-week spreadsheet showing the hours worked by each member of staff and she feeds-back problem areas to the relevant manager. She has found a lot of manual input is required due to rolling reference period; not counting sickness/holidays. Problems also arise because the company does not keep detailed information of, for example, timing of half-day holidays. A lot of telephone follow-ups to clarify data from managers.
3, engineering	Old system is not to be changed. The personnel manager admits that to calculate employees' average hours would involve 'a paper chase'. He says that he would like to invest in a computerised system but he could not justify it because of the WTR requirements only.
4, printing	Put all the information on hours onto computer so that each person's hours are available and this includes the number of hours overtime. The input on computer was initiated by one supervisor and now all the supervisors do it.
5, pharmaceutical	Records introduced for staff except directors and sales people. The director with responsibility for HR issues is responsible for designing and running the records system, monitoring and compliance. A form was developed, which is e-mailed to employees every week. These are printed-out by employees and given to the director. At present he adds up employees' total hours every 17 weeks and calculates the average. A programme is being developed to do this.
6, hotel	Will not be changing record system for the Regulations. The workforce is small and the manager is able to check by eye as to whether people are doing too many hours.
7, security	Existing electronic rostering and time recording system amended to include a spreadsheet to deal with WTR monitoring.
8, NHS	New system not yet in place. Working group on record-keeping. New time sheet piloted. Investigating automated approach. Want to incorporate nurse bank records.
9, housing association	A new computerised system is being established to monitor individual working time in response to the WTR. This is being managed at site level by local line managers. Consider that the existing records for monitoring shift work rotas will provide it with adequate information on the level of night working.
10, food	New system computerised time and attendance system introduced January 2000 to enable both payroll and WTR calculations.
11, utility	No changes yet made. Company wants to introduce a computerised personnel records system for general personnel purposes – would allow transparency of hours worked if an employee complained of stress.
12, finance	Decided only to monitor working 'for all employees who are close to the 48-hour limit or exceed it. We thought the sales force were working long hours but these were not being recorded, now we record them. All on-call hours are recorded and if any workers are thought to be close to 48 hours this is monitored.'

13, general manufacturing	No changes planned.
14, NHS	The trust is planning to introduce a new revised form. This will give details on contracted hours, additional hours and hours worked outside of the trust. It is still a manual system. Line managers are also expected to keep a record of the hours worked. There are short falls in this system, trust plans a new computerised personnel system which will have 'a working time element within it'. Line managers will input data directly into the system.
15, retail	In response to the record-keeping requirements imposed under WTR, the company has introduced a 'thorough working time record keeping procedure'. All retail employees continue to clock in and out using the Time & Attendance system. Payroll clerks in stores identify employees exceeding the 48-hour working week and enter individual names and hours worked on a spreadsheet, which is used to track each individual's weekly hours worked over the 17-week reference period. Store personnel managers monitor the information. If, by week 12, an individual who has not opted-out of the 48-hour limit has a rolling total of more than 48 hours, they will, in consultation with the store manger, reduce the individual's planned worked hours so that the average falls below the weekly 48-hour limit before the end of the 17-week reference period. All employees in head office, regional offices and district officers who work more than 48 hours, who are night workers or who opt-out, keep a personal record of hours worked on a daily basis. A standard form is available.
16, finance	Using the same computer system as flexi-time for recording the hours of those not on the flexi system. This means bringing in senior staff and staff in branches. Planning to add modules to the system to allow recording of overtime and also to distinguish between holidays and other forms of absence.
17, electronics	Signing-in sheets have been adapted so that people's starting and finishing time and total hours are recorded, then sent to the wages department and stored there.
18, hospitality	All employee hours of work are now recorded. The system of recording is largely unchanged, but required some minor modifications to ensure that people not opting-out kept to the 48-hour limit. Devised a working time recording form for employees who opt-out of the 48-hour working week. For these employees, working time is monitored on a four-weekly basis providing a running total. Night workers complete a weekly time sheet, setting out hours worked in any given week. Managers are required to make a separate record of discrepancies re night workers hours.
19, contracting	All white-collar staff will now be required to complete a time sheet They will need to specify the nature of activities and a column a has been added to the old form or central calculation to determine total WTR hours. Spreadsheet has been set up to input hours of staff who exceed 48 hours in any one week. The computerised system for construction workers is being modified. Already identifies night work; time worked in a week; total and average hours over a week. Will be producing cumulative average. CAN highlight those working more than 13 hours in a day; those working more than six days in a week. The plan is that in the future it will also be able to monitor breaks patterns.
20, engineering.	Completely new centralised computer system designed by HR staff. Overtime records are now on computer plus all other working time details (sickness, holidays etc.) which used to be decentralised to the shop floor. At the end of each week line managers/team leaders must complete a standard form for each employee and send it to the personnel department.

Twelve

THE IMPACT OF THE WORKING TIME REGULATIONS

Our first case study visits were conducted some six months after the formal implementation of the Regulations on 1 October 1998. The second phase of the project, involving interviews in the 15 organisations for which the Regulations had, relatively, most implications, took place between March and May 2000. One of the key aims of the follow-up study was to gain a broader understanding of the impact, in practice, of the Regulations.

Even by the time of our second visit, one of the largest case studies (case study 8) had only just begun to implement changes in response to the Regulations. Another (cases study 19) had yet to decide on key working time changes in respect of the small groups of workers most strongly affected by the Regulations. In other cases, organisations had found that the range of flexibilities meant that, in practice, the Regulations had had no significant impact. However, our research shows that the Regulations have had a significant impact in a minority of organisations.

Ten of the case study organisations indicated that the Regulations had had marginal or no impact when assessed against the range of criteria set out under 'areas of impact' below (case studies 3, 5, 6, 9, 11, 12, 13, 17, 18 and 20). This was generally a view reinforced at workplace level by line management and, where applicable, worker representatives. The majority of the organisations concerned were: smaller establishments; organisations that made extensive use of individual opt-outs, derogations and collective flexibilities; and those where working practices were already largely in line with the Regulations.

One organisation was not yet in a position to assess the impact of the Regulations.

- A finance company (case study 16) did not feel able to comment on the impact of the Regulations since an internal review, due to take place in October 1999, did not happen as the relevant data was not available.

However, in nine cases, the Regulations were found to be having a more significant impact. As set out below, this impact had both positive and negative aspects. For the corporate management, line management, and trade union interviewees in the security company, which was one of the organisations that had made the most extensive changes – the balance of impact was positive.

This may be because the Regulations had coalesced with a long-term programme to change working practices.

- According to the corporate HR manager, the Regulations fit in with the company's long-term plan to reduce hours and increase the basic hourly rate. The company was happy with the Regulations because pay rates had been kept down by less scrupulous employers. This led to a trend of long hours to earn a decent living. The Regulations were welcome because they meant that employers would not be able to undercut each other.

For an NHS trust (case study 8) however, the main impact was in the form of a 'very substantial' increase in labour costs, which would be to the detriment of service delivery if it had to be met from within existing resources.

Below, we examine in more detail how the Regulations have affected aspects of organisational performance, and then move on to explore some data on the worker's view of the Regulations. Findings relating to organisations involved in our follow-up study are summarised in table 17. However, first we examine the impact of the record-keeping provisions in the Regulations.

Record-keeping requirements

In a number of organisations, as we outlined in chapter 11, the only or major concern with the WTR related to the record-keeping requirements. Six employers said that it was the most onerous part of the Regulations.

For example:

- The personnel officer of the small retail chain (case study 2) said that it was the biggest burden [of the WTR] involving about three hours of her weekly working time.
- In one of the NHS trusts (case study 14), record-keeping meant an increase in the workload of the personnel department, which had minimal staffing levels anyway. A new manual system introduced in response to the Regulations had not helped matters but the trust was exploring the introduction of a computerised system.
- The HR manager of a finance company (case study 16) said that the record-keeping requirements 'have come at a bad time as IT people are already dealing with the issue of year 2000 compliance'.

A specific issue in some organisations was the response of line managers who saw their involvement in collecting working time records as burdensome.

- In the housing association (case study 9) the new computerised recording system was being managed at site level by local line managers, among whom there was said to be some resistance. However, senior management took the view that it was important that individual line managers should be aware of the hours that their staff were working and so take responsibility for compliance with the Regulations.
- The pharmaceutical company found ‘some resentment over the need for staff to fill in forms’. Some managers resented being treated like other staff, i.e. covered by the Regulations; time-keeping and forms.

However, not all our interviewees, even in the first phase of our research, viewed the record-keeping provisions in the Regulations in a negative fashion. For example, the personnel manager of an engineering company (case study 3), welcomed the provisions as ‘not too heavy-handed’.

In addition, once the systems had been introduced and become accepted, a number of organisations were less concerned about the burden that they represented. By the time we conducted the follow-up study, most organisations either said that the cost of recording working time was non-existent, or that it took the form of relatively small-scale demands on worker time.

- For example, a line manager in the housing association estimated that it took an administrator about half an hour a month to record the necessary information for her staff on a computerised database.
- The works director in a small printing company (case study 4) needed one or two hours a month to do a computerised analysis of working time across the company.

Manual systems, although less costly to establish, tended to be seen as a more onerous on going requirement by our case study organisations. This was a reason why the food manufacturing company (case study 10) made the decision to introduce a new time and attendance analysis system at the one-off cost of around £15,000.

- In the contracting company (case study 19), although records for manual workers were the responsibility of line management, special timesheets were used to record the working time of non-manual staff. This work was distributed across the personnel department, and took time equivalent to one full-time member of staff in collecting and collating data. This was an ongoing cost for the company but the HR manager did not see this as excessive.

Finally, two employers, both small-scale manufacturers, said that the requirement to keep working time records had had positive operational benefits.

- The works director of the printing company said that working time records had enabled him to see the pattern of overtime working in the company, and so to revise production schedules to even out work flows across the year.
- An engineering company was using the system that it set up to comply with the Regulations, to monitor and reduce worker absence and to maintain a data base of worker skills.

Areas of impact

Table 17 summarises the impact of the Regulations on organisations involved in the follow-up study.

Operational efficiency

The majority of organisations involved in the follow-up study said that the Regulations had had no impact on the effectiveness with which they managed their operation. However, in seven cases the Regulations were felt, at least in some degree, to have prompted the organisation to review its working practices with the aim of ‘working smarter’, or had helped support other organisational objectives. For example

- For the security company (case study 7) the Regulations fitted into a long-term plan to shorten shifts and increase efficiency. At our first visit the area manager said that his managers were now much more efficient because they were working fewer hours. There had been some negative impact on operational efficiency due to the reduction in flexibility, arising from limits on individuals’ working hours, but on balance the impact was seen as positive.
- In the food company ‘working smarter’ included changes in its engineering department. A new system of contracted overtime resulted in the same or increased work levels for fewer person-hours at the same labour cost. Normal working hours were now well below 48 a week, allowing ‘headroom’ should sudden increases in production be required.
- In an NHS trust (case study 8) one initial impact of the Regulations was to prompt the move to automation and so increased efficiency in the laboratories.
- The HR director in a hospitality company (case study 18) said: ‘It has made us focus on our patterns of work. Historically in the hospitality industry we were fairly rigid in the working patterns people had to work in order to meet the needs of the business. I think what Regulations have done is allowed us to examine and move away from the barriers we have used as an excuse, and to make our working patterns more flexible and more acceptable for our employees.’

Table 17: impact of the Regulations on organisations in follow-up study

<i>Case study, sector</i>	<i>Impact of WTR on:</i>					
	<i>Operational efficiency</i>	<i>Labour costs</i>	<i>Position of HR</i>	<i>Industrial relations</i>	<i>Health and safety</i>	<i>Equality</i>
1, charity	None	'Significant increase'	None	None	Positive	None
3, engineering	None	None	None	None	Positive	None
4, printing	Positive	None	N/a	None	None	None
7, security	Positive	Some 'big increases'	Reorganised	Some individual grievances	Positive	None/positive
8, NHS	Positive	'Very significant' increase	None	None	Positive	None
9, housing association	Minor positive	Some increase	None	None	Positive	None
10, food manufacturer	Positive	Costs more predictable	N/a	None	Positive	None
11, utility	None	None	None	None	None	None
12, finance	None	None	None	Positive	Positive	None
14, NHS	None	Some increase some decrease	None	None	None/positive	No
15, retail	Positive	None	None	None	None	Positive
16, finance	None	None	None	None	Positive	None
18, hospitality	Positive	Some insignificant cost increases	None	None	Positive	None
19, contracting	None	None so far – but may be in future	None	None	Positive if any	None
20, engineering	None	None	None	None	None	None

- In addition, the corporate HR interviewee in the large retail chain (case study 15) was of the opinion that although the Regulations had meant minor changes in the organisation of work, managers now needed to be a great deal more thoughtful about the way employees were scheduled. Similarly, the manager of a store said: 'From the management point of view it has certainly made people more aware of the need to schedule people more effectively.'

Labour costs

Organisations involved in this project were very unwilling to provide figures showing the precise effect of the Regulations on labour costs. However, we were able to find out whether or not the costs involved were seen as significant.

Of the 15 organisations involved in the follow-up study, eight said that the Regulations had had no

adverse impact on labour costs. One of these – the food manufacturer (case study 10) – found that the working pattern changes introduced to bring the company in line with the Regulations had made labour costs more predictable.

A further three employers saw the costs involved in implementing the Regulations as not significant. The housing association (case study 9), the hospitality company (case study 18) and one of the NHS trusts (case study 14) had seen some increase in costs as the result of the introduction of paid holiday for casual workers. The personnel manager in the trust argued that the costs increase 'was not as bad as the finance department thought it was going to be'. In addition, a line manger interviewed in the same trust had seen costs reduce, because there was now less overtime for existing staff. Instead, bank staff, paid at the basic rate, were now being used to cover extra hours.

However, three organisations were facing considerable increases in labour costs as a result of the Regulations. A fourth – the contracting company (case study 19) – anticipated that, when it introduces the working pattern changes needed to fully implement the WTR, the effect could be significant, unless customers are prepared to carry some of the burden of the increased costs.

The most significant cost increase was being faced by the larger NHS trust (case study 8). This may reflect the experience of other similar organisations in the health sector. The size of the cost increase was a key reason why implementation of the Regulations in the trust was being phased in over a number of years. The scale of the rise in labour costs was described by the personnel manager and the HR consultant involved in implementing the Regulations as three or four times greater than they had anticipated. The personnel manager was unwilling to provide a figure for the increase but said ‘there have been and will be very significant costs which can’t be met out of current revenue. There will be a significant impact on service provision if additional resources cannot be found.’

Factors contributing to the cost increase had been or were expected to include:

- Changed working patterns resulting in a need to increase staff in areas such as medical laboratories and operating theatres;
- Increased night premium payments as a result of changes to the night shift;
- Increased consultant staffing to provide for compensatory rest;
- Holiday pay for bank staff;
- Changing the holiday pay calculation to be based on average rather than basic pay for the first four weeks; and
- The introduction of a working time recording system.

In the security company (case study 7) the impact on costs varied across the company. There was a ‘huge’ increase in costs when the weekly hours of one group of workers were cut from 60 hours to 48. In addition, cover for rest breaks and increases in holiday entitlement all increased costs. In some areas the customer covered the costs. Where this had not been the case some contracts had been lost. In other cases profit margins had been cut. However, the area manager in the same company saw some costs offset by reductions in staff turnover. Staff turnover amongst managers had been high because of unsocial hours, weekends and nights. When first interviewed, he estimated that the costs of reduction in working hours for this group had been wiped out because labour turnover had fallen by 60 per cent among this group and the

company was saving on recruitment costs.

The last organisation to face a cost increase arising from the Regulations which the HR manager described as significant, was the charity (case study 1). This increase was accounted for by the imposition of paid holiday for casual workers.

Position of HR within the organisation

As we have shown in earlier chapters, the key role in implementing the Regulations was taken by HR professionals. When we conducted the first phase of our fieldwork five companies reported that this role had affected HR’s position more generally.

On the negative side:

- HR was accused by one department of unilaterally imposing change on the organisation, ‘although we had conducted many briefings. It did not make us particularly popular’ (case study 1);
- ‘I am seen as even more of a nag than before’ (case study 2).

In other cases, the Regulations were felt to have raised the profile of HR in a more positive manner:

- ‘We had quite a high profile when the WTR policy was being devised. We wrote to everyone and sent out information about the Regulations. Also, we are seen to have a major responsibility in ensuring that the Regulations are adhered to.’ (case study 15);
- In an engineering company (case study 20) the HR department now ‘has a more in-depth knowledge of sickness, absence and overtime hours worked in any week on a systematic basis. Line managers and team leaders now ask each department for statistics, particularly for trends over weeks’.

There were mixed views on the impact of the Regulations in another organisation (case study 7), with line management giving a less positive view than the HR specialist.

- The corporate HR manager said, ‘The HR function has typically been seen as dealing with recruitment and personnel screening. Line managers now realise that HR is more than that.’ He also said that there had been an increase in team working between the line managers, trade union representatives and HR. In contrast a line manager had experienced a decline in the service he received from the personnel department. They had issued guidance on the Regulations but implementation was down to the area manager. Because the personnel department was so busy, he had less assistance from them in areas such as recruitment.

However, as table 17 indicates, by the time we conducted the second phase of our fieldwork, changes associated with the Regulations had largely ‘bedded-in’ and only one organisation reported any enduring effect on the position of HR. In the security company (case study 7) the personnel function was reorganised in response to the ‘wealth of new legislation’ in the employment field. HR professionals previously had general responsibilities. They were divided into two groups – advisors and recruiters.

Impact on collective bargaining/ consultation arrangements

Only eight of the case study organisations adopted the approach of using the flexibilities inherent in a collective/workforce agreement to implement the Regulations. In three of these cases employers argued that the process had strengthened existing structures.

- Discussions over the Regulations in one company (case study 7) ‘revived the national negotiating committee’ which the personnel manager said had ‘dwindled with the introduction of local pay bargaining’. The Regulations were a ‘global issue’ which had raised the profile of collective bargaining, according to the personnel manager.
- The HR director in another company (case study 18) argued that involvement in agreeing an approach to the Regulations ‘has given credibility to the consultative council. The workforce recognises that we will consult with them and listen to them and that we are moveable in our opinions’. However, the same interviewee had previously indicated that no significant changes had been made to company plans in response to discussion with worker representatives.
- In a third establishment (case study 9), management argued that the process had provided the staff association with a rare opportunity for proper ‘negotiation’. ‘This has probably improved the employee-relations climate.’

However, the staff association chair did not share this impression, taking the view that the association’s involvement had been much more of consultation with little real capacity for bargaining. For example, the staff body did not feel able to bring a long-standing workforce claim for a flexi-time system into the discussions. By the time of our second interview, in response to this experience and/or other internal developments, which made representatives feel that they lacked knowledge and expertise, the association was consulting its members on whether to join an independent

trade union.

In addition, in one case where employees were consulted without the intention of reaching a workforce agreement, the director said that the staff representative structure, established to discuss the Regulations, might be used for future consultation exercises (case study 5).

Our follow-up study found only one example of a further effect in terms of collective bargaining structures. The full-time official of the trade union in one of the finance companies (case study 12) argued that the Regulations had helped to strengthen worker representation. The number of full-time officers had been increased from one to two to ensure coverage in the ‘vulnerable’ call centres.

The Regulations seem to have had little impact on the climate of industrial relations. As we set out in chapter 5, none of the organisations had faced any collective grievances as a result of the Regulations and only one company (case study 7) had experienced any formalised individual grievances.

Health and safety of workers

A positive impact on awareness of the importance of working time in worker health and safety was the most common effect of the Regulations to be cited by both management and worker representatives in our second round of interviews. Given that only a minority of organisations had significantly changed working practices in response to the Regulations, it was not surprising that interviewees had generally not seen an impact on health and safety indicators such as accident or sickness levels. Instead the impact cited tended to be less tangible, relating to worker and line management awareness of the issue.

Only the security company felt that implementing the Regulations would in the long term have a direct impact on the health and safety of its employees:

- The personnel manager said that the Regulations would lead to much safer working practices for mobile workers. The WTR had also raised awareness of health and safety and made it a central part of everyone’s job. This was of particular importance in an industry where hours were a fundamental issue. The trade union representative also argued that the Regulations had made employees and managers more aware of health and safety.

As table 17 shows, 10 other organisations also felt that the Regulations had had a positive impact on health and safety in that it had raised awareness of working time as a health and safety issue. For example:

- The personnel manager of the charity (case study 1) said that the Regulations gave official backing to the need to control and reduce excessive working hours. There was some evidence that a few managers who tended to work excessive hours were now more willing to take time off in lieu.
- In an engineering company the personnel manager saw the introduction of annual health checks as a sensible measure: 'it makes people more aware of their health'. In addition, they provide the basis for 'more systematic and sophisticated' records of employee health (case study 3).
- The operations manager in the food manufacturing company (case study 10) said that, as a result of changes in working practices, 'in engineering, mental health seems positive. People are not now working seven days a week and getting into a rut. People seem happier now, although I don't know whether they are actually healthier'.

Equality of opportunity

If the Regulations were able to challenge long hours working and so to make it easier for workers to combine work and family life it might be expected to promote equality of opportunity between men and women. However, interviewees in only two organisations considered that the Regulations had had an impact of this kind.

- The large retail organisation (case study 15) had a central objective of moving towards the achievement of a better 'work/life' balance and the WTR were seen as supporting that objective.
- The employee representative in case study 7 believed that a lot of people had changed their attitude to the balance of work and home as a result of changes associated with the Regulations. Most people now would, if given the choice, only work five days out of seven.

Workers' views of the Regulations

Our methodology did not involve directly seeking individual workers' views on the Regulations. We did, however, ask line managers and, where available, worker representatives, how they thought the majority of workers saw the WTR. This was a particular focus for our second round of interviews. These 'second-hand' views should be treated as such. However, both our initial case study visits and the follow-up study indicate that

worker reaction to the Regulations was commonly characterised by an initial concern about any impact on earnings followed by a lack of interest. Table 18 summarises this picture.

Only one organisation – the large retail company (case study 15) was able to provide any more systematic data on the impact of the Regulations on worker attitudes and morale. The company regularly conducts an worker attitude survey. The survey conducted after implementation of the Regulations found a modest 'positive shift' in worker attitudes to working time. When asked whether they agreed or disagreed with the statement 'to get on in the company you have to work long hours', there was a two per cent increase in those disagreeing, compared to the previous survey.

Conclusion

In half the companies that participated in the project, the Regulations had made marginal or no impact. Our initial evaluation of the Regulations indicated that a key concern, especially in these organisations, was the perceived bureaucratic burden of the requirement for record-keeping. By the time of our second visit, such concerns seemed largely to have dissipated. In a minority of cases this can be linked to subsequent amendment to the Regulations. However, in most cases it was because, once established, the systems were less likely to be seen as onerous.

A minority of organisation engaged in a major review of their working practices. A pay-off for some of these companies was increased operational efficiency. However, on the 'downside', the Regulations have placed considerable cost burdens on a small number of employers.

Table 18: worker attitudes to the Regulations

<i>Case study, sector</i>	<i>Worker rep's own view</i>	<i>Worker rep's view of worker attitudes</i>	<i>Management view of worker attitudes</i>
1, charity	N/a	N/a	No impact
3, engineering	N/a	N/a	WTR are seen as bureaucratic, workers want to work long hours and can earn more doing so at night.
4, printing	No impact	No impact.	N/a
7, security	Good in principle. Collective agreement not always applied in practice.	–	Morale high where workers have received a rise and had hours cut; morale low amongst long established security guards – who want long hours.
8, NHS*	Rep 1: Potential harm to delivery of service.	Rep 1: Staff are happy working how they are and they think why should we change. Rep 2: Most staff don't have a clue.	Planned changes have invoked fear of change and concern about loss of earnings.
9, housing association	Positive because no real impact.	Positive because no real impact.	A bit confusing for some people as they were expecting big changes but none came – but not a bad effect.
10, food manufacturer	N/a	N/a	Engineers do not like change. When first presented with new rotas they were upset and two threatened to leave. But seem happy now.
11, utility	No impact	No impact.	British have a culture of overtime and two jobs – don't want hours reduction.
12, finance*	Rep 1: Good but too complicated. Rep 2: Not much impact.	Rep 1: People want to be allowed to do long hours but we are opposed. Rep 2: People are not really aware of the WTR.	No impact.
14, NHS	N/a	N/a	No impact.
15, retail	N/a	N/a	WTR generally seen as having little effect.
16, finance*	Rep 1: Helps to regulate new practices and control rogue managers Rep 2: They are a good thing – prevent abuse by employers.	Rep 1: Pretty much a non-event. Rep 2: Made people see company as a good employer compared to others.	Not seen as having much impact.
18, hospitality	Seen as having no real impact.	Seen as having no real impact.	No concerns raised.

19, contracting	No big change	At first people were worried about potential loss of earnings but once they realised that this would not happen, they were not bothered.	Once people knew that working time limits were being averaged out they were not concerned.
20, engineering	I disagree with opting out	Most people want the working hours.	Not seen as an issue.

**Two worker representatives were interviewed in these organisations*

Thirteen

CONCLUSIONS

Our research suggests that, despite the Regulations, most employers and workers remain conservative in their attitude to the organisation of working time. So, in most cases, the organisational response to the Regulations was to seek to comply with the WTR by using flexibilities in the Regulations such as individual opt-outs, derogations or collective/workforce agreements, rather than changing working practices.

However, a minority of organisations have chosen to use the WTR as the basis for a fundamental review of the way that work is organised and, in the case where that review has progressed furthest, the company is already seeing benefits.

Our main findings are:

Working time changes not associated with Regulations

These tended to be concentrated in larger, service sector organisations. The small to medium-sized manufacturing companies in our study had seen little change in working time over the two years prior to the commencement of this research.

Implementing the Regulations

The process of implementing the WTR tended to be centralised and managerially-led, and line managers and worker representatives played a proactive role in only a minority of cases. Organisations which had conducted a major review of their working practices in light of the Regulations were in the minority.

Guidance on and interpretation of the Regulations

There were a number of areas in which the WTR and/or guidance on the Regulations would have benefited from more clarification. Case study employers were uncertain about their obligations under the Regulations in a number of key areas, in particular the definition of working time and coverage of the unmeasured working time derogation. Some employers found that the amendment to this part of the Regulations helped to clarify this issue, however for others it had added to the confusion. We also found evidence of continuing misinterpretation of the WTR, especially in the use of individual opt-outs.

The 48-hour week

The large majority of the case study organisations had some instances of people working more than 48 hours in a week, but in only a third of the total was long hours working of this dimension a part of core working time practices. However, three-quarters of the case study organisations were using individual opt-outs to ensure that they complied with the 48-hour limit. In most cases opt-outs were seen as voluntary by worker representatives in the organisations that use them. We found only one company seeking to fundamentally challenge its long-hours culture by changing its working practices; although changes geared at tackling pockets of extensive overtime were more common.

Rest and recuperation

Where companies' existing rest provisions were not in line with WTR minima, this was predominately as a result of shift patterns or overtime working. In particular, weekend overtime working in a number of establishments meant that some workers did not get the weekly rest break. In addition, daily rest breaks tended to be shorter than 11 hours where individuals were changing shifts or doing week-day overtime. The flexibilities offered by collective/workforce agreements and/or one of the derogations were used by a number of companies to reduce the daily break requirement. Employers seemed more inclined to implement the weekly rest provision in full and to use the Regulations to challenge seven-day-a-week working. However, there were a number of cases where operational pressures or worker concerns about loss of earnings meant that formal rest provisions were not always applied in practice.

Holidays

In most organisations, existing holiday entitlements for workers were in excess of the new statutory minimum. Most employers in this study provided at least four weeks' paid holiday and workers were also entitled to public holidays which were not generally part of the annual leave allowance. Where practice fell short of the Regulations this was generally in respect of casual workers, in particular 'on-call' or 'zero hours' workers. The differences in resolution of this issue suggests a continuing lack of clarity in what is required to demonstrate 'continuity of service'.

Night work

Only a small number of organisations were exceeding the WTR night-work limits, prior to the Regulations, although half of the case study

organisations had some night workers as defined by the Regulations. The introduction of health assessments for night workers seemed to be the most significant element of this part of the WTR for companies with night work. However, when applied in practice we found no evidence that these had resulted in workers being moved away from night work.

Record-keeping

Pre-existing time-recording systems generally recorded only paid working time, and so often required substantial amendment or replacement to address the requirements of the Regulations. As a result, for employers whose working time arrangements were not affected by the Regulations, or whose main strategy of compliance was the individual opt-out, the record-keeping provisions were potentially one of the most onerous aspects of the Regulations. However, such concerns had diminished by the time we conducted our follow-up study.

Impact of the Regulations

In half the companies that participated in the project, the Regulations had made marginal or no impact. A minority of organisations engaged in major review of their working practices in response to the Regulations. A pay-off for some of these companies was increased operational efficiency. However, on the ‘downside’, the WTR have placed considerable cost burdens on a small number of employers.

The WTR – a matter of little concern?

This research was a two-stage project. Initial interviews were conducted in 20 organisations around six months after formal implementation of the Regulations. A follow-up study was conducted a year later involving further interviews in the 15 organisations which seemed to have been most strongly affected by the Regulations. Over the intervening period one case study (an NHS trust) had continued to develop a major programme of change associated with the Regulations. However, in other organisations, for which the WTR had raised important issues, less activity was evident. For example, in a security company the trade union representative suggested that the issue had ‘gone off the boil’. In a contracting company important working time changes necessary for full implementation of the Regulations were still not finalised and a finance company had not made the changes to its time recording system necessary to show compliance with the WTR.

In these cases, as well as others, more pressing operational issues had pushed compliance with the Regulations down the agenda. This may in part have been because any initial concern about potential prosecution had dissipated. To give one example, the contracting company had received a routine visit from the HSE and was told that it was considerably in advance of others in the industry in implementation of the WTR. In addition, in some organisations the amendments to the Regulations were seen as removing the need for further action.

Prior to their introduction, the Working Time Regulations were an issue of considerable concern to both employers and worker representatives in organisations with established working practices that included long working hours. Once in place, it became clear that it was possible, with the consent of workers, for such practices to continue under the terms of the Regulations. As a result, a number of informants involved in the first stage of this research said that the Regulations had had less impact than they had expected. By the time we conducted our second phase of interviews, the WTR were only a issue of major concern for the interviewees in one case study organisation – an NHS trust.

To conclude, only in organisations which decided to use the WTR as the basis for a review of, and change to, existing working practices, have the Regulations had any significant impact on the organisation of working time. And in most of these establishments the absence of external pressure meant that the initial impetus for change diminished in the 18 months after implementation of the Regulations. These findings, combined with the analysis of the University of Warwick 1999 Pay and Working Time Survey (see appendix 2), would indicate that, only when they coalesce with an agenda dictated by market pressures, will the WTR impact further on working practices.

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APPENDIX 1

CASE STUDY SUMMARIES

To protect the anonymity of our case study organisations we are providing only broad range information on organisational workforce size. The ranges used are as follows: A = 0-49; B = 50-99; C = 100-199; D = 200-499; E = 500-999; F = 1,000 and over.

Case study 1 (charity)

In the first phase of the project we interviewed the organisation human resources manager, the personnel officer responsible for record-keeping, a line manager in one workplace and a trade union representative. In the follow-up study interviews were conducted with the human resources manager and line manager.

A charity based on three main sites. It had a workforce in the D range and the organisation also employed a large number of casual staff on zero hours contracts. The charity recognised one trade union for all its workers.

The operational hours of the charity were 9am to 5pm except in a call centre – the workplace for this study – which worked on a three-shift basis, with the last shift ending at 9.30pm.

The main issue for the organisation raised by the WTR was a large amount of unpaid and unmeasured overtime. The organisation considered negotiating an extended reference period to address this issue, but rejected this option. Instead opt-outs were being used and the situation was monitored using record-keeping arrangements set up to comply with the WTR. In addition, it was necessary to change arrangements in respect of paid holidays for casual workers and this was seen as a significant cost by the organisation.

Case study 2 (retail)

We interviewed the personnel manager, who also answered questions on behalf of the manager of the largest store, which was the workplace for the purposes of this project. This organisation was not involved in the follow-up study.

A specialist retail chain that was also involved in some production. It had a workforce in the C range, which was spread over eight different sites. 17 per cent of the workforce was part-time. The workplace store had 42 staff. No union was recognised in the company and there was no other worker consultative machinery.

Most staff worked 8am to 5pm on five days between Monday and Saturday. Overtime working usually took the form of additional days outside of those for which the individual was rostered.

The key issue for the company in relation to the WTR was overtime working which meant that in the workplace store some staff regularly worked in excess of 48 hours a week. This issue was being addressed via the redistribution of overtime and the greater use of agency staff. The company had decided not to use individual opt-outs. The other issue of concern was the compilation of working time records which was seen to have added to the work burden of the personnel officer.

Case study 3 (engineering)

In the first phase of the project we interviewed the company personnel manager, the plant manager at one site and a worker representative. Follow-up interviews were conducted with the personnel and plant managers.

An engineering company part of a UK owned group. The company was based on three sites: a head office and two manufacturing plants. The total UK workforce was in the D range, 98 per cent of who work full-time. Sixty-two people worked at one of the manufacturing plants, our workplace for this study.

The company did not recognise any trade unions. Worker consultation was via a works and staff committee comprised of 10 elected representatives.

Head office staff worked normal office hours. Shift working arrangements applied to production workers. In the workplace plant shifts were 7.5 hours a day, Monday to Friday, or three night shifts of 9.5 hours and one of 9 hours. Night workers always did overtime of 7.5 hours a week and additional shifts were available for both night and day shift workers.

The aspects of the WTR which had most potential impact on the company were the 48-hour limit, the limit on night work and the daily rest entitlement. The company was applying worker opt-outs as a way of dealing with all these aspects of the Regulations. As a result the Regulations were seen as having very little impact in practice.

Case study 4 (printing)

In the first phase of the project we interviewed the works director and a trade union representative. The follow-up study involved a second interview with the works director and with the new trade union representative who had replaced the previous incumbent.

An independent printing and packaging company based on four sites. It had a workforce in the D range, 14 per cent of whom were part-time. A total of 144 people were employed in the case study workplace. The company recognised one trade union.

The company operated 'around the clock' from 6am on Monday to 9pm on Friday. Office staff worked 9am to 5pm. Production workers were on fixed shifts, with a small number on a permanent night shift.

Particular issues raised by the WTR were that the company faced seasonally fluctuating demand and at peak times some production workers worked as much as 60 hours a week, including overtime. Prior to the WTR there were no fixed breaks during the working day.

The company adopted the approach of reaching a collective agreement which provided for two breaks of 10 minutes each during the working day. In addition, production schedules were altered so that demand for overtime was spread more evenly across the year, and the few workers exceeding the 48-hour limit over a 17-week reference period were asked to sign opt-out agreements. The WTR were seen as having a positive impact in that they had prompted changes which had clear operational advantages.

Case study 5 (pharmaceuticals)

We interviewed an associate director of the company, who takes responsibility for HR issues, and two workforce representatives. The company was not involved in the follow-up study.

The UK arm of a foreign-owned pharmaceuticals company. The UK company was based on a single site and was involved in clinical research and marketing of company products. It had a total workforce in the A range, one of whom was part-time. No union was represented in the company. However, staff were asked to volunteer as representatives to be consulted over the WTR and two worker representatives were identified via this method.

Work in the company was primarily around normal office hours. The main variation from this pattern was when staff were engaged on foreign assignments.

The company chose not to develop a workforce agreement to cover implementation of the WTR, which had not, in the event, raised major issues for the company. The company would, however be using opt-out arrangements for certain classes of workers who might, at some stage, work more than 48 hours a week as the result of foreign travel. The company had introduced a record-keeping system to comply with the terms of the WTR. This was based on weekly e-mail reminders to staff of the need to record working time. Records were currently maintained manually but software was being developed to carry out the record-keeping and calculations automatically.

Case study 6 (hotel)

We interviewed the hotel owner/manager. This establishment was not involved in the follow-up study.

An independently-owned hotel with a workforce in the A range, two-thirds of whom worked part-time. The company did not recognise any trade unions and there were no other formal worker consultation arrangements.

The bulk of the full-time workforce were organised on a split-shift basis, working 35 hours a week. Chefs had a contracted week of 40 hours but were often recorded as working between 52 and 54 hours in a week. However, this figure included all breaks, which were paid, and time worked on Saturday evening counted as time and a half, so actual working hours were thought to be below 48 a week.

The manager considered that only members of the owning family actually work in excess of the 48-hour figure, and it was only family members who were regularly involved in night work.

The manager saw no need for any changes in response to the WTR.

Case study 7 (security)

In the first phase of the project we interviewed the company personnel manager responsible for industrial relations, an area manager and a union representative. All three were also interviewed for the follow-up study.

A large security company with a workforce in the F range. Around 90 per cent of the workforce was full-time. In addition, casual workers were used on an 'as and when' basis, but were treated as company workers. The company had over 20 offices and its workers worked on over 2,000 customer sites. The area manager interviewed was, at the time of the first interview, responsible for 330 workers, 20 of whom worked part-time. The company recognised two unions, and had some workers who were members of a third. There was also a European Works Council.

Working patterns varied considerably. There were a range of shift patterns linked to customer requirements and extensive night working. The basic working week for the bulk of workers was 40 hours. In advance of the WTR, high levels of overtime working were endemic, partly for operational reasons, and partly as a worker response to low basic pay. The area manager estimated that 30 per cent of his workforce regularly worked more than 48 hours a week. Working practices in some areas were not compliant with any of the WTR rest provisions, for example, in some workplaces seven-day working was the norm. Although most workers received more than four weeks paid holiday, in some areas of the company there was no leave entitlement in the first year, or that entitlement was restricted to two weeks.

The company used the WTR to prompt an extensive review of its working practices, with the eventual aim of changing the long hours culture, and moving towards safer and more socially acceptable patterns of work. To this end it agreed a comprehensive collective agreement with the main trade union. The company was also making extensive use of individual opt-outs, seen as essential in the short-term at least. It had made some use of derogations applicable to the industry and its working patterns. But for health and safety reasons it had specifically decided not to employ these exemptions in relation to workers involved in driving. The changes prompted by the WTR were seen as having important operational and commercial benefits but were not without their costs. This included some lost business and reduced profit and a reduced flexibility resulting from restrictions on individuals' hours.

Case study 8 (NHS)

In the first phase of the project we interviewed the personnel director, a personnel manager, an external consultant involved in advising the organisation on its approach to the WTR, three line managers and two trade union representatives. In the follow-up phase interviews were with two line managers, two trade union representatives and the three personnel specialists interviewed in the initial stage.

An NHS trust spread over seven main sites including a large hospital. The trust had a workforce in the F range, 62 per cent of whom worked part-time. It also used a 'bank' of as-and-when casuals. The trust recognised 12 trade unions. There were no other worker consultative bodies. The three line managers interviewed included two in medical areas. One had a workforce of 300 staff and one of 150 people. The third line manager was in a non-medical area with a workforce of 25 people.

The WTR prompted the trust to conduct a large-scale audit of its working practices. Issues for the trust raised by the WTR were the rest breaks of shift workers; treatment of time on-call and sleeping-in; daily rest breaks; excessive hours working; record-keeping; holiday pay; holidays for casual workers and health assessments.

The strategies identified to address these issues proved very costly and were being phased in over a number of years. Approaches adopted were likely to include changed shift arrangements, increased staffing and new record-keeping arrangements. The trust had already introduced holiday pay for casuals and changed its formula for the calculation of holiday pay to base it on average earnings. It was also negotiating collective agreements. The main impact of the WTR was a 'very significant increase in labour costs.'

Case study 9 (housing association)

In the first phase of the project we interviewed the HR manager, the line manager of a care home, the chair of the staff association and a worker representative selected for the purpose of consultation over the WTR. The same individuals were also involved in the follow-up research.

An independent housing association providing social and general housing for vulnerable people in need. The association had a workforce in the D range, nearly a quarter of whom worked part-time. The organisation also used a register of around 50 'bank' workers which was drawn on to fill short-term staffing gaps. In the care home which was our workplace for the purposes of this study there was a workforce of 28 people, over half

of whom worked part-time. At the time of the first phase of this research the home was using eight bank workers in addition to its main workforce. The association did not recognise a trade union; however it had a long-standing staff association which was involved in discussions around the implementation of the WTR. The organisation also drew on the expertise of a local ACAS official in developing its approach to the agreement.

Working hours varied. While the majority of staff worked normal office hours, those in care homes and staff involved in providing the 24-hour on-call service were engaged in shift-working, including night work.

The association adopted the approach of drawing up a workforce agreement to cover the implementation of the WTR. However, in most cases this agreement simply codified the association's interpretation of the Regulations. Actual provisions were in general better than those in the Regulations. The main area of change that followed from the association's implementation of the WTR was in the provision of health assessments for those who worked nights. The organisation had also established a computerised record-keeping system for the recording of working time. The WTR were seen as having very little impact on the organisation.

Case study 10 (food manufacture)

In the first phase of the project we interviewed the operations manager who answered questions on behalf of a line manager of workers affected by the WTR. In the follow-up study the operations manager and a line manager were interviewed.

A food manufacturing company, part of a US-owned group. The company had two sites in the UK and the workforce was in the D range. A total of 91 people were employed in the case study workplace and 13 of these worked part-time. The company did not recognise any trade unions. However, there was a works council.

Production workers in the company worked either day or evening shifts. There were no night workers. Working arrangements generally complied with the WTR except for those applying to a small group of workers who, as a result of regular overtime working had total hours averaging 55 a week. Overtime patterns also meant that some of the workers concerned did not get the required weekly break.

The organisation's approach to implementing the WTR was to change shift arrangements for the workers affected and to end Sunday working, so bringing average hours to no more than 42 a week. The WTR were seen as having a positive impact in that they had prompted changes in work organisation which had clear operational advantages.

Case study 11 (utility)

In the first phase of the project we interviewed the group personnel manager and the personnel manager of one part of the company. The company personnel manager was also involved in the second phase of interviews as was a worker representative.

A utility with a workforce in the D range, 4 per cent of whom worked part-time. The workforce was spread over more than 30 sites. The company no longer recognised any trade unions although over a third of the workforce were union members. Worker consultation was via a joint consultative committee.

The plants operated on a 24 hour basis. Workers were involved in a variety of shift patterns. In only a minority of cases – control room staff – did this involve night working. However, this was not seen as sufficiently frequent to be termed night working under the Regulations. Stand-by shift arrangements had meant excessive overtime working in the past, but this had been resolved by the introduction of a dedicated stand-by shift. Otherwise the company's approach to the WTR consisted of the use of individual opt-outs (which were not seen as voluntary by either management or worker representatives) and the application of industry-related derogations. Working pattern changes had been introduced largely as a result of operational considerations, although they were supported by the WTR, so the WTR were seen as having little impact in the company.

Case study 12 (finance)

In the first phase of the project we interviewed the corporate personnel consultant, responsible for developing the company's approach to the WTR, the line manager responsible for a call centre and a full-time official of the trade union that represents most workers in the company. Follow-up interviews were conducted with a new personnel consultant, line manager of the other call centre, the union full-time official and a lay representative of the union in the call centre.

A UK-owned finance company with a workforce in the F range, around 28 per cent of whom worked part-time. The company had over 700 sites around the country, including two call centres. One of these, the case

study workplace, had a workforce of 300. The company operated on a 24-hour basis. Most work was undertaken during the day but data input staff, some call centre staff and IT support staff worked nights. The company recognised a single trade union, but there was no other worker consultative machinery.

By the time we conducted second interviews extensive data on overtime working had still not been collected, but the company planned an internal audit. It was felt that the working hours of IT support staff on-call might be in excess of 48 a week. Official provision for breaks was in-line with the WTR. However, one group of workers had traditionally only taken a 15-minute lunch break in order to leave earlier. Finally basic holiday entitlement was in excess of the WTR minimum, except that no holiday was provided to casual workers.

The company issued instructions to staff to reduce their working hours and instructed line managers to reduce access to overtime for those doing excessive hours. Monitoring of logging-off times was being used to ensure that appropriate rests were taken. The WTR were seen as having the benefit of supporting opposition to a long-hours culture, but otherwise they had little impact on the company.

Case study 13 (general manufacturing)

We interviewed the factory manager and production supervisor. Interviews had also been arranged with the human resources director and manufacturing director. However, these were cancelled as both the individuals concerned had been made redundant in the previous week. The company was not involved in the follow-up study.

A general manufacturing company which was sold by a multi-national to a private owner around eight years before this research was conducted. The company had one production site, a head office, a warehouse facility and a number of factory shops. In addition it owned a production site in Asia. The total workforce in the UK was in the D range. A total of 93 people – all full-time – were employed in the factory that was the workplace for this study. The company did not recognise any trade unions for collective bargaining purposes and there were no other worker consultative bodies.

Factory staff worked one of three shifts and do not move between shifts. In a week they might do four shifts of 7am to 5pm; three of 8am to 8pm or three of 8pm to 8am. Office staff worked 40 hours a week. There was regular overtime working with a number of workers doing one or two additional nine-hour shifts a week. Some staff worked seven days a week in a series of different overtime arrangements.

The result of the level of overtime working was that the key issues for the company from the WTR was the 48 hour weekly working hours maximum. Individual opt-outs were used as the way of complying with the WTR. In addition the company put an end to the practice of seven-day working and individuals were not allowed to do more than six days work in a week.

Case study 14 (NHS)

In the first phase of the project we interviewed the personnel officer, the director of operations and the manager of support services. All three were involved in the follow-up study.

An NHS trust with a workforce in the D range. The line manager had a total of 34 staff, 18 of whom worked part-time. The organisation had a 'bank' of casual staff and these were regularly used to cover staffing shortfalls. The trust was based on a single site. The organisation recognised a number of trade unions who were represented on the joint negotiating committee.

Generally, working patterns complied with the WTR; however, the shift patterns of portering staff did not provide the required breaks. The trust also had a concern about the regulation of the working hours of staff with more than one job. However, the major issue for the trust was the provision of paid holiday to bank workers.

In response to the WTR, the trust changed rotas to ensure that portering staff received the required rest periods and breaks. The trust also, via a collective agreement, agreed a 26-week reference period for the calculation of average working time. In addition, staff were asked to declare if they had more than one job and, if so, they were asked to sign individual opt-out forms. Bank workers were given entitlement to four weeks paid holiday, pro-rata, on the basis of the amount of time they had worked over the previous year, but calculated on a six monthly basis. The payment of bank workers holiday was the main cost to the trust of the WTR, but the line manager identified some savings as a result of the use of banks workers rather than full-time staff to cover staffing shortfalls.

Case study 15 (retail)

In the first phase of the project we interviewed the company's HR policy manager and the manager and personnel officer in a large store. Second phase interviews were conducted with the store manager and a new HR project manager.

A major UK-owned retailer. The company had a workforce in the F range, 61 per cent of whom worked part-time. The case study store employed 155 people, 30 per cent of whom were part-time. The company's retail arm had a staff consultative structure.

The majority of stores provided service from early morning to late evening – typically 8am to 10pm during the week. A minority of stores were open 24 hours. Most flexibility was provided by part-time time working, with a wide range of working patterns. A small number of workers (none in the case study workplace) worked nights. An audit of actual working time conducted in response to the WTR found that overtime averaged about 10 per cent of total contracted hours. However, since most staff were contracted to work part-time, only a small proportion regularly exceeded 48 hours. The audit also found that, although formal break provision complied with the WTR, in practice people did not always take the necessary breaks between shifts. In addition there was only a daily break of 15 minutes for those working between four and eight hours a day.

The company used individual opt-outs to deal with cases of staff working more than 48 hours a week. It enforced a minimum break of 12 hours between shifts and introduced a daily rest break of at least 20 minutes for those working six hours or more. It also introduced revised means of recording working time. The main impact of the WTR was to raise awareness that the company wanted to move away from a long-hours culture.

Case study 16 (finance)

In the first phase of the project we interviewed the group personnel manager, the personnel planning manager, the personnel systems administrator and the general secretary of the staff association. The personnel planning manager answered questions on behalf of a line manager who was at the last moment unable to attend the interview. The personnel planning manager and staff association general secretary were also involved in follow-up interviews as were a line manager and lay worker representative.

A finance company trading in pensions and investments. The company had over 30 sites, but the bulk of its workforce, which was in the F range, was employed at the company's head office that was the workplace for this study. Around 7 per cent of staff worked part-time.

The company did not recognise a trade union but had a long-standing staff association with which it had negotiated a workforce agreement for a 26-week reference period.

Most staff worked 35 hours a week on flexi-time. In addition, there was a part-time evening shift. Meanwhile shift working was undertaken by a small number of IT staff based on 12-hour night or day shifts. There was some overtime working but total hours worked did not generally exceed 48 a week. However, a considerable amount of overtime was at weekends.

The most significant part of the Regulations for the company was that which provides for a rest break of a day a week or two days a fortnight. This was addressed by informing line managers of the WTR requirements for daily and weekly breaks. In addition, all night workers were offered health assessments. Problems in introducing a complete time recording system meant that the company did not have a central view of the extent to which it was complying with the WTR. In general the WTR were felt to have had little impact.

Case study 17 (electronics)

We interviewed the personnel manager and the production manager. This company was not involved in the follow-up study.

An electronics company which was part of a UK-owned group. The company was based on a single site and it had a workforce in the D range. Almost all workers worked full-time. No trade union was recognised in the company, however a 'business council' of elected worker representatives met four times a year.

The plant operated in the normal course of events from 6am to 10pm, five days a week and production workers were organised on a double-day shift basis. Prior to the WTR about half of the workforce worked paid overtime at some point and in some cases workers were regularly working a total of more than 48 hours a week. Some workers worked overtime on both days of the weekend. Holiday provision was well in excess of the WTR minimum for permanent workers, but none was given to staff on fixed-term contracts.

Around 60 per cent of the workforce signed an individual opt-out. The company took action to enforce a minimum 20 minutes daily rest break and was attempting to limit overtime working to one day a weekend. The company had introduced paid holiday for staff on fixed-term contracts.

Case study 18 (hotel)

In the first phase of the project we interviewed the human resources director, a hotel personnel and training manager and a workplace level worker representative. Follow-up interviews were with the personnel and training manager and the worker representative.

A UK-owned hotel chain with over 30 hotels across Great Britain. The company had a total contracted workforce in the F range and during the year took on a similar number of casual workers. The case study workplace was a hotel with 71 staff, nine of whom worked part-time. No trade union was recognised but the company had an established staff consultative structure.

Hotels are 24-hour operations and staff were involved in a range of working patterns, including split-shifts and night work. Prior to the WTR most overtime working was by managers, however total working hours did not exceed 45 a week on average. Holiday entitlement started at 18 days a year (excluding statutory holidays). There was no holiday entitlement for casual workers.

The company reached a workforce agreement via its consultative structure. This provided for a 52-week reference period. It also made use of individual opt-outs. Major changes in response to the WTR were an increase in the holiday entitlement for permanent workers, the introduction of holiday pay for casual workers, the introduction of compensatory rest provision, and the introduction of health assessments for night workers. The main cost to the hotel of the WTR was the provision of paid holiday to casual workers. However, this was not seen as significant. Otherwise the impact of the WTR was seen as neutral.

Case study 19 (construction, catering, cleaning contractor)

In the first phase of the project we interviewed the personnel manager, two line managers, a full-time trade union official, a lay representative for a different union and the personnel assistant responsible for record-keeping. Follow-up interviews were with the personnel manager, one line manager and the lay union representative.

A company which carried out construction, catering and cleaning contracts on behalf of public bodies, in particular local authorities. There was a total workforce in the F range, 77 per cent of who worked part-time. The company also used on a pool of casual staff. Staff worked in around 500 different locations. For the purposes of this study the 'workplace' was taken as one area in the company's construction division. This employed a total of 180 people, two of whom were part-time.

The company recognised five major trade unions and had a strong history of collective negotiation around the full range of pay and conditions issues.

Working patterns were highly varied. They ranged from normal office hours for support functions to 24-hour shift working in the construction division at certain times of the year. Workers in the catering division were almost all part-time with the majority of working hours determined by the school day. Working hours in the cleaning and construction divisions varied with the range of different contracts involved.

The company negotiated an extensive collective agreement to cover implementation of the WTR. Although for most staff at most times of the year the Regulations had little significance, the company was making use of the flexibilities associated with collective agreements to address the exceptions. This included applying a 52-week reference period to average out weekly working time, aiming to increase the limit on night work and to reduce the daily rest period. Shift working changes were being discussed to ensure compliance with the weekly rest provision. It was anticipated that when in place these might have cost implications for the company.

Case study 20 (engineering)

In the first phase of the project we interviewed the personnel manager, human resources director, and a trade union representative. All three were involved in the follow-up study.

An independently-owned engineering company based on one site. The company had a workforce in the D range, almost all of whom worked full-time. Two trade unions were recognised by the company.

The factory operated on a 24-hour basis. Production workers worked on a three or four shift basis and about one-fifth of the workforce worked nights at any one time. Prior to the WTR there was extensive overtime working, which varied considerably during the year. At certain times hours regularly exceeded 48 in a week.

Break periods were generally in line with WTR requirements, except for workers changing shifts or doing overtime. Basic holiday entitlement was in excess of the WTR, however there was a practice of 'buying-out' holiday entitlement.

Almost all the workforce completed an individual opt-out form. The company introduced compensatory rest breaks and curtailed the practice of buying out holidays. A completely new computerised system was introduced for recording working time. This system was seen as having additional operational benefits, but otherwise the WTR had had little impact.

APPENDIX 2

THE WARWICK PAY AND WORKING TIME SURVEY

– EVIDENCE FROM FOUR KEY SECTORS.

The Warwick Pay and Working Time Survey has been charting developments in pay and working time systems each year since 1995. A detailed questionnaire covering five pages of questions with around 200 variables is distributed to senior managers in four important sectors: printing, engineering, health and retailing. The research is conducted in collaboration with the British Printing Industries Federation, the Engineering Employers' Federation, and the NHS Executive. Around 300 employers reply each year, reporting on a combined workforce of hundreds of thousands (retail alone covers 540,000 workers). Response rates vary but are normally around 25 per cent for printing, engineering and health, and 15 per cent for retail. The 1999 survey contained a number of specific questions relating to the Working Time Regulations.

These survey findings indicated that there was mounting evidence that employers saw working time change as a key to competitive advantage. The 1999 survey examined replies received from senior managers in 212 organisations, reporting on a combined workforce of over 427,000 workers. Of these, 53 were from printing firms; 99 from engineering companies; 12 were national retail companies; and 48 were NHS trusts. As usual, the survey focused on larger workplaces (over fifty workers) and questions were directed specifically at the largest occupational group (LOG) in the workplace in order to analyse the most important developments in as much detail as possible.

Over three quarters (77 per cent) of print workplaces, 62 per cent of retail companies and NHS trusts, and 45 per cent of engineering workplaces said that changes to working time arrangements had been introduced as an important or very important means to improve performance in recent years. In print and engineering, many of the changes focused on extending shift work arrangements, often accompanied by a cut in the basic working week. In retail and the NHS, more part-time work has been an important strategy in recruitment and retention, as well as helping to extend service times and respond to variable demand.

The Working Time Regulations 1998 (WTR) were therefore introduced at a time when employers were looking to increase the flexibility of their working time arrangements. The lack of a prior framework of law on working hours in the UK, together with established patterns of long working hours, meant that the Directive had a particularly significant potential impact in the UK.

The survey results show that the first reaction of many employers was to take steps to limit the impact of the WTR. Firstly, around half of print and engineering workplaces, three out of five NHS trusts and all but one of the retailers had made or proposed an agreement covering 'flexibilities' in the Regulations, such as averaging the reference period for calculating weekly hours over a longer period. In all but one of the NHS trusts these agreements were made with the union rather than other elected workforce representatives. Union representatives were also involved in around half of the print workplaces and two-thirds of engineering and retail cases. Secondly, approaching two-thirds (63 per cent) of engineering workplaces had introduced arrangements for individual 'opt-outs' from the 48-hour weekly limit, or were in the process of doing so. Around half of employers in the other three sectors were also doing the same.

Long hours working

Long hours working remained common in all of the sectors apart from retail. In engineering and printing, over a third of firms (39 per cent and 35 per cent respectively) reported that at least some workers regularly worked more than 48 hours a week, the 'ceiling' of the WTR. This reflects reduced headcount and an increasingly competitive environment where customers feel able to demand shorter production runs and delivery times. In the health sector, over one in five (22 per cent) reported such regular long hours working, where it reflects recruitment and retention difficulties as well as reductions in staffing levels. Only in retail, where part time patterns predominate, was long hours working not a feature.

Many of the changes to working time referred to above, such as more shift and part time working, were introduced to help cut down on long hours of work due to overtime. Employers had also taken steps to introduce greater variability in staff scheduling to share variations in workload more widely through the workforce as a whole. Around a third of print firms (31 per cent) and engineering workplaces (29 per cent) reported that they now had a system of variable hours over a standard week (often called 'min-max' arrangements) for the largest occupational group. This was more developed in the NHS, where it was reported by 44 per cent of trusts, and in retail where two-thirds of companies had such a system in place. However, the next step, 'annual hours' systems, remained rare outside of the NHS and print. These were found in 22 per

cent of the NHS trusts and 14 per cent of print workplaces, but in only 2 per cent of engineering workplaces and none of the retailers.

The most important reasons for recent changes in working time have been to increase flexibility and reduce costs, according to the survey results. Avoiding redundancy, and recruitment and retention could also be significant factors. Trade union pressure was less important, supporting the view that recent changes to working time arrangements have been predominantly managerial initiatives. Significantly, however, the WTR were a consideration in changes to working time in around half of the workplaces in the survey. The WTR were said to have been a 'very important' factor in 38 per cent of NHS trusts, 30 per cent of print firms, and 22 per cent of retailers. Only 8 per cent of respondents from engineering workplaces said the same, although 36 per cent reported the WTR to have been a 'fairly important' consideration in recent change. Employers, it seems, had begun to take the WTR into account in their HR and IR planning at a fairly early stage, which probably reflects the publicity which the Directive itself originally attracted. However, one of the main ways in which employers often had to respond in the early stages was to improve their systems of record keeping of working hours.

Longer-term effects

The likely impact beyond 1999 of the main terms of the Regulations were explored in separate questions. The results show that respondents in each of the sectors expected the 48-hour limit to have important implications in the near to medium term future (table A). This was the case even in retail where it might reflect the long hours working of managers. The effects are likely to go be felt much more broadly, however. The Regulations concerning night and shift work appear to have particular impact in health and printing for example. Retail might be more effected by the new provisions on statutory entitlement to paid annual leave.

In explaining their answers, the outstanding difficulties raised by managers related to the viability of existing working time patterns in the face of increasingly variable demand. This provided the context in which they viewed the Regulations, often as an opportunity to press for change. Many felt that current arrangements left 'insufficient working hours available at standard time' and that they were 'inflexible and overtime oriented' (print). Organisations were therefore proposing annualised hours arrangements or other alternatives to overtime such as greater use of time off in lieu or shift work, on grounds of cost and efficiency ('the existence of overtime at preferential rates encourages the "spinning out" of work', engineering). Several respondents in engineering highlighted recent developments in the automotive sector: 'we want a flexible working time system like Rover but workers are resisting'. Worker reservations reflected on the one hand the negative implications for earnings for those used to long hours working, and on the other the wider distribution of irregular long hours to those who were not. As an alternative, work reorganisation was sometimes introduced: 'we are completely reorganising our machine shops and prototype manufacturing areas to increase flexibility by reducing machine idle time' (engineering).

Many respondents pointed however to difficulties to do with the implementation of the WTR, with a number suggesting that negotiations had been seen by the unions as an opportunity to press for further concessions. The main working time concerns of workers were reported as a 'reduced working week' (engineering), problems over 'labour scheduling and allocation of hours' (retail), or 'would prefer not to work rotating shifts' (NHS), and 'concerns about workload' (NHS). In addition, the 'WTR has provoked calls for breaks' (print). The WTR was particularly complex in the NHS and there were widespread reviews of working hours and breaks going on as a result, including for staff on sleep-overs and on-call arrangements.

Working time changes managers would like to make:

In printing, the main working time concerns in the near future are likely to continue to be framed by the WTR and other Regulations such as statutory maternity/paternity leave, according to employers in the sector. They also expect further worker pressure for a reduced basic week and more holiday leave. For their part, managers would be looking in many cases for the introduction of longer and more variable operational hours – extending shiftwork and 'developing flexible working systems to meet demand requirements' – ultimately in the form of annualised hours.

In engineering, too, employers expect the WTR to continue to be prominent. Some anticipate 'increased union activity on working time – removal of opt-out agreements', or even 'likely conflict on working hours as a result of the WTR', in addition to long standing 'pressure from the union to reduce the working week'. Yet they also foresee longer operating hours through 'more workers going onto shift work'. This will provide other benefits too – 'new shift patterns to give greater efficiency by removing bottle necks in production',

'flexible working time to eliminate premium payment costs', 'more flexible hours to meet business needs', and ultimately 'flexibility of work hours using TOIL/annualised hours'. Of course, managers are also aware that this 'greater control of overtime reduces earnings potential of hourly paid workers' and that they 'may introduce shift working to save money – but may lose good staff because of less earnings'.

In retailing too, along with the WTR, the biggest single issue was seen as longer trading hours and the move to 24 hour trading, with its negative implications for 'family friendly' employment and in turn the additional problems it raises for meeting labour resourcing requirements.

In the NHS the big future working time issues were seen firstly as the ongoing need to deal with the implications of the WTR. This covered a range of areas – health assessment for night workers, the status of sleep-overs and on call arrangements, shift lengths, recording of hours, reduced hours for junior doctors and the impact on others such as Nurse Practitioners, rest breaks where there was sustained high levels of care activity or where workers were off site in community homes or private houses, compensatory rest, and, more fundamentally, 'changing the long hours culture', although this was seen as especially difficult in a context of 'staff shortages and excess hours for some'. The second key concern was flexibility – 'matching workload and resources' – including through introducing more annualised hours contracts, yet again reconciling this with pressure for 'family friendly' arrangements and the need to attract and retain key staff.

Conclusion

Employers have made a number of important changes to working time systems in recent years in order to improve performance. These have focused on introducing new patterns of work by adding shifts or increasing part-time arrangements. Existing workers have also had to deal with greater variability in the scheduling of their working hours. Yet long working hours remain common, as a result of downsizing, the extension of operational time throughout the day, and the spread of 'just in time' systems.

In this context, the WTR have potentially major implications. In fact, the results of the Warwick Pay and Working Time Survey show that employers have been aware of the Regulations for some time. In many cases they have accommodated to the legislative stipulations in advance of their coming into force, though some of the main changes have been to administrative systems rather than working time arrangements per se. It is also clear that managers expect the substantive terms of the WTR to have important implications in the future. So far, however, the most immediate effect has been to encourage employers to seek 'flexibilities' and 'opt-outs' to minimise their impact by agreement with their workers. Paradoxically, this procedural effect might yet be one of the most significant outcomes of the introduction of the Regulations. By lending statutory support to the principle of consultation and negotiation over hours of work, the Regulations help to clearly and more widely establish working time arrangements as a primary concern of workplace industrial relations.

Table A: longer term expected importance of the WTR

<i>Regulation</i>	<i>Sector</i>	<i>Very Important (%)</i>	<i>Fairly Important (%)</i>	<i>Not Important (%)</i>
48 hours weekly ceiling	Printing	41	28	31
	Engineering	25	36	39
	Retail	25	18	55
	NHS	16	51	33
Recording of hours	Printing	24	36	40
	Engineering	31	34	36
	Retail	27	55	18
	NHS	61	30	9
Night work arrangements	Printing	24	32	44
	Engineering	15	27	65
	Retail	0	27	73
	NHS	26	65	9
Shift patterns	Printing	26	24	50
	Engineering	7	27	65
	Retail	0	27	73
	NHS	33	46	22
Rest breaks	Printing	30	26	44
	Engineering	3	24	73
	Retail	17	42	42
	NHS	46	35	20
Annual leave	Printing	10	16	74
	Engineering	4	15	81
	Retail	42	33	25
	NHS	28	35	37

