



DTI Working Time – Widening the Debate

IOSH response to a preliminary consultation on long hours working in the UK and the application and operation of the working time opt out – June 2004

Consultative
document

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Introduction

Founded in 1945, IOSH has around 28,000 individual members, is Europe's largest occupational safety and health (OSH) professional body and has strong OSH links worldwide. A chartered body and registered charity, we are the guardian of OSH standards of competence in the UK and provider of professional development and awareness training courses. The Institution regulates and steers the profession, maintaining standards and providing impartial, authoritative, free guidance on OSH issues. Our members work at a variety of strategic and operational levels across all employment sectors and our vision is: "A world of work which is safe, healthy and sustainable". We have fourteen specialist groups within the IOSH membership, including Construction; Education; Fire Risk Management; Healthcare; Offshore; Public Services; Railway; Retail; Rural Industries; and Telecommunications. The purpose of these groups is to provide forums for sharing best practice and learning lessons on occupational safety and health matters, both within different sectors and also in the cross-sector areas of interest.

While recognising the many positive benefits to health and welfare that rewarding employment can bring, we are aware that 40 million working days per year are lost due to work-related injury and ill health, with over 13 million of these due to work-related stress. Fatigued workers in any workplace situation can have difficulty in maintaining concentration and meeting the demands placed upon them, which can in turn contribute to a risk of accidents and feelings of stress. Although the UK fatality rate has reduced by more than two-thirds in the last 30 years, these figures do not include work-related road traffic deaths, estimated to be 1,000 per year, and driver fatigue is a known cause of road traffic accidents. IOSH is keen to help improve occupational safety and health management in the UK and to achieve the Revitalising Health and Safety goal of a national workforce that is 'happy, healthy and here'...

The Institution is pleased to respond to this important consultation by the Department of Trade and Industry on *Working Time – Widening the Debate: A preliminary consultation on long hours working in the UK and the application and operation of the working time opt out*. We believe that application of risk-based occupational safety and health practice is vital in helping to ensure that working time arrangements do not compromise the health and safety of workers and others who may be affected by their activities, thereby protecting individual wellbeing and the sustainability of UK business.

In the response that follows, we address your specific consultation questions in the order they have been presented in the consultation document.

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Making sure workers have a real choice about long hours

3.4 (p.19)

- ii (b) Extra information in the opt out agreement should be included as this could benefit those who are considering signing it. This information would enable workers to make better and more informed decisions, reminding both them and their employer that workers have the right not to opt out and can change their minds about opting out at any stage. There should also be information about the potential health and safety risks associated with long hours working (see also answer to 3.12).

3.5 (pp.19-20)

- ii (a) Making it unlawful in UK legislation for an employer to include an opt out clause when giving a new employee their employment contract would help highlight the fact that workers have a free choice and should help prevent situations in which workers feel that they must agree to long hours in order to secure work.

3.6 (p. 20)

- ii (a) Making it unlawful to ask someone to agree to work long hours at the same time as signing their employment contract would give workers more chance to make a free choice, helping reduce any actual or perceived pressure on new employees from employers regarding agreement to opt out.
- ii (b) The minimum gap period between signing the contract and signing an opt out would need to be agreed by DTI with employers and employees / employee groups. However, we suggest one month would seem a reasonable period for consideration.
- ii (c) In those wishing to start working longer hours straightaway, any minimum gap would potentially reduce overtime income temporarily, but this seems a reasonable balance between removing pressure to opt out and optimising earning potential in those who seek it.

3.7 (pp. 20-21)

- ii (a) Introducing a time limited opt out, which expires after a set period of time and must be renewed, would make it easier for workers to change their minds about long hours and alter the expectation of employers who may otherwise take workers ongoing opt out for granted. Given the reasons people have for working longer hours, it seems unlikely that many will want to change very often, however, having this time limit will make it easier for them if they do and will act as a useful review reminder.
- ii (b) The difficulty of keeping track of expiry dates and obtaining renewed opt out agreements will depend on the numbers of employees opting out in an organisation, staff turnover rate and the method of record keeping. In organisations with high staff turnover, large numbers of workers who opt out and a paper-based record keeping system, it is possible significant administrative resource would be needed – however, electronic systems capable of generating automatic reminders would minimise this workload.

Making sure people are protected while they are doing long hours

3.8 (p. 21)

- ii (a) If a cap was introduced, the effect on long hours workers' regarding their hours and pay would depend on what level the cap was set at and whether workers wished to exceed it. For those workers wishing to exceed and be paid for hours greater than the cap, there would be an inevitable reduction in pay. However, as the reason behind having a 'maximum' is to protect workers and others from potential harm to their health and safety associated with long working hours and fatigue, we believe the possible income reduction to be reasonable.
- ii (b) We do not believe employers should find it difficult to keep track of the two sets of limits for long hours and other workers (see comment at 3.7 ii (b) above).
- ii (c) Numbers and patterns of working hours must be risk-based. We do not believe it acceptable for there to be no upper limit on the number of hours an individual works and a cap on the maximum number of hours would be to help protect their health and safety and that of those affected by their activities. A cap would need to be based on research and risk assessment bearing in mind variables such as age, mental / physical limitations, health of the worker, type of shift, nature of work, etc. Workers should not be allowed to opt out of their breaks and rest periods and their remaining working hours should be subject to a suitable and sufficient risk assessment, taking account of the variables listed above, with sustained long hours working being limited.

3.9 (pp. 21-22)

- ii (a) If a suitable and sufficient risk assessment is carried out by a competent person, then foreseeable problems should be identified. Specific risk assessment for those who work longer hours and ensuring that the possible effects of long hours are considered when conducting other health and safety risk assessments, including for work-related stress, would allow a more holistic evaluation and enable more effective controls to be identified and implemented.
- ii (b) Workers facing an hours-related health risk identified by risk assessment should be required to reduce their hours, even if they do not want to, because there is a health and safety duty of care owed to workers and those affected by their activities. Workers also have a duty to co-operate with their employers and to comply with the requirements of any risk assessment.

3.10 (p. 22)

- ii (a) We believe that offering the same health assessment entitlement to those working long hours as is offered to night-shift workers, would help identify health problems. The quality of the information provided by workers will be key to efficacy and they should be encouraged to be open about possible health concerns they may have related to their working hours. Adequate occupational health expertise is essential to the process, as are treatment referral routes, rehabilitation plans, etc. Employees considering working longer hours may welcome the opportunity for health assessment and value

reassurance concerning possible options should a health or safety risk be identified e.g. reduction in hours or altered shift patterns. Though there is likely to be some associated cost to employers, we feel this will be recoupable in terms of securing a healthier, safer and more productive workforce.

3.11 (pp. 22-23)

- ii (a) Employers should keep full records of the hours worked by all employees so they can monitor and review them, including those whose hours are not currently recorded on pay rolls e.g. those working unpaid overtime or on management contracts which result in their regularly working long hours.
- ii (b) The benefits to worker health and safety from recording these hours are that employers will have information on the actual hours and patterns worked by individual employees in order to conduct suitable and sufficient risk assessments of their workers, to identify those at risk, to take preventative action and to monitor potentially at-risk groups. There could also be benefit at national, industry and organisation levels, as such records could help to quantify the scale of both paid and unpaid overtime worked and whether particular sectors / organisations are more affected and in need of attention.

Making sure people know about their rights

3.12 (p. 23)

- ii (a) Awareness campaigns can bring real benefits to those who are targeted and reached, but effectiveness is dependent upon available resource and chosen strategy. Although only short-term impact may be anticipated, we believe it likely that a 'legacy message' from informed workers would be passed to new entrants, though we have no evidence of this being the case. An additional advantage of a public campaign is that family members or friends may also inform workers concerned about their rights regarding opt out.
- ii (b) To help ensure the message reaches and stays with those who need it, employers should explain to workers the aim of the legislation, their rights under the legislation, and how opting out would affect them. This could happen during the induction process or when giving them their opt out form/information sheet. Others intermediaries workers may have contact with, such as workers representatives, community leaders, youth workers, citizens advice staff, job centre staff, employment agencies, licensed gangmasters, insurers, etc. should also have information on working long hours that they can pass on as required.
- ii (c) We believe it would be helpful if employers had to give an information sheet to all employees working long hours. An official opt out form/information sheet could be produced by DTI, for use by all employers (downloadable from the website or available from banks, building societies or post offices) providing all the basic employee rights/health and safety information at the start of the form (with a requirement for the employee to be provided with a photocopy of the signed form). Additionally, a short DTI information sheet could be provided annually to all workers, perhaps in conjunction with the issue of P60 tax statements, if allowed. The information provided should at least summarise the rights of workers under the legislation, highlighting the rights not to opt out and to 'opt back in' at any stage; explain

possible risks to health and safety from working longer hours; outline employers duty to provide health assessments and advise workers to speak to their immediate supervisor if they have any concerns.

3.13 (pp. 23-24)

- ii (a) We believe free guidance aimed at sharing good practice, would be helpful for employers; occupational safety and health practitioners; human resource personnel; workers and their representatives; and other interested parties. It could outline the requirements of the law and give clear guidance on how to implement it, illustrated by good practice case studies.
- ii (b) It should cover: the legal requirements; health and safety risks from working longer hours and the potential harm to individuals, organisations and society; the need for adequate risk assessment for those who work longer hours and how to do this; provision of health assessments; work pattern options; record keeping requirements and systems; methods for ensuring workers are well informed of their rights under the legislation; and inclusion of the official opt out form and information sheet. There could also be some occupation or sector specific guidance for those occupations or sectors in which working longer hours is common.

3.14 (p. 24)

- ii (a) A code of practice providing more force than guidance would be helpful in ensuring good health and safety practice from any employers who may not otherwise be inclined to adopt it and in providing an authoritative benchmark and guide for those seeking to improve.
- ii (b) We believe that long hours working is a general concern across all employment sectors and so a national code would be appropriate. Sectors believed to have a significant problem with a long hours working culture could be used as case study material, within the code of practice, highlighting workable solutions.

We hope you find these comments useful and look forward to further involvement in this important area.