



House of Commons  
Trade and Industry Committee

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# **UK Employment Regulation**

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**Seventh Report of Session 2004–05**





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*Report, together with formal minutes*

*Ordered by The House of Commons  
to be printed 8 March 2005*

## The Trade and Industry Committee

The Trade and Industry Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Trade and Industry.

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### Committee staff

The current staff of the Committee is Elizabeth Flood (Clerk), David Lees (Second Clerk), Philip Larkin (Committee Specialist), Grahame Allen (Inquiry Manager), Clare Genis (Committee Assistant) and Joanne Larcombe (Secretary).

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### Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated in the form 'App' followed by the Appendix number.

# Contents

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<b>Report</b>	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>1 Introduction</b>	<b>5</b>
<b>2 Labour market flexibility and employment regulation</b>	<b>6</b>
<b>3 The National Minimum Wage</b>	<b>12</b>
<b>4 Agency workers</b>	<b>15</b>
<b>5 Working time and flexible working</b>	<b>19</b>
The Working Time Directive	19
Flexible hours and parental leave	22
<b>Conclusions and recommendations</b>	<b>26</b>
<b>Formal minutes</b>	<b>31</b>
<b>Witnesses</b>	<b>32</b>
<b>List of written evidence</b>	<b>33</b>



## Summary

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Debates about labour market flexibility in the UK have appeared polarised. Business organisations consider that an increasing burden of regulation is constraining employers' ability to run their companies efficiently; whereas trade unions have been rather uneasy with the notion of labour market flexibility, which has at times appeared as a synonym for making it easier for companies to hire and fire. We are not convinced that the burden of regulation is excessive or damaging to competitiveness at present. But we do not argue for significant extra regulation: we support the principles of flexibility allied to social cohesion set out in the Lisbon Agenda.

The process for reviewing the level of the National Minimum Wage (NMW) has been very successful and we support the Low Pay Commission's pragmatic approach. We also welcome the extension of the Minimum Wage to 16 and 17 year old workers, albeit at a lower rate. We warn against removing the lower rate for 18-21 year olds immediately though expect its continued convergence with the full NMW rate.

Although there are abuses in the area of the employment of temporary workers, we are not convinced the Agency Workers Directive represents the right way to address these. Employers' concerns have focussed on the period, currently set at six weeks, after which agency workers will be entitled to equivalent pay and conditions to their permanently employed colleagues. We think that the scope of the directive is more important. Agency workers should be entitled to equivalent working conditions immediately but we think there is fundamental difficulty in determining and enforcing an 'equal pay rate'.

We are not convinced by the arguments for retaining the opt-out from the Working Time Directive, which we consider has enough flexibility to accommodate the needs of business. We are pleased that the right to request flexible working for the parents of young children has been well received and welcome the proposal that it should be extended to all those with caring responsibilities. With the numbers of working mothers rising and an ageing population, employers will find that accommodating the caring obligations of their employees is a necessity, not a luxury.



# 1 Introduction

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1. Debates about labour market flexibility in the UK have appeared polarised. On the one hand, business organisations have undertaken constant public campaigns against what they see as the increasing tide of regulation which is constraining their ability to deploy their workforce in a flexible manner, in response to changing demand. On the other hand, trade unions have been rather uneasy with the notion of labour market flexibility, which has at times appeared as a synonym for making it easier for companies to hire and fire.

2. We decided to investigate these competing claims by conducting an inquiry into the current state of employment regulation in the UK. We also decided to look in some detail at the impact of regulation in a few key areas that were highlighted in the written submissions we received: namely the minimum wage, temporary agency workers, and working time.

3. In the course of this inquiry, we heard evidence from Amicus-GPU, the British Chambers of Commerce (BCC), the Chartered Institute of Personnel & Development (CIPD), the Confederation of British Industry (CBI), the Department of Trade and Industry (DTI), the Engineering Employers' Federation (EEF), the Federation of Small Businesses (FSB), Manpower, the Trades Union Congress (TUC), the Union of Shop, Distributive, & Allied Workers (Usdaw), and the Work Foundation. In addition, we received a number of written submissions which are listed on page 33. Those that are cited in the Report are appended. We are grateful to all those who submitted evidence to the inquiry. During the inquiry, we visited Denmark to discuss the Danish approach to employment regulation; and we are very grateful to all those who met us there. We would also like to express our thanks to our special advisers for the inquiry, Dr Gavin Cameron and Mr Nigel Meager.

## 2 Labour market flexibility and employment regulation

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4. Ideas about labour market flexibility, and the role of employment regulation in relation to this, have proved controversial in the UK. For some, flexible labour markets seem synonymous with a diminution of employment rights and a ‘hire-and-fire’ culture amongst employers, and they look to regulatory intervention as a bulwark against this. On the other hand, employment regulation is often cited as a burden on business, steadily increasing, and threatening profitability and future investment. Both positions ignore the complexity of the issues and we agree that: “Too often the debate about reforming labour markets has been sidelined into a supposed choice between a US-style deregulated labour market and the European Social Model.”<sup>1</sup>

5. For its part, the Government has tried to reconcile these apparently dichotomous positions. On the one hand it has stressed the importance of maintaining, and even enhancing, the UK’s flexible labour market. But on the other, it has stressed that this does not involve “putting efficiency before the primacy of human values”.<sup>2</sup> It argues that “[a] flexible and efficient labour market, combined with a stable macroeconomic environment, implies an economy that is more competitive and productive, and which provides greater fairness. It also means an economy that is better able to respond to economic change”.<sup>3</sup>

6. In its written evidence, the Government reiterated that it aims to achieve a labour market characterised by full employment, diversity and choice, and high productivity.<sup>4</sup> Specifically:

- *Full Employment*: It expresses concern that, despite high employment rates, there are concentrated pockets of unemployment in certain areas and amongst certain social groups.
- *Diversity and Choice*: It comments that the employment rates of female and older workers are improved if there is greater flexibility over hours worked. Greater skills also enhance choice in the labour market.
- *High Productivity*: It notes that higher skills help improve productivity. This is also improved when there is a high degree of commitment between employers and employees.

7. These aims are very much in line with the Lisbon Strategy, agreed by the European Council in 2000 with the aim of making the European Union “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”.<sup>5</sup> In pursuit of this, the Lisbon

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1 DTI Full & Fulfilling Employment: Creating the Labour Market of the Future (2002), p. 3

2 *Ibid*, p. 8

3 App 6, para. 9

4 App 6, para. 6. See also DTI Full & Fulfilling Employment: Creating the Labour Market of the Future (2002), for a fuller discussion

5 Facing the Challenge: The Lisbon Strategy for Growth and Employment Report from the High Level Group chaired by Wim Kok (November 2004), p. 5. Hereafter referred to as ‘the Kok Report’.

Strategy, and the subsequent policy documents that it has generated, promote greater flexibility in the labour market alongside a commitment to promoting social cohesion.<sup>6</sup> However, as will be discussed in subsequent chapters, not all of the regulations emanating from Europe would appear to be entirely consistent with this model.

8. Whilst the aim may be to reconcile flexibility with social objectives, the general impression given to us by business organisations was that the balance is in danger of being lost and that the pursuit of social objectives *via* labour market regulation has gone too far and is now impinging on competitiveness. The CBI stressed that the UK is still a good place for businesses to operate, but less so than it was five years ago, and they were concerned that the situation would deteriorate further.<sup>7</sup> The reason for this was the greater regulatory burden that business was being forced to operate under, of which employment regulation was the most onerous element. The EEF cited evidence that suggested that the burden of regulation was becoming a disincentive to continued investment in the UK. The BCC and the FSB had similar concerns, stressing in particular, the disproportionate burden that regulation placed on small businesses.

9. The CBI emphasised the role that labour market flexibility plays in the UK's continued economic success. For the CBI, labour market flexibility is both a good in itself but also a compensating factor for areas in which the UK is less strong, such as skills or education, or even transport infrastructure:

“businesses in Britain rely upon the flexibility of how they can recruit and utilise labour, working hours, work organisation, to make up for the fact that skill levels are not as high as they would be in France and Germany. France and Germany have the benefit of higher skills levels. They may have more flexibility in terms of skills utilisation, but they lose that advantage because of maybe too high wage rates, too high restrictions on labour market participation. You can see the net result. We are broadly as competitive as those countries... we are not prepared to lose what we have while we are busy making up for our deficiencies in the areas that we are not competitive in.”<sup>8</sup>

10. The BCC took a similar line, claiming that “the burden of regulation continues to be of great concern to UK businesses as it represents a significant erosion of [UK] competitive advantage”.<sup>9</sup> They maintain a ‘burdens barometer’ which they argue reveals that, between 1998 and June 2004, regulatory costs increased by £30 billion, with £12.68 billion deriving from employment regulation.<sup>10</sup> Consequently they claim that “the burden of red tape and regulation is the biggest single problem” facing British business.<sup>11</sup>

11. The paradox is that the UK retains a comparatively unregulated labour market. It is certainly true that the UK's relative advantage in this area may have decreased slightly, but

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6 For example, Kok Report, p 28

7 Q 68

8 Q 72

9 App 2, para 2

10 App 2, para 2. Almost all of this figure was, however, accounted for by the Working Time Directive, aspects of which the BCC is not opposed to. The Working Time Directive is discussed in more detail in Chapter 5 of this report.

11 Q 133

this is largely due to deregulatory measures taken elsewhere. There has been a degree of reregulation of the labour market under the Labour Government, but there can be little doubt that it remains considerably less regulated than most comparable countries:<sup>12</sup> in the OECD's index of labour market flexibility, the UK's score has moved from 1.0 in the late 1990s to 1.1 in 2003. This is against an OECD average of over 2.0.<sup>13</sup> And yet the business organisations give the impression of a large and expanding burden of regulation that constrains their freedom to use their resources as they would wish, and which diverts scarce management time to compliance matters and away from more productive activity. It seems that the pace of change can go some way towards accounting for this perception: the EEF thought that the negative perception was the result of the fact that employers have had to come to terms with a steady stream of regulation, whereas firms operating in more regulated economies were accustomed to that environment.<sup>14</sup> The FSB emphasised how difficult it is for small companies without the benefit of a personnel department to monitor and oversee implementation of new regulations.

12. It has, however, proved hard to quantify the extent to which the regulatory burden genuinely does divert scarce resources. One study, conducted for the DTI found that the perception of regulatory burden was general and not, in most instances, based on first-hand negative experiences. In the study, "the common theme...was the view that flexibility was being restricted by, for example, the existence of maternity rights...But deeper inquiry showed that these concerns tended to relate to beliefs about business in general rather than concrete experience in the firm itself."<sup>15</sup> This would seem to be supported by some of the research that Professor Keith Ewing<sup>16</sup> has conducted on behalf of Amicus-GPM Section. Whilst some employers felt that there was an excessive regulatory burden, many small and medium-sized firms were not concerned about the level of employment regulation.<sup>17</sup> Work Foundation research has found that the high-performing companies were relatively untroubled by regulation and did not regard it as a significant constraint on their operations. At the most, it was regarded as "a bit of a hygiene factor".<sup>18</sup>

13. The TUC suggested that the business concern with regulation was symptom of a continued preoccupation with the 'low road' approach to competitiveness, based on cheap labour and low productivity. Instead, the focus should be on making the transition to the 'high road' of high investment in capital and labour, leading to high skills, high productivity and high value-added.<sup>19</sup> The 'high road' is characterised by high labour standards and the TUC consequently supported increased regulation, albeit "intelligent, well-designed labour market regulation", in order to ensure these.<sup>20</sup>

12 App 6, Annexes A and B list regulations and estimate the cost of their implementation.

13 OECD Employment Outlook (2004), Table 2.A2.4, p.117

14 Qq 279-280

15 Paul Edwards, John Black & Monder Ram The Impact of Employment Legislation on Small Firms: A Case Study Analysis Employment Relations Research Series No.20 DTI (September 2003), p.38

16 Professor Ewing is Professor of Public Law, Kings College, University of London

17 Qq 432-438

18 Q 462

19 App 17, para 2

20 Q 24

14. Whilst the concept of labour market flexibility has traditionally been unpopular amongst its members, the TUC does not reject it outright. Instead it supports a model of ‘flexicurity’, combining flexibility with security. ‘Flexicurity’ is a label normally applied to Denmark’s combination of generous welfare, active labour market policies, and low Employment Protection Legislation (EPL).<sup>21</sup> But the TUC appear to mean something rather different. They highlight the distinction that academics have drawn between the different ways in which labour markets can be considered flexible. In particular, they note how labour market flexibility is frequently taken simply to mean external numerical flexibility—or the ease with which companies can hire-and-fire. Instead the TUC is keen to promote functional flexibility—the ease with which individual workers are able to undertake different tasks—and the opportunities for more flexible working arrangements for those who, at various points of their career, may prefer not to work conventional hours.<sup>22</sup>

15. The TUC claim that, rather than threatening future employment, EPL need not jeopardise, and may even enhance, prospects for long term full employment. If an employer’s ability to hire and fire in response to changing circumstances is constrained, it will have to use its existing workforce more flexibly, which encourages employers to train their workforce. A better trained workforce often leads to higher productivity. It is certainly true that, if one were to look at Germany or France, one might conclude that EPL damages employment. However, the example of countries such as Sweden indicates that this need not be the case. And the experience of the UK, where increases in regulation have gone in tandem with high levels of employment, further highlights the lack of a clear association.

16. The issues raised by the TUC highlight some important aspects of labour market flexibility. It is clear that flexibility is multi-faceted and not limited to questions of the ease of hiring or firing, or constraints on shift patterns or total working time. It is also clear that the shortcomings of the UK labour market are not primarily related to regulatory constraints on employers’ ability to change the number of workers or the hours worked: the OECD’s figures show that the UK’s EPL continues to be amongst the lowest in the OECD, and there are limited constraints on working time.<sup>23</sup>

17. This does not, however, mean that increases in regulation in these areas will improve matters or overcome the shortcomings. The fact that the UK already has substantial flexibility in these areas can be seen as an advantage to be maintained whilst addressing these shortcomings. There need be no link between low levels of EPL and poor levels of functional flexibility and addressing the latter does not have to be to the detriment of the former. But neither need numerical flexibility be synonymous with a diminution of work standards or increases in job insecurity. The example of Denmark shows how these can successfully co-exist.

18. Denmark has become a source of considerable interest to policy-makers and academics alike for its ‘flexicurity’ model. In Denmark, high levels of external, numerical flexibility,

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21 OECD Employment Outlook OECD (2004), p. 97-98

22 App 17

23 This would still be the case in comparison with other EU member states, even if the opt out from the Working Time Directive is removed. The issue of the regulation of working time discussed in more detail in Chapter 5.

reflecting low EPL levels, are combined with generous income protection, and Active Labour Market Policies (ALMP). This combination has created high employment levels, as well as high levels of job satisfaction and security amongst the workers. This has been achieved by the substitution of strong agreements between trades unions and employers' organisations for formal EPL. Denmark has high trade union membership. Naturally, the Danish model is the product of a unique context which might limit its applicability elsewhere, but its 'hybrid' model clearly shows that the various aspects of labour market flexibility are not juxtaposed in the way they are sometimes assumed to be and need not undermine the rights and conditions of workers.

19. The TUC emphasised that higher levels of EPL need not damage employment rates. This is certainly true of 'core workers'—prime age, male, skilled workers. Neither need higher levels of EPL constrain the movement of workers from one sector of the economy to another and so hinder flexibility in that respect. However, it does seem that, in reducing 'churn', EPL can increase the duration of unemployment and can hinder the entry to the labour market of more marginal workers such as youths, older workers, or women returning after childcare.<sup>24</sup> This clearly runs counter to the Government's approach to dealing with social exclusion, and its stated desire to promote full employment and choice and diversity in work. It is also suggested that high EPL can damage the prospects of attracting inward investment.<sup>25</sup>

**20. Whilst the pace of regulatory change might have created problems for some firms, the evidence for any serious impact is limited and, at least to some extent, based on general impressions about the nature of the economy and the regulatory environment. We can find little hard evidence to support the assertion that UK competitiveness is being threatened by overly stringent employment regulation. Consequently, we found the obsession with the growing burden of regulation slightly bemusing. Whilst we acknowledge that there has been reregulation of the labour market since the late 1990s, the UK still has a more lightly regulated labour market than most comparable economies. In the Porter Report, which reviewed UK competitiveness, excessive labour market regulation was not cited as a concern, nor deregulation seen as a useful strategy for improving the country's competitive position.<sup>26</sup>**

**21. The debate about regulation versus flexibility is in danger of losing sight of the important issues—namely the pursuit of competitiveness and the need to ensure good, minimum standards of protection for employees. Flexible labour markets and regulation are good only in so far as they contribute to these goals. We welcome the principles set by the Lisbon Strategy, combining flexibility with social cohesion. The realisation of this strategy might involve the introduction or the removal of specific regulations, but this would need to be judged on an *ad hoc* basis. But it should be reiterated that the main challenges that the UK economy faces are not exclusively matters of regulation or deregulation, but in areas that we have addressed in several**

24 OECD Employment Outlook OECD (2004), p. 81-85

25 For example, see H. Gorg Fancy a stay at the 'Hotel California'? Foreign Direct Investment, investment incentives, and exit costs and G. Dewit, H. Gorg C. Montagna Should I stay or should I go? Foreign direct investment, employment protection, and domestic anchorage. Both Department of Economics Working Papers, University of Nottingham

26 Michael E. Porter & Christian H.N. Ketels UK Competitiveness: Moving to the Next Stage DTI Economics Paper No.3 (May 2003)

**Reports, including skills and training, R&D and technology transfer, the supply of capital for investment, and narrowing the productivity gap with our competitors.<sup>27</sup>**

22. The 2003 Budget set out twelve principles to guide the Government's intervention in the labour market. These include intervention where: there is a significant problem that can be addressed only through government intervention; full consideration has been given to the alternatives to regulation; the consequences for the small firm sector, in particular, have been assessed; the impact on the employment opportunities of disadvantaged groups and on productivity and growth have been tested; a cost-benefit analysis (or Regulatory Impact Assessment) has been conducted; proper consultation has been undertaken, and information to aid compliance and resolve disputes is made available.<sup>28</sup> If fully and consistently applied, these principles should ensure that regulation proceeds only where necessary. The introduction of two 'regulation' days a year, when new regulations come into force, will help.

23. **The Government's emphasis on regulation as a last resort, only to be used where the required goals cannot be achieved through other means, is significant and it is a position that we support.** It is clear that, where perceived problems can be resolved through the agreement between the social partners, outcomes are better. Recourse to regulatory intervention seems less good at delivering solutions that please all parties involved. It was instructive that, in Denmark, government intervention in labour market issues is quite limited. Instead, the 'governance' of the labour market is provided through the collective bargaining process. As a result, most labour market matters have been successfully dealt with without recourse to legislation, and to the evident satisfaction of all those involved. We are not suggesting that the Danish model of collective bargaining should be reproduced here—it is based around a very different set of labour market institutions which are not readily transferable—but use the example to highlight that regulation is not always the most appropriate means to achieve goals, and that the greater the involvement of all interested parties, the more likely the outcomes are to be mutually satisfactory—a point highlighted by the unanimous praise we heard for the process for revising the minimum wage.<sup>29</sup>

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27 See, for example, Competitiveness and Productivity of UK manufacturing industry, Third Report of session 2001-02, HC 597, UK biotechnology industry, Twelfth Report of Session 2002-03, HC 87 and The UK Automotive Industry in 2004, Eighth Report of Session 2003-04, HC 437

28 The full list is given in App 6, para 19

29 This is discussed in the next Chapter

## 3 The National Minimum Wage

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24. The National Minimum Wage (NMW) was introduced in April 1999 at a rate of £3.60 per hour for workers aged 22 and over, with a lower rate of £3.00 per hour for 18-21 year olds. The rates were set following a consultation process established by the Low Pay Commission (LPC), which brings together representatives of business and the unions, as well as expert, academic opinion, to make recommendations on the NMW rates.

25. At first, many were wary of the NMW's introduction. The CBI opposed it (a position it has since reversed) and the Bank of England warned of a temporary rise in inflation of 0.4 percent as a consequence. The Government initially predicted that approximately 1.9 million workers would gain an average 30 percent pay rise as a result of the NMW's introduction. In reality, the NMW had a far more limited impact in its first years, either positive or negative, than had been anticipated. Inflation rises and job losses were not evident, but the impact on wages was modest, with subsequent downward revisions to estimates of both the numbers who benefited and the amount by which they gained: the NMW "arrived with more of a whimper than a bang."<sup>30</sup>

26. The NMW has been raised regularly since its inception and, since October 2004, the full rate has stood at £4.85 per hour, and the 18-22 rate at £4.10 per hour. In addition to the increase, October 2004 also saw the extension of the NMW principle to all workers over the minimum school leaving age, with the introduction of a new, £3.00 per hour rate for 16-17 year olds. The Government told us that they estimated approximately 1.1 million more workers had benefited from the October 2004 revision. It has since been announced that the NMW will increase to £5.05 in October 2005, and £5.30 in October 2006.<sup>31</sup>

27. It was acknowledged by witnesses that the NMW had had a relatively limited impact, at least until the last rises. Since then Usdaw, which has a high number of low paid members in areas such as retail, told us that the NMW has actually started to have an impact on its members at the £4.85 rate.<sup>32</sup>

28. Businesses too, it is claimed, are beginning to feel the impact of the NMW at the new rates. Whilst employment has still not been affected by the NMW, the CBI said that it would be a while before the impact of the last rise could be judged, and they were concerned about the consequential effect on differentials.<sup>33</sup> The BCC said that anecdotal evidence suggested that their members were feeling the impact of the latest rises. They expressed concern at the prospect of a NMW rate in excess of £5.00 per hour and went as far as to suggest a cap on future rises.<sup>34</sup>

29. Evidence from Usdaw suggested that, in retailing at least,<sup>35</sup> thus far the NMW had not had a marked impact on differentials. The DTI suggested that employers anticipated

30 R. Dickens & A. Manning 'Minimum Wage, Minimum Impact' in R. Dickens, P. Gregg & J. Wadsworth *The Labour Market Under New Labour: The State of Working Britain* Palgrave, Basingstoke (2003), p.202

31 DTI Press Notice 'Minimum Wage Above £5 This October' (25 February 2005)

32 Q 325

33 Q 106

34 Qq 183-195

35 A sector where low pay is common.

NMW rises and pre-empted them with pay rises to maintain a clear distinction between the NMW rate and the rate they offered their staff. This was confirmed by Usdaw, though they also noted that other employers had simply adopted the NMW rate as their basic pay rate. However, even where employers have sought to improve recruitment and retention by paying in excess of the NMW, this seems to have been through merging pay grades rather than through across the board rises, resulting in a rather ‘flatter’ pay structure. Usdaw acknowledged that this process was influenced by the shift to multi-skilling, but suggested the NMW had accelerated the process.<sup>36</sup>

30. It does seem that the lower rate for 18-21 year olds has actually resulted in a pay drop for workers in some instances. Usdaw cited examples where young employees who had been paid the same rate as their colleagues who were 22 and over, found themselves earning less as a result of the introduction of the lower rate. Despite this, we found wide support for the extension of the NMW principle to 16 and 17 year olds, though Usdaw thought the rate too low.<sup>37</sup>

31. There was universal approval of the LPC’s conduct thus far. However some called for the discretionary approach that it has adopted to be replaced by a formulaic approach to future NMW rises. The EEF argued that a formula would give future rises much greater predictability, making future investment plans much easier. However, calls for a formulaic approach also seem to be motivated by concern at the rate of NMW rises in the last couple of years. A formula would presumably be designed to tie the NMW rate to inflation or the rate of rises in average earnings, both of which it has substantially outstripped to date. CBI were not convinced that a formulaic approach was desirable at this stage. Despite their concern at the recent rate of rises, they preferred the flexibility associated with the discretionary approach.<sup>38</sup>

**32. The Committee is not in a position to make recommendations on the appropriate rate for the NMW. We do, however, acknowledge the widespread praise for the work of the LPC. It seems that it has managed to maintain a broad consensus on a contentious subject to date, and the difficulty of setting the NMW at a rate that is, at once, affordable to business and fair to workers, especially given the wide regional variations in the cost of living that exist, should not be underestimated. Consequently, we do not think that a formulaic approach to future increases is desirable at this stage. The LPC has, by necessity, adopted a fairly cautious and experimental approach to NMW rates, setting them low initially, and then increasing them on the basis of experience. Given the relatively recent introduction of the NMW, it seems too soon to establish a formula dictating future rises, and we believe the LPC should continue to exercise the discretionary approach that, it would appear, has worked so successfully until now.**

33. Whilst we are concerned that the lower rate might have seen a few employers reducing pay for 18 and 19 year olds, we are mindful that youth employment is an area that can be damaged by regulation and so we endorse the cautious approach of the LPC to date. Given this, it does not seem sensible, at present, to abolish the lower rate for 18 to 21 year olds in one step, though we do note that this lower rate has risen faster than

36 Qq 333-335

37 Qq 343-345

38 Q 112

the full rate and it may be that, in time, the convergence is such that the lower rate can be abandoned.

34. We welcome the extension of the NMW principle to 16 and 17 year olds. We can see no reason why all those entitled to work should not be protected by a minimum wage limit. But again, whilst the rate is low, we are mindful of the need for caution in order to maintain employment. Experience would suggest that this rate will be increased relatively rapidly. We are not concerned that guaranteeing a certain level of pay to younger workers will act as an incentive to abandon education or training early. The rates have been set at a level below that already being paid to many school-leavers. The NMW will ensure a moderate rate of pay for the very lowest paid and, as such, cannot really be seen as a very tempting alternative to continuing education.

35. Ensuring a sensible rate for the NMW is only part of the challenge and enforcing that rate is also, clearly, important. Paying below the NMW rates is a problem not only for those workers who are being exploited by employers who, either wittingly or unwittingly, are breaking the law, but also a source of concern for competitor firms who may find themselves undercut by those with a lower wage bill.

36. The difficulty is that the companies who are ignoring the NMW, inadvertently or otherwise, are unlikely to be unionised or members of trade associations, and consequently are difficult to detect. There is a clear danger in relying on employees, who may not know they are being exploited or who may fear for their jobs, to report breaches of NMW regulations. Consequently, we are pleased to see that the enforcement unit established in the Inland Revenue to ensure NMW compliance takes a proactive approach. It runs a helpline, investigates complaints, including anonymous complaints, and conducts surprise investigations at companies' premises. For example, 60 percent of the investigations conducted are based on its own analysis and 'risk assessment' based on tax returns. It would seem a model that might be extended beyond enforcement of the NMW to other areas of regulation.<sup>39</sup>

37. We have concerns about the way in which regulation can be enforced in areas which are dominated by non-standard work patterns, such as homeworking.<sup>40</sup> The TUC suggested that homeworkers' employment status allows their exploitation.<sup>41</sup> The National Group on Homeworking claimed that, because of the piecemeal nature of the work, many homeworkers were paid substantially less per hour than the NMW.<sup>42</sup> We are naturally extremely concerned by these suggestions. **A full investigation of the condition of homeworkers is beyond the scope of this inquiry. However, we recommend that our successor Committee conduct a dedicated inquiry to establish the extent to which homeworkers do indeed suffer from a systematic non-compliance with regulations designed to ensure minimum standards. We urge the Government to look more closely at the problem.**

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39 App 4, paras 15-20

40 In this instance, we refer to those who receive an income from work that they do at home, rather than those who, because of improvements in electronic communication, for instance, are able to do much of their work away from their office.

41 Qq 60-61

42 App 11

## 4 Agency workers

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38. In March 2002, the European Commission proposed a directive governing the working conditions of temporary agency workers—the so-called Agency Workers Directive (AWD). The AWD arose from a concern that agency workers are an exploited sector of the workforce with lower pay, limited opportunities for training or for transferring to permanent employment, and lacking both the job security and pension entitlements of their colleagues employed directly by the ‘user undertaking’.<sup>43</sup> Agreement on the directive has yet to be reached in the Employment Council, with the UK one of the countries leading the opposition to the proposed directive.

39. The AWD aims to establish the principle of non-discrimination against temporary workers, meaning that they “may not be treated worse, in terms of basic conditions, than a comparable worker in the user undertaking in an identical or similar job”.<sup>44</sup> This means that agency staff would have a right to pay, hours, and holidays equivalent to those that their directly employed colleagues are entitled to, after a qualifying period of six weeks.<sup>45</sup> It also requires that: there should be improved access to training; agency workers should be covered by requirements for workers information, consultation, and representation; agency workers should be allowed equal access to the collective facilities of the user undertaking; and temporary agency workers should be informed about permanent vacancies in the user undertaking.<sup>46</sup>

40. There has been a steady increase in the number of temporary agency workers in the UK over the last two decades. Currently, the Government estimates that there are approximately 600,000 people employed as temporary agency workers. There are large numbers in manufacturing, where they comprise around 17 percent of the total manufacturing workforce, with real estate, renting and business, and health and social work also employing significant numbers (10.8 percent and 11.6 percent, respectively). These temporary agency workers are heavily concentrated in administrative and secretarial, elementary occupation, and process, plant and machine operative work.<sup>47</sup>

41. The consequence of the directive, as it currently stands, would be to improve conditions of work for agency workers in the UK. As well as increasing the availability of paid holiday leave, it would lead to a pay increase for approximately half of all agency workers. However this would vary between sectors: for instance, it seems that agency nursing staff are, on average, paid more than their directly employed colleagues.<sup>48</sup> The directive would also increase the provision of training as it is estimated that only 20 percent of temporary agency staff have received work related training within the previous 13 weeks,

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43 The clumsily-termed ‘user undertaking’ is the company in which agency workers are posted.

44 Proposal for a Directive of the European Parliament and the Council on working conditions for temporary workers explanatory memorandum COD 2002/0072

45 App 17, para 74

46 DTI Regulatory Impact Assessment of Proposal for a Directive of the European Parliament and of the Council on Working Conditions for Temporary Agency Workers (January 2003)

47 *Ibid*, paras 55-56

48 *Ibid*, para 54

compared with 57 percent of permanent workers.<sup>49</sup> As a result, the effect might be to make temporary agency work a more attractive option and consequently to increase the supply of people in this type of work.

42. However, the Government also predict that it will increase the cost of employing temporary workers. The agencies will be faced with higher costs and will pass these on to the user undertakings, which is likely, other things being equal, to lower demand for agency workers.

43. Opponents of the AWD suggested that the extent to which temporary agency workers were exploited has been exaggerated and pointed out that they were already covered by a variety of regulations in areas such as working time, minimum wage, non-discrimination, and health and safety.<sup>50</sup> The benefit of temporary work to the economy as a whole was also emphasised. Employers argued that it provided companies with the flexibility to cope with peaks in demand. They also suggested there were benefits for the temporary agency workers themselves. Temporary work could provide people with a route back into permanent employment, and they stressed the flexibility that temporary work gave. One witness explained how his company used temporary agency staff as the basis for recruitment, treating the duration of the temporary assignment as a trial period before deciding whether to employ the worker permanently.<sup>51</sup>

44. The primary areas of concern amongst opponents of the AWD were the six week qualifying period, and the notion of equality with the staff of the user undertaking and how this would be interpreted.

45. The business organisations who gave evidence were particularly unhappy with the proposed six week qualifying period. At the moment, the Government estimates that only 12 percent of temporary agency assignments fall within the six week qualifying period.<sup>52</sup> The majority of our witnesses who opposed the six week qualification thought a period of one year would be more appropriate. This was, as Manpower told us, because any employer should be able to judge whether a position had become permanent after 12 months.<sup>53</sup> It was also pointed out that a twelve months qualification period would more closely tie in with the parental leave entitlements, allowing, for example, the work of a permanent employee away on maternity leave to be covered by an agency temp, without the AWD terms taking effect.<sup>54</sup> The vast majority of temporary assignments, we were told, lasted less than 12 months.<sup>55</sup> Consequently a 12 month derogation from the AWD would mean that very few temporary agency workers would be covered by its terms.

46. The principle of equivalence for temporary agency workers with the pay and conditions of directly employed staff also exercised the opponents of the AWD on a number of levels.

49 Though the directive does not suggest an equal right to training, merely a dialogue to increase temporary workers' access to training.

50 Qq 253-254

51 Qq 212-221

52 DTI Regulatory Impact Assessment of Proposal for a Directive of the European Parliament and of the Council on Working Conditions for Temporary Agency Workers (January 2003), paras 27-31

53 Q 389

54 Q 117; Q 225

55 Q 388

The CBI argued forcefully that, beyond the minimum standards which apply to all workers, temporary agency workers should remain the responsibility of the agency supplying them. They emphasised that the key contractual relationship was, and should remain, that between the user undertaking and the agency, and not between the user undertaking and the agency worker: “the reason...user companies make use of agency temps is a commercial one, not an employment one. They reach a commercial arrangement with an employment agency, a commercial arrangement whereby they outsource the employment relationship to the agency”.<sup>56</sup>

47. On this basis, there was significant opposition to the idea of equivalence of pay between temporary agency staff and user undertaking staff. The CBI emphasised that, given the user undertaking wanted no relationship with the temporary agency worker, they rejected the idea of an equivalence of pay with directly employed staff, at least within 12 months.

48. Mr Arkless, a member of the executive board of Manpower, a multinational employment agency, reiterated the idea that the key employment relationship was between the agency and the agency worker. He said that “we would like to see the acceptance that agencies are employers and fully-fledged employers”.<sup>57</sup> The implication of this is that it is the responsibility of the agency to ensure appropriate pay, pension provision, and training and development opportunities.

49. Equivalence of pay was, in his view, difficult to ensure and hard to justify on principle in many instances. It is based on the assumption that someone providing temporary agency cover is able to do a job as well as the person they are covering for. There are instances where this will be the case, but for the most part it will not: the agency worker is likely to lack the knowledge and experience specific to that post, which can only be gained by being in the job over a period of time. Besides which, the user undertaking, he predicted, would probably respond by stretching pay scales, meaning that the principle of equality of pay would, in practice, mean nothing of the sort.<sup>58</sup>

**50. The business organisations and the Government, by focussing on the six week derogation period, are missing the more important issue which is the scope of the directive. We fully support the principle that temporary agency workers should, in most respects, enjoy the same working conditions as the permanent staff. Whilst the agency worker is in place, he or she should be entitled to the same hours and to have access to the same facilities, for example, as directly employed colleagues. This should be the case from the day that the assignment starts and should not be subject to any derogation period whatsoever. If the intention of the directive is to ensure that agency workers enjoy adequate conditions in their temporary posts, we can see no reason why they should have to wait six weeks before enjoying this ‘privilege’. A 12 month derogation would make the directive almost meaningless given that only a very small minority of temporary assignments last beyond 12 months.**

**51. Matters such as pay, pensions, and training are more difficult. Whilst not, in principle, against attempts to ensure equivalent pay for temporary agency workers, we**

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56 Q 117

57 Q 386

58 Q 394

are mindful of the difficulties of implementing this. As Mr Arkless of Manpower noted, there are clear means that the user undertakings can employ to avoid this and we note the very real difficulties that there are in using equal pay legislation to ensure equivalence within companies.<sup>59</sup> And it is not necessarily the case that temporary agency staff will be able to do the same job to the same standards as those they are covering for. The means by which wage levels are set for agency workers also create difficulties for making proper comparisons with the permanent staff. The agency charges the user undertaking a fee which covers the wage of the agency worker and a mark-up for overheads and profits.<sup>60</sup> It is, therefore, not clear to us how, within this process, the principle of equivalent pay could be put into practice. Furthermore, if, as maintained, the key employment relationship is between the agency and the agency worker, the responsibility for training or for pensions falls to them rather than the user undertaking. Whilst a company the size of Manpower is able to provide these for their staff, it will certainly present problems to the smaller, independent agencies.<sup>61</sup>

52. Whilst temporary agency work is, for many (though not all), a less desirable option than permanent employment, it does not seem that, in most instances, it is a straightforward alternative: we were told that employers would not respond to an increased cost for temps by substituting permanent employees.<sup>62</sup> Instead, whilst the need for a degree of flexibility would still result in the use of temporary agency workers, there would be a reduced demand. The danger, then, is rather than promoting permanent employment, the employment prospects of some of the more peripheral members of the labour market are simply undermined.

53. We are, however, aware of clear abuses, where agency workers are kept on long term, temporary contracts as employers attempt to avoid making a proper commitment to them. We were told that some of the large, financial institutions maintained large pools of long term, temporary agency workers. We were approached by one such person who told us that she had been in this position for a number of years.<sup>63</sup> The Higher Education sector is another where, it seems, long term temporary contracts, renewed annually, are common. We are genuinely concerned about situations such as these and can see no reason why a temporary agency worker, after a period of 12 months in a post, cannot then be considered permanent.

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59 Q 394

60 Q 398

61 We are aware that, in Denmark, temporary agency workers are seen as the responsibility of the user undertaking, and entitled to equivalent pay and conditions to their directly employed colleagues. This is very much tied in with their encompassing collective bargaining agreements, however. And we do not know whether it has resulted in significantly higher wages for temporary agency workers

62 Q 118; Q 406;

63 Understandably, she did not wish her name to be published.

## 5 Working time and flexible working

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### The Working Time Directive

54. The Working Time Directive (WTD) became law in the UK in 1998. Its key provisions are for a maximum working week of 48 hours, averaged over 17 weeks, a minimum daily rest period of 11 consecutive hours a day, a rest break where the working day is longer than six hours, a statutory right to four weeks paid holiday annually, and a night shift of no more than eight hours on average.<sup>64</sup> The UK has retained the right to an opt-out, under which workers can waive their right to a limit of a 48 hour working week. However, this ability to continue to use the opt out is currently being reviewed by the European Commission. The Government and the various business representatives are strongly supporting the continued use of the opt-out.<sup>65</sup> The unions, on the other hand, are keen for an end to the opt-out.<sup>66</sup>

55. It is important to stress that we found virtually no opposition to the WTD in principle. The CBI told us that “we do not have a problem with the principle of sensible regulation of hours and agreement on what is a reasonable number of days paid holiday”.<sup>67</sup> The key issue was, then, not the directive itself, but the right of employers to continue to request that their staff waive their right to work a maximum of 48 hours a week on average, and the continued right of employees to work longer than 48 hours if they so wish.

56. Without the maintenance of the opt-out, the business organisations were concerned that their members would lose their ability to deploy one of their main assets—their workforce—as they judged necessary. The CBI told us their membership was anxious about the impact that the removal of the opt-out would have on their ability to ask their staff to take on overtime. They told us that a recent survey of their membership revealed that 70 percent to 80 percent would be “very concerned” about the impact of the withdrawal of the opt-out on their ability to meet the demands of their customers.<sup>68</sup> The BCC said that between 52 percent and 62 percent of the respondents to a survey of their membership felt that their businesses would be detrimentally affected by an end to the opt-out.<sup>69</sup>

57. The BCC also emphasised that it is not only employers who value the opt-out, but their employees as well. They stressed that employees value the right to work longer hours at times because of the extra money they can earn.<sup>70</sup>

58. The case against the continued use of the opt-out was put most strongly by the TUC. They argued that the UK has a long hours culture which is, itself, a manifestation of the ‘low road’ approach that we discussed in Chapter 1. The attempt to maintain the opt-out

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64 Council Directive 93/104/EC.

65 App 2, paras 7-11; App 5, para 17; App 6, para 30; App 9, paras 14-15

66 App 17, para 12

67 Q 71

68 Q 74

69 Q 152

70 Qq 153-154

needs to be seen in the context of the UK's continuing failure to adopt the 'high road' and is a reflection of its continued productivity failings.<sup>71</sup> They claimed that the two most common reasons for long hours—low basic hourly pay leading workers to rely on overtime and unpaid overtime by white collar workers—highlight this.<sup>72</sup> Furthermore, they suggested that, without the removal of the opt-out and at the current rate of change, it would take several decades for the UK to reach the European average for the proportion of people working more than 48 hours.<sup>73</sup>

59. The point that long hours are a reflection of poor productivity and organisation was reiterated by Amicus-GPM with regard to the printing industry, a sector dominated by Small and Medium-sized Enterprises (SMEs) (but with a 'unique culture' of its own).<sup>74</sup> They said that there was external pressure to work long hours in a competitive industry where companies sought to gain an edge by reducing lead times, for instance.<sup>75</sup> However, they said that the pressures to work long hours were also generated within the companies. Amongst the smallest firms the impetus came from a need to supplement poor basic pay with overtime. But amongst slightly larger firms, the long hours culture was a result of "an inability or an unwillingness on the part of management to actually manage work hours properly and to manage production properly."<sup>76</sup> To emphasise this point they cited examples of how they were able to work with the management of several companies to introduce new working arrangements that enabled them to cut very long working hours very significantly.<sup>77</sup> They also told us that there was a reluctance, on the part of some of their members, to accept the changed shift patterns that reduced the long hours. However, "once they have had a trial...you cannot get them off of it."<sup>78</sup> They considered the WTD "a damn good incentive to push [companies] into more efficient ways of working."<sup>79</sup>

60. This highlights the different perspectives on the WTD. Whilst the opponents of the WTD opt-out highlight its function in forcing companies to look at how they organise production and push them to improve their productivity; on the other hand, those in favour of the opt-out emphasise the constraint that it places on a key resource and the consequent impact on competitiveness. This is a matter noted by the Work Foundation. The WTD has evidently prompted some firms to re-examine the way that they organise their working time: there are examples of companies who have previously relied on long hours working but who have now looked at ways of reducing this.<sup>80</sup>

61. We are happy to hear that companies are being prompted to look creatively at ways in which they can organise working time more efficiently. However we would be slightly wary

71 Q 35

72 App 17, para 22

73 Q 34

74 Q 44

75 Q 425

76 Q 425

77 Qq 425

78 Q 430

79 Q 425

80 Q 473. See also the case studies in F. Neathey Implementation of the Working Time Regulations: follow-up study DTI Employment Relations Research Series No. 19 (2003)

about promoting the regulation of working time primarily on this basis. Certainly countries such as Belgium, Denmark and even France have higher levels of productivity than the UK and combine this with a shorter average working week. However, the USA also has higher productivity levels than the UK and a longer average working week.<sup>81</sup> **We do not consider the argument about the tighter regulation of working time to be primarily a productivity issue but a matter of the quality of work.**

62. Average working hours have been dropping steadily in the UK since their peak in the mid-1990s, so the fall clearly predates the impact of the WTD. Furthermore, this trend is visible amongst workers not covered by the WTD as well as those who are.<sup>82</sup> The numbers of those working long hours has also fallen over the same period.<sup>83</sup> Sustained long hours working is primarily concentrated amongst senior management, with manual workers also notable in this group.<sup>84</sup> At least some of those employees keen to work longer hours seem motivated by the desire to add to low basic rates of pay with overtime.<sup>85</sup> However, whilst the UK is ranked in the middle of EU member states, it has a longer working week than the comparable members such as France, Germany, Belgium, Holland, or Denmark so in some senses it could be said that the UK still has a long hours culture.<sup>86</sup> The business organisations have maintained the need to retain the opt-out for their competitiveness. However, full time workers are already working longer hours than their European competitors. There are concerns about the detrimental effect of constraints on working time in France, and in Denmark we were told that the rate of decrease in working time was increasingly problematic.<sup>87</sup>

63. **With the WTD only aiming to limit the working week to an average of 48 hours, it would seem to us that there is plenty of scope for particularly long hours to be reduced without encountering the problems that these economies are facing. Consequently we are not convinced of the necessity of maintaining the opt-out. All the business organisations told us that they thought it unlikely individuals would be required to work more than 48 hours a week for a prolonged period. We fully understand that, at times, it will be necessary for employees to put in very long working weeks: peak periods of demand, large orders, or deadlines are just a few of the common examples where this is likely.<sup>88</sup> However the WTD has a 17 week reference period over which the 48 hour average can be calculated. We consider that a period of over four months should amply allow for such contingencies.**

64. **Whilst nobody has brought to our attention examples where the 17 week reference period is inadequate, if these are of sufficient number or scale, then an extension of the**

81 OECD Clocking in and Clocking out: Recent Trends in Working Hours (October 2004)

82 F. Green 'The Demands of Work' in R. Dickens, P. Gregg, & J. Wadsworth *The Labour Market Under New Labour* Palgrave (2003), p.141

83 Labour Force Survey Usual Weekly Hours – all in Employment., [www.statistics.gov.uk](http://www.statistics.gov.uk)

84 T. Hogarth, WW. Daniel & A.P. Dickerson *The Business Context to Long Hours Working* DTI Employment Relations Research Series. No. 23 (November 2003), p.29-33

85 For example, Q 268; See also Q 153 and *Ibid.* p. 43.

86 T. Hogarth, WW. Daniel & A.P. Dickerson *The Business Context to Long Hours Working* DTI Employment Relations Research Series. No. 23 (November 2003), p.42

87 For example, J. Thornhill 'Back to work: France finds little reward in the costly leisure of its 35-hour week' *The Financial Times* (15 February 2005), p.17

88 For example, Q 315

reference period should be considered. The business organisations all argued that if the WTD opt-out were to be lost, they would prefer a 52-week reference period—and, indeed, this is one of the revisions to the Directive suggested by the European Commission. As the FSB conceded: “It would be inconceivable that any small business would work their workers 48 hours a week for an entire 12 months”.<sup>89</sup> Even so, the Government told us that they estimate that there are 1.7 million people who are working in excess of 48 hours a week over a year. What is not yet clear is who they are or why they are working such long hours or even whether, for example, they would even be covered by the WTD.<sup>90</sup>

65. Ultimately, though, we remain to be convinced of the necessity of retaining the WTD opt-out. Whilst we have heard arguments in favour of its retention, we cannot help but agree with the CIPD who said that the opt-out has taken on “totemic significance”,<sup>91</sup> and with the Minister for Employment Relations when he told us that it has become a “*cause célèbre*” and that there is “a greater attachment to its importance than there needs to be”.<sup>92</sup>

## Flexible hours and parental leave

66. Ongoing debates about the aggregate working week are just one part of the discussions about working time. How that time is organised is another area that the Government has been looking at. The Government gave as one of its goals for the labour market promotion of diversity and choice, noting that employment rates of female and older workers are improved if there is a greater degree of flexibility over hours.<sup>93</sup> The Government has introduced the right for employees to request flexible working arrangements by parents with children up to six years old and to have that request considered seriously.<sup>94</sup>

67. The benefits to employees from this are clear: opportunities to improve work-life balance and to accommodate caring obligations are just two of the most obvious. Requests, if successfully accommodated by an employer, allow people to structure their working time around these other commitments, allowing people, for instance, to schedule work around school times or even to work longer during school terms and less during school holidays. With working mothers predicted to form one in five of the workforce by 2010, this is an issue that employers are going to have to get to grips with.<sup>95</sup>

68. But there are also benefits to employers as well. There are clear gains in terms of retention: if employees can successfully accommodate their outside work commitments, they are more like to remain and employers have a clear incentive to retain experienced staff in whom they may have invested in training.<sup>96</sup>

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89 Q 315. See also Q 157

90 Q 498

91 Q 270

92 Q 498

93 App 6, para 6. See also DTI Full & Fulfilling Employment: Creating the Labour Market of the Future (2002).

94 HC Deb 797W 24 February 2005

95 A Jones, About Time for a Change, Work Foundation (2003)

96 Q 29

69. In addition the Work Foundation suggested that companies that offer flexible working more generally can benefit. For instance, one study they cited suggests that those who can work from home can be up to 31 percent more productive.<sup>97</sup> The results were from one, limited study and have not been properly explained—it may be that outside the normal work environment, people are simply working longer.<sup>98</sup> And clearly not all work, or every worker, is suited to homeworking. They note that, to work successfully, homeworkers need to be “the right kind of person...to have good communications set up...to feel part of a team”; and there are also health and safety considerations.<sup>99</sup> Even so, it seems that in this one area, homeworking can help company performance.

70. The reception of the right to request flexible working seems to have been very encouraging. The CBI told us that, amongst their membership, three quarters of requests were successfully accommodated and only 8 percent rejected outright, on business grounds: “employers have met this piece of legislation...not just in the letter but in the spirit”.<sup>100</sup> They suggested that the scheme had proved so successful because it was not an absolute right to flexible work, but involved negotiation between the employer and employee to try to achieve a mutually satisfactory compromise. The Chartered Institute of Personnel and Development called for an extension of the right to request beyond the parents of children under six.<sup>101</sup>

**71. We are pleased to see that, to date, the parental leave regulation has been so well received and appears to be being embraced by employers. The principle behind the regulation is clearly beneficial to both employers and employees but only if implemented in a sensible way. It seems that it has been introduced in a way that allows employers the flexibility to embrace it without detriment to their firms and without excessive bureaucracy. But the parents of young children are not the only section with caring obligations. One in six people aged over 16 are caring for a sick, disabled, or elderly person, and the burden falls disproportionately on women.<sup>102</sup> With an ageing population, this is a figure that will increase. Given this, we are pleased that the Government is reviewing how the right to request flexible working principle could be effectively extended to include all those with caring responsibilities.<sup>103</sup>**

72. The evidence on flexible working more generally is more mixed. CBI suggested that in addition to the 84 percent of their members offering part time work, 31 percent are offering flexi-time, 38 percent job share schemes, and 28 percent career breaks and sabbaticals. Nonetheless, the Work Foundation have suggested that the notion of flexible working has not really been fully embraced: “work organisation and job design in most organisations remains the same as it always has been, with some flexibility squeezed in round the edges”.<sup>104</sup> The Government told us that companies who had adopted more

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97 Q 469

98 Q 471

99 Q 471

100 Q 96

101 Q 250

102 J. Maher & H. Green Carers 2000 National Statistics (2002)

103 HC Deb 28 February 2005 76W5

104 A. Jones The Labour of Hours Work Foundation (2004)

flexible working options had found little or no cost involved but were seeing improvements in reduced absenteeism and improved workplace morale which was contributing to higher productivity.<sup>105</sup>

**73. There seems limited scope for public policy in implementing more flexible working beyond increasing awareness amongst employers of the potential gains.<sup>106</sup> One possibility is a form of the right to request flexible working for parents with young children that was discussed above; but any regulation would risk involving Government in the detail of the way in which companies organise their work. Furthermore, there seems little point in putting in place extra regulations when it is the attitudes underlying them that is crucial. The Work Foundation cited an example of an investment bank with exemplary paternity policies which they claimed to be using to “weed out the losers”.<sup>107</sup> Clearly such puerile machismo will undermine the best designed policy, so any progress depends on improving awareness of the benefits that can be gained. The FSB noted that the small business sector already has a good record on flexible working and is able to do so because of the relatively informal nature of the working relationships.<sup>108</sup> Overall, this is an area that is still developing but has the potential to benefit all concerned.**

74. In addition to the right to request flexible working, the Government has also extended the rights to parental leave. The Employment Act 2002 introduced the extension of ordinary and additional maternity leave and the reduction in the qualification period for additional maternity leave; more generous maternity pay; and two weeks statutory paid paternity leave.<sup>109</sup> The Pre-Budget Report of December 2004 announced further plans, including: the goal of 12 months paid maternity leave by the end of the next Parliament; legislation to give the right to mothers to transfer a proportion of this paid leave to the child’s father by the end of the next Parliament; and an increase in the rate of Statutory Maternity Pay, Maternity Allowance, Statutory Adoption Pay, and Statutory Paternity Pay.<sup>110</sup>

75. Some of the business organisations that we spoke to were concerned by the prospect of these measures. The BCC were vehemently opposed to any extension of statutory maternity leave, which they felt was placing an unreasonable burden on their members.<sup>111</sup> Representing the BCC, Mr Toyne, the managing director of a software company, told us that he had two pregnant women and two expectant fathers on his staff. This coincidence meant that he was faced with losing 20 percent of his workforce to parental leave schemes. Understandably, he felt that such a situation was liable to cause him some difficulties, as it would do any small firm.<sup>112</sup>

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105 Qq 506-508

106 Q 465

107 Q 463

108 App 9, para 17

109 App 6, para 28

110 HM Treasury Opportunity for All: The Strength to take the long-term decisions for Britain Cm 6408 (December 2004), p. 93

111 Qq 228-229

112 Q 166

76. Whilst we sympathise with his predicament, there is clearly increasing pressure to accommodate the needs of working parents. In purely economic terms, in a tight labour market faced with skills shortages, it is important to ensure that mothers can successfully combine their home commitments with their working life to retain them in the workforce. And beyond the purely economic, there are clear benefits in terms of promoting gender equality. As we noted above, with workforce mothers set to comprise one fifth of the labour market by 2010, this is a process that we cannot see being reversed, even were it desirable to do so.

77. In their evidence, the CBI expressed concern, not with the prospect of increased parental leave, but with the lack of clarity over its duration. They said that there was often a lack of communication over return dates and their members were often unclear about whether it is legitimate to contact an employee on maternity leave to discuss this. The uncertainty about when staff are due to return from extended leave is clearly a huge inconvenience. Consequently we are pleased that, since we took evidence, the Secretary of State has announced a consultation on whether to introduce a requirement for mothers on maternity leave to confirm their return with their employer in advance and on an increase in the notice given should they wish to return sooner than planned. The consultation will also consider other ways in which communication between employer and employees can be improved during parental or adoptive leave.<sup>113</sup>

**78. With a stable or falling-age working population and low rates of unemployment, the greatly increased participation of women in the labour force has made a major contribution to relieving labour shortages and restraining wage inflation. This situation looks set to continue whatever the economic circumstances because of the UK's demography. It is therefore in employers' self-interest to motivate and retain experienced staff. Although we recognise that a number of companies—especially SMEs—will find it difficult to accommodate the proposed extensions to parental leave, to some extent this should be off-set by the greatly enhanced ability to plan afforded by the suggested requirement on mothers to provide better notice of their date of return.**

## Conclusions and recommendations

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### Labour market flexibility

1. Whilst the pace of regulatory change might have created problems for some firms, the evidence for any serious impact is limited and, at least to some extent, based on general impressions about the nature of the economy and the regulatory environment. We can find little hard evidence to support the assertion that UK competitiveness is being threatened by overly stringent employment regulation. Consequently, we found the obsession with the growing burden of regulation slightly bemusing. Whilst we acknowledge that there has been reregulation of the labour market since the late 1990s, the UK still has a more lightly regulated labour market than most comparable economies. In the Porter Report, which reviewed UK competitiveness, excessive labour market regulation was not cited as a concern, nor deregulation seen as a useful strategy for improving the country's competitive position. (Paragraph 20)
2. The debate about regulation versus flexibility is in danger of losing sight of the important issues—namely the pursuit of competitiveness and the need to ensure good, minimum standards of protection for employees. Flexible labour markets and regulation are good only in so far as they contribute to these goals. We welcome the principles set by the Lisbon Strategy, combining flexibility with social cohesion. The realisation of this strategy might involve the introduction or the removal of specific regulations, but this would need to be judged on an *ad hoc* basis. But it should be reiterated that the main challenges that the UK economy faces are not exclusively matters of regulation or deregulation, but in areas that we have addressed in several Reports, including skills and training, R&D and technology transfer, the supply of capital for investment, and narrowing the productivity gap with our competitors. (Paragraph 21)
3. The Government's emphasis on regulation as a last resort, only to be used where the required goals cannot be achieved through other means, is significant and it is a position that we support (Paragraph 23)

### The National Minimum Wage ('NMW')

4. The Committee is not in a position to make recommendations on the appropriate rate for the NMW. We do, however, acknowledge the widespread praise for the work of the Low Pay Commission ('LPC'). It seems that it has managed to maintain a broad consensus on a contentious subject to date, and the difficulty of setting the NMW at a rate that is, at once, affordable to business and fair to workers, especially given the wide regional variations in the cost of living that exist, should not be underestimated. The LPC has, by necessity, adopted a fairly cautious and experimental approach to NMW rates, setting them low initially, and then increasing them on the basis of experience. Given the relatively recent introduction of the NMW, it seems too soon to establish a formula dictating future rises, and we believe

the LPC should continue to exercise the discretionary approach that, it would appear, has worked so successfully until now. (Paragraph 32)

5. Whilst we are concerned that the lower rate might have seen a few employers reducing pay for 18 and 19 year olds, we are mindful that youth employment is an area that can be damaged by regulation and so we endorse the cautious approach of the LPC to date. Given this, it does not seem sensible, at present to abolish the lower rate for 18 to 21 year olds in one step, though we do note that this lower rate has risen faster than the full rate and it may be that, in time, the convergence is such that the lower rate can be abandoned. (Paragraph 33)
6. We welcome the extension of the NMW principle to 16 and 17 year olds. We can see no reason why all those entitled to work should not be protected by a minimum wage limit. But again, whilst the rate is low, we are mindful of the need for caution in order to maintain employment. Experience would suggest that this rate will be increased relatively rapidly. We are not concerned that guaranteeing a certain level of pay to younger workers will act as an incentive to abandon education or training early. The rates have been set at a level below that already being paid to many school-leavers. The NMW will ensure a moderate rate of pay for the very lowest paid and, as such, cannot really be seen as a very tempting alternative to continuing education. (Paragraph 34)

### **Enforcement of the NMW**

7. The companies who are ignoring the NMW, inadvertently or otherwise, are unlikely to be unionised or members of trade associations, and consequently are difficult to detect. There is a clear danger in relying on employees, who may not know they are being exploited or who may fear for their jobs, to report breaches of NMW regulations. Consequently, we are pleased to see that the enforcement unit established in the Inland Revenue to ensure NMW compliance takes a proactive approach. It runs a helpline, investigates complaints, including anonymous complaints, and conducts surprise investigations at companies' premises. For example, 60 percent of the investigations conducted are based on its own analysis and 'risk assessment' based on tax returns. It would seem a model that might be extended beyond enforcement of the NMW to other areas of regulation. (Paragraph 36)

### **Homeworking**

8. A full investigation of the condition of homeworkers is beyond the scope of this inquiry. However, we recommend that our successor Committee conduct a dedicated inquiry to establish the extent to which homeworkers do indeed suffer from a systematic non-compliance with regulations designed to ensure minimum standards. We urge the Government to look more closely at the problem. (Paragraph 37)

## Agency workers

9. The business organisations and the Government, by focussing on the six week derogation period, are missing the more important issue which is the scope of the Agency Workers Directive. We fully support the principle that temporary agency workers should, in most respects, enjoy the same working conditions as the permanent staff. Whilst the agency worker is in place, he or she should be entitled to the same hours and to have access to the same facilities, for example, as directly employed colleagues. This should be the case from the day that the assignment starts and should not be subject to any derogation period whatsoever. If the intention of the directive is to ensure that agency workers enjoy adequate conditions in their temporary posts, we can see no reason why they should have to wait six weeks before enjoying this 'privilege'. A 12 month derogation would make the directive almost meaningless given that only a very small minority of temporary assignments last beyond 12 months. (Paragraph 50)
10. Matters such as pay, pensions, and training are more difficult. Whilst not, in principle, against attempts to ensure equivalent pay for temporary agency workers, we are mindful of the difficulties of implementing this. There are clear means that the user undertakings can employ to avoid equal pay and it is not necessarily the case that temporary agency staff will be able to do the same job to the same standards as those they are covering for. The means by which wage levels are set for agency workers also create difficulties for making proper comparisons with the permanent staff. The agency charges the user undertaking a fee which covers the wage of the agency worker and a mark-up for overheads and profits. Furthermore, if, as maintained, the key employment relationship is between the agency and the agency worker, the responsibility for training or for pensions falls to them rather than the user undertaking. Whilst a company the size of Manpower is able to provide these for their staff, it will certainly present problems to the smaller, independent agencies. (Paragraph 51)
11. We were told that employers would not respond to an increased cost for temps by substituting permanent employees. Instead, whilst the need for a degree of flexibility would still result in the use of temporary agency workers, there would be a reduced demand. The danger, then, is rather than promoting permanent employment, the employment prospects of some of the more peripheral members of the labour market are simply undermined. (Paragraph 52)
12. We are, however, aware of clear abuses, where agency workers are kept on long term, temporary contracts as employers attempt to avoid making a proper commitment to them. We were told that some of the large, financial institutions maintained large pools of long term, temporary agency workers. The Higher Education sector is another where, it seems, long term temporary contracts, renewed annually, are common. We are genuinely concerned about situations such as these and can see no reason why, if a post has been filled by a temporary agency worker for 12 months, it cannot then be considered permanent. (Paragraph 53)

## The Working Time Directive ('WTD')

13. With the WTD only aiming to limit the working week to an average of 48 hours, it would seem to us that there is plenty of scope for particularly long hours to be reduced without encountering the problems faced by countries with significantly shorter working weeks. Consequently we are not convinced of the necessity of maintaining the opt-out. All the business organisations told us that they thought it unlikely individuals would be required to work more than 48 hours a week for a prolonged period. We fully understand that, at times, it will be necessary for employees to put in very long working weeks: peak periods of demand, large orders, or deadlines are just a few of the common examples where this is likely. However the WTD has a 17 week reference period over which the 48 hour average can be calculated. We consider that a period of over four months should amply allow for such contingencies. (Paragraph 63)
14. Whilst nobody has brought to our attention examples where the 17 week reference period is inadequate, if these are of sufficient number or scale, then an extension of the reference period should be considered. The business organisations all argued that, if the WTD opt-out were to be lost, they would prefer a 52-week reference period—and, indeed, this is one of the revisions to the Directive suggested by the European Commission. Even so, the Government told us that they estimate that there are 1.7 million people who are working in excess of 48 hours a week over a year. What is not yet clear is who they are or why they are working such long hours or even whether, for example, they would even be covered by the WTD. (Paragraph 64)
15. Ultimately, though, we remain to be convinced of the necessity of retaining the WTD opt-out. Whilst we have heard arguments in favour of its retention, we cannot help but agree with the CIPD who said that the opt-out has taken on “totemic significance”, and with the Minister for Employment Relations when he told us that it has become a “*cause célèbre*” and that there is “a greater attachment to its importance than there needs to be”. (Paragraph 65)

## Flexible hours and parental leave

16. We are pleased to see that, to date, the parental leave regulation has been so well received and appears to be being embraced by employers. The principle behind the regulation is clearly beneficial to both employers and employees but only if implemented in a sensible way. It seems to have been introduced in a way that allows employers the flexibility to embrace it without detriment to their firms and without excessive bureaucracy. But the parents of young children are not the only section of the population with caring obligations. One in six people aged over 16 are caring for a sick, disabled, or elderly person, and the burden falls disproportionately on women. With an ageing population, this is a figure that will increase. Given this, we are pleased that the Government is reviewing how the right to request flexible working principle could be effectively extended to include all those with caring responsibilities. (Paragraph 71)

17. As for a general extension of flexible working, there seems limited scope for public policy to effect this other than by increasing awareness amongst employers of the potential gains. For parents with young children one possibility is a form of the existing right to request flexible working; but any regulation would risk involving Government in the detail of the way in which companies organise their work. Furthermore, there seems little point in putting in place extra regulations when it is the attitudes underlying them that is crucial. The Work Foundation cited an example of an investment bank with exemplary paternity policies which they claimed to be using to “weed out the losers”. Clearly such puerile machismo will undermine the best designed policy, so any progress depends on improving awareness of the benefits that can be gained. The FSB noted that the small business sector already has a good record on flexible working and is able to do so because of the relatively informal nature of the working relationships. Overall, this is an area that is still developing but has the potential to benefit all concerned. (Paragraph 73)
18. With a stable or falling-age working population and low rates of unemployment, the greatly increased participation of women in the labour force has made a major contribution to relieving labour shortages and restraining wage inflation. This situation looks set to continue whatever the economic circumstances because of the UK’s demography. It is therefore in employers’ self-interest to motivate and retain experienced staff. Although we recognise that a number of companies—especially SMEs—will find it difficult to accommodate the proposed extensions to parental leave, to some extent this should be off-set by the greatly enhanced ability to plan afforded by the suggested requirement on mothers to provide better notice of their date of return. (Paragraph 78)

# Formal minutes

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**Tuesday 8 March 2004**

Members present:

Mr Martin O'Neill, in the Chair

Mr Roger Berry

Mr Richard Burden

Judy Mallaber

Linda Perham

The Committee deliberated.

Draft Report (UK Employment Regulation), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 78 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Seventh Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the house.

Several papers were ordered to be appended to the Minutes of Evidence.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman*)

[Adjourned till Tuesday 15 March at half past Nine o'clock.]

## Witnesses

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### Tuesday 20 November 2004

Mr Ian Brinkley, Mr Richard Exell and Ms Hannah Reed, **Trades Union Congress**

Mr John Cridland and Mr Neil Bentley, **Confederation of British Industry**

### Tuesday 30 November 2004

Miss Emmeline Owens, Mr Lewis Sidnick and Mr Francis Toye, **British Chambers of Commerce**

Mr Mike Emmott and Mrs Dianah Worman, **Chartered Institute of Personnel and Development**

Mr Peter Schofield, Mr Stephen Radley and Mr David Yeandle, **Engineering Employers' Federation**

Mr Alan Tyrell QC and Mr Stephen Alambritis, **Federation of Small Businesses**

### Monday 20 December 2004

Mr Paddy Lillis, Mr Graham Markall and Ms Ruth Stoney, **Union of Shop, Distributive and Allied Workers**

### Tuesday 18 January 2005 (Morning)

Mr David Arkless, **Manpower**

Mr Tony Dubbins, Mr Tony Burke, Mr Mike Griffiths and Professor Keith Ewing, **Amicus, GPM Sector**

### Tuesday 18 January 2005 (Afternoon)

Mr Nick Isles and Ms Alexandra Jones, **The Work Foundation**

Mr Gerry Sutcliffe MP, Minister for Employment Relations, Competition and Consumers, Ms Janice Munday and Ms Beatrice Parrish, **Department of Trade and Industry**

## List of written evidence

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- 1 Amicus
- 2 British Chambers of Commerce
- 3 Chartered Institute of Personnel and Development
- 4 Citizens Advice
- 5 Confederation of British Industry
- 6 Department of Trade and Industry
- 7 Engineering Employers' Federation
- 8 Equal Opportunities Commission
- 9 Federation of Small Businesses
- 10 Graphical, Paper & Media Union
- 11 National Group on Homeworking and UK Poverty Programme, Oxfam
- 12 National Outsourcing Association
- 13 Popularis Ltd
- 14 Professional Contractors Group Limited
- 15 Recruitment and Employment Confederation
- 16 Small Business Council, Small Business Service
- 17 Trades Union Congress