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European Union Committee

9th Report of Session 2003-04

**The Working Time
Directive: A Response
to the European
Commission's Review**

Report

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ABSTRACT

This Report is designed to contribute to a European Commission review of the Working Time Directive, as well as focussing attention on the Directive in the House and elsewhere.

The key issues in the review are:

- The voluntary individual opt-out from the 48-hour working week. We say this should be kept: it offers the flexibility which employers need in meeting global competitive challenges, and is particularly suitable for British circumstances. It also preserves the right of those who want or need to work overtime.
- Two European Court judgments about hospital doctors' resident on-call duties. One (*SiMAP*) holds that all on-call time should be treated as working time, even when the doctors are able to sleep. Complying with this by August 2004, as required, will be impossible for the NHS.
- We say more time is needed to work out a common-sense compromise that improves doctors' working conditions without putting standards of patient care at risk or harming medical training.
- The other (*Jaeger*) holds that doctors are entitled to immediate compensatory rest after resident on-call duties, even if they have been able to rest. We say this interpretation is perverse and completely impractical. We call for urgent action to get it changed.

The Working Time Directive: A Response to the European Commission's Review

CHAPTER 1: INTRODUCTION

The European Working Time Directive

- 1.1. The Working Time Directive¹ (the Directive) was introduced in 1993 as a health and safety measure as a 'practical contribution towards creating the social dimension of the internal market'. It provides for:
 - a working time limit of 48 hours over 7 days averaged over a reference period not exceeding 4 months;
 - night work limits;
 - health assessments for night workers; and
 - entitlements to weekly, daily and in-work rest breaks and four weeks' paid annual leave.
- 1.2. By collective agreement the 48-hour a week limit may be calculated by reference to a period of up to 52 weeks.
- 1.3. The Directive does not apply to anyone who is self-employed or to persons with "autonomous decision-making powers", family workers or workers officiating at religious ceremonies in churches and religious communities².
- 1.4. The working hours and related conditions of lorry drivers are covered separately by the Road Transport Directive.³

The UK Working Time Regulations

- 1.5. The Directive was transposed into United Kingdom law by the Working Time Regulations 1998 which include the right to a voluntary opt-out. Under the Regulations the individual agreement that the 48 hour limit shall not apply must be in writing.⁴ In 1999 the Working Time Regulations were amended in order to bring them into line with the Directive which requires employers to keep up-to-date records of all workers who have voluntarily opted out.⁵

¹ Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time. Official Journal L307, 13/12/1993 p. 0018-0024.

² Ibid

³ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities [2002] 05 L80/35

⁴ Working Time Regulations 1998 SI1998/1833

⁵ Working Time Regulations 1999 SI1999/372

The Commission's Review

- 1.6. Article 18 of the Directive requires the European Council of Ministers to re-examine by 23 November 2003 both the derogation from the 17 weeks reference period through collective agreement and the voluntary individual opt-out provision. Review of these two matters should take place on the basis of a Commission proposal accompanied by an appraisal report.
- 1.7. On 15 January 2004 the Commission published the required Communication to re-examine the reference period and the opt-out⁶. This Communication also considers the implications for the Working Time Directive of two recent European Court of Justice Rulings (*SiMAP* and *Jaeger*).⁷
- 1.8. On the basis of this Communication, the Commission has issued an open consultation of interested parties to consider five main matters:
 - The length of the reference period
 - The definition of working time following the ECJ rulings
 - The conditions for the application of the opt-out
 - Measures to improve the balance between work and family life (which were not included in the original Directive)
 - How to find the best balance of these measures.
- 1.9. The closing date for submissions to the Commission's consultation is 31 March 2004.
- 1.10. Based on the Communication and the submissions received through the open consultation, which the Commission states it will consider in detail, the Commission is expected to propose an amended Directive. The factors which the Commission say should be weighed up in choosing future policy options include:⁸
 - giving workers a high level of health and safety protection;
 - giving employers and Member States more flexibility in the way they manage working time; and
 - avoiding imposing unreasonable constraints on businesses, especially SMEs, and enabling them to meet fluctuations in demand.
- 1.11. This Report deals with these issues. It is intended to feed into the Commission's consultation and **we make this Report to the House for debate.**

Why have we launched this Inquiry?

- 1.12. This Report is the result of an Inquiry carried out by Sub-Committee G (which deals with Social Policy and Consumer Affairs) between January and March 2004. It is intended to feed into the consultation by the European

⁶ COM(2003)843 final/2 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions and the social partners at Community level concerning the re-exam of Directive 93/104.EC concerning certain aspects of the organization of working time.

⁷ See 1.25 – 1.27 and Chapter 3

⁸ COM (2003) 843 final/2

Commission on the review of the Directive. Our conclusions and recommendations are set out in Chapter 4.

- 1.13. A list of Sub-Committee Members and their declared interests is at Appendix 1. Our Call for Evidence is at Appendix 2. A full list of those who gave evidence is set out in Appendix 3. The written and oral evidence received is printed in an Annex to the Report.
- 1.14. We would like to express our appreciation and thanks to all those who assisted in this Inquiry.
- 1.15. We have carried out this Inquiry in order to inform the European Commission's consultation because the review of the Directive is clearly of considerable economic and social importance for the United Kingdom and because the two European Court of Justice judgments, (*SiMAP* in 2000 and *Jaeger* in 2003) have a profound potential impact on the application of the original Directive in the United Kingdom health sector in particular and possibly on other sectors.
- 1.16. We note that the United Kingdom Labour Force Survey reports that only 20 per cent of full-time workers in the United Kingdom usually work more than 48 hours a week. We were told that this equates to 3.7 million workers. If a reference period of 52 weeks is taken, this figure drops to 1.7 million. As the DTI have pointed out, some of these may be "autonomous workers" who are excluded from the terms of the directive. (Q 5)
- 1.17. Even though the majority of United Kingdom workers are not working more than the stipulated 48 hours a week, we have received strong evidence in support of retaining the opt-out because of its importance to United Kingdom competitiveness.
- 1.18. The Commission review of the Working Time Directive is also particularly relevant to the United Kingdom for two other reasons:
 - (a) The Directive allows the reference period over which the 48 hour weekly maximum is calculated to be extended from four to twelve months through collective agreement between unions and employers. According to the Commission, the United Kingdom is one of only four Member States (together with Greece, Ireland and Portugal) to reproduce the EU reference period provision of four months faithfully in national legislation. Some other EU Member States have made substantial use of this provision to extend the flexibility in application of the Directive. Furthermore, as the Commission points out, employment covered by collective agreement in the United Kingdom merely amounts to 36% overall and only 22% in the private sector⁹ (Q 43). The scope afforded by the provision to extend the reference period to a year is therefore very limited in the United Kingdom. For this reason, the United Kingdom relies more than other Member States on the flexibility that can be achieved through the voluntary individual opt-out; and
 - (b) When transposing the Directive into national statute, only the United Kingdom made use of the possibility for a full voluntary individual opt-out agreed between worker and employer. Because of

⁹ COM (2003) 843/final 2

this, the United Kingdom is placed under particular scrutiny by the Commission's review of the Directive.

The Barnard Report

- 1.19. In order to assess the application of the individual opt-out in the United Kingdom more fully, the Commission put out to tender a study which could feed into the Commission's plan for a review of the Directive. Professor Catharine Barnard of Cambridge University and associates won this tender and conducted a study which considered views from the 'social partners' – management and labour organisations; Government; and the Health and Safety Executive. The Barnard Report also covers findings from a selective sample of a number of specific employer-based case studies. (Q 185) This study indicates considerable reliance by United Kingdom employers on the voluntary individual opt-out and reinforces the point that any review of the Working Time Directive is of clear importance to the United Kingdom.

The European Parliament Report

- 1.20. The European Parliament Employment and Social Affairs Committee produced a report which called on the Commission to launch infringement proceedings against the United Kingdom at the European Court of Justice for using the opt-out and called on the United Kingdom to do away with the individual opt-out entirely by 2007. On 11 February 2004, the European Parliament endorsed the report in plenary, but deleted the call for infringement proceedings against the United Kingdom and replaced the reference to 2007 by 'as soon as possible'.¹⁰
- 1.21. In complete contrast to the view expressed by the European Parliament, the great majority of our witnesses agree with the United Kingdom Government that the voluntary individual opt-out should be retained as it affords flexibility to the United Kingdom workforce and is important to United Kingdom competitiveness.
- 1.22. What is more, the United Kingdom is not the only Member State that has sought to use the provisions in the Directive to increase flexibility. Luxembourg has also introduced the possibility for individual opt-out limited to the hotel and catering industry. Among the Accession States, Cyprus and Malta have incorporated the Directive in national legislation for all employment.¹¹
- 1.23. The CBI told the Committee that the Netherlands has created greater flexibility by interpreting 'persons with autonomous decision-taking power' who are excluded from the Directive as anyone who earns more than three times the national minimum wage. (Q 68)
- 1.24. In comparing the situation in the United Kingdom it is important to recall that the voluntary individual opt-out is only one of three main ways in which Member States have sought to extend the flexibility of the Directive. Other Member States have extended the reference period to 52 weeks through collective agreements or have broadened the definition of 'autonomous worker' which excludes a worker from the Directive. This report considers

¹⁰ Plenary vote on 11 February 2004: 370 votes to 116 with 21 abstentions.

¹¹ COM (2003) 843/final 2

each of these possibilities for retaining flexibility in application of the Directive.

ECJ Judgments

- 1.25. In its Communication, the Commission extends the remit of the re-examination of the Directive to include the impact of the European Court of Justice Judgments in what are known as the *SiMAP* and *Jaeger* cases about the interpretation of the Directive. In the 2000 *SiMAP* judgment, the Court defined time spent resident on call in a hospital or other place of work as working time, even if the worker was asleep for some of that on-call time.¹² The *Jaeger* judgment of 2003 requires that compensatory rest should be taken immediately rather than within a reasonable time if the statutory 11 hours rest per 24 hours has been interrupted by an emergency.¹³ As the BMA told us, this means that if a doctor is called in to hospital after only 8 hours of rest, he should cancel his morning clinic and return home to take his outstanding three hours of rest thereby disrupting the rota system. (Q 180)
- 1.26. In order to avoid the full implications of these judgments, France and Spain have already implemented the opt-out for use in the health sector. Austria, Germany, and the Netherlands plan to do so. (Q 24) Of the countries that will join the EU on 1 May 2004, Slovenia has already applied the opt-out to the health sector. Estonia, Hungary, Latvia and Lithuania may also apply the opt-out to the health sector alone.¹⁴
- 1.27. It is thus clear that the consequences of the *SiMAP* and *Jaeger* judgments are proving very difficult not only for the United Kingdom, but also for a number of other Member and Accession States. However, the BMA contends that these judgments will hit the United Kingdom harder than other countries because of the relatively low number of doctors per head of population in the United Kingdom compared with other Member States. Once junior doctors come within the scope of the Directive on 1 August 2004, the implications will be even more serious for the United Kingdom. (Q 154) Our evidence shows that the *Jaeger* judgment in particular has made it very difficult for some hospitals to provide patient care while respecting the Directive as the ECJ has interpreted it. We therefore also consider these aspects in our report.

¹² Case C-303/98, *Sindicato de Medicos de Asistencia Publica (SiMAP) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana* ECR [2000], I-7963.

¹³ Case C-151/02, *Landeshauptstadt Kiel v Norbert Jaeger*. Judgment of 9 October 2003

¹⁴ COM (2003) 843 final/2

CHAPTER 2: THE OPT-OUT

Health and Safety

- 2.1. Health and Safety considerations are central to the purpose of the Working Time Directive. The legal base of the Directive was founded in the then Article 118a of the EC Treaty, which deals specifically with Health and Safety matters.¹⁵
- 2.2. The Commission¹⁶ claims that “many research projects have shown that work-related fatigue is increased by the number of hours worked”.¹⁷ Although the Commission says it would be useful to evaluate the negative health and safety repercussions of working time in excess of the limits laid down by the Directive, it concludes that this “appears not to be possible owing to the lack of reliable data”.¹⁸
- 2.3. Nevertheless, the Commission quotes from a recent study¹⁹ by the United Kingdom Health and Safety Laboratory that “the available evidence supports a link between long hours and fatigue” and that “working long hours does seem to be associated with stress and poorer psychological health ...”. It says the same study also notes cause for concern about the relationship between long hours, safety and accidents.
- 2.4. On the other hand, the Commission also quotes from another study²⁰ that “an individual who chooses to work 13 hours because he or she enjoys the work would probably report higher well-being scores than an individual who was required to work 13 hours due to high work-load”.
- 2.5. The TUC stated, quoting the Health and Safety Laboratory report mentioned above, that: “there is compelling evidence that working more than 48 hours per week is associated with a range of physical and mental problems”. (p 47) They contended that a country in which a substantial number of workers regularly work more than 48 hours per week “is one in which workers are seriously at risk”.²¹ The TUC also quoted an estimate by the Health and Safety Executive that stress-related illness costs United Kingdom employers £1.24 billion a year.²²
- 2.6. We asked the TUC whether they could show what proportion of the workforce suffered directly from working more than 48 hours a week, and what proportion of the stress-related illness reportedly costing £1.24 billion a year might be attributable to working long hours, as distinct from other factors. (Q 103) We also asked whether they had comparative data from other EU countries. In response, the TUC pointed to the incidence of long hours working in the United Kingdom as being four times that of the European average. They claimed that the United Kingdom also had more cases of

¹⁵ Articles 117 to 120 of the EC Treaty have subsequently been replaced by Articles 136 to 143 EC

¹⁶ COM (2003) 843 final/2

¹⁷ Page 14, 2.2.1.6.

¹⁸ Ibid

¹⁹ Ibid quoting J Beswick et al *Working Long Hours*, HSL 2003/02

²⁰ Ibid quoting PD Bliese, RR Halverson, “*Individual and Monothetic Models of job stress: an Examination of Work, Hours Cohesion and Well being*”, quoted in J Beswick *Working Long Hours* above.

²¹ Ibid

²² Ibid

- stress than other EU Countries, but admitted “there is no quantifiable work to pin it down more tightly”. (Q 103)
- 2.7. The TUC also claimed (pp 47, 48, 49) that long hours could be both a stress factor and could combine with other sources of stress to compound the effect. They gave us a copy of their publication “The Use and Abuse of the Opt-out in the United Kingdom”²³ which quoted concerns from a Health and Safety Executive Report about a possible link between long hours and physical health, especially where working hours exceeded 48-50 a week.
 - 2.8. The TUC publication also quoted a survey carried out by the Chartered Institute of Personnel Development (CIPD) in 2001²⁴ which reported long hours workers suffering an increased incidence of chronic headaches and irritable bowel problems. In another survey by the same organisation²⁵ four workers reported suffering physical ailments, as well as stress or depression, as a result of working long hours.
 - 2.9. The same TUC publication also referred to the dangers of accidents caused by fatigue in road safety, as well as at the workplace. (It gave as an example one fatal crane collapse where the three workers killed had reportedly regularly worked more than 100 hours a week).
 - 2.10. The CIPD (pp 117-123) confirmed that one of the findings of their 2003 Survey was that long hours working had “some sort of negative impact on health (by more than one in four respondents)”. The CIPD also quoted the 2003 Health and Safety Executive Review as concluding that “there is some evidence that working long hours can lead to stress or mental ill health, although this is somewhat equivocal”.
 - 2.11. On the other hand, the CIPD quoted from a report for the Institute by Professor David Guest which stated that: “...although working longer hours may be harmful to health, the social support received by those working long hours and their control over their work had a positive effect, mitigating some of the negative effects”.(pp 117-123)
 - 2.12. The CIPD commented: “the evidence suggests that the relationship between long hours working and ill health is not entirely straight-forward”. It also quoted from a survey of more than 750 human resources professionals carried out by the Employment Lawyers Association and “*Personnel Today*” magazine, published in January 2003. This reported that almost two thirds of those surveyed did not believe that removing the opt-out would improve health and safety in the workplace. (pp 117-123)
 - 2.13. The CBI told us that the evidence on health and safety was “quite a mixed, complex picture”. The CBI referred to particular problems of those working constant night shifts and jobs involving irregular working patterns, as well as shift work, but concluded that there was probably not “conclusive evidence to show that long hours can be a detriment to health”. (Q 64)
 - 2.14. The CBI also drew attention (pp 15-19) to a study of the British Household Survey²⁶ which indicated that self-employed people who work longer hours

²³ “*The Use and Abuse of the ‘opt-out’ in the United Kingdom*”, TUC ESAD, November 2003

²⁴ “*Married to the Job*”, Occupational Health and Safety, 31 (7) July 2001 pages 16-17 CIPD

²⁵ “*Living to Work Survey*”, CIPD, October 2003

²⁶ Sparks et al “*Effects of hours of work on health: a meta-analytic review*”, Journal of Occupational Organisational Psychology 70 pp367-375

had fewer problems than those who were not self-employed. The CBI also referred to a BMA review²⁷ which found that “workers who choose themselves to work long hours, due to personal commitment or enjoyment of work, are more likely to suffer less than workers who are forced to work long hours”. The CBI claimed that this demonstrated that, so long as the individual opt-out was freely given, it should not be assumed that it would have an adverse effect on the health and safety of most workers.

- 2.15. The Association of British Chambers of Commerce accepted that there must be some link between long hours and fatigue. But the witness had no evidence of how many hours might have to be worked before fatigue was a relevant factor and “no evidence from amongst our members or employers that opting out of working time is having any impact on health and safety”. (Q 64)
- 2.16. We asked the Under-Secretary of State for Employment Relations, Competition and Consumers at the Department of Trade and Industry (DTI), Mr Gerry Sutcliffe MP, about health and safety issues in relation to the opt-out. Mr Sutcliffe replied: “we do not believe it is a serious problem in terms of how it affects health and safety issues in the United Kingdom”. (Q 241) He cited figures showing that the United Kingdom had fewer fatal injuries than all EU Member States except Sweden and fewer serious accidents than all but Sweden and Ireland. He did not believe that the opt-out was damaging to the health and safety provision of the Directive.²⁸
- 2.17. Asked about stress-related illness, Mr Sutcliffe said he did not think that stress was particularly relevant to long hours working. He reiterated: “we do not see a trend that indicates that it is just because of the opt-out that there are significant health and safety problems”. (Q 242) The Department of Trade and Industry also pointed to United Kingdom health and safety at work legislation as an important safeguard. (Q 21 and Q 241)
- 2.18. **From the evidence we have received we do not find a clear causal link between working long hours and detrimental effects on health and safety in the United Kingdom. Nor have we found evidence of any particular relationship between the voluntary individual opt-out and adverse health and safety consequences. Common sense suggests that very long hours working over a sustained period of time could damage the health of workers. It might also put at risk others who come into contact with over-tired workers in their work environment. But we have seen no evidence quantifying how many hours would need to be worked over what period of time and in what type of employment for that risk to be significant.**
- 2.19. **We recommend that the Commission should carry out detailed research in Member States, not only in the United Kingdom, into the possible relationship between long hours working and health and the safety risks for different categories of workers and for those with whom they come into contact in the working environment before decisions are taken on any modification of the Directive.**

²⁷ “*Implications for Health and Safety of Junior Doctors Working Arrangements*”, BMA, August 2000

²⁸ Ibid

Competitiveness, flexibility and efficiency

- 2.20. The CBI, the Association of British Chambers of Commerce and the Federation of Small Businesses all argued strongly that retention of the voluntary individual opt-out was essential to competitiveness because it provided flexibility. (QQ 43, 45, pp15-19, pp 19-22 and pp 23-24)
- 2.21. The CBI detailed some of the findings of a report they had published in 2003²⁹, based on company case studies from a variety of sectors. The companies surveyed were said to rely on the voluntary individual opt-out to provide additional flexibility as “the most economic and efficient means for tackling upturns in labour demand”. (pp 15-19)
- 2.22. According to this report, the CBI told us that relevant factors included:
- Jobs requiring highly specialised skills which might be in short supply and which could not easily be done by inexperienced temporary staff brought in at short notice
 - Where relatively short-term demand increases did not warrant additional recruitment costs or equipment expenditure
 - Employee relations difficulties resulting from denying overtime to current employees, or from hiring staff to cope with peaks in demand and then making them redundant during a downturn
 - Sectoral labour shortages (e.g. hospitality which has 12% of all unfilled job vacancies) where temporary staff are not available to do extra work
 - Work processes in areas like construction and safety maintenance where, once started, work had to be completed. (pp 15-19)
- 2.23. The CBI added that labour market flexibility made the United Kingdom an attractive place to do business and that employers were concerned about the extent to which labour market regulation might erode that flexibility. (Q 45)
- 2.24. The flexibility provided by the voluntary individual opt-out was also mentioned as a crucial factor in evidence from the Freight Transport Association, the British Retail Consortium, Road Haulage Association, the Motor Sport Industry Association and the Construction Confederation. (pp 130-132, pp 114-117, pp 141-143, pp 132-134 and pp 123-125)
- 2.25. The CIPD referred to the 2003 survey of human resources professionals mentioned above. This reportedly stated that 78% of employers surveyed strongly supported keeping the voluntary individual opt-out, while 80% believed that without it their overall level of efficiency would suffer. Other responses to the possibility of removing the opt-out included: 47% anticipated an adverse effect on staff turnover; 46% predicted increased moonlighting; 74% said it would increase agency staff costs; 78% were worried that it would adversely affect staff rostering; and 69% believed it would have an adverse effect on managing seasonal demands. (pp 117-123)
- 2.26. The CBI also claimed (Q 43) that removal of the individual opt-out would amount to unfair treatment of the United Kingdom because other EU States were able to use collective agreements for sectoral exclusion to secure flexibility to a far greater extent than is possible in the United Kingdom.

²⁹ “Maintaining a dynamic labour market – the Working Time Directive and Individual opt-out” CBI, 2003

- 2.27. Mr Sutcliffe (DTI Minister) also stressed the importance of the voluntary individual opt-out for flexibility. He claimed it was a key element in achieving the targets for employment creation in the European Union set by the Lisbon European Council declaration of 2000. (Q 243)
- 2.28. On the other hand, the TUC contended that there was “no real evidence” that long-hours working had given the United Kingdom any competitive advantage. (Q 99) They suggested that removal of the opt-out would give British employers and managers an incentive to achieve functional flexibility through changes in work organisation, the introduction of new technology and better management techniques. In their view, poor quality managers tended to use overtime as the easy way out. They argued that removing the opt-out should be part of a package of measures designed to drive up productivity and achieve sustainable growth. (QQ 99–102)
- 2.29. Dr Catherine Barnard from Cambridge University, co-author of the Barnard Report, told us that some employers appeared to resort to the opt-out rather than finding more innovative solutions to structural problems. She added: “from that point of view you could perhaps argue that the use of the opt-out is a barrier to some form of innovative practices”. (Q 190)
- 2.30. Dr Barnard’s co-author, Mr Richard Hobbs, thought the findings from their study were “relatively inconclusive about the arguments for and against using the opt-out on business efficiency grounds”. But he acknowledged that added labour and equipment costs, skill shortages and the greater efficiency of using existing workers rather than taking on new employees were valid reasons for preferring the opt-out. He also noted the importance of critical knowledge and personal relationships for key personnel in legal and financial services, especially when working under intense pressure to complete deals against tight deadlines. Operational flexibility was also critical in areas like food manufacture where demand could increase by 50% in a day. (Q 196)
- 2.31. Mr Hobbs told us it was difficult to draw firm conclusions about this from the relatively limited field surveyed by the Barnard Report. (QQ 196, 197) In some cases he thought the opt-out had probably been a barrier to innovation and might have been seen by managers as an easy solution. But he also stressed that loss of traditional overtime earning was likely to lead to industrial disputes and tricky labour negotiations which could damage competitiveness. (Q 198)
- 2.32. We asked witnesses from the CBI, Association of Chambers of Commerce and the Federation of Small Businesses why the United Kingdom appeared to have longer working hours than other EU Member States but also had lower productivity. They thought it was difficult to make meaningful comparisons, although a productivity gap between the United Kingdom, France, Germany and the USA was widely accepted. They suggested that lower labour force skills and relative lack of capital investment put the United Kingdom at a disadvantage in comparison with some international competitors and that overtime working was probably used to compensate for these deficiencies. (QQ 52-56) Training and management skills were other relevant factors. (QQ 58, 59)
- 2.33. Working Time Solutions Ltd (a consultancy) asserted that “mutual dependence on overtime... may not necessarily be in the best interests of productivity and motivation in the work place”. They noted that “overtime dependence and overtime cultures” appeared to be endemic in certain

industries (these included: hotels and catering; rail, plant and engineering maintenance; security; manufacturing machine operation; construction; warehousing and logistics; and food manufacturing). (pp 161-166)

- 2.34. They felt, however that this was partly due to such factors as the volatility of demand and seasonal business cycles, the move to seven day trading and “just-in-time” stock keeping. They suggested that “new management practices and changes in traditional contractual relationships could reduce overtime dependence in many sectors and that ending the voluntary individual opt-out would ultimately prove beneficial to British industry, although for some organisations this would involve a difficult period of alignment”. (pp 161-166)
- 2.35. In the following chapter, dealing with the impact of the *SiMAP* and *Jaeger* European Court of Justice Judgments, we note some of the innovative methods recently introduced by the National Health Service to reduce hospital staff working hours. These would appear to bear out the contention that imaginative solutions need to be examined as an alternative to undue reliance on long hours working. But we appreciate that such changes would not necessarily apply readily to other sectors or be capable of being introduced rapidly and cost-effectively.
- 2.36. **On balance, we conclude that the flexibility offered by the voluntary individual opt-out is an important element in preserving competitiveness, especially in view of the intense global competitive pressures now facing European business. We also consider that the structure of British business makes the voluntary individual opt-out particularly suitable for the United Kingdom. We therefore recommend that the voluntary individual opt-out should be retained, but kept under periodic review.**
- 2.37. **At the same time, we recommend that Government, business and the trades unions should actively look for other ways of improving competitive flexibility so as to reduce dependence on long working hours wherever possible.**

Work/Life Balance

- 2.38. The Commission is “firmly of the view that the revision of the Working Time Directive could be exploited in such a way as to encourage the Member States to take steps to improve compatibility of work and family life”.³⁰
- 2.39. The DTI pointed out that the Government is already promoting family friendly policies such as the Work Life Balance Campaign, a new right for parents with children under six or disabled children under 18 to request flexible working and rights for parental leave.³¹
- 2.40. The DTI also reported that the proportion of full time employees in the United Kingdom who worked more than 48 hours a week had fallen from 23.5% in 1998 to 20.4% by spring 2003. (Q 3) The Government’s commitment to helping to improve the work/life balance was reiterated by Minister Sutcliffe. (Q 244)

³⁰ COM (2003) 843 final/2 (page 21)

³¹ Explanatory Memorandum Ref 5188/04 January 2004, paragraph 18

- 2.41. We were also told by the DTI that, while the United Kingdom had more employees working above the European average of working hours, it also had more working below average hours and that overall the United Kingdom had a wider range of working hours than most other Member States. It was claimed that “this flexibility makes it easier for both employees and employers to match working hours to their needs”. (Q 3) Overall, however, the DTI noted that: “the average working hours in the United Kingdom for all those in employment was similar to the European average at about 38 hours”. (Q 22)
- 2.42. The CBI claimed that British employers had an excellent record in enabling employees to reconcile their work and family life. They pointed out that the United Kingdom had the third highest employment rate for women in the EU and the second highest incidence of “the part-time working that so suits employees with child or elder care responsibilities”. The United Kingdom also had an excellent record in providing agency and fixed-term working, as well as tele-working. (pp 15-19)
- 2.43. They also quoted the CBI Annual Employment Trends Survey for 2003 which showed that 96% of employer respondents had at least one flexible working practice while 60% offered at least three. They suggested that the right to request flexible work for working parents was likely to result in an increased proliferation of flexible working practices. (pp 15-19)
- 2.44. The Association of British Chambers of Commerce also drew attention to improvements in work/life balance legislation, particularly maternity rights, parental leave, paternity pay and leave, adoption leave, pay and time off for public duties and rights to apply for work flexibility. (pp 19-22)
- 2.45. The trade union Amicus quoted a survey undertaken in October 2003 aimed at working parents. From over 3,000 completed questionnaires returned they noted that working hours “become problematic” for workers with dependent care responsibilities well below the 48 hour weekly working hours limit set by the Working Time Directive. (pp 109-111)
- 2.46. Amicus also noted the frequency with which respondents identified flexible working and reduced hours as desirable changes to their present working patterns. They concluded that “the needs of workers for family life and work life balance should also be included in a more radical overhaul of the law in respect of work life balance”. (pp 109-111)
- 2.47. The CIPD quoted from their 2003 survey of human resources professionals mentioned above. This showed that more than a quarter of employers had seen an increase in the total number of requests for flexible working since April 2003 when the rights were introduced. Of those organisations that had received statutory requests, nearly two thirds (62%) had approved at least half of the requests received. The CIPD also claimed that 91% of employers surveyed said they were already prepared to consider requests for flexible working from employees who are not currently statutorily entitled to apply for it, while 49% said that they intended to expand the groups of eligible employees who would be considered for flexible working in due course. (pp 117-123)
- 2.48. The British Retail Consortium claimed that the United Kingdom retail industry had led the way in introducing and expanding family-friendly and flexible working policies and had set many examples of voluntary good practice. They argued that the inclusion of specific requirements about

work/life balance in the Directive would be unnecessary and over-prescriptive and that employers should develop a best practice guide on voluntary family-friendly policies. They pointed out that different workers had different priorities at different stages of their careers. These were best met by a flexible approach including part-time working, job sharing, career breaks, term-time working, shift-swapping, choices between time off in lieu or overtime and home working. (pp 114-117)

- 2.49. The Equal Opportunities Commission (EOC) drew attention to what they saw as a “polarisation” between the excessive hours predominantly worked by men and the part-time work predominantly done by women. They argued that this exacerbated the tendency for women working part-time hours to face significant inequalities in pay, job opportunities and overall lifetime earnings. The EOC suggested that long hours working also prevented more equal distribution of care responsibilities because fathers who worked longer hours were less able to participate actively in their care of their children. They also argued that expectations that it might involve working far in excess of contracted hours deterred mothers from trying to re-enter full-time employment. (pp 127-130)
- 2.50. The TUC told us that the relatively high level of female participation in the United Kingdom workforce, in comparison with other EU countries, was because so much part-time work was available. They acknowledged that this had attracted many more women into the labour market in the last twenty or thirty years. Although they regarded this as a very positive development, they felt it needed to be accompanied by better access to adequate child care and more attention to the problems of lone parents. (QQ 134-136)
- 2.51. The CBI suggested that female participation in the labour market was growing partly because women were being offered the opportunity to work the hours that suited them and that it was increasingly possible for women to move back into full-time working and resume successful careers. They gave examples of extensive part-time and other flexible working opportunities in large retail organisations. (Q 88) But they also noted that, although the United Kingdom had the highest participation rates amongst females of working age in Europe, it was “probably the lowest where children were under five”. They thought this was due to the relative lack of child care provision for very young children. (Q 89)
- 2.52. We also had considerable evidence about the wishes and needs of workers to do overtime. Dr Barnard commented that: “a lot of workers want to do the long hours either because of overtime pay, which adds to the quality of their life, or because of reasons of job satisfaction”. (Q 205) Her colleague Mr Richard Hobbs stated that: “employers’ organisations and the unions themselves recognise that there is a difficulty in reducing workers’ hours if it is going to mean reducing workers’ pay”. (Q 198)
- 2.53. The Association of British Chambers of Commerce told us that: “there is a very strong drive from the employees to ask the employers to work those hours to generate extra income that they want to spend. Most of the drive for extra hours is coming from employees”. (Q 76)
- 2.54. Similarly, the Federation of Small Businesses stated: “it is the employees who want to earn more money; seven out of ten of the employees would say they would not work longer hours unless they could earn more money”. (Q 80)

- 2.55. The Freight Transport Association (FTA) (pp 130-132) and the Road Haulage Association (RHA) (pp 141-143) both pointed to the strong desire of their employees to continue to work overtime. The FTA commented: “very often it is the availability of overtime at premium rates that attracts workers to a particular company” and that reduced take-home pay would have an adverse effect on employees’ “life style choices”. They also suggested that curbing overtime would encourage workers to take secondary employment without informing their employers. (pp 130-132)
- 2.56. Similar comments were made by the Construction Confederation. (pp 123-125) The Confederation also defended the right of employees to decide how many hours they worked. They suggested that a reduction in potential earning power for employees might result not only in discontentment but also in increasing numbers of workers turning to the black economy to augment their earnings.
- 2.57. The Motor Sport Industry Association also supported these views and commented that employees in their sector also worked overtime voluntarily because they wished to involve themselves in the team work necessary to meet competitive challenges. (pp 132-134)
- 2.58. Amicus (pp 109-111) cited the need for workers on an average basic wage of around £12,000 a year to work between “15-36 extra hours a week in order to achieve a reasonable and decent wage”.
- 2.59. The TUC publication “The Use and Abuse of the Opt-out in the UK”³², (pp 59-63) included a table analysing data from the Labour Force Survey which showed that while 68% of long hours workers surveyed wanted to work fewer hours, only 24% would be willing to do so for less pay. The proportion of those content to work fewer hours for less pay only rose significantly (to 35%) in the case of professional occupations, while it was markedly less (17-18%) among lower paid occupations.
- 2.60. **We note that the Commission review proposes to take account of the legitimate desire of many European workers to improve their work/life balance, even though this aspect was not covered in the original Directive. We welcome the moves that our own Government has already made to strengthen workers’ rights in this respect and to encourage more family-friendly employment policies. What has been done so far to improve opportunities for women is particularly important, although more attention needs to be given to the changing needs of family life and of those who care for the elderly and disabled.**
- 2.61. **Nevertheless, these are complex issues which involve factors quite outside the original purpose and proper scope of the Directive, such as the provision of better child care and more help for those wanting career breaks or having to care for the elderly and the disabled. Revision of the Directive may provide some opportunities for stimulating further positive action within the overall framework of policy at the European level, but in our view that overall policy itself should first be examined to determine realistic priorities for action to which revision of the Directive might contribute.**

³² “The Use and Abuse of the Opt-out in the United Kingdom”, TUC ESAD, November 2003

- 2.62. **We also believe strongly that it is most important that the reasonable rights of those who wish, for whatever reason, to work longer hours should also be respected where extra work is available for them to do.**

Application of the opt-out

- 2.63. In examining the relevant United Kingdom legislation³³ the Commission³⁴ noted that “a number of information sources note a certain generalisation in the presentation of the opt-out agreement when the work contract is signed”. It suggested that this might undermine the provisions of Article 18 of the Directive which aimed to guarantee that no worker should suffer harm through not being prepared to work extra hours. It commented: “it is legitimate to suppose that if the opt-out agreement must be signed at the same time as the employment contract, freedom of choice is compromised by the workers’ situation at that moment”³⁵.
- 2.64. The Commission also noted that, when the United Kingdom Working Time Regulations had been amended in 1999, the requirements for record-keeping in the original regulation had been replaced by a requirement that only the agreement itself must be recorded, rather than the number of hours actually worked.³⁶ As the DTI pointed out to us, technically employers are not required by the Directive to keep a record of the hours worked by those employees who have opted-out. (Q 16)
- 2.65. The TUC claimed that polling results showed that one in four of those who had signed an opt-out claimed that they were not given a choice. They drew attention to the pressure exerted on workers who received an opt-out form together with a contract for signature and other employment information when starting a new job. This could give workers in that position the impression that they had no choice but to comply with the employers’ request that the opt-out form should be completed and returned. (pp 47-49)
- 2.66. The TUC also complained that the United Kingdom enforcement regime was too weak. The onus for enforcement action seemed to lie with individual workers. Enforcement action was generally taken by the Health and Safety Executive only in response to such complaints. The TUC suggested that Health and Safety Executive Inspectors should adopt a more pro-active approach, carrying out spot inspections as they do for other health and safety requirements. (Q 124)
- 2.67. When we asked the TUC about evidence of abuse, they admitted that their evidence was based on “some quite limited polling”. They reported that, in a survey of over 2,000 long-hours workers, they had found that one quarter of those who had opted out claimed they had no choice but to do so. The TUC Survey also indicated that some employers sent prospective employees contracts of employment and opt-out forms together with a covering letter saying that both must be signed and returned before the job offered could be started. (Q 124)
- 2.68. Asked about the cost of additional regulation to Government, employers and employees, TUC witnesses suggested that removing the opt-out and

³³ Working Time Regulations 1998 SI 1998/1833 and Working Time Regulations 1999 SI 1999/3372

³⁴ COM (2003) 843 final/2

³⁵ COM (2003) 843 final/2

³⁶ Ibid

switching to what they described as “a more straight-forward application of the Directive” should involve no extra cost or bureaucratic burdens. But, when pressed on this point, they did not think any “robust analysis” had been done of likely costs and bureaucratic consequences. (Q 126 and Q 127) They were sceptical that additional enforcement alone would solve what they described as “the basic problem” of abuse of long hours working. (Q 129)

- 2.69. The TUC publication “The Use and Abuse of the Opt-out in the UK”³⁷ pointed to the “very small number of officials devoted solely to working time issues” in the Health and Safety Executive. It also compared the more proactive enforcement action taken by the Executive on other aspects of the Regulation with the lack of powers of entry or rights to serve enforcement notices over alleged breaches of the working hours regulations. The publication asserted that more effective Government enforcement remedies would need to be backed by what is described as “greater clarity in the law”.
- 2.70. Apart from the practice of combining opt-out forms with job offers, the TUC publication claimed that: “sometimes employers simply resort to old-fashioned bullying to make workers work long hours”. It quoted an example from a Government study³⁸ where a company had put the opt-out in a staff handbook. This had reportedly led a member of the workforce to claim that “people had the feeling that this is the way it is going to be, so there was no option”. The publication mentioned a follow-up study by the same authors for the DTI in 2003³⁹ which found that another firm from the same sample had made the opt-out compulsory for new recruits to the night shift.
- 2.71. The TUC publication also quoted ten complaints to the TUC helpline alleging coercion on individuals to work long hours. It did not say whether these complaints had been substantiated or investigated. Reports of abuses from TUC-affiliated unions⁴⁰ were also quoted by the same document, although again these were essentially anecdotal and unsubstantiated.
- 2.72. Amicus also complained about inadequate enforcement of the regulations and claimed that “there were ample opportunities for employers to undermine them by persuading employees to sign away their rights to not work more than 48 hours a week on average”. It added that many Amicus members had reported that “opt-out clauses were regularly inserted into employment contracts” and that “a refusal to sign can often result in a job offer being withdrawn”. (pp 109-111)
- 2.73. The Royal College of Nursing stated: “although we have no quantifiable evidence of the number of NHS Trusts who require employees to sign opt-out agreements, we have informal feedback that the monitoring of hours and record keeping where nurses work more than 48 hours does not comply with regulations”. (pp 143-145)
- 2.74. The Offshore Industry Liaison Committee (OILC), a trade union representing workers employed in the offshore oil and gas industry, also complained about the inadequacy of the amended regulations applicable to

³⁷ TUC ESAD November 2003

³⁸ F Neathy and J Arrowsmith, “*Implementation of the Working Time Regulations*” Employment Research Series 11, DTI 2001

³⁹ F Neathy ERRS 19. “*Implementation of the Working Time Regulations: follow-up study*” DTI 2003

⁴⁰ ASLEF, RMT, BECTU, GPMU, UIF1 and USDAW

their members (although this appeared to be partly related to the lack of statutory union recognition in the industry). (pp 134-140)

- 2.75. The Equal Opportunities Commission (EOC) also called for the regulations on the voluntary individual opt-out to be enforced more stringently. (pp 127-130)
- 2.76. We asked Dr Barnard about use and abuse of the Directive. She thought that the opt-out tended to be used in the United Kingdom “because the rest of the regulations are so user unfriendly”. It was used where it was not actually needed because employers felt it protected their position to do so. (Q 189)
- 2.77. Dr Barnard found it difficult to determine what was meant by abuse. She pointed to the pressures on new entrants to the legal profession to conform with the long hours culture of the City. (Q 189)
- 2.78. She also noted that the opt-out provision was very narrowly drawn so that employees could only opt out of the 48 hour week, although she and her colleagues had found evidence of employers requiring employees to sign to opt-out of rest breaks and other entitlements, which was unlawful. (Q 187)
- 2.79. Dr Barnard added that the tribunals appeared to be having difficulty in applying the regulation because of the distinction in the Directive and the regulations between the concepts of entitlements and limits: the limits on working time and night work were enforceable through criminal action whereas claims about entitlements such as rest breaks could only be pursued through civil litigation. She stressed that, to the knowledge of her team, only one single prosecution had been brought under the Working Time regulations. (Q 187)
- 2.80. Dr Barnard referred to a High Court judgment which had held that the 48 hour limit would become a term of the contract. She noted that this would be difficult to enforce in the tribunal unless the employment had already been terminated. (Q 187)
- 2.81. Dr Barnard’s colleague Mr Richard Hobbs described the question of linkage between employment contracts and opt-out agreements as a “grey area”. He said that the Barnard team had found one example in their case studies where the opt-out agreement had been included as a standard term of an employment contract. But an employment law practitioner with specific experience of working in this field had told the team that he included the opt-out as a standard term in about 50% of contractual employment packages. (Q 187)
- 2.82. Mr Hobbs also told us that the need to keep up-to-date records was “another grey area”. He said it was unclear what form such records should take. The team had found that, in most case studies, no central record had been kept of people who had opted out. As the United Kingdom law was drafted it implied that records of hours worked by those who had opted out did not need to be kept. (Q 187)
- 2.83. He also reported that the Health and Safety Executive had taken enforcement action more often about record-keeping than about hours actually worked. He also mentioned cases where employees had opted in to a 48 hour week, rather than opting out of it. One human resources director had thought that employees should sign the agreement to opt in so that the working time regulations would apply to them. (Q 187)

- 2.84. Dr Barnard added that her team had not found much evidence of direct “arm-behind-the-back” pressure. Nor was it possible to say to what extent indirect pressures had caused employees to sign opt-outs. (Q 194) Mr Hobbs commented: “it is not necessarily a case of always bullying employees to use the opt-out”. He referred to: “a conspiracy between workers and their employers” where “the workers are quite happy to keep doing overtime when they get paid time and a half for doing almost the same work”. (Q 190) Mr Hobbs also pointed out, however, that the evidence in the Barnard Report was limited because the team had not interviewed individual workers. (Q 191/2)
- 2.85. The CBI told us that it was “a mistake to assume or suggest that there is wide-scale abuse” of the Directive. They suggested that “part of it is genuine misunderstanding by the otherwise good employers”. They pointed to examples of such misunderstandings from the Barnard Report and suggested that more needed to be done to ensure that employers and employees were better informed about the opt-out. (Q 84)
- 2.86. The CBI acknowledged that it would be an abuse of the regulations for employers to make signature of an opt-out a condition of employment. They suggested that other incidences of abuse were on a small scale and pointed out that very few employees had complained to the Advisory, Conciliation and Arbitration Service (ACAS). (Q 84)
- 2.87. The CBI also quoted from the Employment Tribunal Service Annual Report 2002/2003 that only 4% of all employment tribunal claims in that year had included a complaint about working time. They said that the claims made had included complaints about holiday entitlements and rest periods as well as long working hours. In summary, they suggested that, although there was some abuse, “some of it is inadvertent, some of it is from cowboys”. They contended that this did not amount to a case for abandoning the opt-out. (Q 84)
- 2.88. The Association of British Chambers of Commerce drew attention to a statement in the Barnard Report that, for every employee who felt under pressure to opt out, others had been found who wanted the right to choose the hours that they worked, as well as the salary status and job satisfaction that they wanted. (Q 86)
- 2.89. The CBI assured us that they were committed to tackling the problem of abuse of the Directive and were ready to take part with the Government and TUC in discussions aimed at concrete action to remedy these issues. (Q 84 and pp 15-19)
- 2.90. The Association of British Chambers of Commerce and the Federation of Small Businesses complained about the administrative burdens and costs associated with the Directive. They both claimed that these would be greatly increased if the voluntary individual opt-out were to be abandoned. (QQ47-50, pp 19-22 and pp 23-24)
- 2.91. The Freight Transport Association (FTA) took the view that claims of abuse of the opt-out in the United Kingdom were “largely unsubstantiated and should not jeopardise the economic business case for retaining this provision”. (pp 130-132)
- 2.92. The Road Haulage Association (RHA) suggested that: “it would not be too difficult for DTI to amend the existing regulations and reissue the

Employers Guidance to ensure that opt-out documents prepared by employers are completely separate from offers of employment and contracts of employment”. They thought that DTI could also “ensure that opt-out agreements clearly state that the individual can choose whether to opt out or not, outline their rights and entitlements and formally advise them that they can change their mind in the future if they wish to”. If necessary, the RHA conceded that employers could be obliged to record hours worked over 48 per week. (pp 141-143)

- 2.93. The British Retail Consortium noted that: “although, following the 1999 amendment of the Working Time Regulations, most retailers no longer recorded the hours worked by staff who had signed the opt-out, the Directive itself did not explicitly require working hours to be recorded”. They commented that “the lack of recorded hours is central to the Commission’s argument that the United Kingdom’s abuse of the opt-out is damaging the health and safety of workers”. The Consortium felt that, whilst reverting to the original 1998 legislation (which required the working hours of those who had opted out to be recorded) “would be burdensome to both employers and the Health and Safety Executive in the short term,... the retention of the opt-out would be far more beneficial for retailers and the economy in the long term”. (pp 114-117)
- 2.94. The Consortium also noted that larger retailers tended to employ good practice and did not offer the option to sign the opt-out at the same time as offering employment contracts for signature. (pp 114-117)
- 2.95. We asked the DTI whether they had any estimate of the scale of abuse of the regulation in the United Kingdom and what might be done to prevent it. They replied that the vast majority of United Kingdom employers must be complying with the 48 hour limit since the vast majority of employees were not working long sustained hours nor doing night work or shift work. (Q 10)
- 2.96. The DTI acknowledged some anecdotal evidence from the Barnard Report about pressure from employers on individuals to sign an opt-out in the minority of cases. But they noted that the Barnard Report was unable to conclude whether the process of obtaining opt-outs from new employees at the time of recruitment amounted to indirect pressure, rather than indicating that responsible employers were trying to deal with all the paperwork correctly. They acknowledged that the TUC survey indicated that some workers felt obliged to sign opt-outs, but commented: “it is quite difficult to get underneath that and know exactly what is happening” (Q 10).
- 2.97. The DTI also explained that the original regulations had been modified because employers had complained that form-filling and record-keeping was posing a “disproportionate burden”. They commented: “we would not recommend restoring that record-keeping unless we could see that there was a real, proportionate, added protection and benefit for workers in doing so. Our best information is that it would not add value”. (Q 20)
- 2.98. Mr Sutcliffe (DTI Minister) stated: “where abuses are identified, the Government are keen to act”. He referred to discussions with the CBI and TUC aimed at identifying abuses and suggested that improved recording might be the best way of tackling any perceived abuses. (Q 250)

- 2.99. Asked about the practice of combining contracts and opt-out documents, Mr Sutcliffe said: "I think that to have the opt-out form arrive in the same letter as the contract that has to be signed is not acceptable and that is something I have said clearly on record in the House and in public and it is a type of abuse that I would wish to see stopped". He suggested that bodies such as ACAS might be used more to deal with reported abuses. (Q 251)
- 2.100. Mr Sutcliffe also referred to Ministerial discussions with other Member States where, in looking at the opt-out and possible variations of it: "the strong point came alongside that we had to make sure that people were protected and that any abuses were tackled". (Q 251) He felt that some aspects of the Barnard Report relating to abuses had been taken out of context by the Commission and others. (Q 252) He also noted that he had not seen "a wealth of evidence of abuse" from the trades unions. (Q 252)
- 2.101. **Though the allegations of abuse of the Directive that we have had in evidence are mainly anecdotal, apparently few in number and unsubstantiated, we believe the possibility of abuse must be taken seriously. We welcome the strong commitments given to us by the Government and the CBI to cooperate in stamping out abuses. We believe that firm action is needed to ensure that employees are properly protected and not subjected to coercion, whether explicit or implicit. If the present voluntary individual opt-out is to be retained, it is essential that all concerned should have confidence that it is being used properly and transparently.**
- 2.102. **Among the basic safeguards, we recommend that the Directive should be amended to make clear that no documents inviting the signature of a voluntary individual opt-out should ever be sent or presented to prospective new employees at the same time as they are invited to sign a contract of employment. Any such opt-out documents should not be sent or handed to new employees for signature until at least 48 hours after they have signed any contract of employment. These opt-out documents should be accompanied by a clear and simple written statement pointing out the voluntary nature of the opt-out, including the right of the employee to revoke it at any time and without adverse repercussions.**
- 2.103. **As a further safeguard, we suggest that consideration might be given to the possibility that every individual signing a voluntary opt-out should also be allowed a brief "cooling off" period after the date of signature within which they would have an absolute right to revoke the opt-out before it took effect. Any such right should also be clearly spelt out in the accompanying documentation.**
- 2.104. **We are concerned to note evidence we have received indicating that various provisions of the Directive are unclear and may have been misapplied as a result. We urge the Commission to consult with Member State Governments about the need to make these provisions clearer by amendment of the Directive.**
- 2.105. **We also recommend that the Government, employers' organisations and trades unions should, as a matter of urgency, devise more stringent and transparent methods of record-keeping and rules of inspection designed to detect and deter abuses in a way that would**

add the least possible burden of cost and bureaucracy to employers, especially small-scale businesses and voluntary organisations.

- 2.106. **Having put these arrangements in place, the Government should devote additional resources to improving surveillance to ensure that the Directive is properly applied, including arrangements for more pro-active checks by the Health and Safety Executive.**
- 2.107. **In support of these legal and administrative changes, we recommend that the Government, employers' organisations and trades unions should be encouraged to cooperate in a publicity campaign to explain to employers and workers the purpose and implications of the Directive, and especially the rights of workers and duties of employers, in straight forward language and in an accessible form.**

Reference Periods

- 2.108. The Commission Consultation⁴¹ also includes consideration of the length of the reference period. As the Directive currently stands, the maximum working week of 48 hours is calculated over an average reference period not exceeding four months.⁴² Apart from the voluntary individual opt-out already examined, Article 17 of the Directive allows the reference period to be extended to 52 weeks by "collective agreements or agreements concluded between the two sides of industry".⁴³
- 2.109. We asked various witnesses for views on possible extension of the reference period. The CBI told us that averaging overtime over 52 weeks without the necessity of a collective agreement might be useful, although the voluntary individual opt-out was preferable as it was more flexible and because: "people are happy by and large with the opt-out in the United Kingdom. It suits both employers and employees". (Q 68)
- 2.110. The TUC's view was that the Directive already offered sufficient flexibility: the current reference period should be appropriate for most circumstances, but employers already had the opportunity of moving it to 52 weeks by collective bargaining or work-force agreement. (QQ 131, 133)
- 2.111. Dr Barnard thought it would probably be helpful if the reference period could be extended to 12 months without the need for collective agreements, because it was sometimes difficult to accommodate peaks and troughs in demand over a four month reference period. But she pointed out that a significant number of employees, probably as many as 1.8 million, would still exceed the 48 hour limit even if the reference period was extended to 12 months. Nor would it necessarily solve the problems caused by labour or skills shortages or where short fixed-term contracts were necessary. (Q 199)
- 2.112. Mr Sutcliffe (DTI Minister) said that extending the reference period to 12 months could be helpful. But he reminded us that the United Kingdom did not have the potential coverage of collective agreements available elsewhere in the EU because there were fewer unionised workers as a percentage of the working population. He thought the voluntary individual opt-out should still be retained because of the flexibility it offered and because "the history in the United Kingdom has been to support voluntary arrangements". But,

⁴¹ COM (2003) 843 final/2

⁴² Article 16

⁴³ Council Directive 93/104/EC 23 November 1993 Article XVII

speaking personally, he added that he saw the need to revisit some of these issues again. (Q 246)

- 2.113. The British Retail Consortium also drew attention to the relatively low percentage of collective bargaining in the United Kingdom. This limited the possibility of extending the reference period to 12 months. The Consortium felt strongly that retailers should be able to negotiate an extension of the reference period to 12 months with individual workers on a voluntary basis, rather than through collective work-force agreements. This would give added flexibility, especially in coping with seasonal peaks. But this would be much less satisfactory than retaining the present voluntary individual opt-out. The Consortium were also concerned that additional work might be entailed in recording working hours over such a long period. (pp 114-117)
- 2.114. The CIPD reported from their survey of human resources professionals mentioned above that 80% of those surveyed would, as a concession, be prepared to accept the averaging of working hours over 52 weeks as an alternative to the present voluntary individual opt-out. But it, too, pointed out that the United Kingdom would be at a comparative disadvantage because of the relatively low level of union membership so long as the extension remained linked to the need to conclude collective agreements. It also noted that the 71% of those surveyed believed that a simpler mechanism was needed for work-force agreements. CIPD therefore suggested the removal of the need for specific collective agreement. (pp 117-123)
- 2.115. Working Time Solutions also expressed a preference for a statutory 52 week reference period which could support moves towards contracts based on annual hours which were inherently more flexible. They also thought that a 26 week reference period would be an improvement on the current 17 week period. (pp 161-166)
- 2.116. The Association of British Chambers of Commerce (pp 19-22) told us they were investigating the benefits of extending the reference period to one year. Although the Association would welcome such an extension for those not using the opt-out, it was not inclined to request it as an acceptable alternative to losing the opt-out. It, too, pointed out that present figures indicated that if the working week was averaged over a year some 1.7 million workers would still be working more than 48 hours per week.
- 2.117. The Federation of Small Businesses stated that the current 17 week reference period was inadequate for the needs of its membership, for whom the individual voluntary opt-out was the best solution. It was also concerned about the risk of additional administrative burdens which might be caused by any change. (pp 23-24)
- 2.118. BNFL Commercial told us that they saw no advantage in either shortening or lengthening the reference periods. They would not wish to see a change from the present voluntary individual opt-out which had been agreed with their trades unions. (pp 113)
- 2.119. The FTA thought that calculating overtime over 52 week reference periods might provide a solution for specific businesses in some cases. But it stressed that this would not be an acceptable alternative to the loss of the voluntary individual opt-out which would have an “overall negative effect”. (pp 130-132)

- 2.120. The RHA pointed out that mobile road haulage workers would be restricted by the Road Transport Directive to a maximum 6 month period from 2005. It argued that the flexibility needed by non-mobile support staff in the haulage industry meant that it was essential to retain the voluntary individual opt-out for them, although a 12 month reference period “would be useful to many haulage employers”.
- 2.121. The Motor Sport Industry Association reiterated the industry’s need for voluntary individual opt-out. It added that if the opt-out were to be removed a 12 month review period would be the minimum acceptable to motor sport employers because of the demands of the race calendar. (pp 132-134)
- 2.122. Amicus argued that the extension of the reference period was a negotiating issue which should be handled by democratically-elected employee representatives such as shop stewards or conveners with the support of their relevant trades union organisation. (pp 109-111)
- 2.123. We had strong evidence from the BMA (Q 174), the NHS Confederation (Q 221), the Royal College of Physicians of England and Wales (pp 148-152), and the Royal College of Obstetricians and Gynaecologists (pp 145-147) that, because the rotation patterns of junior hospital doctors were based on 26 weeks, a longer reference period would not be appropriate for them.
- 2.124. The NHS Confederation commented that, since the National Health Service operated on a 24 hour basis throughout the year, it was easier to manage working time allocation “in smaller aliquots”. (Q 221) The Royal College of Nursing (pp 143-145) preferred to retain the present 17 week reference period.
- 2.125. **We acknowledge, on the one hand, a strong preference among employers’ organisations for retention of the voluntary individual opt-out and, on the other, a strong preference by trades unions to remove the voluntary individual opt-out whilst retaining the right to extend working hours by collective agreements. We also note that longer reference periods would not necessarily suit all sectors, and would appear to be inappropriate in the case of junior hospital doctors. Nevertheless, we recommend that the Commission should give further consideration to the possibility of permitting longer reference periods where appropriate.**
- 2.126. **We are not convinced that the requirement for collective agreement as an explicit condition of the extension of reference periods to 12 months is either appropriate or necessary, especially in the circumstances of the United Kingdom. We therefore recommend that the Commission should consider removing that requirement so as to enable reference periods to be extended to 12 months more widely.**

Sectoral Variation

- 2.127. We have already noted that some of the evidence we received indicated that possible changes in the regulations might suit some sectors better than others. The following chapter discusses the particular problems posed by the *SiMAP* and *Jaeger* judgements of the European Court of Justice for the medical profession, and possibly by extension for some other sectors where staff have resident on-call duties. We have already noted in the preceding section that an extension of the reference period would not appear to be appropriate for junior hospital doctors.

- 2.128. In the time available, and on the basis of the evidence we received, we did not feel able to make specific recommendations about the possibility of introducing new sectoral variations by, for example, adding them to the derogations from the Directive. We note, however, that the Road Traffic Directive⁴⁴ indicates the possibility that some sectors may require a different approach to their particular circumstances, including the spelling out of more detailed rules. Such an approach might be worth considering in the case of hospital doctors, as discussed in the next Chapter.
- 2.129. We also noted that, although employers' representatives from various sectors pointed out the special circumstances created by the nature of their business, they all saw the voluntary individual opt-out as the best way of preserving the flexibility which they needed to meet those challenges.
- 2.130. Mr Richard Hobbs, one of the co-authors of the Barnard Report, told us that the Barnard team had found indications of considerable variation in sectoral practice in applying the present Directive. (Q 209) These would appear to hinge on whether the nature of the business had required extensive use of the voluntary individual opt-out. These findings seem to us to bear out the conclusion that the voluntary individual opt-out is the best way of accommodating sectoral variations. (Q 210)
- 2.131. The TUC said that they "would not want to go down the route of sectoral variations". They thought that the present Directive worked well enough if simply applied across the board without sectoral variation, although they felt it would be "a useful exercise" to discover more about how the Directive was applied in practice in different sectors and what changes to work organisation might be needed. (Q 130)
- 2.132. When we put this to the DTI Minister he thought that sectoral exemptions would probably lead to confusion and greater complications. (Q 250)
- 2.133. **We are unable, on the basis of the evidence received and in the limited time available to us, to reach any firm conclusion about the desirability of adding further sectoral exemptions to the Directive (with the possible exception of the medical profession with which we deal separately). But we note that much of the evidence we have received from employers' organisations suggests that the voluntary individual opt-out is the most practical way of accommodating sectoral variations and that this appears to accord with the view of the Government. We recommend that the Commission should consider carrying out further research on this aspect.**

Autonomous Workers

- 2.134. We have already noted that the Directive and regulations do not apply to anyone who is self-employed or to persons with autonomous decision-making powers. Although this definition has not been highlighted by the Commission as an aspect of the consultation to be covered in the present review, our attention has been drawn by several witnesses to the unsatisfactory nature of the present definition.
- 2.135. The CBI told us that they would welcome clarification of the definition of autonomous workers. (Q 68)

⁴⁴ Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities [2002] 05 L80/35

- 2.136. We were struck by the oral evidence from DTI officials that only 11.2 % of workers in the United Kingdom are categorised as self-employed, whereas in Greece 31.6% are (including, typically, waiters). (Q 21)
- 2.137. Evidence submitted jointly by the British Hospitality Association, the British Beer and Pub Association and Business in Sport and Leisure in support of evidence given by the CBI noted one legal opinion that no employee can be classed as “autonomous” or “having the right to determine their own working time”. As a result, they would like to see the term “autonomous worker” to be clarified. They also noted that “the assumption of seniority should be removed in deciding whether a worker can determine his or her working time”. (pp 37-43)
- 2.138. Mr Richard Hobbs mentioned the autonomous worker provisions as one of the “grey areas” requiring better definition (Q 187). He drew attention to the way in which other EU Member States had apparently used this provision to exempt managers. He and Dr Barnard both reported that uncertainty about the correct definition of autonomous decision-maker had discouraged the employers from using it and to rely instead on the voluntary individual opt-out. (Q 200, 205)
- 2.139. Mr Hobbs suggested that, were the individual opt-out to be dropped, it would lead to greater reliance on the autonomous decision-maker provision. He thought this might have an adverse impact on the health and safety of managers. (Q 205)
- 2.140. **We are concerned over the apparent uncertainty over the definition of “autonomous worker” which has been brought to our attention in evidence and by the suggestion that the term “autonomous worker” is being interpreted differently in different Member States. We recommend that the Commission should examine the way that the term is being interpreted in Member States with a view to providing clarification through an amendment to the Directive.**
- 2.141. We understand from evidence given by the CBI (Q 68) that in the Netherlands all workers earning more than three times the national minimum wage are automatically exempt from the Directive. Currently in the United Kingdom we understand that this would have the effect of excluding those earning more than around £36,000 a year gross. This could be another way of exempting those with managerial responsibilities and concentrating the protection of the Directive on what might be regarded as more vulnerable sections of the workforce. On the other hand, it could be argued that many of those earning less than three times the national minimum wage would be likely to be in greater need of overtime to supplement their earnings.
- 2.142. **We further recommend that the Government should examine the merits and disadvantages of what we understand to be the position in the Netherlands whereby those earning more than three times the national minimum wage are automatically exempted from the provisions of the Directive.**

Burdens on Small Organisations

- 2.143. The Association of British Chambers of Commerce and the Federation of Small Businesses gave evidence about the administrative and financial burden on small businesses of complying with the Directive. (QQ 43, 47, 48,

pp 19-22 and pp 23-24) Although we did not have evidence on this point, these considerations presumably also apply to other organisations, such as charities, which have few paid employees.

- 2.144. The Federation of Small Businesses suggested to us (QQ 43, 82 and pp 23-24) that businesses with fewer than 20 employees should be exempted from the Directive, although those employees should have the safeguard of the right to opt-in to the 48 hour working week if they wished. It was suggested to us that, as well as removing the administrative and financial burden on smaller scale businesses, this would also give those who worked for such businesses more say in work organisation. It would also provide opportunities for those employees who did want to work overtime and protection for those who did not. (pp 23-24 and QQ 82, 83)
- 2.145. We asked the DTI Minister for his views on this suggestion. Mr Sutcliffe expressed some caution, recalling his earlier preference to avoid sectoral exemptions. But he stressed that Government was in dialogue with small business representatives about their particular problems in implementing the Directive. He wanted to do everything possible to ensure that those businesses maintained flexibility without losing their employees. (Q 253)
- 2.146. **We have been impressed by the evidence we have received about the financial and administrative burdens of these regulations upon organisations with small numbers of employees. We hope that the consultation between Government and such organisations will lead to some relief of those problems. But we also urge the Commission to take particular account of them in their review and to examine the practice of such organisations in other Member States by comparison.**
- 2.147. **We also recommend that the Government and the Commission should both take due account of the suggestion that organisations employing fewer than 20 employees might be exempted from the requirements of the Directive so long as their employees themselves have the right to opt-in to a maximum 48 hour working week if they wish to do so.**

The Barnard Report

- 2.148. When Dr Barnard gave us oral evidence we asked her about the seemingly curious status of the Barnard Report. She confirmed that the Commission regarded the Report as a confidential document, although copies were apparently made freely available by the Commission to those who requested them, using the EU access to information procedures. This had meant that certain interest groups had used the Report to support their particular viewpoint, although the Barnard team were not allowed to talk to the media about it. The Commission had eventually agreed that Dr Barnard and her colleagues should write an article to the *Financial Times* to try to present the Report in a fuller and more balanced light. (QQ 194, 195)
- 2.149. We ourselves have been placed in an awkward position over this. Although the Commission readily released a copy of the Report for us to study, we understand that it is an unpublished and technically confidential Commission document. We are therefore unable to quote directly from it in this Report or publish it with our evidence. Instead, we have had to rely on referring to our questioning of Dr Barnard and her colleague Mr Hobbs, as

well as on the evidence from other witnesses, about the content of the Report.

- 2.150. **The Commission's position on the disclosure of the Barnard Report is wholly unacceptable. There is no public interest justifying the non-disclosure of the Barnard Report. Nor do we consider that its disclosure would "seriously undermine" the Commission's decision-making process.** ⁴⁵ **Quite the opposite. There is a clear public interest in the Report being published so that there can be a full and open debate on its content. We therefore strongly recommend that the Commission should publish the Barnard Report as soon as possible and make every effort to ensure that its findings are fully and accurately reported.**
- 2.151. Dr Barnard and her colleague Mr Richard Hobbs also outlined the limitations in the scope and methodology of their Report. It was a small budget report based on a relatively restricted number of case study interviews, was limited to the United Kingdom and did not involve interviews with employees. (QQ 185, 189, 191, 192)
- 2.152. Dr Barnard and her colleagues have done excellent work within those limited parameters. We note that they say they did more than the Commission had actually wanted. Nevertheless, we believe this is insufficient and that far more extensive research should be done before final decisions are taken on any changes to the Directive.
- 2.153. **While we commend Dr Catherine Barnard and her colleagues on their excellent work, we believe that the terms of reference of their Report were not sufficient to give an adequate reflection of this complex topic. We therefore recommend that more extensive studies, employing wider methodologies, should be carried out by the Commission across the EU, and not simply in the United Kingdom, to gain a deeper and more comprehensive understanding of the way in which the Directive is currently being implemented in Member States and to distil more solid conclusions before final decisions are taken on any changes to the Directive.**

⁴⁵ See Article 4 of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents.

CHAPTER 3: THE IMPACT OF SIMAP AND JAEGER EUROPEAN COURT OF JUSTICE JUDGMENTS

SiMAP

- 3.1. In the *SiMAP* case a Spanish court referred five questions to the European Court of Justice for a preliminary ruling on the interpretation of the Directive. The national court wished to know *inter alia* whether time spent by doctors on-call, either at medical centres or under a contact system, should be regarded as “working time” and therefore whether that time should be included in the calculation of working hours for the purposes of the 48 hour maximum weekly working time. The Court ruled that “time spent on-call by doctors in primary health care teams must be regarded in its entirety as working time and, where appropriate as overtime, within the meaning of Directive 93/104 if they are required to be at the health centre”. If they merely had to be contactable at all times when on-call, only time linked to the actual provision of primary health care services must be regarded as “working time”.⁴⁶

Jaeger

- 3.2. The *Jaeger* case also concerned the definition of doctors’ working time. Dr Jaeger, a hospital doctor, carried out a number of periods of on-call duty each month, where he stayed at the clinic (he had a room with a bed in the hospital) and was called upon to carry out his professional duties as need arose. The Court held that the Directive must be interpreted as meaning that on-call duty performed by a doctor where he is required to be physically present in the hospital must be regarded as constituting working time in its totality for the purposes of the Directive, even where the person concerned is permitted to rest at his place of work during the period when his services are not required. Periods when the doctor was on-call but not working should not be treated as rest periods. Compensatory rest periods must immediately follow the periods worked.⁴⁷
- 3.3. Our witnesses agreed that the *SiMAP* and *Jaeger* judgments go beyond the Directive’s original underlying principles. They stressed that these judgments make compliance with the Directive extremely difficult for the health sector. (QQ 27; 145; 148; 216) Although both actions originated in the health sector, the rulings may also have wider repercussions for other employment sectors, as is discussed in paragraphs 3.53-3.60 below.

Extension of the Directive for Junior Doctors

- 3.4. In 2000 an amendment to the Directive⁴⁸ brought sectors and activities formerly excluded from the Directive within its scope. This included doctors in training, otherwise known as junior doctors. A compromise amendment allowed a phasing-in over five years from 2004 of the 48 hour weekly limit for junior doctors.

⁴⁶ Case C-303/98 *Sindicato de Medicos de Asistencia Publica (SiMAP) v Conselleria de Sanidad y Consumo de la Generalidad Valenciana*. [2000] ECR I-7963

⁴⁷ Case C-151/02 *Landeshauptstadt Kiel v Norbert Jaeger*. Judgment of 9 October 2003.

⁴⁸ Council Directive 2000/34/EC, 22 June 2000 amending Council Directive 93/104/EC.

- 3.5. As the BMA explained to us, by 1 August 2004 rest and break requirements become law and junior doctors should not have to work in excess of 58 hours. By August 2007 their maximum working week should be brought down to 56 hours. Full application of the 48 hour a week limit for junior doctors is due by 2009. (pp 44-47)

NHS Changes Under Way

- 3.6. The NHS Confederation, representing NHS employers, told us that reducing the hours worked by junior doctors had been a priority for the NHS long before the 2000 amendment to the Directive was agreed. It was consistent with an international trend to reduce hospital doctors' hours. (Q 222) They said the NHS had been working for some time to a contract negotiated between the medical profession and the Government called the "New Deal", under which NHS organisations will be required to move junior doctors to a 56 hour working week. (QQ 213, 215)
- 3.7. We were told by the Confederation that the latest figures showed that 95 per cent of NHS organisations now had working patterns for junior doctors which complied with the 56 hour limit set by the "New Deal". Therefore, they would also comply with the 58 hour limit which will come into force for junior doctors with the Directive in August of this year. (QQ 213, 256, 260)
- 3.8. The Department of Health (DoH) and the NHS Confederation told us that "New Deal" addressed the question of excessively long working hours for junior doctors in two main ways. The first looked critically at the distribution of work between different professionals and rationed work patterns in an innovative way. (QQ 27, 216)
- 3.9. The NHS Confederation and the BMA argued that this reorganisation had already reduced the working hours of junior doctors significantly (QQ 157, 216).
- 3.10. The Department of Health (DoH) reported that £46 million had been set aside by the Government over three years to help implementation of the Directive in the NHS through developing training programmes and new models of service delivery. (Q 28) They gave us evidence of NHS pilot schemes designed to test some of these initiatives.
- 3.11. The NHS Confederation told us that these pilot schemes showed benefits to patients from more timely care to higher quality care, better coordinated care and doctors who are less tired, as well as benefiting staff themselves. (Q 218) However, the BMA pointed out that the NHS was a "long way off" being able to extend the methods to more than 20 to 50 hospitals by August of this year when junior doctors will be bound by the Directive. (Q 157)
- 3.12. The NHS Confederation explained that the second, longer-term, Government aim for the NHS was to increase the number of junior doctors by providing more medical school places and new medical schools. (Q 216) The Rt. Hon John Hutton, MP, Minister of State at the Department of Health, told us that the Government wanted to see a consultant-led service, rather than the United Kingdom's health service's traditionally heavy reliance on junior doctors. (Q 260)
- 3.13. The NHS Confederation stressed that an increase in the number of medical school places could not deliver immediate change, but should help to achieve the present 2009 deadline for a 48 hour week for junior doctors. (Q 216)

- 3.14. The Confederation went on to explain that the 2000 amendment to the Directive, which brought junior doctors within its scope, necessitated considerable change in NHS working practices. Although these changes were not always welcomed by health professionals, the Confederation claimed it was generally accepted that the Directive had been a catalyst for improvement in the NHS. They commented: ‘when we reach the end of this period, this will have been seen as quite a useful set of changes even though it is fairly painful going through it and trying to deliver’. (Q 222)

Impact of the Directive on Medical Training

- 3.15. The BMA told us that the reduction in the number of hours worked by junior doctors had already had a considerable impact on their training. We were surprised to learn that training hours had been reduced from 30,000 hours to about 8,000 hours since the early 1990s and that working towards the further reduction in junior doctor working hours required by the Directive by 2009 would cut this training time to 6,000 hours. The BMA said they were extremely concerned about the reduction in training time. (Q 158)
- 3.16. The NHS Confederation, on the other hand, argued that training had to move away from the old apprenticeship model in which junior doctors learnt their profession ‘by some undefined and vague osmotic process’ to training delivered in a more pro-active and systematic way with more senior doctors spending time dedicated specifically to training more junior doctors. (Q 228)

Reactions to the *SiMAP* and *Jaeger* Judgments

- 3.17. The Health Minister told us that: “we have been making very good progress in reducing the number of hours that junior doctors work every week in the NHS. Had it not been for the *SiMAP* and *Jaeger* rulings I do not think that we would have had a problem in the NHS in dealing with the Directive” (Q 256). He later reinforced his point by saying that, without the additional complications posed by the *SiMAP* and *Jaeger* judgments, the United Kingdom “could have met the 58-hour maximum working week for junior doctors in training by August this year”. (Q 260)
- 3.18. The Royal College of Physicians of England and Wales, applauded “the ongoing efforts of Government, NHS managers and clinicians to implement” the Directive. But it also stressed that “full compliance with the Directive throughout the NHS is highly improbable by the August 2004 deadline”. The College added: “we remain concerned that – in its present shape and form- compliance will have serious long-term effects for continuity of care, patient safety, and the education and training of doctors”. (pp 148-152)
- 3.19. The College pointed out that the NHS currently has insufficient trained doctors in all the acute specialities to maintain safe levels of patient care in every hospital if the full-shift working implied by the Directive is imposed on all residential junior doctors in August 2004. It commented that, while a maximum 48 hour working week “may be a laudable objective, it is unlikely that there will be enough consultant physicians in the United Kingdom for the next few years”. (pp 148-152)
- 3.20. The College stressed that “most of these tumultuous changes” were caused by the *SiMAP* and *Jaeger* judgments. Urgent clarification of the implications of these judgments, including a better definition of working time, was

- needed. The College supported what it described as the “common sense and pragmatic view” that “sleeping isn’t working” and suggested that this was far more persuasive than the position adopted by the ECJ. (pp 148-152)
- 3.21. It also suggested that the definition of working time should be left to national Governments to be interpreted in the light of their own circumstances. Endeavouring to comply with *SiMAP* and *Jaeger* would mean abandoning the traditional working pattern for junior doctors which had provided valuable experience, developed team work and assured hospitals of a strategic reserve of expertise to treat patients in emergency. (pp 148-152)
- 3.22. The College thought the “New Deal” arrangements were an adequate safeguard against junior hospital doctors having too little sleep. But it estimated that 60% of NHS hospitals still did not have the necessary middle grades to adopt a robust full shift system. It was also concerned about the potentially serious impact on future recruitment to acute medicine. (pp 148-152)
- 3.23. The Royal College of Physicians of Edinburgh broadly supported these views. It also asserted that the current supply of doctors was inadequate to provide a safe level of care in all hospitals and expressed particular concern about the staffing implications for remote and rural hospitals. (pp 152-153) This was echoed by the NHS Confederation. (QQ 220, 223)
- 3.24. The Royal College of Obstetricians and Gynaecologists drew attention to the particular difficulties created by the need to have specialists in obstetrics, paediatrics and anaesthetics available on a 24 hour basis. The College pointed out that the shift pattern changes would be particularly difficult for the training and career development of women doctors. This would run counter to the steady increase in female trainees, especially in obstetrics, which the College was keen to encourage. (pp 145-147)
- 3.25. The College also took the view that the ECJ rulings would “almost certainly” make it impossible for all hospitals to comply with the Directive in the near future. (pp 145-147)
- 3.26. The NHS Confederation told us that both rulings were “a bridge too far”. They were actively lobbying the Government, as well as elsewhere in the EU, to overturn both of them. *SiMAP* might be described as “aspirational”: it had some desirable and some less desirable aspects, but the NHS could not implement it by 1 August without creating “a very difficult situation in terms of the sustainability of services”. (Q 227)
- 3.27. The Royal College of Nursing also expressed concern about the potential impact of the *SiMAP* and *Jaeger* judgments. The College called for clarification of the definition of compensatory rest and how it should be applied. It drew attention to the particular difficulty in calculating working time where 24 hour nursing care was provided by agency nurses living in patients’ homes. (pp 143-145)
- 3.28. The NHS Confederation also drew our attention to the possible risk to NHS trusts from litigation by individual doctors based on the *SiMAP* and *Jaeger* judgments. (Q 227) The Health Minister acknowledged that this risk existed and said that the best way to deal with it was to amend the Directive. (Q 256)
- 3.29. The Royal College of Physicians in Edinburgh thought that changes in work patterns necessary to bring hospitals into line with the *SiMAP* and *Jaeger*

- judgments would adversely affect the education and training of junior doctors, as well as the work/life balance for hospital doctors. This would have consequent repercussions on future recruitment. (pp 152-153)
- 3.30. The BMA contended that the *SiMAP* and *Jaeger* judgments had “shifted the goalposts” for interpretation of the Directive. (Q 154) It would be extremely difficult for health services throughout the EU to deliver good patient care in full compliance with these rulings. (QQ 159, 171, 182)
- 3.31. The NHS Confederation agreed that “sizeable numbers” of hospitals in the United Kingdom could not comply with the Directive by 1 August 2004 because of these judgments. (Q 223)
- 3.32. The BMA claimed that if the *Jaeger* ruling remained unchanged the effect would be tantamount to losing the equivalent of 3700 junior doctors by August 2004 and between 4300 and 9900 junior doctors by 2009 when the full 48 hour limit would come into effect. (pp 44-47 and Q 148)⁴⁹ One BMA witness commented that the United Kingdom would be in “real trouble”. (Q 148)
- 3.33. According to the BMA, *SiMAP* would have a particularly pronounced effect on the United Kingdom because the ratio of junior doctor to consultant and senior doctor service provision in the NHS was much higher than in other Member States. We were struck by the significant difference (as quoted by the BMA) between the prevailing ratio of 1.4 junior doctors to each senior doctor in the United Kingdom and the EU average of 4 seniors to each junior doctor. (Q 154)
- 3.34. The BMA added that the United Kingdom would be also heavily affected by the *SiMAP* ruling because most hospitals in this country rely on doctors in training providing services: “at least 50% of our service is delivered by doctors in training” whereas in other Member States training is concentrated in far fewer hospitals. (Q 154)
- 3.35. The Government and the NHS Confederation agreed that the *SiMAP* ruling went too far. (Q 227 and Q 259)
- 3.36. The Health Minister told us that the Government did not think that *SiMAP* was “a sensible interpretation of the Directive” and that “it was certainly not within the intentions of the United Kingdom Government when we signed up for the Directive that time spent asleep would somehow magically count as time spent at work”. (Q 259) But he thought that it was “perfectly sensible” for the NHS to look at ways of minimising resident on-call rotas and that there was a “strong case” for looking at how hospitals have been traditionally staffed at night. (Q 259)
- 3.37. The BMA, on the other hand, told us that they were “broadly supportive” of the essence of the *SiMAP* ruling “that every hour spent in hospital now counts as work”. They pointed to the regular pattern of disturbance involved in overnight on-call duty. In their view *SiMAP* represented “an overdue change”. Although it could not be achieved in this short term they were hoping for “a common sense solution”. They described a Danish proposal

⁴⁹ The BMA witness explained that the apparent discrepancy between the estimated loss of the equivalent of between 4300 and 9900 junior doctors by 2009 was that the figure of 4300 was calculated on the basis of an estimate of the actual hours of work lost whereas 9900 represented an estimate of the hours of cover lost. (Q148)

that compensatory rest should be taken within 72 hours as “commendably sensible”. (Q 180)

- 3.38. The Health Minister explained the implications of the *Jaeger* ruling for the NHS: “To require compensatory rest to be taken immediately would potentially have a massively destructive effect across the NHS and might mean that doctors could not work the following shift on rota that they were required to do. This would have knock-on consequences right across the hospital. At the end of the day, the only people who would be negatively affected would be the patients and that is a ridiculous result”. (Q 259)
- 3.39. The NHS Confederation put it in equally strong terms: “*Jaeger* makes no sense at all in terms of how you run NHS organisations” (Q 230). The BMA described how it might work in practice and commented “This is nonsense”. (Q 180)

Reactions in other Member States

- 3.40. The *Jaeger* judgment poses problems for other health sectors in the EU. In its Communication, the Commission cites Germany as saying that if both *SiMAP* and *Jaeger* were left unamended it would have to increase its doctors by 24% with costs running to €1.75 billion. It also reports that the Netherlands estimated the extra cost of both judgments to be €400 million to fund recruitment of 10,000 new staff.⁵⁰
- 3.41. In order to avoid the full implications of these judgments for hospitals, the Commission⁵¹ reports that France and Spain have chosen to apply the individual opt-out for use in the health sector. Austria, Germany and the Netherlands are planning to do so. (Q 24) Of the countries that will join the EU on 1 May 2004, Slovenia has already applied the opt-out to the health sector. Estonia, Hungary, Latvia and Lithuania may also apply the opt-out to the health sector alone.⁵²
- 3.42. We were relieved to hear from the DTI Minister (Mr Sutcliffe) that, at the European Employment and Social Affairs Council on 5 March, the Commission acknowledged the difficulties that Member States are facing over *SiMAP* and *Jaeger*. Mr Sutcliffe told us that the Commission had promised to find a solution before the Summer. (Q 239)
- 3.43. The Health Minister told us he believed the problems could be resolved in “a very sensible way which does not drive a coach and horses through the fundamentals of the Directive which is to provide proper protection for employees against working practices that are safe and unsound”. (Q 259)
- 3.44. **We are encouraged by the positive preliminary reports of the pilot schemes aimed at reducing hospital doctors’ working time which are currently being carried out in the NHS. We hope that it will prove possible to extend schemes on these lines to all United Kingdom hospitals as a contribution towards the attainment of the requirements of the Directive without detriment to standards of patient care or medical training.**

⁵⁰ COM (2003) 843 final/2

⁵¹ Ibid

⁵² Ibid

- 3.45. We note, however, the unanimous evidence we have had from Government and the medical profession that it will be impossible for the NHS to comply with the extension of the Directive to junior hospital doctors by August of this year if the definition of working time in the *SiMAP* ruling is applied as it stands.
- 3.46. We also note that there are differences of opinion over the feasibility of applying the principles underlying the *SiMAP* ruling in the longer term. We look to the Commission to produce proposals as a matter of urgency that would have the effect of deferring the implementation of the Directive for junior doctors until a satisfactory solution to the problems posed by the *SiMAP* ruling can be devised and agreed with Member States.
- 3.47. We also urge the Government to continue to work closely with representatives of the medical profession and NHS management, as well as with the Commission and other Member States, in attempting to devise a common approach to the definition of working time for hospital doctors on-call duties which is consistent with the spirit of the Directive as interpreted in the *SiMAP* judgment whilst being workable in practice and to agree on a reasonable programme to phase in whatever changes are needed without detriment to standards of patient care or medical training.
- 3.48. As we understand it from the evidence we were given, we believe more attention should be paid to the particular difficulties which the *SiMAP* judgment will cause for the United Kingdom because of:
- the relative shortage of doctors in the United Kingdom in comparison with other Member States,
 - the striking difference in the ratio of junior to senior doctors in the United Kingdom of 1.4 to one, compared with the EU average of 4 seniors to each junior doctor;
 - the long-standing British practice of delivering at least 50 per cent of hospital service through doctors in training, and
 - the British tradition of dispersing doctors in training to virtually every hospital, rather than concentrating them in fewer centres as in most other Member States.
- 3.49. We note the Health Minister's optimism about finding "a very sensible way which does not drive a coach and horses through the fundamentals of the Directive which is to provide proper protection for employees against working practices that are unsafe and unsound". Nevertheless, it is clear to us from the overwhelming evidence we have received that the effect of the interpretation of the Directive in the *Jaeger* judgment is perverse and wholly impractical to implement.
- 3.50. In view of the extremely serious situation created by the *Jaeger* judgment, we call upon the Government to indicate as a matter of urgency how they propose to deal with the problem of doctors' working time and compensatory rest from the extension of the Directive to junior doctors in August 2004 until such time as a satisfactory solution can be found.

- 3.51. **In the meantime, we encourage the Government to continue their efforts with other Member States to convince the Commission that the serious practical implications of the *Jaeger* judgment for all Member States demand rapid and effective remedial action through an amendment of the Directive.**
- 3.52. **We agree with our witnesses that the best solution would be to get rid of the automatic requirement for immediate compensatory rest completely. Ways should be found of providing compensatory rest within a reasonable time.**

Potential impact of these rulings on other sectors

- 3.53. The UK Offshore Operators Association, on behalf of various trade associations within the UK offshore oil and gas industry, was very concerned by the possibility that these rulings might be interpreted more widely to include offshore oil and gas rig crews. This would have a profoundly damaging impact on staffing requirements and operating costs. They argued that the time spent on shore by rig crews more than adequately compensated for the necessary rest periods. (pp 111-113)
- 3.54. The Road Haulage Association described the *Jaeger* judgment as “absurd” and claimed that it defied common sense. (pp 141-143)
- 3.55. The English Courtyard Association drew attention to the potential impact on residential retirement and care premises where resident staff were employed. The resultant confusion was making it difficult for the Association to maintain its services. (pp 125-127)
- 3.56. BNFL Commercial also called for a clear definition of on-call duties in the light of these judgments. (p 113)
- 3.57. Concern about the potential impact on the motor sport sector was also expressed by the Motor Sport Industry Association. (pp 132-134)
- 3.58. Amicus took the view that the judgments should be respected while recognising the difficulties caused by cost implications and a shortage of trained professional staff. It called for “social dialogue” about the problem, and for wider understanding of the nature of on-call working on employers premises. (pp 109-111)
- 3.59. The DTI Minister told us that these rulings might well pose problems for both the private and local authority care sectors, as well as the emergency services and offshore workers. The Health Minister thought that the rulings were likely to have the biggest impact on small care homes which are usually run by small private firms or independent voluntary organisations. (Q 264)
- 3.60. **We are also concerned by the possibility which has been raised with us that the *SiMAP* and *Jaeger* judgments might be applied to other sectors. We call upon the Commission to produce detailed advice on this possibility for consideration by Member States as a matter of urgency.**

CHAPTER 4: FINAL CONCLUSION

- 4.1. **On the central point raised in the Commission's consultation, we reiterate our conclusion that the voluntary individual opt-out should be retained. We make a number of recommendations for practical improvements in the way that the Directive operates. In the time available we have endeavoured to do justice to this important and complex topic. We believed it was important to submit our Report before this phase of the Commission's review was completed. We intend to keep the review of the Working Time Directive under close scrutiny and will wish to examine carefully any further report or legislative proposals that may be issued as a result of the consultation. In the meantime, we recommend that the House should debate this Report as soon as possible.**

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

Health and Safety

- 5.1. From the evidence we have received we do not find a clear causal link between working long hours and detrimental effects on health and safety in the United Kingdom. Nor have we found evidence of any particular relationship between the voluntary individual opt-out and adverse health and safety consequences. Common sense suggests that very long hours working over a sustained period of time could damage the health of workers. It might also put at risk others who come into contact with over-tired workers in their work environment. But we have seen no evidence quantifying how many hours would need to be worked over what period of time and in what type of employment for that risk to be significant. (paragraph 2.18)
- 5.2. We recommend that the Commission should carry out detailed research in Member States, not only in the United Kingdom, into the possible relationship between long hours working and health and the safety risks for different categories of workers and for those with whom they come into contact in the working environment before decisions are taken on any modification of the Directive. (paragraph 2.19)

Competitiveness, flexibility and efficiency

- 5.3. On balance, we conclude that the flexibility offered by the voluntary individual opt-out is an important element in preserving competitiveness, especially in view of the intense global competitive pressures now facing European business. We also consider that the structure of British business makes the voluntary individual opt-out particularly suitable for the United Kingdom. We therefore recommend that the voluntary individual opt-out should be retained, but kept under periodic review. (paragraph 2.36)
- 5.4. At the same time, we recommend that Government, business and the trades unions should actively look for other ways of improving competitive flexibility so as to reduce dependence on long working hours wherever possible. (paragraph 2.37)

Work/Life Balance

- 5.5. We note that the Commission review proposes to take account of the legitimate desire of many European workers to improve their work/life balance even though this aspect was not covered in the original Directive. We welcome the moves that our own Government has already made to strengthen workers' rights in this respect and to encourage more family-friendly policies. What has been done so far to improve opportunities for women is particularly important, although more attention needs to be given to the changing needs of family life and of those who care for the elderly and disabled. (paragraph 2.60)
- 5.6. Nevertheless, these are complex issues which involve factors quite outside the original purpose and proper scope of the Directive, such as the provision of better child care and more help for those wanting career breaks or having to care for the elderly and the disabled. Revision of the Directive may provide some opportunities for stimulating further positive action within the overall framework of policy at the European level, but in our view that overall policy

itself should first be examined to determine realistic priorities for action to which revision of the Directive might contribute. (paragraph 2.61)

- 5.7. We also believe strongly that it is most important that the reasonable rights of those who wish, for whatever reason, to work longer hours should also be respected where extra work is available for them to do. (paragraph 2.62)

Application of the opt-out

- 5.8. Though the allegations of abuse of the Directive that we have had in evidence are mainly anecdotal, apparently few in number and unsubstantiated, we believe the possibility of abuse must be taken seriously. We welcome the strong commitments given to us by the Government and the CBI to cooperate in stamping out abuses. We believe that firm action is needed to ensure that employees are properly protected and not subjected to coercion, whether explicit or implicit. If the present voluntary individual opt-out is to be retained, it is essential that all concerned should have confidence that it is being used properly and transparently. (paragraph 2.101)
- 5.9. Among the basic safeguards, we recommend that the Directive should be amended to make clear that no documents inviting the signature of a voluntary individual opt-out should ever be sent or presented to prospective new employees at the same time as they are invited to sign a contract of employment. Any such opt-out documents should not be sent or handed to new employees for signature until at least 48 hours after they have signed any contract of employment. These opt-out documents should be accompanied by a clear and simple written statement pointing out the voluntary nature of the opt-out, including the right of the employee to revoke it at any time and without adverse repercussions. (paragraph 2.102)
- 5.10. As a further safeguard, we suggest that consideration might be given to the possibility that every individual signing a voluntary opt-out should also be allowed a brief “cooling off” period after the date of signature within which they would have an absolute right to revoke the opt-out before it took effect. Any such right should also be clearly spelt out in the accompanying documentation. (paragraph 2.103)
- 5.11. We are concerned to note evidence we have received indicating that various provisions of the Directive are unclear and may have been misapplied as a result. We urge the Commission to consult with Member State Governments about the need to make these provisions clearer by amendment of the Directive. (paragraph 2.104)
- 5.12. We also recommend that the Government, employers’ organisations and trades unions should, as a matter of urgency, devise more stringent and transparent methods of record-keeping and rules of inspection designed to detect and deter abuses in a way that would add the least possible burden of cost and bureaucracy to employers, especially small-scale businesses and voluntary organisations. (paragraph 2.105)
- 5.13. Having put these arrangements in place, the Government should devote additional resources to improving surveillance to ensure that the Directive is properly applied, including arrangements for more pro-active checks by the Health and Safety Executive. (paragraph 2.106)

- 5.14. In support of these legal and administrative changes, we recommend that the Government, employers' organisations and trades unions should be encouraged to cooperate in a publicity campaign to explain to employers and workers the purpose and implications of the Directive, and especially the rights of workers and duties of employers, in straight forward language and in an accessible form. (paragraph 2.107)

Reference Periods

- 5.15. We acknowledge, on the one hand, a strong preference among employers' organisations for retention of the voluntary individual opt-out and, on the other, a strong preference by trades unions to remove the voluntary individual opt-out whilst retaining the right to extend working hours by collective agreements. We also note that longer reference periods would not necessarily suit all sectors, and would appear to be inappropriate in the case of junior hospital doctors. Nevertheless, we recommend that the Commission should give further consideration to the possibility of permitting longer reference periods where appropriate. (paragraph 2.125)
- 5.16. We are not convinced that the requirement for collective agreement as an explicit condition of the extension of reference periods to 12 months is either appropriate or necessary, especially in the circumstances of the United Kingdom. We therefore recommend that the Commission should consider removing that requirement so as to enable reference periods to be extended to 12 months more widely. (paragraph 2.126)

Sectoral Variation

- 5.17. We are unable, on the basis of the evidence received and in the limited time available to us, to reach any firm conclusion about the desirability of adding further sectoral exemptions to the Directive (with the possible exception of the medical profession with which we deal separately). But we note that much of the evidence we have received from employers' organisations suggests that the voluntary individual opt-out is the most practical way of accommodating sectoral variations and that this appears to accord with the view of the Government. We recommend that the Commission should consider carrying out further research on this aspect. (paragraph 2.133)

Autonomous Workers

- 5.18. We are concerned over the apparent uncertainty over the definition of "autonomous worker" which has been brought to our attention in evidence and by the suggestion that the term "autonomous worker" is being interpreted differently in different Member States. We recommend that the Commission should examine the way that the term is being interpreted in Member States with a view to providing clarification through an amendment to the Directive. (paragraph 2.140)
- 5.19. We further recommend that the Government should examine the merits and disadvantages of what we understand to be the position in the Netherlands whereby those earning more than three times the national minimum wage are automatically exempted from the provisions of the Directive. (paragraph 2.142)

Burdens on Small Organisations

- 5.20. We have been impressed by the evidence we have received about the financial and administrative burdens of these regulations upon organisations with small numbers of employees. We hope that the consultation between Government and such organisations will lead to some relief of those problems. But we also urge the Commission to take particular account of them in their review and to examine the practice of such organisations in other Member States by comparison. (paragraph 2.146)
- 5.21. We also recommend that the Government and the Commission should both take due account of the suggestion that organisations employing fewer than 20 employees might be exempted from the requirements of the Directive so long as their employees themselves have the right to opt-in to a maximum 48 hour working week if they wish to do so. (paragraph 2.147)

The Barnard Report

- 5.22. The Commission's position on the disclosure of the Barnard Report is wholly unacceptable. There is no public interest justifying the non-disclosure of the Barnard Report. Nor do we consider that its disclosure would "seriously undermine" the Commission's decision-making process.⁵³ Quite the opposite. There is a clear public interest in the Report being published so that there can be a full and open debate on its content. We therefore strongly recommend that the Commission should publish the Barnard Report as soon as possible and make every effort to ensure that its findings are fully and accurately reported. (paragraph 2.150)
- 5.23. While we commend Dr Catherine Barnard and her colleagues on their excellent work, we believe that the terms of reference of their Report were not sufficient to give an adequate reflection of this complex topic. We therefore recommend that more extensive studies, employing wider methodologies, should be carried out by the Commission across the EU, and not simply in the United Kingdom, to gain a deeper and more comprehensive understanding of the way in which the Directive is currently being implemented in Member States and to distil more solid conclusions before final decisions are taken on any changes to the Directive. (paragraph 2.153)

The *SiMAP* and *Jaeger* Judgments

- 5.24. We are encouraged by the positive preliminary reports of the pilot schemes aimed at reducing hospital doctors' working time which are currently being carried out in the NHS. We hope that it will prove possible to extend schemes on these lines to all United Kingdom hospitals as a contribution towards the attainment of the requirements of the Directive without detriment to standards of patient care or medical training. (paragraph 3.44)
- 5.25. We note, however, the unanimous evidence we have had from Government and the medical profession that it will be impossible for the NHS to comply with the extension of the Directive to junior hospital doctors by August of

⁵³ See Article 4 of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents

this year if the definition of working time in the *SiMAP* ruling is applied as it stands. (paragraph 3.45)

- 5.26. We also note that there are differences of opinion over the feasibility of applying the principles underlying the *SiMAP* ruling in the longer term. We look to the Commission to produce proposals as a matter of urgency that would have the effect of deferring the implementation of the Directive for junior doctors until a satisfactory solution to the problems posed by the *SiMAP* ruling can be devised and agreed with Member States. (paragraph 3.46)
- 5.27. We also urge the Government to continue to work closely with representatives of the medical profession and NHS management, as well as with the Commission and other Member States, in attempting to devise a common approach to the definition of working time for hospital doctors on-call duties which is consistent with the spirit of the Directive as interpreted in the *SiMAP* judgment whilst being workable in practice and to agree on a reasonable programme to phase in whatever changes are needed without detriment to standards of patient care or medical training. (paragraph 3.47)
- 5.28. As we understand it from the evidence we were given, we believe more attention should be paid to the particular difficulties which the *SiMAP* judgment will cause for the United Kingdom because, of:
- the relative shortage of doctors in the United Kingdom in comparison with other Member States,
 - the striking difference in the ratio of junior to senior doctors in the United Kingdom of 1.4 to one, compared with the EU average of 4 seniors to each junior doctor;
 - the long-standing British practice of delivering at least 50 per cent of hospital service through doctors in training, and
 - the British tradition of dispersing doctors in training to virtually every hospital, rather than concentrating them in fewer centres as in most other Member States (paragraph 3.48)
- 5.29. We note the Minister's optimism about finding "a very sensible way which does not drive a coach and horses through the fundamentals of the Directive which is to provide proper protection for employees against working practices that are unsafe and unsound". Nevertheless, it is clear to us from the overwhelming evidence we have received that the effect of the interpretation of the Directive in the *Jaeger* judgment is perverse and wholly impractical to implement. (paragraph 3.49)
- 5.30. In view of the extremely serious situation created by the *Jaeger* judgment, we call upon the Government to indicate as a matter of urgency how they propose to deal with the problem of doctors' working time and compensatory rest from the extension of the Directive to junior doctors in August 2004 until such time as a satisfactory solution can be found. (paragraph 3.50)
- 5.31. In the meantime, we encourage the Government to continue their efforts with other Member States to convince the Commission that the serious practical implications of the *Jaeger* judgment for all Member States demand rapid and effective remedial action through an amendment of the Directive. (paragraph 3.51)

- 5.32. We agree with our witnesses that the best solution would be to get rid of the automatic requirement for immediate compensatory rest completely. Ways should be found of providing compensatory rest within a reasonable time. (paragraph 3.52)
- 5.33. We are also concerned by the possibility which has been raised with us that the *SiMAP* and *Jaeger* judgments might be applied to other sectors. We call upon the Commission to produce detailed advice on this possibility for consideration by Member States as a matter of urgency. (paragraph 3.60)

Final Conclusion

- 5.34. On the central point raised in the Commission's consultation, we reiterate our conclusion that the voluntary individual opt-out should be retained. We make a number of recommendations for practical improvements in the way that the Directive operates. In the time available we have endeavoured to do justice to this important and complex topic. We believed it was important to submit our Report before this phase of the Commission's review was completed. We intend to keep the review of the Working Time Directive under close scrutiny and will wish to examine carefully any further report or legislative proposals that may be issued as a result of the consultation. In the meantime, we recommend that the House should debate this Report as soon as possible. (paragraph 4.1)

APPENDIX 1: SUB-COMMITTEE G (SOCIAL AND CONSUMER AFFAIRS)

The Members of the Sub-Committee which conducted this Inquiry were:

Baroness Brigstocke
 Lord Colwyn
 Earl of Dundee
 Baroness Greengross
 Baroness Howarth of Breckland
 Lord Harrison
 Lord Howie of Troon
 Baroness Massey of Darwen
 Lord Williamson of Horton (Chairman)

Declarations of Interest:

Baroness Brigstocke

Education Consultant
Independent National Board Director of Times newspapers Holdings Ltd
Chairman, Landau Forte College (a CTC) Derby
Chairman of Trustees, Home-Start International
Trustee of Great Britain Sasakawa Foundation
Vice President of Elderly Accommodation Counsel
President of Bishop Creighton House Settlement, Fulham
President of British Accreditation Council for Independent, Further and
Higher Education
Trustee of HSBC Education Trust

Lord Colwyn

Practicing Dental Surgeon
President, All Party Group, Complementary and Integrated Healthcare
President, National Medicines Society
Chairman, Banbury Local Radio

Baroness Greengross

Vice Chair, Britain in Europe

Baroness Howarth of Breckland

Board Member, Food Standards Agency
Board Member, National Care Standards Commission
Board Member, CAFCASS (Children and Families Court Advisory and
Support Service)
Chair, Children's Helplines International (charity)
Patron and Trustee, Little Hearts Matter (health/care charity)

Baroness Massey of Darwen

Chair of the National Treatment Agency for Substance Misuse
Co. Chair of ASSG for Children
School Governor

Lord Williamson

Non-Executive Director, Whitbread plc

APPENDIX 2: CALL FOR EVIDENCE

The European Commission has initiated a consultation on the EU Working Time Directive (Directive 93/104/EC). This consultation will consider in particular:

- i) The reference periods used for determining the working week
- ii) The use of the individual opt-out by the UK and other Member states
- iii) The definition of working time in the light of the *SiMAP* and *Jaeger* judgments of the European Court of Justice about on-call requirements for hospital doctors
- iv) Ensuring Compatibility between Work and Family Life

The Commission's consultation is due to be completed by 31 March 2004.

Sub-Committee G has decided to hold an Inquiry into these aspects of the Directive with the aim of producing a report to Parliament to coincide with the Commission's Consultation.

Interested parties are invited to submit written evidence about the Directive to this Inquiry. In order to be considered by the Sub-Committee within the timescale set by the Commission **written evidence will need to be submitted to the House of Lords Committee Office by Monday 23 February 2004**.

Evidence should be limited to five sides of A4 paper and should be set out in numbered paragraphs. Supporting material, such as tables of figures or extracts from publications, may be attached to the submission, but should not exceed four extra pages. The submission should be signed and dated, together with a note of the author's name and status. It should make clear whether the evidence is submitted on an individual or corporate basis. **Submissions by e-mail are preferred (as attachments in Word) with a signed hard copy to follow.**

Evidence submitted becomes the property of the Committee, and may be published. Witnesses may publicise their written evidence themselves, but in doing so should indicate that it was prepared for the Committee.

Having reviewed the written evidence, the Sub-Committee may decide to invite some of those who have submitted it to give oral evidence on the record to a public meeting of the Sub-Committee. Additional written information may also be requested.

2 February 2004

APPENDIX 3: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

Amicus

Dr Catherine Barnard *, Dr Simon Deakin and Mr Richard Hobbs *

BNFL Commercial

British Chambers of Commerce (BCC) *

British Hospitality Association *

British Medical Association (BMA) *

British Retail Consortium

Philip Bushill-Matthews MEP

CBI *

Chartered Institute of Personnel and Development (CIPD)

Construction Confederation

Department of Health (DoH) *

Department of Trade and Industry (DTI) *

English Courtyard Association

Equal Opportunities Commission (EOC)

Federation of Small Businesses (FSB) *

Freight Transport Association (FTA)

Motor Sport Industry Association

NHS Confederation *

Offshore Industry Liaison Committee (OILC)

Road Haulage Association (RHA)

Royal College of Nursing

Royal College of Obstetricians and Gynaecologists

Royal College of Physicians, London

Royal College of Physicians of Edinburgh

Royal College of Surgeons of Edinburgh

Trades Union Congress (TUC) *

Union of Construction, Allied Trades and Technicians (UCATT)

Working Time Solutions Ltd

Dr J R Ponsford, University Hospitals Coventry and Warwickshire NHS Trust