

Response to DTI Consultation Paper on Working Time Regulations

20 September 2004

Introduction

1. On 29 June 2004, the Department of Trade and Industry (DTI) published a consultation document "Working Time – Widening the Debate", a preliminary consultation on long hours working in the UK and the application and operation of the working time opt out. Comments are invited by 22 September 2004.

2. This paper sets out the response of the Association of Labour Providers. The Association was established in February 2004 by 18 labour providers that wish to improve standards in the industry, and currently has 30 members. The Association is generally accepted as the representative body for labour providers and has worked closely with Defra on the gangmasters licensing legislation. All members were notified of the consultation exercise and asked for their comments. The response was approved by the Executive Committee of the Association at a meeting on 20 September 2004.

3. Labour providers represented by the Association supply large numbers of manual workers to the agricultural and food packing and processing industries where long working hours are a generally accepted practice. 48% of all workers in agriculture and fisheries work more than 48 hours a week; the next highest proportion is 28% in transport and communications. An estimate 80% of workers provided by labour providers work in excess of 48 hours a week. Most come to Britain from low wage countries and seek to earn as much money as they can while they are in the country.

Executive summary

4. The present arrangements work well and the Association is not aware of any major problems with them. The Association would oppose any further regulations in this area. Labour providers and employers generally already suffer from an endless stream of new regulations notwithstanding government commitments to cut the regulatory burden. The consultation document itself considers only relatively modest tinkering and in these circumstances, bearing in mind that there are no major problems, the do-nothing option must be the preferred one. Any attempt to restrict hours worked or to tighten the operation of the opt out would simply result in more moonlighting.

The issues - a summary

5. The Working Time Directive 1993 was implemented in the UK by the Working Time Regulations 1998. The main features of the Directive are:

- A maximum average working week of 48 hours.
- A daily rest period of at least 11 consecutive rest hours.
- An uninterrupted rest period of 24 hours every 7 days.
- A compulsory rest break where the working day is over 6 hours.
- Special rules for those who work at night.

6. Under the Directive Member States can allow individuals to opt out of the 48 hour working time limit and the Regulations permit this. Even if an individual agrees to work for more than 48 hours, they are not allowed to do so unless they sign an opt out which can be cancelled at any time. Employers cannot force a worker to sign an opt out.

7. The latest figures show that about 20% of full time employees usually work more than 48 hours a week and that there has been a slight reduction in this figure since 1998. Surveys show that while people would prefer to work shorter hours only 25% of employees usually working more than 48 hours would want to reduce their hours if this meant reduced pay.

8. The European Commission is consulted on the operation of the opt out. It has argued that the way the opt out is used in the UK shows that the difficulty in ensuring that the spirit and terms of the directive are respected. The Commission has identified four options on the opt out:

- Tighten the conditions of the application of the individual opt out to strengthen its voluntary nature.
- Permit exemptions only through collective agreements.
- Provide that the opt out could only be possible when authorised by means of collective agreements between social partners.
- Revise the individual opt out with a view to its phasing out.

9. In the consultation document the government makes clear its strong support of the individual opt out and floats a number of options for changing the present arrangements while leaving the basic structure of an opt out in place.

Specific issues

10. In response to the specific raised in Chapter 3 of the consultation document, the Association's views are:

- Members of the ALP do use opt outs and the current system of written consent works well. (Paragraph 3.4)
- Neither labour providers nor their workers would benefit from additional information in the opt out document. (Paragraph 3.4) Already workers are supplied with a mass of information in employment contracts; for many, this is information overload. Most of the workers who labour providers take on fully expect to work more than 48 hours a week and wish to do so. No useful purpose would be served by providing them with further information.
- Changing the law to make it clear that an employment contract cannot include an opt out clause would serve no useful purpose as this is already the legal position. (Paragraph 3.5)
- Making it unlawful to ask someone to agree to work long hours at the same time as signing their employment contract would be strongly opposed by the Association. (Paragraph 3.6) This would introduce an unnecessary element of bureaucracy and would prevent workers working long hours immediately if they wished to do so. The point has already been made that the workers employed by labour providers fully expect and seek to work long hours so as to earn more money, and further obstacles and bureaucratic arrangements should not be put in their place.

- The Association opposes a time limited opt out which would have to be renewed. (Paragraph 3.7) This would merely introduce an additional element of bureaucracy and would serve no useful purpose.
- There is no merit in applying a maximum number of hours that workers can do. (Paragraph 3.8) It would impose additional reporting requirements and again would simply mean more bureaucracy.
- There should be no requirement for additional risk assessments for businesses using long hours workers. (Paragraph 3.9) As the consultation document makes clear there is no evidence to link working long hours with a higher level of health and safety problems. Paragraph 2.13 of the consultation document states: “The Working Time Directive was introduced as a health and safety measure. However, research has not been able to show a clear, unequivocal causal link between the length of time people work each week and ill health and it is very difficult to separate the effects of long-hours working from other possible causes of occupational ill health. There is certainly no evidence pointing to particular problems arising at the 48 hour point. There is stronger evidence to suggest an association between, on the one hand, job control, monotonous and repetitive work and an imbalance between a worker’s effort and regard, and, on the other, coronary heart disease and other conditions. Giving people choice and control over their working time can enhance occupational health.”
- Health assessments for long hours workers should not be a requirement as again there is no evidence on which to single out hours of work as a basis for employers being forced to offer health assessments and in practice few would wish to take this up. (Paragraph 3.10)
- There should be no additional record keeping requirements. The present arrangements work well and requiring specific records on working hours rather than allowing these to be extracted from pay roll data would impose additional bureaucracy. (Paragraph 3.11)
- An awareness campaign would be pointless as this is not an issue on which there is great public concern and any campaign would need to be massive to have any effect. (Paragraph 3.12) It is suggested that because many workers give consent to opt out but then do not work more than 48 hours, that there is a low level of awareness of the rules. This may well be a misreading of the position. Rather, some employers may seek a consent automatically simply as a means of dealing with all the bureaucracy in one go regardless of whether the opt out rule would be used in practice.
- If the DTI and others wish to produce good practice guidance then that is a matter for them. Labour providers can see no need for any information above that already available. (Paragraph 3.13)
- The opt out requirements are clear and it is difficult to see what additional information could be provided by a code of practice. (Paragraph 3.14)
- Labour providers know precisely how many of their workers are working long hours and they monitor their working hours as they are paid on an hourly rate. (Paragraph 3.15)

Response to DTI Consultation Paper on Working Time Regulations

20 September 2004

Introduction

1. On 29 June 2004, the Department of Trade and Industry (DTI) published a consultation document "Working Time – Widening the Debate", a preliminary consultation on long hours working in the UK and the application and operation of the working time opt out. Comments are invited by 22 September 2004.

2. This paper sets out the response of the Association of Labour Providers. The Association was established in February 2004 by 18 labour providers that wish to improve standards in the industry, and currently has 30 members. The Association is generally accepted as the representative body for labour providers and has worked closely with Defra on the gangmasters licensing legislation. All members were notified of the consultation exercise and asked for their comments. The response was approved by the Executive Committee of the Association at a meeting on 20 September 2004.

3. Labour providers represented by the Association supply large numbers of manual workers to the agricultural and food packing and processing industries where long working hours are a generally accepted practice. 48% of all workers in agriculture and fisheries work more than 48 hours a week; the next highest proportion is 28% in transport and communications. An estimate 80% of workers provided by labour providers work in excess of 48 hours a week. Most come to Britain from low wage countries and seek to earn as much money as they can while they are in the country

Executive summary

4. The present arrangements work well and the Association is not aware of any major problems with them. The Association would oppose any further regulations in this area. Labour providers and employers generally already suffer from an endless stream of new regulations notwithstanding government commitments to cut the regulatory burden. The consultation document itself considers only relatively modest tinkering and in these circumstances, bearing in mind that there are no major problems, the do-nothing option must be the preferred one. Any attempt to restrict hours worked or to tighten the operation of the opt out would simply result in more moonlighting.

The issues - a summary

5. The Working Time Directive 1993 was implemented in the UK by the Working Time Regulations 1998. The main features of the Directive are:

- A maximum average working week of 48 hours.
- A daily rest period of at least 11 consecutive rest hours.
- An uninterrupted rest period of 24 hours every 7 days.
- A compulsory rest break where the working day is over 6 hours.
- Special rules for those who work at night.

6. Under the Directive Member States can allow individuals to opt out of the 48 hour working time limit and the Regulations permit this. Even if an individual agrees to work for more than 48 hours, they are not allowed to do so unless they sign an opt out which can be cancelled at any time. Employers cannot force a worker to sign an opt out.

7. The latest figures show that about 20% of full time employees usually work more than 48 hours a week and that there has been a slight reduction in this figure since 1998. Surveys show that while people would prefer to work shorter hours only 25% of employees usually working more than 48 hours would want to reduce their hours if this meant reduced pay.

8. The European Commission is consulted on the operation of the opt out. It has argued that the way the opt out is used in the UK shows that the difficulty in ensuring that the spirit and terms of the directive are respected. The Commission has identified four options on the opt out:

- Tighten the conditions of the application of the individual opt out to strengthen its voluntary nature.
- Permit exemptions only through collective agreements.
- Provide that the opt out could only be possible when authorised by means of collective agreements between social partners.
- Revise the individual opt out with a view to its phasing out.

9. In the consultation document the government makes clear its strong support of the individual opt out and floats a number of options for changing the present arrangements while leaving the basic structure of an opt out in place.

Specific issues

10. In response to the specific raised in Chapter 3 of the consultation document, the Association's views are:

- Members of the ALP do use opt outs and the current system of written consent works well. (Paragraph 3.4)
- Neither labour providers nor their workers would benefit from additional information in the opt out document. (Paragraph 3.4) Already workers are supplied with a mass of information in employment contracts; for many, this is information overload. Most of the workers who labour providers take on fully expect to work more than 48 hours a week and wish to do so. No useful purpose would be served by providing them with further information.
- Changing the law to make it clear that an employment contract cannot include an opt out clause would serve no useful purpose as this is already the legal position. (Paragraph 3.5)
- Making it unlawful to ask someone to agree to work long hours at the same time as signing their employment contract would be strongly opposed by the Association. (Paragraph 3.6) This would introduce an unnecessary element of bureaucracy and would prevent workers working long hours immediately if they wished to do so. The point has already been made that the workers employed by labour providers fully expect and seek to work long hours so as to earn more money, and further obstacles and bureaucratic arrangements should not be put in their place.
- The Association opposes a time limited opt out which would have to be renewed. (Paragraph 3.7) This would merely introduce an additional element of bureaucracy and would serve no useful purpose.
- There is no merit in applying a maximum number of hours that workers can do. (Paragraph 3.8) It would impose additional reporting requirements and again would simply mean more bureaucracy.
- There should be no requirement for additional risk assessments for businesses using long hours workers. (Paragraph 3.9) As the consultation document makes clear there is no evidence to link working long hours with a higher level of health and safety problems. Paragraph 2.13 of the consultation document states: "The Working Time Directive was

introduced as a health and safety measure. However, research has not been able to show a clear, unequivocal causal link between the length of time people work each week and ill health and it is very difficult to separate the effects of long-hours working from other possible causes of occupational ill health. There is certainly no evidence pointing to particular problems arising at the 48 hour point. There is stronger evidence to suggest an association between, on the one hand, job control, monotonous and repetitive work and an imbalance between a worker's effort and reward, and, on the other, coronary heart disease and other conditions. Giving people choice and control over their working time can enhance occupational health."

- Health assessments for long hours workers should not be a requirement as again there is no evidence on which to single out hours of work as a basis for employers being forced to offer health assessments and in practice few would wish to take this up. (Paragraph 3.10)
- There should be no additional record keeping requirements. The present arrangements work well and requiring specific records on working hours rather than allowing these to be extracted from pay roll data would impose additional bureaucracy. (Paragraph 3.11)
- An awareness campaign would be pointless as this is not an issue on which there is great public concern and any campaign would need to be massive to have any effect. (Paragraph 3.12) It is suggested that because many workers give consent to opt out but then do not work more than 48 hours, that there is a low level of awareness of the rules. This may well be a misreading of the position. Rather, some employers may seek a consent automatically simply as a means of dealing with all the bureaucracy in one go regardless of whether the opt out rule would be used in practice.
- If the DTI and others wish to produce good practice guidance then that is a matter for them. Labour providers can see no need for any information above that already available. (Paragraph 3.13)
- The opt out requirements are clear and it is difficult to see what additional information could be provided by a code of practice. (Paragraph 3.14)
- Labour providers know precisely how many of their workers are working long hours and they monitor their working hours as they are paid on an hourly rate. (Paragraph 3.15)