

The regulation and flexibility of working time: Long working hours in the UK

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INTRODUCTION

Two of the defining features of working time in the UK, in comparison to other major European economies, are: (a) a high incidence of (female) part-time work and long (male) full-time hours and (b) weak statutory regulation of working time. The story of part-time work is perhaps relatively straightforward. With limited legal restrictions on part-time working, it began to increase in the 1970s with the growth of the service sectors, both public and private, and the increased participation of women in the labour market. Only one in seven jobs was part-time in 1971, but it now accounts for around a quarter of all jobs, or some 7.5 million workers, which is the second highest proportion of part-time workers in the EU after the Netherlands. Part-time work constitutes the majority of jobs in hotel and catering and nearly half in retail and wholesale, health and education. In these sectors, where demand is highly variable but largely predictable, part-time work can be used to match labour to peak and extended ('unsocial') times. It can also provide more bodies for absence cover and better productivity or quality work in routine and/or pressured jobs. Service-sector work also lends itself to fragmentation because it is less highly coordinated than many manufacturing processes and costs of training duplication may be lower. Finally, by offering a degree of 'work-life balance' to staff, part-time work can also have a dampening effect on pay expectations, which is highly significant in such labour intensive sectors. Part-time working, especially on these terms, is thus most likely to appeal to those with other significant responsibilities such as education or childcare, who do not want or cannot meet the requirements of full-time work. Though most women actually work full-time hours, part-time work is highly gendered - nearly eight out of ten part-time workers are female, with men mainly at entry and exit demographic stages. Hence, part-time work reflects patterns of child care and the sexual division of labour in society as a whole, as well as the tertiarisation of the economy. Indeed, employers of part-time workers have collectively constructed a pattern of working which both benefits from and perpetuates women's primary social responsibilities for childcare and domestic labour.

Weak legal regulation is also associated with the pattern of relatively long working hours for men. This is occupationally segmented between the 'unpaid overtime' of workers such as managers and professionals, and paid overtime for mainly blue-collar employees. Overtime is a major contributor to long working hours, especially for manual employees, but in recent years has begun to significantly decline. In 2001, nearly a third (31.5%) of male full-timers worked paid overtime, averaging 8.1 hours per week. In 2007 the percentage was down to 27.4%, with an average of just 1.9 hours. For full-time women, 17.1% worked an average 4.5 hours paid overtime in 2001; this dropped to 15.1% working 0.7 hours in 2007. Although some of this may be accounted for by methodological changes from the New Earnings Survey (NES) to the Annual Survey of Hours and Earnings (ASHE), other survey data also points to a decline in long working hours (see below). In the next section we briefly examine some of the recent developments in working time in the UK. The most significant is this fall in long working hours, though it remains high by European standards. This raises the questions as to why this decline

has occurred, but also why it has not gone still further. We can speculate that over time, and in combination with other 'family-friendly' laws, the WTR may have had the effect of stimulating wider awareness of work-life balance by employers and employees alike, especially in the context of tight labour markets and as the phenomena of dual-career and multi-carer households continued to grow. We then briefly examine the case of 'annualization' to highlight some of the factors sustaining traditional practices such as overtime and precluding more profound change.

BACKGROUND: WORKING TIME AND ITS REGULATION IN THE UK

There has been a steady decrease in the overall working hours of full-time workers since the election of a Labour government in 1997. On average, both male and female full-timers now work more than one and a half hours less each week. According to the Labour Force Survey (LFS), which is a representative survey of employees (rather than employers as in NES/ ASHE), in 2007 full-time men work on average a total of 39.0 hours a week, compared to 40.7 in 1997; the figures for women are 33.8 and 34.7 respectively. (Part-time workers of either sex consistently average around 15 hours a week).

The [Office for National Statistics](#) (ONS) publishes LFS data in a form which records long working hours as over 45 hours a week. Also relevant is the nationally-representative Workplace Employment Relations Survey (WERS) that was last conducted in 2004 (WERS 04) and previously in 1998 (WERS 98). The proportion of employees who said they *usually* worked more than 48 hours a week fell from 13 to 11% over this period, though the proportion working between 39 and 48 hours remained stable at 37% (Kersley et al, 2006: 266).

One explanation for this decline in long-hours working could be that employers are using alternative forms of flexibility in place of overtime such as part-time, shift-work, annualized hours contracts (AHC) and temporary work. Yet the use of part-time and shift-work shows little change and these remain located in particular sectors and occupations. For example, though the proportion of workplaces with no part-time workers fell from 21% in 1998 to 17% in 2004 (WERS), this is most likely to be associated with an expansion in public sector employment (in 2004, private-sector workplaces were more than twice as likely to have no part-time employees as those in the public sector, at 19% compared to 8%). The use of AHC declined in the 1990s to reach a plateau of just 4.6% of the workforce from 2001, and again the practice is concentrated in particular sectors. WERS also finds that the use of temporary agency work (TAW) halved in the private sector from 29% of workplaces in 1998 to 14% in 2004 (remaining stable at around 26% in the public sector). Over the same period, workplaces using fixed-term contracts (FTC) declined from 34% to 23% in the private sector and from 72% to 61% in the public sector. This might be related to conditions of economic growth, as employers are less reticent of hiring permanent workers when product demand is high, and more keen to retain them in tight labour-market conditions.

An alternative explanation for a reduction in long-hours working could lie with stricter regulation. Yet in both institutional and legislative forms this is weak. For trade unions, the reduction of working time has always been a priority to be pursued at times of strength. This is related to concerns about the exploitation of labour and, more positively, to secure a share in productivity growth. But unions have also always been aware that

victories over working time are likely to be more enduring and difficult to reverse than, say, gains over pay; few employers usually want to extend working time in the down cycle when labour is weak (Arrowsmith, 2003). Reductions in basic hours were introduced in the UK by collective bargaining and at times of labour scarcity, with each advance serving as a platform for the next campaign. The stepwise reductions were firstly in 1872-4 (a 10% cut from 60 to 54 hours); 1919-20 (11% to 48); 1946-9 (8% to 44); with the last generalised wave in the early 1960s (9% to 40). There has been no repeat since as multi-employer bargaining has collapsed and the proportion of non-union firms has grown such that less than one in five private sector workers are now covered by collective bargaining. Furthermore, even where labour representatives are involved in the regulation of working time, their position has been weakened by increased (international) competition and real or perceived job insecurity (Burchell, et al, 2002). Much collective bargaining appears ritualistic and with limited impact on management decisions (Forth and Millward, 2002).

The WTR 1998, which implemented the 1993 Working Time Directive (WTD), was the UK's first comprehensive law on working time. The UK was alone at the time in making use of the provision for an individual 'opt out' from the requirement that no-one should work an average of 48 hours or more a week. The trade unions argued that this was nonsensical for a health and safety measure and would permit employers to apply unfair pressure on staff to continue to work long hours, especially in workplaces without a trade union presence. They also feared that a lack of awareness about individual rights, and limited enforcement, would fundamentally weaken the 48-hour stipulation. Certainly, early evidence suggests that the 48-hour rule had very little impact on long working hours (Neathy and Arrowsmith, 2001; Goss and Adam-Smith, 2001). Yet the introduction of the WTR also marks the start of a sustained and significant fall in weekly working hours for full-time workers (figure 1). This is observed for both male and female workers (table 1).

Figure 1.



Source: ONS

Table 1. Actual full-time weekly hours of work, UK

	Men	Women
1997	40.7	34.7
1998	40.7	34.6
1999	40.1	34.5
2000	39.8	34.1

2001	39.9	34.4
2002	39.8	34.4
2003	39.2	34.1
2004	39.1	33.9
2005	39.1	33.7
2006	38.9	34.0
2007	39.0	33.8

Source: LFS spring quarter (except 2005 = third quarter)

The trend to shorter hours slightly pre-dates implementation of the regulations (though this could be explained by employers anticipating change in the law). But it is also seen amongst exempt groups, such as the self-employed: in 1997 43.0% of the self-employed usually worked over 45 hours a week; by 2007 the figure was down to 31.9%. This implies that there are other reasons for the fall in hours, including the possibility that people have been seeking to achieve a more positive 'work-life balance' (WLB).

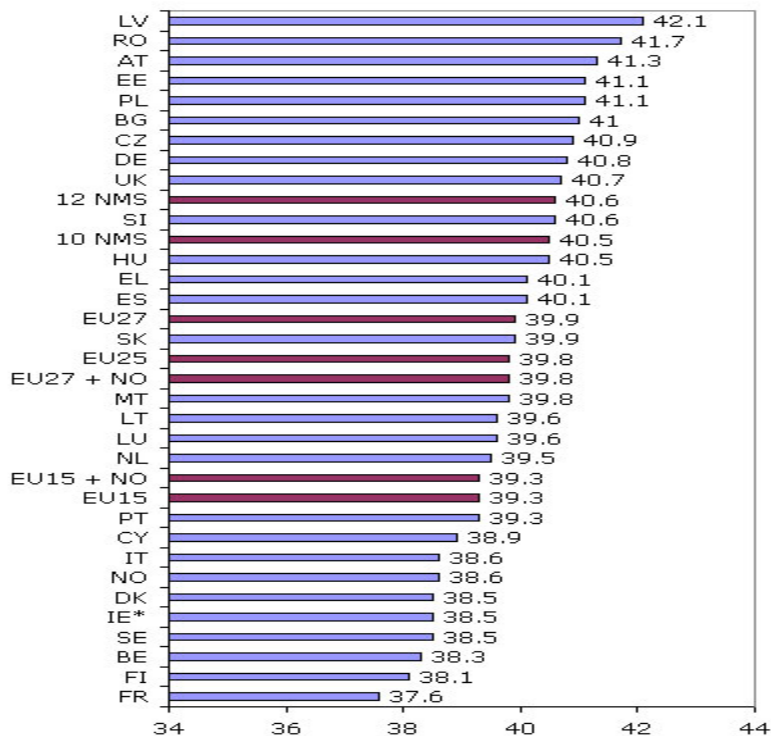
Why might this interest in WLB have occurred at this time? First, employees may have been empowered by tight labour market conditions and skills shortages in the late 1990s and early 2000s. Recent research also suggests that male workers are themselves becoming more interested in family-friendly work practices, reflecting more active involvement in childcare - the average time spent by fathers with young children on childcare activities has increased eight-fold since the 1970s (EOC, 2006). This could be related to the growing phenomenon of dual-career families, which is itself linked to increased educational and employment opportunities for women, and increased inter-generational caring responsibilities reflecting demographic change. Second, and reinforcing this, a widening provision of individual rights beyond the WTR meant that WLB became an increasingly mainstream concern. WLB was a distinctive policy turn of the incoming Labour government of 1997. The Employment Relations Act 1999 and Employment Act 2002 introduced and/or enhanced a range of provisions concerning maternity leave and maternity pay; paternity leave (initially unpaid, but now paid); and emergency paid leave to care for dependents. The 2002 Employment Act also provided parents with children under the age of six years the right to request flexible working arrangements, and this was recently extended to a wider range of employees with caring responsibilities.

WERS 2004 finds substantial evidence of extra-statutory provision on maternity leave (Marginson, 2006): for example, in 51% of private and 84% of public sector workplaces, at least some portion of maternity leave is on full pay (no comparable data are available for 1998). The survey also finds noticeable increases in the availability of paid paternity leave and emergency paid leave since 1998, although for the latter more than three times as many employees reported that they took annual leave when such emergencies arose as those who took special paid leave. In this regard also, the gap between the public and private sectors evident in 1998 had partially closed by 2004. WERS 2004 reveals significant increases in the availability of a range of flexible working arrangements since 1998, including flexi-time, term-time only working, homeworking, and job-sharing. Work-life balance is thus now a more recognised issue for employers and employees. In 1998, 84% of WERS managerial respondents said it was basically up to individuals to balance work and family responsibilities; this fell to 65% in 2004. The biggest drop was in the public sector (from 75% to 48%; private sector fell from 81% to 73%).

A third consideration is that the WTR, though weakened by the availability of the opt-out, was highly and increasingly significant in other ways. There was no opt-out from the rules governing daily, weekly and annual rest periods. These rules have also been tightened, either following union challenges in the courts (e.g. over service qualifications and use of pay in lieu of leave), or independently by the government following union campaigns, as in the case of holiday entitlement. The WTR provided the first ever statutory right to paid leave, at 20 days for full-time employees, which benefited millions of workers, especially part-time workers and those in small firms. The Working Time (Amendment) Regulations 2007 increase statutory leave entitlement by adding eight public holidays. From 1 October the statutory entitlement increases to 24 days, and to 28 days from 1 April 2009. This is estimated to benefit 22% of the UK workforce. These developments are likely to have further raised awareness of the WTR, and perhaps even encouraged a certain 'reflexivity' over the 48-hour provision in the sense of attitudinal restructuring and changed patterns of self-regulation.

Yet, for all that, UK workers still work some of the longest hours in western Europe (figure 2). This is because the developments referred to above largely operate at the *individual* level (Fagan, et al, 2006). Without the further extension and strengthening of legal rights, and in the context of weak institutions for collective bargaining, reductions in hours are not generalisable but remain contingent on specific local conditions. The wider reorganisation of work which is necessary to reduce dependency on patterns of long working hours faces structural constraints to do with product market pressures and an insufficient institutional capacity to develop and implement alternatives in a managed process of partnership. The barriers facing annualized hours working, which usually redistributes overtime across the workforce, is one example.

Figure 2. Average actual weekly hours in main job, full-time employees, 2006



Note: * 2005 figure. Source: Eurostat, with averages calculated by EIRO

FINDINGS AHC: A CASE IN POINT

There was a growth in AHC in the early 1990s but this was short-lived and it remains relatively rare in the UK. Around one in twenty workers are employed on AHC, according to the LFS, but a large proportion of these will be seasonal workers and in occupations such as teaching in which there is little or no budgeting for short-term flexibility through provision for recourse to a 'pool' of reserve hours. On the face of it, the limited use of AHC is surprising given their ability to offer both long-cycle and immediate flexibility to employers, which provides employers greater control over working-time scheduling at lower cost. AHC can also release cost and productivity gains to be shared with workers through, for example, higher (pensionable) pay and less overall time spent at work.

The use of AHC was investigated through a survey of trade unions and analysis of the 2004 WERS (Arrowsmith, 2007). Overall, the evidence suggested that AHC are retarded by the path dependency of existing patterns of long working hours which both provides an alternative flexibility *and* makes the introduction of AHC more problematic. The complexity of AHC depends on specific patterns of labour demand. However, it can be difficult to manage because they generalise and compel a flexibility requirement across the workforce. The redistribution of voluntary overtime and/or shift work across the workforce leads to long-hours workers losing premia pay, whilst others are effectively conscripted into periods of 'unsocial' or additional work. There is thus a risk of individual and collective conflict whether demand is highly variable or in circumstances where managers have only ad hoc recourse to reserve hours.

Breaking out of the dependency on long hours is limited by inadequate institutional mechanisms with which to introduce, regulate and maintain more complex working time arrangements effectively. It is no coincidence that most notable, cases of AH are introduced by collective bargaining (IDS, 2006). Trade union involvement can reassure the workforce by representing their concerns to management and, by taking a collective view, unions can also help employers address any problems of competing earnings and working-time preferences within the workforce. These can be resolved by negotiating a claim on the financial savings and improved labour productivity arising from the scheme.

The trade union survey confirmed an overall decline in interest and use of AHC and found little evidence of active engagement of trade unions on the part of employers. The WERS data provided a wider picture of the overall patterns of AHC usage and permitted some inferences about the most significant factors involved. The analysis showed that AHC is most commonly found in large organisations in sectors such as education, health, manufacturing, the utilities, transport and communication, and financial services. It is not evidently associated with particular competitive conditions but does seem to form part of a flexibility strategy that involves JIT, shiftworking, multi-skilling and teamwork. Many AH workplaces also use TAW and FTC, though to a significantly lesser degree than non-AH workplaces. Perhaps the strongest finding, however, was that AHC highly correlated with trade union presence and recognition, and furthermore a willingness by management to engage trade unions over workplace change.

Given this, there may be two broad explanations as to why AH working is not more commonly found. First, there may be limited need whereby requirements can be met by different combinations of shiftwork, temporary and part-time work, or overtime. In the retail sector, for example, temporary and part-time work enables operating hours to be

extended and regular daily, weekly and seasonal peaks to be covered. In industry, shiftwork and overtime provide extended operating and the flexibility necessary to react quickly to sudden upsurges in demand or to ensure that late or overrunning orders are completed. Overtime working can be cut back to respond to downturn periods without having to lose skilled staff. However, management depends on (often a minority of) employees agreeing to work overtime, which it might encourage by lower basic rates of pay. This means that overtime can become regularised or 'institutionalised' as a self-serving practice that is more expensive and less productive than standard working time.

The second set of possible explanations operates at the level of the firm: i.e. management inertia, risk aversion or a lack of strategic capacity, particularly in the face of potential resistance. Reassuring employees and sustaining a reasonable balance of advantage requires sophisticated industrial relations, and unions themselves have to be sufficiently 'strategic' and capable. Yet Britain's tradition of antagonistic industrial relations has historically not been suited to a joint problem-solving approach. This has been compounded in three ways. First, the decentralisation of collective bargaining narrows the scope for coordination or the dissemination of 'best practice', by employers or by trade unions. One of the most significant AHC initiatives was introduced by sector-level agreement, in the paper and board industry following benchmarking of the Scandinavian experience in 1982 (Beaumont and Hunter, 1996), but such arrangements have now virtually disappeared in the UK. Second is increased competition, organisational change and job insecurity, an instability which can make the maintenance of 'high-trust' employment relations more difficult. Third is, of course, employers' retreat from collective bargaining itself. It is no surprise that annualization is much more common in other European countries such as Germany, where it has spread through collective bargaining, or in France where it has been promoted by law. In this sense, the apparent freedoms that UK employers have - weak legal regulation of working time and limited trade union rights - may be somewhat perverse because there is much more flexibility, at least in the form of AHC, in those countries where the opposite applies.

DISCUSSIONS AND CONCLUSION

There has been a steady decline in long working hours in the UK since 1997. This coincides with the introduction of the country's first statutory framework governing working time. However the effect is not necessarily straightforward. Many workers will have swiftly benefited from new rules limiting working time to an average of 48 hours a week. However the impact of the WTR was also limited by widespread use of the 'opt-out'. It is possible that the fall in long working hours was also related to increase awareness of WLB, undermining the willingness of employees to work long hours and also the ready recourse to long hours by many employers. This would reflect a combination of long term social change (dual-career, multi-caring and single-parent households); medium-term economic change (sustained economic growth and tighter labour markets); and more immediate policy change (increased provision of individual employment rights). Increased awareness of WLB could have reinforced the effect of the WTR in a 'reflexive' manner, including by discouraging use of the opt-out itself (though no data is available on this).

However the decline of collective forms of self-regulation, and the individualised nature of the employment rights provided by the law, limits the margin for working-time reduction. In the absence of co-ordination across employers provided by sector-level regulation, and with the declining significance of collective bargaining within workplaces, the capacity for reforming

work organisation to break the path dependency of long working hours is diminished. Changes to working time arrangements are often complex as they often involve matters to do with pay and work organisation, not just contractual hours, and different groups within the workforce may have different expectations and interests over these. Significant reductions in working time in Europe usually result from some combination of contest and collaboration through collective bargaining, social partnership and hard law. Prospects for each of these are currently somewhat limited in the UK.

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Further reflections