



Out of Time - why Britain needs a new approach to working-time flexibility

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The background of the entire page is a vibrant blue sky. Scattered throughout are numerous dandelion seeds in various stages of flight. Some are in sharp focus, showing their delicate, feathery structure and dark seed heads. Others are blurred, suggesting movement and a sense of time passing. The seeds are distributed across the frame, with a higher concentration in the lower-left and lower-right areas.

OUT OF TIME

Why Britain needs a new approach
to working-time flexibility

Research paper for the TUC by Colette Fagan,
Ariane Hegewisch and Jane Pillinger 2006

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Section one

Executive summary

1. Introduction

Fundamental policy changes are needed in relation to flexible working time in Britain to meet the demands of economic, social and family relationships in the 21st century.

Large numbers of workers are missing out on flexible working, while many employers are not fully taking advantage of the potential of flexible working practices to enhance their competitiveness and growth.

The policy emphasis on working time and flexible work has been on helping parents of pre-school children and, in future, some carers, who are principally women, balance work and family/care responsibilities, but the problem is that these workers incur significant pay and career penalties for working flexibly.

In addition, the narrow focus on parents and carers misses opportunities to develop flexible working options in order to meet broader social and economic goals. In particular, the Lisbon economic objectives include action to raise the employment rates of women and older people, yet 'active ageing' policies to enable older people to remain in the labour market if they want to are woefully absent from existing government policy.

Similarly, achieving growth and competitiveness increasingly requires workers to be more adaptable, skilled and knowledgeable. Using flexible working hours to promote lifelong learning and skills development is another area where working-time policy can have an impact.

Meeting the demands of economic, social and family relationships in the 21st century requires a new and broad-ranging approach to flexible working time and work/life balance, based on a dynamic model of social partnership within a strong regulatory framework. There is now an urgent need to address these issues if employers are to have a competitive edge in the global economy and if workers are to be able to secure working arrangements that fit better their diverse circumstances and aspirations.

There are several policy challenges that concern the future organisation of work and time and for which a more coherent and wider-reaching working-time policy is required. These are to:

- Meet the flexibility requirements of the modern workplace and business competitiveness and utilise the full potential of all employees.
- Provide real equality between women and men at work by ensuring that

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these arrangements do not penalise women and actively encourage men to contribute time to family life.

- Secure working-time arrangements that support the policy goals of promoting lifelong learning and the development of a stronger knowledge-based economy.
- Promote active ageing and healthy work patterns to retain older workers and enable older workers to work reduced or flexible hours.
- Improve the quality of life for all employees through working-time options which improve leisure time and opportunities for pursuits away from the workplace, including community participation and the development of ‘civic renewal’.

Consequently, we advocate that there are three important ingredients missing from the development of working-time policy in the UK:

- Recognition of the valuable roles to be played by social partnerships and trade unions in negotiating workplace innovations in working time.
- A stronger and more coherent regulatory framework which combines the promotion of flexibility with direct regulatory limits designed to end the long-hours culture.
- A life course perspective to working-time policy.

In particular, we examine **the recent legislation for the right to request flexible work**, introduced initially for parents of young children and disabled children under 18 by the 2002 Employment Act and to be extended to a wider group of carers in 2007. We assess the impact in comparison to that of similar legislation introduced in the Netherlands and Germany.

We argue that while there has been some positive impact of the right to request, it remains limited by virtue of its narrow design and reliance on individualised policy measures that are directed at carers. This narrow focus is part of an overall failure to tackle the problems created by the long-hours working requirements in many jobs in Britain. Furthermore, the policy focus on (a subset of) employees with caring responsibilities has missed the point that a more effective and individual right for all employees to request flexible work could play an important role in securing a number of policy objectives which extend beyond the work–family agenda. We make a case that the UK’s right to request flexible work should be extended to all workers and that it requires a stronger regulatory framework.

2. Social and economic challenges of the 21st century

The report highlights five main social and economic challenges. We argue that these challenges can only be met by adopting new approaches to working time.

Globalisation, competition and productivity

Demands for competitiveness and productivity are heightened in a global economic market. Increasing productivity has been linked to management strategies which emphasise smart working and work/life balance policies, particularly in responding to the under-utilisation of part-time women's skills and aspirations in the labour market. This means making better use of all workers' skills and talents, of women and men, of older workers and younger workers, at all stages of the life course.

Flexibility is regarded as a necessary component of competitiveness and employment, as seen in the 2005 Lisbon Action Plan with a combined approach to employment and competitiveness. In parallel to this focus on a competitive and flexible European economy has been an emphasis on the importance of a social market approach, by requiring minimum standards that guarantee security, based on a model of 'flexisecurity'.

Learning and the knowledge economy

An effective lifelong learning policy to secure a knowledge-based economy requires working-time flexibility so that workers can reduce hours or have leave periods for learning and development. Social partnership and collective bargaining have stimulated a range of initiatives to improve training and lifelong learning opportunities in the workplace. In particular, the social partners are increasingly taking the responsibility to negotiate a balance between working time and time for learning; including specific measures to advance the careers of unskilled workers.

Active ageing

Population ageing has highlighted the need for active ageing and for measures to raise the employment rate for older workers. The policy challenge is how to retain older workers for longer in employment, which requires reform to working-time policy and not just a focus on the reform of pension systems and retirement ages. Increased opportunities to 'scale back' through flexible and reduced working hours could play a pivotal role in enabling older workers to adapt their working conditions and prolong their working lives if they wish. At the workplace level this also requires measures to improve training opportunities and job design adjustments in conjunction with flexible working options.

In relation to pension reform it also means addressing the impact of disparities in lifetime earnings and ensuring that women in particular are not penalised

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due to the impact of care responsibilities on their working-time pattern over their working lives.

The long-hours culture

The long-hours culture is extensive in the UK. Some 3.6 million employees regularly work more than 48 hours per week, while nearly 5 million employees (4,759,000) worked on average an extra day a week in unpaid overtime in 2005 (7 hours 24 minutes).

This feature of the UK economy has huge costs and there is now significant evidence of the negative impact of long working hours on personal, social, family and economic relationships, as well as health and well-being. The long-hours culture is particularly pervasive in male-dominated jobs and is one factor which helps perpetuate the 1.5 household work model (where the man works full-time and the woman part-time) instead of a more equal distribution of work based on shorter hours for both partners. Parenthood or other care responsibilities are typically managed by women dropping out of full-time work in part to compensate for the long hours worked by their partners.

Evidence shows that flexible working can help organisations and workers to adjust to the intensification of work as well as stress at work, and most employers believe that people work best when they can balance work with the rest of their lives.

Work and care: the gender time gap

The UK has a pronounced gender time gap. The narrow policy focus on flexible working time as a tool for work–family reconciliation for carers has produced a situation whereby women have to pay a high price because flexible working hours are largely seen as a ‘women’s issue’ associated with the ‘mummy track’. Large numbers of women work part-time, where a high and persistent part-time pay penalty is incurred. Part-time work has often been created explicitly to recruit or retain women, while the continuing workplace expectation that long hours are to be worked in particular jobs such as management helps to preserve this area of employment as a largely male enclave.

There is a need to balance equal opportunities with equity by enabling all parents and carers to have access to flexible hours to enhance their work/life balance, while also ensuring that those who do not have caring responsibilities can also enjoy the benefits of flexible hours.

There are strong arguments to suggest practical managerial benefits if flexible working is broadened to include all workers, linked to time for learning and training, time for leisure, time for participation in local communities, trade unions and in local politics, time for longer breaks and sabbaticals for study, travel and voluntary work.

3. Comparisons between the approach to working time flexibility in the UK, Germany and the Netherlands

Flexibility exists for all employees in Germany and the Netherlands, but is restricted to some parents and, in future, carers for adults in the UK

The UK legislation has the broadest flexibility options, allowing individuals to request reductions in working hours, changes in scheduling and the location of work. However, the legislation applies only to parents of young or disabled children, and, from April 2007, some employees caring for adults, in contrast to the provisions for all employees (except those in small firms) in Germany and the Netherlands. Furthermore, there is no right to request a move from part-time to full-time hours, unlike the Dutch and German legislation.

The narrow approach in the UK to flexible working means that it does not extend to areas such as lifelong learning as it does in Germany and the Netherlands. The use of working-time accounts and working time flexibility to support gradual retirement or lifelong learning, by statute or collective agreements, is a possibility that remains under-explored in the UK.

The Dutch law seeks to create greater diversity in working-time patterns and choice across the life cycle, in addition to creating a more equal redistribution of hours between male and female employees. The German law also reflects a concern with job creation by enabling the hours freed by a voluntary reduction to part-time work to be used to create job opportunities for people who are unemployed.

All three approaches to working-time flexibility are conditional on the business context. Employers can reject a request if implementing it would entail disproportionate costs or organisational problems. Yet UK employees are most limited in their ability legally to challenge employers' business reasoning.

A comprehensive approach based on negotiated flexibility is missing in the UK

Germany and the Netherlands have a more comprehensive approach to working-time flexibility that extends beyond specific legislation to reduce or increase working hours. In particular, working-time flexibility is negotiated and is embedded into collective bargaining and social partner negotiations, in national contexts where union coverage and influence is greater than in the UK.

As a result UK employers have less of an incentive to develop creative working-time solutions, by virtue of the more limited coverage of employee rights to consultation and participation in determining working hours, and the persistence of the long-hours culture.

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UK employees lose out in comparison to their Dutch and German counterparts

UK employees not only work longer full-time hours but also have fewer options for securing personal flexibility than in Germany and the Netherlands. If UK employees switch to part-time work they incur large penalties. In comparison to part-time workers in the Netherlands, those in the UK experience greater penalties, including a much wider gender wage gap between full-time and part-time hourly pay. Part-time workers in the UK are much more likely to be working in low-paid and typically female jobs.

The benefits of a social partnership is that working time flexibility comes into the mainstream

The comparison with the Netherlands and Germany demonstrates the benefits of a social partnership approach to working hours. To turn flexible working from marginal to mainstream requires a change in attitudes from employees as much as employers, one that is unlikely to be achieved by a one-sided approach to the organisation of work.

The limited focus of the UK legislation on some parents and carers means that an opportunity has been missed to contribute to a broader range of policy goals

The narrow focus of the legislation in the UK means that it does not address the many valuable ways in which a stronger right for all employees to request flexible work could contribute to a broader range of existing government objectives and policies. These include modernising working practices, achieving gender equality and active ageing, promoting lifelong learning, providing better job opportunities for disabled people and creating time for community participation and civic renewal. For individuals a stronger right to request flexible work would enable them to plan and make adjustments as they move through their working lives.

A comparison with the Dutch experience, with proportionately three times as many requests for part-time work as in the UK, indicates a comparable level of acceptances from employers and no significant differences in the number of employers experiencing problems as a result of the legislation. This suggests that there is no 'natural' limit to flexible working or that, in any case, if there is, the UK economy is far from having reached it.

4. How effective has the right to request flexible working been in the UK?

There have been some signs of a positive impact, that it has been widely implemented and that there have been few major obstacles and many workplace benefits. While the level of requests has not significantly increased since the introduction of the law, the number of refusals by employers has fallen.

Although women are the majority of those making requests and having their requests granted, men are also requesting flexibility in significant numbers. Men are more likely to seek options which, unlike part-time work, do not reduce earnings.

However, our research finds that there are problems with the full implementation of the right to request. This includes weaknesses in the procedure, coverage and the extent of legal redress:

The right to request is in danger of reinforcing gender inequalities

One particular danger is that the right to request flexible work could reinforce gender inequalities by reinforcing the linkage between flexible work and care responsibilities and the 'mummy track'. This is of particular concern because the majority of requests are made by women for part-time work, which has associated negative penalties on pay and career and advancement, and later on pension rights, across the working life.

Flexible work continues to be seen as non-standard

An additional problem is that the UK law has adopted a rationing approach to flexibility by treating it as non-standard, rather than promoting its widespread use. Flexible working is consequently seen as an add-on to existing full-time models of work.

The effect is limited by the continued prevalence of long working hours

The ability of the individual right to request flexible work to secure significant enhancements in work/life balance for men and women is thwarted by the prevalence of the long-hours culture in the UK. Long hours are incompatible with family responsibilities, contributing to women's under-representation in these jobs. This has created a household working pattern of 1.5 workers, with women working shorter hours to compensate for male long hours; rather than a fairer balance of work or reduced hours for both partners such as a 'dual 75%' model for couples (where both partners work shorter hours, equivalent to the total hours worked in the '1.5' model) or a shorter full-time working week for all.

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Men are finding it harder to work flexibly

Although significant numbers of men are requesting flexible work, they experience greater barriers to their requests than women. Men are more likely to have their requests rejected by their employer (14% of men compared to 10% of women) and to have their cases turned down in the employment tribunals (male claimants account for 27% of flexible working tribunal claims since 2003, but for 45% of cases that were lost, ruled out on procedural grounds or dismissed).

In practice women have been more successful in winning cases because almost two-thirds (64%) of cases brought by women, compared to only 17% by men, combined reference to the right to request with a claim under the Sex Discrimination Act. This has been harder for men to do. The Sex Discrimination Act allows a substantive challenge to a particular employment practice, can oblige the employer to implement change, and provides higher damages.

There are limited rights to make a legal challenge

Employees' rights to make a legal challenge to an employer's decision are limited to procedural grounds, without being able to challenge a business reason in detail. Our analysis of 420 employment tribunal cases suggests that some employees have been able to challenge employer intransigence. However, there is considerable inconsistency between tribunal decisions.

The use of the Sex Discrimination Act is usually limited to women, leaving men with a lower level of rights on changing their working hours or patterns.

Our analysis of tribunal cases suggests that there remains a serious problem of employees being forced to change jobs because of employer inflexibility. This is unlike in Germany and the Netherlands where claims are for an amendment of terms under the existing employment contract, whereas UK employees whose complaints are upheld generally might receive a small financial compensation but will have lost their jobs.

The lack of rights for UK employees to challenge substantially employers' business reasons for refusing their requests, and hence the lack of powers of tribunals to require a change in employment practice, limits the potential of the right to request to contribute to a modernisation of working practices.

There has been little or no impact on long working hours

The legislation has had little or no impact on the extent of long-hours working. The long-hours culture may be one of the reasons why men find it harder both to request flexible working and to have their requests accepted by employers.

Variable and unsocial hours present particular problems under the right to request flexible work.

The rationing approach to flexible working is particularly problematic in relation to variable hours, evening and weekend work. Employment tribunal cases illustrate the difficulties for parents to provide care when both partners have irregular hours, and also demonstrate the equity problems between employees when decision making on who has to work unattractive hours is narrowly prioritised round care for young children.

5. Meeting the 21st century challenges through social partnership and a life-course approach

Our research shows that we need to have a vision of a workplace of the future that is based on greater organisational flexibility and partnership, where workers can have not only a work/life balance but also some control of their working lives over the life course, and where employers can gain a competitive edge.

This requires innovative thinking; more creative working-time models that link new models of work organisation and working-time flexibility to the benefit of workers and employers. This needs to be addressed in a broader framework of regulation and social partnership. In a more competitive market gaining the win-win-win for employers, workers and consumers is at the heart of an effective model of work/life balance.

6. Recommendations: the future direction for policy – a framework for an integrated approach to working-time policy which benefits workers, businesses and services

Our recommendations for future policy concern the following four areas:

- A regulatory framework on working time is the starting point: this should extend the coverage and right to flexible working, address the long-hours culture and investigate means to increase the predictability of working time.
- Partnership working should underpin all working-time developments: social partnership, workplace dialogue and a positive and dynamic role for trade unions in relation to working time are essential to this new model of flexible working time.
- Flexible working hours need to be seen across the life course so that flexible working time includes a coordinated and integrated policy approach that includes care, pension and social security considerations.
- Changing the organisation of work is central: this means ensuring that changes in working time are effectively managed alongside other changes in work organisation and job content.

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a) A regulatory framework on working time is the starting point

The weak regulatory framework in the UK has limited the potential scope and coverage of working-time flexibility. The restriction of the right to request to some parents (and carers) in conjunction with the lack of rights effectively to implement a work/life balance beyond the parameters of the current legislation mean that the current regulatory framework has had a limited impact, particularly in resolving the gender time gap and ending long working hours.

A stronger regulatory framework is needed as an essential part of a new approach to flexible working time across the life course. This includes:

Reform of the right to request flexible work

- Extend the right to request flexible work to all employees.
- Provide clearer procedural rights for temporary reductions in working hours and for part-timers to request an increase in working hours.
- Increase the powers of employment tribunals to require employers to trial new working patterns and better to align procedures with those available under the Sex Discrimination Act; and greater involvement of ACAS in disputes over individual requests for flexible working.
- The knowledge gaps regarding the effectiveness of the right to request should be addressed in the review announced by the government for 2006 (this should include whether there is a part-time penalty from reductions in working hours, the pattern of refusals of requests by type of workplace; the impact on developments in flexitime and other forms of flexible working which do not involve a pay cut; and a focus on men and flexible working).

Tackling long and unpredictable working hours

- End the 48-hour opt-out of the Working Time Directive.
- Incentives and other measures be introduced to encourage employers and unions to re-examine work organisation and identify productive and 'smart' ways of working to move away from a routine reliance on long hours.
- Identify the measures that could provide greater predictability and encourage forward planning from employers on work schedules in recognition of the particularly difficulty that variable working hours poses for caring, education, volunteering and other regular pursuits, such as the Dutch four-week notice period for shift patterns.

Statutory provisions to encourage social partnership negotiations on working time

- Providing legal backing to social partnership could help to extend the coverage and role of social partnership and collective bargaining in relation to flexible working time, lifelong learning and active ageing in the workforce.

b) Social partnership and a positive and dynamic role for trade unions

The individualised right to request flexible work must be underpinned by collectively agreed principles to ensure it is implemented effectively and fairly across the workforce. Flexibility in working time cannot be achieved without a dynamic approach to change that directly involves trade unions working in partnership with employers to ensure that flexible working is located at the centre of collective bargaining and local negotiations. All the evidence shows that social partnership can create innovative and new approaches to working time that emphasises joint problem-solving and joint solutions between workers and management. This is illustrated with best practice examples covering a range of agreements from the UK and other European countries. We propose that:

- The Information and Consultation Directive be deployed to secure greater workplace consultation over working-time arrangements.
- Unions and employers make working time and time control a central focus alongside pay in collective bargaining with a view to eliminating inducements to long-hours working, ensuring decent pay levels do not rely on long-hours working and to evaluate the gender equity impact of the payment structures associated with different working-time practices.
- Employers and unions should consider setting up workplace working groups similar to those in the best practice examples, to review how the organisation of working time might be improved and how workers could be given increased choice regarding their working-time arrangements.
- Financial support be provided to encourage the development of pilot work/life balance projects, for example, through a new work/life balance social partnership challenge fund.

c) Flexible working hours need to be seen across the life-course perspective

A shift in policy focus is required to address the inter-related policy objectives of securing more flexible and productive working practices, increased lifelong learning, active ageing, work/life balance and gender equality. A more systematic, integrated policy framework would address the issue of flexible working hours across a life course perspective for all men and women – young and old, with and without current care responsibilities. The life-course approach entails a shift away from a focus on separate life events (e.g. education, parenthood, ill-health, retirement) to one where the connections across life events are a central element of policy. A life-course perspective on working time covers policies such as working-time accounts, possibilities of reducing/increasing working hours, lifelong learning, sabbaticals, career breaks and other leave arrangements from the labour market.

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The benefit of the life course approach is that it acknowledges and thereby makes it possible to predict with more certainty, the impact of different life-course events on participation in the labour market. An integrated approach to social protection and flexible working hours is needed if flexible working is to be a viable option for a wider group of workers. We propose that:

- A life-course perspective should be applied in policy design and evaluation pertaining to flexible working; and that the government apply this integrated approach to examine the coherence, implementation and impact of current working-time policies.
- A modern and successful social protection system is required which acknowledges and supports working-time adjustments and flexibility over the life course for all adults; rather than one which penalises individuals who deviate from a full-time, continuous profile or relies on outdated assumptions about a (male) household breadwinner. The government and the social partners should develop a new framework for pensions and social security on this basis, including developing flexible working and retirement schemes as an integral part of future pension reform as a way of retaining older workers in the workplace.

d) Changing the organisation of work is central

The organisation of work needs to change to reflect the changing labour market, changing society and the global economy. In particular, the competitiveness of the UK economy is dependent on the need to change work organisation to fit the knowledge economy. We propose that:

- Government, employers and unions develop training packages for managers, particularly for first-line supervisory staff, so that they can more effectively manage modern workplaces based on more diversified working patterns linked with changes in work organisation.
- Employers investigate the possibility of establishing incentives for line managers to develop 'smart' working and reductions in long working hours.
- In support of active ageing, employers, managers and unions address the role of working-time policies in conjunction with job design, training and development for the support and retention of an older workforce.
- In support of lifelong learning that a creative use of working-time flexibility be developed to facilitate and reward employees pursuing education and development. A similar principle might also be extended to support volunteering and community work.

Section two

Introduction

This report addresses the modern dilemma about how men and women can balance their increasingly complex lives with the demands of the 21st-century workplace. These are complex issues for which there is no easy solution. However, flexible working time can be part of a process of dynamic change in the workplace. In this report we highlight the need for new forms of flexible working time, organised through social partnership and taking a person's lifetime experiences into account, in order to match the economic, social and family relationships of the 21st century.

The report was commissioned by the TUC as a contribution to the debate about flexible working hours and how they can be used as a tool for increasing competitiveness, improving customer focus to services and in helping organisations adapt to change, as well as improving the work/life balance of employees.

In the next chapter (chapter 2) we explore the changing social and economic challenges facing Britain. These include globalisation, competition and productivity; learning and the knowledge economy; active ageing; the long-hours culture, and work and caring roles: the gender time gap.

In Chapter 3 we discuss the impact of the legislation giving workers with parental (and, in the future, care) responsibilities the right to request flexible working hours. We compare this with similar legislation that covers the whole working population that has been implemented in Germany and the Netherlands. This provides some valuable lessons for exploring whether extending flexible working hours to all workers can help to meet a broader range of policy goals.

In Chapter 4 we discuss a new approach to working-time flexibility that takes a life-course approach and the practical application of this more strategic approach to working time through planned approaches through working-time accounts, flexible retirement and learning opportunities.

In Chapter 5 we present some case studies of successfully negotiated working-time arrangements that have addressed issues relevant to the life course, using flexible working hours to plan working patterns and the retention of employees, and how flexible working hours can be used to improve the quality and range of services offered to the public at municipal and city levels.

Finally, in Chapter 6 we set out a number of recommendations for a new approach to working-time flexibility using a life-course approach embedded in social partnership.

Section three

Social and economic challenges of the 21st century

3.1 Introduction

The UK shares with its European partners broad policy challenges that result from long-term global, economic, structural, societal and demographic changes. These have implications for the changing nature of employment, work organisation and working conditions, the modernisation of social protection, and enhancing employment rates, particularly through the inclusion in the labour market of women, people with disabilities and older workers.

The transformation and diversification of working-time patterns has been a response to new workplace pressures resulting from international competition, globalisation of production chains and consumption patterns, technological innovation and changing customer demands (Bosch and Lehdorff 2005, Bosch et al. 1994, Messenger 2004, O'Reilly et al. 2000).

3.2 Social and economic challenges

There are five main social and economic challenges, each of which is discussed below:

- globalisation, competition and productivity
- learning and the knowledge economy
- active ageing
- the long-hours culture
- work and caring roles: the gender time gap.

Globalisation, competition and productivity

Economic globalisation and the move away from industrial to service sector employment have resulted in greater demands for competitiveness and productivity in a global market. The corresponding need to increase productivity is linked to changes in work organisation and working time. Against the background of shrinking labour supply, the full utilisation of all workers, particularly responding to the under-utilisation of part-time women's skills and aspirations in the labour market, is key to international

competitiveness (EOC 2005a). Coupled with training programmes, flexible working practices are amongst the most influential human resources (HR) practices to contribute to productivity. Achieving competitive and high productivity workplaces of the future requires more choice and flexibility for workers by making better use of all workers' skills and talents, of women and men, of older workers and younger workers, at all stages of the life course.

Some companies are already attuned to these requirements. International comparative research focussing on medium-size manufacturing companies finds that good people management practices (i.e. developing, rewarding and retaining talent and skills) go hand in hand with making work/life balance policies available in well run companies competing under globalised conditions; an arrangement which produces 'smarter' instead of 'harder' working arrangements (Bloom et al. 2006). The same study shows that such work/life balance policies do not penalise productivity and other studies across service and manufacturing sectors record a range of 'business case' gains from work/life balance policies (Den Dulk 2001, Dex and Scheibl 1999, Dex et al. 2001, Woodland et al. 2003); see Box 1 for some evidence from recent surveys.

A substantial part of these policy challenges has been addressed through the European Union where flexibility has been regarded as a necessary component of competitiveness and employment. Beginning with the European Commission's *White Paper on Growth, Competitiveness and Employment* (Commission of the European Communities 1993), and this focus on competitiveness and employment was cemented in the Lisbon Economic Guidelines (European Council, 2000), the EU's Employment Taskforce Report (European Council 2004) and more recently in the new Lisbon Action Plan with a combined approach to employment and competitiveness through the new *National Lisbon Programmes* for growth and jobs (Commission of the European Communities 2005).¹

In parallel to this focus on a competitive and flexible European economy has been an emphasis on the importance of a social market approach by requiring minimum standards that guarantee security, based on a model of 'flexisecurity'. In particular the Directives on Part-Time Work and Parental Leave, agreed through the social dialogue at the European level between employer and union organisations, as well as the Working Time Directive, set minimum standards for employee security and the reconciliation of work and family life, within a flexible and competitive European economy.

¹ This programme results from the relaunch of the Lisbon agenda that focuses on the twin priorities of jobs and growth through an Integrated Guidelines package, agreed by the European Council in March 2005. National Reform Programmes have been drawn up for delivering long-term growth, high employment and a fair and inclusive society.

Box 1: Some evidence from employers and employees about flexible working

The DTI's Employers' Survey for their second Work/life Balance Study found that of those employers that have already implemented work/life balance practices, 81% believed that these had had a positive effect on employment relations, 75% stated that the workforce had become more motivated and committed and 60% reported a better retention of staff. Employers also reported that work/life balance had positively contributed to increased productivity (49% of companies), improved recruitment, reduced rates of absenteeism, reduced overheads, improved the customer experience and created a more motivated, satisfied and equitable workforce (DTI 2003).

Employee demand for flexible working is widespread. According to the DTI's Employees' Survey for their second Work/life Balance Study, 70% of employees want to work more flexibly and 46% of employees identify flexible working as the most important factor in the choice of their next job (DTI 2004). This survey also found that the quality of working life has overtaken pay as the prime workplace concern for many employees, for one third would prefer to work flexible hours rather than receive an additional £1000 in pay. However, many employees also believe that working flexibly would impact negatively on their careers (DTI 2004), and the 2004 Workplace Employment Relations Survey found that 42% of employees thought their managers did not understand the work/life balance pressures they were under, only slightly less than was the case in 1998, 45% (Kersley et al. 2005). Similarly, a survey by Parents at Work (2004) found that parents did not think that employers provided enough practical support to enable them to combine work and caring, while 92% of non-working mothers stated that flexible working hours would be essential in returning to work.

In particular, new working-time patterns are associated with economic and social change, while employee motivation and adaptability are regarded as core elements of productivity and new methods of work organisation (Commission of the European Communities, 2004a). Similarly, active ageing policies to retain older workers in the labour market, and policies on employability and lifelong learning, are viewed as essential elements of a competitive and dynamic knowledge-based society (ibid.). This is associated with the need to modernise social protection systems, particularly in areas such as health and pensions, which can help to avoid wage traps, encourage more people into the labour market and retain those already in the labour market (Commission of the European Communities 2005).

The core of this EU policy framework is a recognition of the role of social partnership and social dialogue as key levers for change in work organisation and working time. The emphasis is placed on employer organisations and

unions negotiating agreements in areas such as the modernisation of work organisation, working-time arrangements, lifelong learning, equality between women and men and the reconciliation of work and family life.

Learning and the knowledge economy

The high knowledge economy requires continual learning and development. Many workers state that they want to have more opportunities for learning, some work-related, some not. An effective lifelong learning policy requires more flexibility in the workplace so that workers can take short and long-term leave for learning and development. Since the Lisbon European Council in March 2000 there has been a policy commitment to invest in people's skills, competences and qualifications in order to make Europe the most competitive, dynamic, knowledge-based and socially inclusive society and economy in the world by 2010. This has resulted in an awareness of gaps in access to and participation in lifelong learning and attention being given to overcoming barriers in the development of competences and qualifications of the workforce. The 2004 Joint Employment Report (Commission of the European Communities 2004b) states that all member states and the social partners should give immediate priority to investing more effectively in human capital and lifelong learning.

There is now broad agreement that lifelong learning, creating more innovative approaches, for example, through local learning partnerships, and facilitating more coordination between government agencies and departments, requires cooperation and partnership between the social partners (Commission of the European Communities 2000, 2001, 2002a and 2002b, ETUC UNICE and CEEP 2003, OECD 2002). In the UK the emphasis on lifelong learning in the government's skills strategy was given additional weight under the 2002 Employment Act, through entitlements to time off for trade union learning representatives and an expansion of workplace union learning representatives, alongside a flexible qualifications framework and greater investment in lifelong learning. Social partnership and collective bargaining have stimulated a range of initiatives in improving union effectiveness in influencing vocational education and training and lifelong learning opportunities in the workplace. The early evidence shows considerable impact on the creation and take-up of learning opportunities at work (Pillinger 2004).

In particular, the social partners across Europe are increasingly taking responsibility to negotiate a balance between working time and time for learning. Examples of these are the development of Union Learning Representatives in the UK, working-time accounts for leave or training in Germany, job rotation schemes for leave for learning that can contribute to reducing unemployment in Belgium, Denmark and Finland and entitlements to leave for training and individual learning accounts, funded by employers, the state and individuals in a number of countries.

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The TUC has advocated a 'work/learn' balance to enable more workers to participate in work-related learning. A survey by the TUC (2005c) found that although large numbers of employees want to take up training they face a range of obstacles including overwork and stress. A third of those interviewed, a large proportion of whom were women, said that they did not have time for training because of care responsibilities. A further third stated that their jobs were stressful and that the hours they worked were too long to enable them to take up training. The survey indicates that there is a significant interest among workers for training and that employers are missing out on skills development of the workforce.

Lifelong learning is inextricably linked to the organisation of working time, including access to continuous training and re-training, specific training to advance the careers of unskilled workers, skills development and work-based learning. Innovative approaches to working time can be developed to facilitate these demands, including identifying 'time' as a learning resource to ensure that workers are able to adapt and update their skills. Although different approaches exist across Europe, developing entitlements to longer leave for education and training purposes is becoming an increasingly important feature of working-time policy, acting in some circumstances as a lever and trade off for employers' preferences to working time flexibility, and to provide adaptability to changing labour market demands.

Active ageing

In the area of population ageing alone the impact on fiscal resources of a changing old-age dependency ratio has raised new demands for financially sustainable approaches to pensions, the raising of the retirement age, policies on active ageing and a new emphasis to flexible approaches to retirement and retention of older workers. UK demographic pressures mean that the number of people over 65 years relative to the number of people of working age – the dependency ratio – will rise from the current 25% to 40% in 2030 and 45% in 2050. This has far-reaching consequences; healthcare and long-term care spending alone is estimated to increase by about 3–3½ percentage points of GDP over the 2000–50 period.

This has resulted in a policy focus on increasing the employment of older workers, the removal of incentives to retire early, increasing the retirement age, reform of pension systems including retirement income from a mix of sources, greater focus on cost effectiveness in health and long-term care and the need for strategic frameworks (Casey et al. 2003, European Foundation 1997). In particular, a package of changes needs to include job recruitment, training and development, flexible working practices, job design and changing attitudes to ageing as being important in removing age barriers in employment (Department for Education and Employment 2002; Casey et al. 2003, Commission of the European Communities 1999, European Foundation 1997, Loretto et al. 2005).

The European Commission (Commission of the European Communities 1999) suggests that in order to encourage the retention and/or re-insertion of older workers within the workforce policies are needed to raise the quality and attractiveness of work. These include correcting the balance of financial incentives to work with regard to tax and benefit systems, tackling the gender pay gap and gender inequity in labour market access, promoting the participation of carers especially women into the workforce, social partnership initiatives to retain workers longer in employment by focusing on training, promotion of adaptability and improving the quality of work. These measures translate at local level to improved training opportunities for older workers, improved health and safety measures, adjustments to workplace design and job design, the introduction of work facilitating technology and new working-time arrangements.

Accommodating older workers who wish to remain in the labour market means acknowledging and recognising that they may face limitations and require flexible working, part-time work or reduced working hours (Loretto et al. 2005). According to research by the National Audit Office (2004) there are up to a million potential workers above the age of 50 who are partly discouraged from actively seeking employment by the lack of flexible work options; as the Equal Opportunities Commission points out in its recent investigation into flexible working (EOC 2005b), the UK government cannot afford to ignore these factors if it is serious about reaching its targets for increased labour force participation. The 2002 Pensions Green Paper signalled the need for a sustainable framework for retirement provision, including more choices about retirement. The recognition, in the recent Turner Report (Pensions Commission 2005), of unequal pensioner income arising from disparities in lifetime earnings highlights the importance of ensuring that there is provision for people, especially women, whose working lives have been interrupted by caring responsibilities and who have consequently been disadvantaged by the current contributory system. The Pensions Commission recommendations likely to benefit particularly women and others with interrupted working lives include improved credits for carers towards the state second pension and the shift towards a universal basic state pension unrelated to national insurance contributions. The proposed National Pension Savings Scheme (NPSS) offers a relatively secure and low-cost savings vehicle for low-paid workers, with enhanced tax relief for those who pay income tax below the standard rate. In addition, the Commission makes a number of recommendations to support voluntary working beyond the state pension age and to support and encourage older workers to remain in employment up to the normal pension age.

The long-hours culture

Long-hours working and the use of paid and unpaid overtime have contributed to a long-hours culture in the UK and results from the intensification of work,

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increased workloads and long working hours that are not effectively regulated. Britain, along with Ireland, now has the longest working hours in the EU 15; among the enlarged EU 25 only Poland and Latvia have longer average working hours. Clearly, long working hours are not limited to the UK, particularly in managerial and professional jobs, and in several countries employer associations are pushing for an extension of working hours. According to the Work Foundation there appears to be a growing acceptance of a long-hours culture and a culture of presenteeism at work across Europe (Cowling 2005). However, among OECD countries the UK persistently is at or near the top end when it comes to the share of people working particularly long hours (Fagan 2004, Kodz et al. 2003).

The longest hours are worked by male employees, especially fathers (CIPD 2004, EOC 2004a, DTI 2004), managers and professionals, and employees with supervisory responsibilities (DTI 2004, TUC 2004). However, female full-time workers in the UK are also more likely than in other EU countries to work long hours (Fagan 2004). The prevalence of long-hours working is linked to wage inequalities, for it is countries where (net) wage inequalities are high or increasing that the longest hours are worked – such as the UK and the US – in contrast to the shorter working hours found in more equal economies such as Sweden, Germany or the Netherlands (Bell and Freeman 1995, Bluestone and Rose 2000, Bowles and Park 2005). Such wage inequalities created financial pressure for both the well-paid and low-paid to work long hours – the affluent so they can afford to consume more than the average household while the low-paid ‘run harder’ to try and secure a decent standard of living.

In 2003, 2.25 million long-hours workers were in managerial or professional occupations and 1.07 in skilled trades or ‘operative’ jobs (TUC 2003). When asked why they work extra hours, nearly half (46%) said they needed to generate overtime pay, while a further 34% said that they needed extra time to cope with unmanageable workloads. One in ten of the workers who work over 48 hours a week or more had suffered some form of physical problem as a result of working long hours. Despite this the majority of employers (92%) agree that people work their best when they have a work/life balance and many did not believe that implementing work/life balance policies would cause them too many problems (DTI 2003).

According to TUC research, based on the Summer 2005 Labour Force Survey, nearly five million employees (4,759,000) worked on average an extra day a week in unpaid overtime in 2005 (7 hours 24 minutes). The percentage of people working at least an extra hour a week unpaid has fallen slightly and is now at its lowest level since 1992 (19.4%). The research also shows that Londoners put in the longest hours where those doing unpaid overtime put in an extra 8 hours 12 minutes in a week.

The same research also shows that in 2005 the number of employees working more than 48 hours has fallen to 3.6 million, a decline of 10 per cent since the

introduction of the UK Working Time Regulations (1998). However, the incidence of long working hours in the UK is still about two and a half times higher than the EU 15 average.

The TUC's *About Time* campaign has called for the ending of the long-hours culture, an end to the 48-hour working week opt-out of the Working Time Directive, improved management and cultural change in the workplace, including being rewarded for working 'smartly' rather than for putting in long hours (TUC 2002a, 2005a).

Ending the long-hours culture is essential to giving men and women more choices about their working hours. Men want more time to participate in family life as well as in civil society generally, while mothers need to escape the penalties of enforced short-hours working, which are at least partly necessitated by the long hours worked by their partners. Government, employers and unions need to confront the division of labour at work and at home – the two are inextricably linked (Morris and Pillinger 2006).

What is the impact of long hours?

There is now significant evidence of the negative impact of long working hours on personal, social, family and economic relationships. Long working hours have a detrimental impact on physical and mental health, stress, family and marital life and the productivity of workers (Brown and Sessions 2004, CIPD 2005, EOC 2005b, Messenger 2004, TUC 2005a). Long hours work against 'smart' working and modern management practices (Cowling 2005, DTI 2005b) and are often accompanied by more complex work processes and work tasks, resulting in a rise in stress-related absences from work (Burchell and Fagan 2004, CIPD 2004). Similarly, long hours can undermine good employment relations and team working (Messenger 2004). The TUC's *About Time* campaign to end the long-hours culture in British workplaces has also shown the link between long hours and ill health, low morale and a negative effect on productivity.

A UK survey, for the Work Foundation and Employers for Work/Life Balance (Jones 2003), on time pressures found that more than two thirds of respondents (69%) want to spend more time with their families and this is particularly the case for full-time workers (73%). Young people under the age of 25 and those with young families expressed the highest level of dissatisfaction with their work/life balance (Jones 2003). Two thirds of employees carry out regular paid or unpaid overtime and many cite work pressures as a reason for this, particularly when work schedules and work tasks are self-managed.

Male long hours help to fuel women's decisions to work part-time hours and this affects inequality between men and women. Fathers of young children, supplementing the lost income of the mother, often work the longest hours in the UK. A third of fathers work more than 48 hours a week, compared with

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only 5 per cent of working mothers (Hurrell and Davies 2005). This limits their participation in family life and reinforces the long-hours, short-hours working-time culture among working families, or the 1.5 household working model. Part of the problem is that traditional pay structures, based on a full-time work model and a culture of overtime, continue to reinforce this unequal division between paid and unpaid work. These pay structures and working patterns are detrimental to both women and men.

Flexible working can help organisations and workers to organise work more effectively and reduce stress at work. As the CIPD's survey on flexible working showed, flexible working has had a positive effect on absenteeism, staff retention, staff morale and better employee relationships, which in turn had a positive impact on productivity and profits (CIPD 2003 and 2005). The DTI's (2003) research finds that 94% of employers believe that people work best when they can balance work with the rest of their lives, and 71% of employers who have flexible working report that it has had a positive impact on management–employee relations, employee motivation and commitment and labour turnover; see also Box 1 above. Thus work/life balance policies contribute to companies' abilities to secure 'smart' working in order to compete successfully in globalised markets (Bloom et al. 2006).

Work and caring roles: the gender time gap

UK approaches to flexible working time have largely focussed on the reconciliation of family and working life on the basis that parents of young children (and some carers of adults) require different working time frames. Numerous studies have shown that women in particular have had to pay a high price because flexible working hours have been seen as a women's issue associated with the 'mummy track' (EOC 2004a, Fagan 2004, Maternity Alliance 2004, Pillinger 2000 and 2002).

Working-time schedules associated with different jobs can operate to reinforce and perpetuate gender segregation. Part-time work has often been created explicitly to recruit or retain women (Beechey and Perkins 1987, Horrell and Rubery 1991), while the requirement for working long hours in particular jobs such as management helps to preserve this area of employment as a largely male enclave (Simpson 1998, Wajcman 1998). The persistence of the gender wage gap also helps to shape the household division of labour, while in turn the gender inequalities in the household contribute to the maintenance of sex-segregated working-time patterns. This also has an impact on lone-parent households for in most cases these are lone mothers trying to secure a 'main earner' wage and combine this with care responsibilities in a labour market where the jobs that most women have access to do not deliver a 'main earner' wage.

This association of flexible working time with caring roles has a profound impact on women and men leading to inequalities and segregation in the

labour market. The employment rate for women is currently 65.6%. Yet the gender pay gap for full-time workers persists, even though it has narrowed, at 14.4% per hour and is larger once hourly pay rates for part-timers are included (see table 1 in chapter 3.4). The gender pay gap is wider still when total weekly earnings are considered. While opportunities for women in full-time jobs have improved, part-time work has been left behind (Manning and Petrongolo B. 2005), and the pay gap between women in full-time and part-time jobs is now wider than it was in the 1980s (Women and Work Commission 2005). These concerns about occupational segregation and the gender pay gap and the associated loss of women's potential in the labour market are a focus of the Women and Work Commission report due in 2006.²

The gender time gap refers to gender-differentiated working-time patterns in employment, which in turn are connected with a gender-segregated pattern of employment. The combination of long hours in some male-dominated parts of the economy and part-time work options in some female-dominated parts of the economy operate to reinforce traditional gender roles by a move from a 'single male breadwinner' model to a 'one-and-a-half earner' model. Although the rising participation of women in the labour market has been accompanied by a modest increase in men's contribution to childcare and domestic work (Gershuny 2000), women still do the majority of the care and domestic work, even in couples where both are employed full-time (Harkness 2005, OECD 2001). Men's contribution increases as women devote more time to employment (although not necessarily proportionately and not in equal measures for different groups of men; Bruegel and Grey 2005), which suggests that a reduction in the gender gap in working hours in employment would facilitate a more gender-equal domestic division of labour (Anxo et al. 2002).

Most part-time jobs are concentrated in a narrow range of occupations that are typically lower-paid and lower-status female-dominated service jobs (OECD 1994, O'Reilly and Fagan 1998). Nearly 50% of part-time jobs in the UK are in manual grades while 20% are in professional and lower managerial jobs. While many full-time workers state that they want to reduce their working hours in exchange for a cut in earnings, many part-timers want to increase their working hours (TUC 2005b).

Between a third and a half of women working part time work below their potential and are not using their skills, experience and qualifications (Francesconi and Gosling 2005, Grant et al. 2005). Key problems concern the lack of awareness by managers of the skills, talents and aspirations of women working part-time, the limited opportunities for career progression and the lack of opportunity to work part-time in senior positions. In particular, the pressures of full-time work and limited opportunities for work/life balance in

² This paper went to print before the publication of the Women and Work Commission, expected early in 2006.

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more senior positions meant that some women have opted to work part-time in order to combine work and care responsibilities.

This gender division has costs for individuals, households and society. That women do most of the care work constrains their labour supply and reduces their lifetime earnings and occupational advancement compared to men. As the EOC (2005a, 2005b) has found, long-hours working deters women from returning to employment following maternity leave and in seeking promotion. In many cases women sought part-time work that was less demanding in order to cope with the work demands on their partners. The EOC (2005a) also found that “the shifting, complex nature of women’s engagement with work and care” was poorly understood by employers or accommodated in the workplace, which in turn had a huge impact on pay and pensions. Similarly, men felt that it was difficult to ask for flexible working because of the impact that it would have on their career prospects, long-term social protection and also on their financial responsibilities to their families. The way households organise themselves to meet care responsibilities and secure earnings is not independent from the labour market conditions they face: individual choices and plans are structured by the social context and “preferences are usually compromises between what is desirable and what is feasible” (Bielenski et al. 2001, p.16).

Research shows that if women’s potential in the labour market is to be fully realised the division between full-time and part-time work needs to be broken down, there needs to be a better management of work tasks and working time in workplaces and a change in attitude to part-time and flexible work so that it is available in all jobs and at all levels (Grant et al. 2005). In addition, women part-time workers need to have improved access to earnings and skills development as compared to full-time workers (Francesconi and Gosling 2005, Olsen and Walby 2004) and significant action also needs to be taken to reduce the gender pay gap in these jobs, which earn 40% less per hour than men, a gap that has barely changed in thirty years (EOC 2005a, 2005b).

As the EOC’s investigation into part-time and flexible work found (2005b): “Urgent action is needed to realise the full economic potential of flexible working for Britain and to find a model of working that helps individuals successfully balance work and life”. In particular, the loss of potential and of valued skills and experience means that the economy is also working below its potential. Men are effectively barred from flexible working and therefore from participating more fully in the lives of their families because of these economic penalties. In the 21st century a greater sharing of paid and unpaid work is both essential and appropriate to meeting both men’s and women’s needs.

The role of family policy

In particular, family policy needs to reflect social change through family-friendly policies to enable parents to have more flexibility, to enable fathers to be more involved in childcare and to have policies that avoid women having little choice but to take low-paid, part-time work (O'Brien 2005). This is particularly important where two parents are involved in caring for children since the lack of flexibility for one partner also reduces the choices available to the other. Research has also shown that decisions about work and time are often structured round family needs; decisions are made on the basis that families come first (Dex 2003) or round what is best for the children (Williams 2004). This evidence has shown that mothers want fathers to work shorter hours and that working weekends, particularly Sundays, are unpopular. In addition, the emphasis has tended to be on the care of children, with less attention given to the needs of working carers of older adults or disabled children.

As Williams (2004) has argued, there is a need to rebalance the ethics of work with the ethic of care and recognise the diversity of family lives and of caring roles and relationships. This is particularly important in the context of the move from the 'male breadwinner' model to the 'adult worker' model, which creates tensions for women and men's roles as carers and workers in an environment where "the significance that people place on care and commitment in their lives is underestimated by policy-makers". She argues that there should be a 'political ethic of care' that links workplace strategies to care strategies, and where care is valued and supported in legislation and in service developments through flexible working hours, good quality and affordable childcare and financial support. These are critical factors in enabling men and women to have choices about how they manage and balance work and care commitments and to identify realistic ways by which care can be promoted and valued and balanced with work.

Equality balanced against equity

A key issue is finding the balance between ensuring that there is equality of opportunity through policies which enable parents and other carers to have access to flexible hours while also ensuring that there is equity between employees so that the benefits of flexible hours can be enjoyed by full-time workers and those who do not have caring responsibilities. It is one of the reasons that we believe that it is important to ensure that the focus on flexible working is broadened to include all workers and so that it is linked to time for learning and training, time for leisure, time for participation in local communities, sport and in local politics, time for longer breaks and sabbaticals for study, travel and voluntary work. Rather than flexible working being seen as a penalty that is paid for by women with caring responsibilities, our objective should be to ensure that flexible working is available to all workers. This wider approach will not only reduce the ghettoisation of female part-time

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and flexible work but will also have a major impact in creating modern workplaces that are able to recruit and retain the best staff, that make the best use of the skills, experience and aspirations of all staff and that increase productivity and competitiveness. In practice, wider flexibility should be easier to manage and the balancing of the flexible working preferences should be easier to achieve if flexible working is made available to all employees.

Section four

Legal rights to individual working-time flexibility: the UK compared to Germany and the Netherlands

4. 1. Introduction

In this chapter we focus specifically on legal rights to individual working-time flexibility and compare the UK's approach with similar rights found in Germany and the Netherlands. Our focus is on assessing the impact of the right for employees to negotiate individual adjustments to their working hours, which came into force in April 2003.³ The right to request flexible work gives parents of children under 6 years old and disabled children under 18 and, from April 2007, employees caring for adults, the right to request changes in their working hours or the location of their work. Similar rights had previously been introduced in the Netherlands and Germany granting individual rights to employees to reduce or increase their working hours (see Appendix A).

These new rights to flexible working are conditional in that employers can reject the request on the grounds of business-case arguments. This conditionality is in contrast to substantive rights established under national legislation on maternity leave, paternal leave or rest periods, and under the Part-Time Work Directive, the Parental Leave Directive and the Working Time Directive. For example, rights exist in Sweden, Belgium and Germany for parents of young children to work reduced hours as part of parental leave schemes (for a review of the provisions in 30 European countries see Fagan and Hebson 2004, Plantenga and Remery 2005). In Sweden parental leave can be used for reduced working hours up to a child's 8th birthday; in Belgium the career break scheme can be taken converted into part-time working; and in Germany parental leave legislation provides the possibility of a temporary reduction of working hours from full-time to between 19 and 30 hours per week during the first two years after a baby is born; at the end of that period parents have the right to return to a full-time job with equivalent pay and status.

³ Under the Employment Act 2002, and has been inserted as Part VIII A of the Employment Rights Act 1996, accompanied by the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 and the Flexible Working (Procedural Requirements) Regulations 2002.

Legal rights to individual working-time flexibility: the UK compared to Germany and the Netherlands

4.2 Approaches to working-time flexibility: UK, Germany and the Netherlands

At first sight the UK law on working-time flexibility, allowing for independent requests for change of the number of hours, the scheduling of hours and the location of work, appears broader in its approach to working-time reorganisation, compared to the German and Dutch focus on the numbers of hours worked. See Box 2 for a comparison of these provisions and Box 3 for a summary of the main approaches to working-time flexibility. However, the German and Dutch working-time adjustment laws represent a small element of a more comprehensive approach to working-time flexibility that has been achieved through legally enforceable union–employer negotiations. Collective and enterprise agreements going back to the late 1980s, and covering a large proportion of employees in both countries, provide substantial rights to various forms of working-time flexibility. Significantly, in both countries, but not in the UK, employee representatives at enterprise level have day-to-day co-determination rights over working-time arrangements. These employee rights to individual flexibility were negotiated with employers who agreed to an overall reduction in working hours in exchange for greater ability to vary hours in line with demand.

Box 2: Summary of the main features of the UK, Dutch and German laws on the individual right to request flexible working

In Germany and the Netherlands, the rights apply to all employees, except those in small firms, irrespective of their reasons for seeking change. In the UK the legislation only refers to parents of children under six years old and disabled children aged under 18 years old and, from April 2007, employees caring for adults.

In the UK there is a broader focus allowing for changes in work organisation, including reductions in the number of hours worked, the scheduling of hours and the location of work, each as independent components. In Germany and the Netherlands this only covers increases or reductions in working hours and related scheduling.

While the Dutch and German laws provide rights, enforceable in court, the UK law provides only a right to request flexible work, and to have a request considered seriously, but with no possibility to challenge substantively the employer's decision as long as the employer sticks to procedures and stays within the broad grounds for refusal provided in the law. This is not only a much weaker provision than in Germany and the Netherlands but also lacks the legal weight found in the UK Sex Discrimination Act, which has been used successfully in the past to challenge employers' refusal *continues*

to make alternative work schedules available to working mothers (see Fraser 2004, Palmer 2003 for a comparison).

All three approaches to working-time flexibility are conditional on the business context (although the UK law provides least scope to question employer reasoning). Employers can reject a request if implementing it would entail disproportionate costs or organisational problems. Another important shortcoming is that the laws in the Netherlands, Germany and the UK imply a permanent change to the employment contract since they do not guarantee that an employee can revert back to either their previous hours or full-time hours at a later stage.

The UK legislation is conceived narrowly as work-family reconciliation and as a contribution to greater gender equality by making it easier for men to adjust their working hours to caring tasks. The Dutch law adds an explicit commitment to the creation of greater diversity in working-time patterns and working-time choice over the lifetime; it also includes a specific commitment to facilitate a division of labour in couples where both partners work 75% of full-time hours, by increasing the number of hours now typically worked by women and reducing those typically worked by men. The German law also reflects this wider approach, as well as a concern with job creation by enabling the hours freed by a voluntary reduction to part-time work to be used to create job opportunities for people who are unemployed.

Germany and the Netherlands have a more comprehensive approach to working-time flexibility that extends beyond specific legislation to reduce or increase working hours. In particular working-time flexibility is embedded into collective bargaining and social partner negotiations, in national contexts where union coverage and influence is greater than in the UK. In both countries, working-time reductions and flexibility have been on the negotiating agenda since the late 1980s; the extent of collective bargaining coverage and the quasi-legal role that collective agreements play has ensured that flexible working arrangements are more effectively introduced; see Box 3 for more detail.

Legal rights to individual working-time flexibility: the UK compared to Germany and the Netherlands

Box 3: Overview of working-time flexibility provisions: UK, Germany and the Netherlands

Working-time flexibility in the UK

The focus has been on work/family reconciliation. The individual right to request reduced or flexible hours for parents with young children was introduced in 2003, to be extended to carers of adults in 2007. This is on the heels of measures to improve the work-reconciliation options for parents (including the extension of maternity, paternity and parental leave rights; the National Childcare Campaign; the introduction of children's tax credits for all parents and childcare tax credits for working families and the government work/life balance campaign to persuade employers of the business case merits of work/family policies). The right to request flexible work is a welcome but limited advance – in principle it offers a solution for individuals to negotiate an individual adjustment with their employer. In practice the regulations are the weakest of our three comparator countries. Other legislation impacting on work/life balance includes the Sex Discrimination Act, which can help working mothers who are refused a change from working-time arrangements which conflict with their responsibilities as primary carers, and the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, which establishes rights for part-time workers. The Disability Discrimination Act also requires employers to make reasonable adjustments in the workplace for disabled employees. Refusing a disabled person the flexible working arrangements could constitute discrimination under the Act.

Collective agreements on flexible work are limited to union-recognised workplaces.

Working-time flexibility in the Netherlands

Working-time flexibility has been characterized by strong union activity and strong collective agreements, first formalized in the 1990s where reductions in working hours to 36 per week and a range of individual options of how to implement working-time reductions were first achieved. The options ranged from daily reductions in working hours to nine-day-fortnights, from saving time for additional annual leave to a sabbatical several years down the line to gradual or early retirement (Hegewisch and Martin 1998). Today both the standard 36-hour week and a flexible approach to working hours are widespread; legislation to be introduced in 2006 will formalise the link between working-time accounts and retirement. The 1996 Working Time Act sets limits on daily and weekly working hours and a process of decentralisation of negotiations exists over working time and rest periods at the enterprise level. Employers are formally obliged to take into account employees' non-employment obligations in relation to care or voluntary work when scheduling work. Basic shift patterns and days on which people are expected to work must be set 4 weeks in advance. *continues*

Legislation coming into force in 2006 will eliminate the distinction between the standard working day and overtime and falls back on minimum regulations under the Working Time Directive.

In 1993 a central agreement introduced the right to adjust working hours with recommendations for sectoral and workplace agreements. The ‘Law prohibiting differential treatment on the basis of working hours’ in 1996 was the precursor of the 1997 European Part-time Directive, prohibiting adverse treatment of part-timers. Subsequently unions made a renewed push for legislation regarding the right to adjust hours when the evaluation of the 1993 central agreements showed that even though over 70% of collective agreements (covering around 80% of employees) referred to employees’ rights to increase or reduce working hours, few included detailed mechanisms of how this might be achieved. This, and a more sympathetic government, led to the 2000 Working Time Adjustment Act, which provides the formal right to request flexible work a reduction or increase in contractual working hours.

Working-time flexibility in Germany

Working-time reductions and flexibility have been on the German negotiating agenda since the late 1980s. The emphasis has been on matching employee flexibility with the need for employers to have more flexible workforces to increase productivity and remain competitive, alongside the use of working-time flexibility as a tool to open up the labour market to unemployed people. The trade-off between working-time reductions and flexibility has been formalised in working-time accounts. These provide a means for employers, within limits, to vary daily, weekly and annual working hours and match them more cost effectively to variations in demand. In exchange for greater variability and reduced overtime earnings employees can benefit from more time off and greater control over their working hours. There are myriad working-time account schemes and the purposes for which time can be ‘spent’, including longer leave, time off for education or early or gradual retirement schemes. Frequently employees are covered by more than one scheme (see also Box 4). It is estimated that two thirds of German companies have introduced working-time accounts for at least some employees (Seifert 2005a) and that a third of German employees, including 18% of manual workers, have individual control over daily starting and finishing times (Bauer et al. 2004).

More recently working-time accounts have been transformed into a tool for guaranteeing employment security to [core] employees across the economic cycle (Seifert 2005b). In times of high demands additional hours worked are saved and can then be ‘spent’ to guarantee stable income during periods where otherwise there might have been temporary lay-offs or a switch to short-time work. There is a broad framework of regulation provided through industry-specific collective agreements implemented through detailed engagement between employee representatives and managers at enterprise level. Such ‘regulated flexibility’ continues to characterise the majority of workplaces.

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The emphasis on ‘negotiated flexibility’ in Germany and the Netherlands differs from the approach taken in the UK (O’Reilly et al. 2000). While there are examples of creative win-win solutions to working-time flexibility in the UK (see for example DTI 2005b; TUC *Changing Times* Website; TUC 1998), they are the exception rather than the rule. In both Germany and the Netherlands negotiations over working-time flexibility set clear limits to working hours. In Germany this principally takes place through collective bargaining (which continues to cover directly the majority of the workforce and is taken as a reference point for other employers) and in the Netherlands through legislation and collective bargaining, again covering the large majority of the workforce.

In contrast, in the UK the absence of an effective cap on working hours, because of the individual opt-out of the Working Time Directive, coupled with the much lower coverage of collective bargaining and employee rights to consultation and participation in relation to working hours, means that employers have much less of an incentive creatively to examine working hours. Where working hours are agreed by collective bargaining in the UK, the length of the working week does not differ much from that negotiated in Germany or the Netherlands; yet actual working hours for full-time employees in the UK, and the proportion of employees who regularly work 48 hours or more per week, are higher in the UK (with actual hours worked averaging 40.4 for women and 44.6 for men in the UK, 39.0 for German women and 40.0 for German men, and 38.0 hours for Dutch women, 38.8 for Dutch men; Carley 2005).

As a result UK full-time employees fare worse than their colleagues in Germany and the Netherlands, by having to work longer full-time hours per week and having less personal flexibility within these full-time hours. Less than 12% of UK employees have flexitime (TUC 2005b) and almost six out of ten never receive time-off for additional hours worked (DTI 2004). The individual right to request flexible work is the only route for many UK employees to combine paid employment with caring responsibilities.

4.3 Part-time work and work-family reconciliation

All three countries have broadly similar patterns of part-time work: women are the large majority of part-time workers. The ‘one-and-a-half’ household model means that work/family reconciliation is mainly provided by the father working full (and over) time and the mother working part-time. In all three countries it is commonly the case for the caring-related switch to part-time work to be linked to a downgrading in job contents, career prospects and pay. Yet because of the less developed regulatory and collective bargaining framework in the UK and a more polarised labour market with greater overall wage and income differentials, the part-time pay penalty is more severe in the UK than in the other two countries (Fagan et al. 1998).

There are significant differences between the status and pay of part-time workers in the UK and the Netherlands. In the UK 53% of part-time jobs are carried out by people with low levels of skills and education compared to only 3% of Dutch part-time employees (Cousins and Tang 2004). In 2005 female part-timers in the UK earned 38% less per hour than men working full-time, with a gap of 26% between part-time and full-time women workers (see Table 1 below). In contrast, the part-time pay gap is much smaller in the Netherlands; for example, the estimated pay gap between full-time and part-time women (in jobs with at least 20 hours and controlling for education) is less than 2% (Russo and Hassink 2005).

Part-time employees in the Netherlands are much more likely to feel they have choice and control over their hours than in the UK: 75% of female part-timers in the Netherlands, compared to 49% in the UK, said that they controlled or could negotiate how many hours they worked (Cousins and Tang 2004). In the Netherlands a quarter of highly educated couples, both father and mother, now reduce their working hours after the birth of a child, showing another dimension of progress in the Netherlands.

Thus, even though part-time work is the only means for many employees to combine paid employment with caring responsibilities, UK employees face greater penalties and have fewer choices than their colleagues in Germany and the Netherlands. While in Germany and the Netherlands individual working-time rights are embedded in a framework of regulations and collective agreements, in the UK the right to request flexible work is virtually stand-alone.

4.4 The impact of the individual flexibility laws

How effective have the laws on flexibility been in practice? In all three countries a significant number of employees have successfully requested change. While the methods of data collection do not allow for direct comparisons, requests for part-time work have been highest in the Netherlands (already the country with the highest levels of part-time employment). In the Netherlands, 15% of employees requested reductions (and an almost equal number requested additional hours; MuConsult 2003); in the UK, 3.5% of employees requested reductions and another 10.5% requested different forms of flexibility (Holt and Granger 2005); whereas in Germany, less than half a per cent of employees (84,000 in 2001; 128,000 in 2003) requested a reduction in hours, while in 2003, 56,000 employees requested an extension of working hours (Wanger 2004).

In Germany, the low rate of requests can in part be put down to a combination of the deteriorating state of the economy and record levels of unemployment. German unions state that under these conditions the need to make a permanent contractual change to part-time work, without a guarantee to be able to return to full-time work at a later date, reduces people's willingness to

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take up this option; some collective agreements in Germany have been concluded to overcome this limitation in the law (see Box 4). The low take-up also reflects traditionally held beliefs in West Germany that young children require a stay-at-home mother, whereby mothers of young children are much less likely to be in employment compared to the situation in the UK (Fagan et al. 2005, Hegewisch 2005).

Box 4: Examples of IG Metall negotiations to improve the German Part-time Law and family-friendly working hours

Try-out period of part-time work: if, within 2 to 6 months of having shifted to part-time work, the employee and/or supervisor finds that this arrangement is not working out, there is a right to return to their previous working hours and employment contract (collective framework agreements governing the dry cleaning industry and several company agreements).

Guaranteed return to previous contract, after part-time work of between 6 months and 3 years; the three-year maximum might be extended if there is good reason, such as the completion of a course of education (company agreements).

Prohibition of mini-jobs (where earnings are too low to qualify for social security contributions) unless the employee is retired (i.e. already in receipt of a pension) or there are other individual circumstances which make this the only option. Mini-jobs have been growing rapidly while the majority of workers prefer more substantial part-time jobs (regional agreements in Frankfurt, Brandenburg, Hamburg and Schleswig-Holstein and many company agreements).

The use of working-time accounts to save up 'time' which can then be used to extend the paid period of parental leave after the birth of a child (regional agreements in Baden Wuerttemberg).

A right to individual daily flexi-time, if organisationally feasible, for parents of children in day care or with child minders (metal industry agreements in Hamburg/Schleswig-Holstein and in Brandenburg).

The majority of formal requests have been received positively by employers, with high levels of acceptance. In Germany, 96% of requests were accepted (Wanger 2004); in the UK, 69% of requests were fully and 12% partially accepted (Holt and Grainger 2005) and in the Netherlands, 61% were fully accepted and 10% partly accepted (does not include pending requests; MuConsult 2003). It is perhaps particularly noteworthy that in the Netherlands positive responses are almost as high as in the UK, even though requests for part-time work have been considerably higher in the Netherlands

and Dutch companies already operate with much greater diversity in working patterns.

Law or labour market?

It is uncertain whether the law has had a major impact on the levels of requests. Labour market trends in the UK and the Netherlands were, in any case, reflecting a general trend towards more individualised working-time arrangements, irrespective of the legislation, and, in the Netherlands, pre-existing practice established through collective and workplace agreements. Requests in both countries were already running high before the passing of the legislation and employers' agreement to these requests reflected labour shortages and their needs to recruit and retain staff. In the UK, in the two years prior to the introduction of the right to request flexible work, employees' requests for flexible working were made at a similar, if not higher levels, than after the law was introduced (Stevens et al. 2004). Similarly, the majority of employees do not follow the procedure of the law when making requests in the UK and in the Netherlands only a minority of employers and employees directly credit the law with either an increase in flexible working or the response of their employer (MuConsult 2003).

However, the law does seem to have had a significant impact on the proportion of refusals. In the UK the proportion of rejected applications is estimated to have fallen from 21% prior to the legislation to 12% of requests (Holt and Grainger 2005). Similar estimates are not available for Germany or the Netherlands, although in both countries the introduction of the laws, or rather the testing and defining of the business-case defence in the courts leading in the majority of cases to pro-employee decisions, has led to a greater acceptance by employers of the rights to reduce working hours (Burri et al. 2003).

Employer behaviour in the UK has been changing. Over time there has been an increase in the proportion of employers who permit women to switch to part-time hours on their return from maternity leave, although worrying numbers did not or said they would only if the woman agreed to take an inferior job. In one survey 44% of women who were employees at the time of their pregnancy said their employer offered opportunities for flexible hours (Hudson et al 2004), while 60% of employers said in the DTI's 2002 work/life balance survey (before the right to request flexible work) that they would permit women to switch to part-time hours after maternity leave, although only two thirds of these said the women would definitely be able to keep their existing job and seniority (Woodland et al. 2003). Thus by implication six out of ten employers either did not allow a switch to part-time work or expected a compromise in terms of a lower-grade job. It should also be noted that pregnancy discrimination continues to be widespread (EOC 2005c, James 2004) with the EOC (2005c) reporting that in an average year more than a

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thousand women take legal action claiming they were sacked because of their pregnancy.

Are the laws fulfilling their policy objectives?

The laws were introduced to make it easier and less costly to switch to part-time jobs, including in managerial and professional jobs, to reduce gender imbalances and to improve work/life balance more broadly. How far are the laws fulfilling these objectives? This question is difficult to answer in spite of the evaluations. It is hoped that the evaluation of the UK right to request flexible work promised in the 2004 Warwick Social Policy Forum will shed more light.

Impact on the need to change jobs for flexibility

Certainly a considerable number of UK parents with young children – estimated at 22% of those formally eligible under the right to request flexible work – have asked their employer for changed working-time arrangements. However, this is the group of employees who already were most likely to request change and/or switch to part-time work before the laws. Thus the question concerns not mere numbers but whether it is now easier and less costly to switch hours. Panel studies in the Netherlands (Fouarge and Baaijens 2006) and Germany (Munz 2004) found no statistically significant change in trends, although two years is a relatively short period to be assessing major changes in behaviour, and, as we said earlier, in the Netherlands at least the introduction of the law only marginally amended what was already commonly provided in many collective agreements. Nevertheless, this highlights the fact that new legal rights in themselves are unlikely to cause a major change in behaviour unless they are part of broader cultural change.

Given the short time since the passing of the right to request flexible work, no comparable data is available on the impact on the need to change jobs; this should be one issue taken up by the government review promised for 2006. In principle, the right to request flexible work should have made it much harder for employers to withhold part-time work and have made it less necessary for employees to change jobs to get reduced hours. An analysis of the 420 employment tribunal cases lodged between 2003 and August 2005 with reference to flexible working suggests that employers' lack of flexibility continues to force people out of their jobs and that the law provides little real redress in situations where employers are uncooperative: four out of ten flexible-working claims include a complaint of unfair or constructive dismissal. Even if a claimant wins the case, at best he or she can expect some compensation but they will not get their job back. This is very different from Germany and the Netherlands where protection against dismissal is much greater and where claims under the part-time laws are brought for an alteration of the existing employment contract, not as compensation for not being able to get their working hours changed. In recognition of the need for

speedy decisions particularly where mothers are returning to work from maternity leave and need to make childcare arrangements, Dutch courts have allowed ‘fast track’ hearings (Burri et al. 2003, Opitz 2005).

Impact on the part-time pay penalty

There are two findings from our research that suggest that the right to request flexible work has had little impact on the part-time pay penalty. First, women still experience a problem of reduced pay after a request to switch to part-time work is accepted and, second, there is no evidence of a significant narrowing of the pay gap in the period covering the introduction of the legislation.

Anecdotal evidence for the UK suggests that there continues to be a problem faced by women who have their requests accepted. The Maternity Alliance’s (2004) first-year review of the right to request flexible work in 2004 found that almost one in three of the people who had their requests for reduced hours accepted had to ‘pay’ for this with a demotion or reduction in hourly wages or increased workloads. There are several tribunal cases where employees were asked to change to jobs with less earning potential, status or lower bonus in exchange for different hours. According to the DTI’s Second Flexible Working Employee Survey, 56% of all employees who had changed their working patterns (not only from full-time to part-time) said they experienced negative consequences. Cuts in pay was the most widely cited consequence (Holt and Grainger 2005); this is likely to reflect both reduced earnings because of reduced hours – a strong reminder that switching to part-time work is certainly not a cost-free option even if it is voluntary – and because of pro-rata pay reductions. The EOC’s investigation of pregnancy and maternity discrimination found that a fifth of women who returned to work after maternity leave experienced a decline in pro-rata earnings (Adams et al. 2005).

There also is no evidence of a major impact on the part-time pay gap at the macro level. On a broad estimate based on the DTI’s Second Flexible Working Employee Survey, about 600,000 employees voluntarily switched from full-time to part-time employment as a result of the right to request flexible work, slightly more than a tenth of all part-time employees. If the law was effective in terms of reducing the penalties associated with such a switch, one might expect either a small narrowing of the pay gap between full-timers and part-timers or an increase in the proportion of higher-paid part-time jobs as it became easier for people in professional and managerial jobs to reduce their working hours. In terms of access to senior jobs, the DTI’s Second Flexible Working Employee Survey does not provide detailed data on acceptances of requests from managers; yet when we take requests from people working 40 or more hours per week (a characteristic of most management jobs in the UK) as a proxy, acceptance rates of requests are significantly below the average. Another indicator of the slow speed of change in access to more senior jobs is job-sharing, a tool designed to prevent adverse career effects of part-time work. The number of employees on job-sharing schemes fell between 2003 and

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2005, according to the Labour Force Survey, from 0.7 to 0.6% of employment, and accounts for only 0.3% of management jobs, with most of these job-shares found in the public sector.

Turning to pay data, Table 1 shows that the introduction of the right to request flexible work appears to have coincided with, if not contributed to, a slight narrowing of the part-time gender pay gap – defined as the gap between the hourly pay of men working full-time compared to women working part-time – in most occupational groups over the period since 2001. However, the pay gap remains pronounced, notably in the managerial grades and skilled trades; and since the law was implemented in 2003 there has been no further narrowing of the gap in most occupational groups except for associate professional, administrative and sales. Furthermore, the part-time pay gap is still wider than the pay gap between men and women employed full-time.

Table 1 Trends in the part-time pay gap by occupational group, 2001–5

Hourly pay (excluding overtime) of female part-time employees as a percentage of male full-time employees				
	2001	2003	2004	2005
Managers	61	65	63	63
Professional occupations	91	93	93	93
Associate professional and technical occupations	73	78	80	82
Administrative and secretarial occupations	89	79	79	82
Skilled trades occupations	64	64	64	67
Personal service	63	89	91	90
Sales and customer service occupations	55	70	70	76
Process, plant and machine operatives	69	71	71	73
Elementary occupations	72	75	75	77
Female part-time pay as percentage of male full-time pay	58	59	60	62
Female part-time pay as percentage of female full-time pay	72	73	73	74
All part-time pay as percentage of all full-time pay	63	..	65	66
All female full-time pay as percentage of all male full-time pay	80	81	82	83

Note: Based on mean hourly pay, excluding overtime. The Annual Survey of Hours and Earnings (ASHE) was introduced in 2004 to replace the New Earnings Survey (NES). NES data for 2003 and earlier years has been reworked by the Office of National Statistics to provide a time series with earlier years but this reworking does not take account of the improved coverage of employees obtained using the ASHE compared to the NES. (Data for 2002 was not available when the website was consulted for checking on 12 January 2006.)

Source: Annual Survey on Hours and Earnings; authors' calculations from Office of National Statistics published data for the ASHE table 2.6a for various years downloaded at www.statistics.gov.uk/downloads/theme-labour

Impact on tackling the differences between men and women

In all three countries men are a significant proportion of those who apply for change although women greatly outnumber men overall. Requests for part-time work continue to replicate the gender-differentiated pattern of

employment. Thus while flexible-working rights may open the door to men, they can also reinforce traditional gender divisions of labour. In Germany, 29% of applications for reduced hours came from men (Wagner 2004). In the UK, 10% of male employees made a request compared to 19% of women (Holt and Grainger 2005). There the largest share of requests are from mothers working in typically female jobs, as seen below:

- 10% of employees in skilled trades reported a request compared to 19% in typically female administrative and secretarial jobs.
- 20% of employees in banking and finance reported a request compared to only 9% in manufacturing.
- 19% of employees in sales and customer service jobs (traditionally female) compared to 10% of managers and senior officials (traditionally male).
- Among parents of young children, mothers are three times as likely as fathers to have applied for change (36% compared to 12% in the group).

It is also interesting to note that when men in the UK make a request, they are more likely to be rejected: 14% of men compared to 10% of women get a complete rejection and 62% of men compared to 72% of women have their request fully accepted. This might be a reflection of fewer men applying under the ‘protected’ category of a parent of a pre-school child. This harsher treatment is also confirmed by our analysis of employment tribunal cases. More than a quarter (27%) of all flexible-working tribunal claims since 2003 were brought by men, yet men’s share of the cases which were lost, dismissed or where the tribunal ruled that it had no jurisdiction is almost twice this level (45%).

The difficulties encountered by men are illustrated in employment tribunal case details: “nice try” was the first reaction from the manager of a financial dealer who had recently become a father and requested a compressed working week.⁴ Another tribunal found that managers at Safeways “took the view that the applicant’s [a warehouse worker and recent father] desire to change his working patterns was not motivated by his childcare needs but was merely a repetition of his earlier complaint that going on the late shift, after having worked for 8 years on the morning shift, had an adverse consequence on his family and social life.”⁵ The tribunal did not side with the managers in this case but the employee lost anyway on business grounds.

One reason for the lower success rate of men in UK tribunals might be that they mainly rely on the right to request flexible work whereas almost two thirds of cases brought by women (64%) combine reference to the right to

⁴ Case 2203702/2004, Coxon against Landesbank Baden-Wuerttemberg; 3 Feb. 2005, London Central.

⁵ Case 1401989/03, Mr Gardener against Safeways Plc; 21 Oct 2003, Bristol.

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request flexible work with a claim for indirect sex discrimination. The advantages of this approach are well established: under the Sex Discrimination Act the employer can be challenged on substantive grounds, not just procedurally; awards for damages are not limited; all workers are covered, not just employees after tenure, and there is now a substantial body of case law where women have successfully argued that forcing them to work 'typically male' working patterns constitutes indirect sex discrimination (Fraser 2004, Palmer 2003). Claiming indirect sex discrimination is virtually impossible for men as this would require a male employee to demonstrate that statistically fathers (or married men) are less likely than women or unmarried men to comply with certain working-time arrangements because of their role as primary carers. As most fathers are not the primary carer, work full-time and do not have working patterns that dramatically differ from those of other men (if anything, of course, they work even longer hours), this type of comparison is closed to them. Some men have successfully claimed direct sex discrimination by pointing to a particular female colleague who, unlike them, was allowed different hours in response to caring needs. In 2001, for example, the EOC supported the case of a male mechanic who successfully claimed sex discrimination when his employer refused to let him change to a part-time schedule to become the primary carer of his baby (EOC 2001). Such cases continue to be rare and only 17% of male claimants linked their flexible-working claims to a complaint against sex discrimination.

Thus, arguably, working fathers are much more disadvantaged than working mothers by the 'soft' framing of the right to request flexible work. In combination with established case law on indirect sex discrimination the right to request flexible work offers an improved procedure for challenging employers' refusal to allow a change in working hours and, where successful, allows a real challenge to employer practices, including a requirement to redesign work practices and considerable damages. In the absence of a reference to sex discrimination, as is the case for most male claims, the right to request flexible work offers at most marginal redress and no real challenge to entrenched working practices.

Impact on reducing the long-hours culture

Most recent data on long hours show a small decline in the proportion of people who regularly work more than 48 hours although long working hours remain prevalent in the UK by international standards (see chapter 2). As we have argued above, the long hours worked predominantly by fathers puts added pressure on mothers to cut back on their hours of work and careers (and future pension benefits). While it would be encouraging to think that this decline in long hours was linked to the right to request flexible work, the slowdown in the economy presents a more likely explanation. According to the DTI's Second Flexible Working Employee Survey, people who usually work more than 40 hours per week are less likely to have their employer accept their

request for changed working arrangements than those who usually work less than 40 hours per week (Holt and Grainger 2005).

Impact on individual working-time flexibility and unsocial hours

The same vicious cycle applies to unsocial hours. As with overtime hours, having one parent working unsocial hours, particularly if shift patterns change at short notice, requires someone else with stable standard hours to provide care. In 2004, 21% of female employees and 28% of men with dependent children usually worked weekends and 11% of working mothers as well as 17% of fathers usually worked evenings (EOC 2004b). Weekend or evening work can be an important means of making up for lack of affordable childcare in a two-parent family (although the solution might be short-term as statistically such tag shifting is linked to a higher likelihood of divorce (Presser 2000). Yet when these unsocial hours also become variable such accommodation becomes much harder.

A number of flexible-work employment tribunal cases illustrate the 24/7 dilemmas. When an employee requests to be exempt from evening or weekend work, the line manager's response is often "sorry – this would not be fair to the other employees", or in the case of *Clarke v. Telewest Communications*: "We require all employees to work some weekends and late shifts till 20:30 however allowing some flexibility so that each individual is treated equally."⁶ Some tribunals have challenged this response since under the right to request flexible work every request has to be considered individually. Employees such as Ms Clarke, with the support of the EOC, have won considerable damages against the employer (through making a successful parallel claim for sex discrimination). In other cases employees have lost because the employer convinced the tribunal that the business objectives for certain shift patterns outweighed the employee's needs for different hours. Two examples stand out:

- Mr Harrison,⁷ a father of three, the youngest four years old, and married to a nurse who worked variable shifts, lost his job when he refused to accept new shift patterns that meant that he could no longer pick up his children from school. The tribunal criticised the employer for the manner in which Mr Harrison's claim for changed working hours had been dealt with and awarded Mr Harrison some compensation for this (though he had lost his job of twenty years) but overall accepted the employer's right to impose new working hours.
- Ms Rickaby's⁸ case arose when her childcare arrangements for Saturday working fell through; as part of her contract she was obliged to work one in four Saturdays. She was no longer able to do that when both the father of

⁶ Case 1301034/2004, Ms Deborah Clarke v. Telewest Communications Plc, 7 June 2005, Birmingham.

⁷ Case 1306479/2003, Mr. S. Harrison v. Bowater Windows Ltd, 27 May 2004, Birmingham.

⁸ Case 2501341/2005, Ms V. Rickaby v. N Power Ltd, 23 August 2005, Newcastle upon Tyne.

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her children and her own father, who had looked after the children on Saturdays while he was unemployed, found Saturday jobs themselves. The employer did offer alternative work, which involved significantly less pay. The tribunal found for the employer, arguing that the employer was justified to demand Saturday working and that there was no case for indirect sex discrimination because other women with children were able to work Saturdays.

Apart from illustrating the inconsistent manner in which tribunals apply the law, what the cases show is the complexity of negotiating childcare when working hours are either changeable or at times when schools and crèches are closed. An individual right to adjust hours can only do so much without broader restrictions on when and for how many hours people work. In France, the deregulation of the standard working day went hand in hand with a significant increase in childcare availability during non-standard hours (Fagnani and Letablier 2006). Work outside the standard working day has increased also in Germany and the Netherlands and there too childcare facilities are not generally available during unsocial hours. However, employees have a somewhat greater right to predictability. In the Netherlands basic shift patterns and on/off days have to be set a month in advance, and many collective agreements in Germany stipulate notification periods. Also, the lack of the Working Time Directive opt-out and greater overall regulation of working time reduce the size of swings and working-time fluctuations. These do not eliminate the problems caused by varying hours but make it a little easier to plan.

Universal versus special rights

The question who must and must not work unsocial hours points to another problem with the UK right to request flexible work: its lack of application to all employees. One of the key complaints of line managers about the right to request flexible work is having to manage the perceived lack of fairness when decisions are made on the basis of whether someone has a small child or not. The arguments against such a narrow approach have been well rehearsed by the CIPD, the EOC, the TUC and other respondents to the Government's consultation paper on the work family bill.⁹ Part of the problem is that the overall organisation of working time remains untouched and this limits the scope of flexible working and reduces the potential gains in productivity from new ways of working. As the CIPD (2005) has pointed out: "Once there is a critical mass of people wishing to work flexibly – not only parents – this increases the chance of finding a workable solution for the team." The successful introduction of flexible working, such as in the Inland Revenue, Bristol City Council or in the National Health Service, shows that it is possible to generate business and service gains because it draws on the diversity of

⁹ The consultation paper *Work and Families: Choice and Flexibility* and responses are available at www.dti.gov.uk/workandfamilies

working-time preferences among the whole workforce (see also chapter 4; Morris and Pillinger 2006).

Impact of flexible-working rights on workplace cultures

The laws have played a welcome role in formalising flexible working policies in many organisations that already had flexible working policies. That many UK organisations have made progress in opening up the basic parameters of flexible working is confirmed in the Workplace Employment Relations Survey (DTI 2005a), the CBI's Employment Trends Survey (CBI 2004) and by the CIPD (2005). Progress, however, appears to have come mainly from employers already open to working-time flexibility. The question is how far the laws have been able to shift employers who are hostile to individual flexibility. There clearly are some cases where individual employees have relied on the right to request flexible work to challenge inflexible employers in employment tribunals but this generally happens only when the employment relationship has already ended. The majority of employees consider a legal challenge of their employer only as the ultimate option, when the employment relationship has deteriorated to a position of no return, staying silent if the employer is hostile or unsympathetic. Even making a request in the first place generally happens only where employees are reasonably certain of a sympathetic reception.

This problem is not limited to the UK, although the weaker regulatory framework may make the problem more severe. A survey of sixteen European countries found that a sizeable proportion of employees in each country would like to switch to part-time work but thought this request would be rejected or impact negatively on their career prospects (Fagan 2001). In the Netherlands, for example, more than half of employees do not act on their working-time preferences and 40% of these give the reason for their silence the fear that their employer would reject them or that flexible working would have an adverse impact on their career prospects (MuConsult 2003). In the UK, according to the Labour Force Survey almost three quarters of employees who stated they would like to reduce their hours, even with a pay cut, did not tell their employer (TUC 2005b). Two thirds of those who are either dissatisfied or very dissatisfied with their current work arrangement stayed silent (Holt and Grainger 2005).

One explanation can be found in the continuous lack of understanding of work/life issues by line managers, a perception that is confirmed by the fact that two thirds of line managers feel that it is not their responsibility to deal with employees' work/life balance problems (ACAS 2005). According to the CIPD, 40% of HR managers believe that employees' fear of rejection is an important or very important factor accounting for the lack of applications to change working arrangements. Slightly more believe that it is fear of an adverse impact on careers that is stopping them and a lack of imagination of how jobs might be carried out differently (CIPD 2005).

Legal rights to individual working-time flexibility: the UK compared to Germany and the Netherlands

From a legal point of view the lack of effective mechanisms under the UK right to request flexible work to challenge employers' lack of flexibility once an employee has made a request is a particular problem. Organisations such as ACAS which might facilitate a productive solution to conflict over working time generally become involved only when the employment relationship has already irrevocably broken down. Tribunals cannot require employers to change working arrangements, they can only require them to reconsider their decision. This is unlike Germany and the Netherlands where the courts have to assess the evidence on the business case provided by the employer and can order the employee's request to be implemented. A mid-way position between letting the employer make the business decisions and imposing the employee request exists in New South Wales, Australia, where employees with family care responsibility can claim a right to alternative work schedules. Judgements have made it possible for there to be a review of the new working arrangements after a period of months if in practice it proves unmanageable (Bourke 2004).

Equally important are initiatives more broadly aimed at making working-time flexibility part of workplace culture. As the EOC (2005b) has stressed in its investigation into flexible and part-time working, line managers clearly need more help and support in managing flexibility and social partnership initiatives. Examples of this approach can be found in an Inland Revenue project called *Our Time* (Inland Revenue/PCS 2002), where the employer and union developed a training programme for managers as part of a redesign of work and service delivery or, in the case of *Changing Times in Health* (SW London NHS 2005), the provision of a resource pack designed to help managers work within a partnership context and manage flexible working hours more effectively (Morris and Pillinger 2006). There also needs to be a greater recognition of the strategic importance of this issue at senior management level, an assessment that goes beyond mere emphasis on recruitment and retention. Apart from broader initiatives aimed at shifting cultural barriers to flexible working and increasing the knowledge and ability of managing new patterns of work, there is also a role for financial incentives, particularly for small firms to help them address potential start-up costs of new working-time practices (EOC 2005b).

4.5 Assessment of working-time adjustment measures

In the UK, as in the other three countries, individual working-time laws have increased employees' ability to change their working hours. They have been introduced in a climate of a growth of flexibility and in this context seem to have made a small but significant impact on employers' willingness to accommodate requests. How much of an impact is difficult to assess from the evaluations carried out by the different governments. More information is needed on what happens to employees when their request for flexibility is accepted and in particular what happens to their pro-rata earnings and the

scope of their jobs. There also needs to be more differentiation between different types of flexible working and a greater exploration of forms of flexible working that do not reduce people's income, such as flexi-time and longer-term working-time accounts. Although we know much about part-time work, we know much less about other types of employee-centred flexibility and the barriers to and effects of their implementation. Finally, the evaluations also provide little differentiation between employers and it would be interesting to know why some employers are more likely to say 'yes' and if so what distinguishes them, and similarly the conditions under which some employers say 'no' and the type of concrete measures that can be developed to change their attitudes.

We have also shown that requests for reduced hours are no longer the exclusive domain of women. Men are becoming a more significant number of those who apply to change their hours, although their reasons for seeking change vary considerably from women's. However, men face greater obstacles when they want flexible working and these obstacles are made worse by the insufficient legal framework. The application of the Sex Discrimination Act to the area of flexible working has shown how far the law, with proper remedies, is able to shift employers' (and courts') understanding of their obligations to adjust working practices. In combination with the procedural approach of the right to request flexible work, female employees with family responsibilities now seem to find it easier to challenge employer intransigence. Yet this avenue is closed to men.

The Dutch and German laws both include requests for a contractual increase in working time. Even though legally the rights to increase contractual hours are rather weak, they point to the often neglected consideration that part-time workers may want to work longer part-time hours. This could direct employers' attention to their current part-time employees as a resource to be taken into consideration. In the context of the under-utilisation of many part-time workers in the UK a greater emphasis on additional hours for part-timers seems particularly relevant.

A related problem is the framing of all three legal rights as a permanent contractual change. Where this involves a shift to part-time work (and hence a cut in pay) this is likely to act as a significant break on people's willingness to risk such a change. It is likely that this issue will become more acute when the right to request flexible work is formally extended to people who care for elderly or sick relatives. German rights to temporary part-time work during parental leave should be considered more fully in the UK context. More creative approaches to working hours over the longer term, as can be found through working-time accounts in both the Netherlands and Germany, might also provide more scope for employees temporarily to reduce their working hours without an impact on pay.

Legal rights to individual working-time flexibility: the UK compared to Germany and the Netherlands

Individual working-time rights are valuable and attractive to employees but they are no substitutes for broader controls on working hours or for coping with the requirements of the 24/7 society. Unsurprisingly, the right to request flexible work has made little impact on the long-hours culture, and hence little impact on the need for female carers to cut down their working hours (and earnings and pensions entitlements). Few incentives are given to employers to develop more rational and productive ways of organising work, compared to the situation in Germany and the Netherlands, as well as many other European countries. Not only does UK law have weaker rights, which apply only to parents of young children and (in future) carers of adults, it also disadvantages UK employees and employers because of the lack of overall regulation and caps on working time. The win-win flexibility which has been developed in many Dutch and German organisations is less the result of individual working-time rights and more due to the need to find new working-time solutions within a framework of social partnership institutions at workplace level.

The narrow UK approach to flexible-working rights means that working-time flexibility does not extend to areas such as lifelong learning, as exists in Germany and the Netherlands. The use of working-time accounts and working-time flexibility to support gradual retirement by statute or collective agreements is a possibility that remains under-explored in the UK.

Finally, the comparison with the Netherlands and Germany demonstrates the benefits of a wider framework of working-time policies and a social partnership approach to working hours. To turn flexible working from marginal to mainstream requires a change in attitudes from employees as much as employers, one that is unlikely to be achieved by a one-sided approach to the organisation of work.

Section five

A life-course approach

5.1 Introduction

In this section we advocate that a life-course approach to working time is necessary so that change can be accommodated in more systematic ways across a person's lifetime. Further, that this requires a complementary life-course approach in relation to social security, tax and pensions arrangements.

In the UK working-time flexibility has suffered from a lack of coordination between different policy regimes, including employment, learning, social protection, care and family life. The need for a coordinated and integrated policy approach that combines social protection and time policies through a life-course perspective will also ensure that flexible working-time arrangements do not penalise women or older people.

Achieving an integrated approach requires a combination of regulation and partnership at the workplace in order to stimulate changes in work organisation and revisions in pay and social protection systems so that they are more in tune with modern work/life challenges.

The UK approach to life-course flexibility through the right to request flexible work continues to be too individualised and narrowly focused on traditional gender-based working-time patterns. It does potentially make it easier for people to amend their working hours to deal with caring issues and, even if culture change is slow, it does not limit these options to women. However, it continues to place the burden of adjustment on individuals, particularly in terms of pension and social security benefits, as no allowance has been made to acknowledge that taking time off for the care of children or relatives in need of care is for the benefit of all of society. This contrasts with approaches taken in the Netherlands and some other countries such as Sweden, for example. We have argued that the narrow and rationed approach to flexible-working rights limits the potential for implementing productive working-time flexibility at company level since individual requests for flexibility are much easier to accommodate when there is a diversity of different working-time requirements.

We propose that by extending flexible working to the whole working population this will help both to normalise it in the labour market and to stimulate reform of social protection. For example, the schemes of flexible work combined with flexible retirement, linked to working-time accounts, that have been introduced in Germany and the Netherlands offer some possible models for a life-course approach. The current review of pensions also presents an opportunity for a modern approach to work/life balance that recognises the

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importance of the life-cycle approach to the development of future pensions systems, including possibilities for flexible retirement enabling workers to work part-time and to defer half their state pension. These issues are of great importance given that by 2020 more than a third of the population will be over 50 and that working longer and retiring later can be achieved through flexible working; this requirement to prolong working life to secure a decent pension is likely to be the reality faced by many workers.

The state pension age for women is already set to rise to 65 years and it is likely that flexible-working options will become critical to the retention of older workers in the workplace. Yet there is often limited flexibility in and out of these schemes and workers are often prevented from adopting flexible working-time schedules according to their life-course needs. Giving all workers access to flexibility also means advocating ways by which individual rights can be given to a temporary reduction in working time, rather than permanent changes in contracts, more predictability of working-time and shift patterns, and opportunities to move from shorter to longer hours and vice versa.

By addressing working-time needs and preferences across the life course can also provide greater scope for balancing competitiveness with workers' time preferences.

The key issue here is that the greatest chance for accommodating flexibility productively is to make the right to work flexibly open to all employees and to make sure that there are mechanisms for employee involvement to facilitate the detailed reorganisation of working time and culture change.

5.2 How can this focus on the life course be realised in practice?

The benefits of the life-course approach are that it acknowledges, and thereby makes it possible to predict with more certainty the impact of different life-course events on participation in the labour market (European Foundation 2003, 2005). There are positive benefits associated with enhancing skills and income levels and in linking skills development with productivity. Parents, particularly women, who work flexibly will experience a much reduced penalty on their pay and career development. There are positive benefits to employers in having women working to their full potential and in retaining valued women in the labour market. Older workers can be retained in the labour market by enabling them to work flexibly, for example through part-time working, thereby ensuring that employers continue to benefit from their experience, skills and contributions. Finally, society benefits from a more integrated approach to work, care and social activity.

A more coordinated, systematic and strategic life-course approach to policy can help to meet the changing demands rooted in the workplace, the home and community, and population ageing. This includes fitting individuals' changing

preferences and needs, lifelong learning, family and care arrangements, efforts to enhance civic and community participation, into a new policy framework that helps secure both financial security and a degree of work/life balance for men and women across their working lives.

A life-course approach considers all workers, men and women, young and old, so that flexibility and reduced hours are viewed across a person's lifetime or life course (Anxo and Boulin 2005, Boulin and Hoffman 1999). At a practical level a life-course approach, when integrated with a reform of pension and social security provisions, can provide a system of saving or banking hours that enable people to combine work, education, care and other time activities more effectively in different phases of their lives.

This requires a shift in policy approach away from a focus on separate life-phases or events (e.g. education, parenthood, ill-health, retirement) to one where the connections across the life trajectory are a central element of policy design and development. Working-time options and related income and social security provisions are adjusted between different life-phases – and in so doing making it more feasible to pursue a continuous employment profile while maintaining income security. In other words the policy objective is to enable individuals to be able to 'spend and save' working time as well as income over the working life through enhanced options for time-limited leave arrangements (e.g. family leave, training leave, sabbaticals); employee rights to reduced or flexible working hours and 'reversibility' to full-time hours; and the development of working-time accounts, while reconciling the interests of employees with the flexibility requirements of employers (European Foundation 2005).

As Anxo et al. have argued (2006) a life-course approach to working-time policy can address four interrelated objectives: the requirements for healthy working-time patterns, particularly if working lives are to be prolonged, better work and family balance, and promoting gender equality. This can play a crucial role in the enhancement of firms' competitiveness via increasing the human capital and social capabilities of their employees (Box 5).

A key issue is the need to address the obstacles inherent in the social security and pension systems that have been designed for a model of full-time, continuous employment based on one period of full-time education as a youth and (full-time) retirement. The economic penalties that are incurred for periods of interrupted employment or part-time work during the working years are a major factor contributing to the low pension entitlements accrued by women in the UK.

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Box 5: A life-course perspective on working time

From a life-course perspective, providing employees with more opportunities to adjust their working hours over the course of their working life in conjunction with limits on long working hours can:

- help parents reconcile work and employment, and in particular help to raise mothers' employment rates. It may also contribute to promoting fertility.
- encourage men to participate more fully in family life
- increase the compatibility of employment with lifelong learning
- promote healthy working
- promote high employment rates and active ageing for the older workforce by creating more options for employees to negotiate their preferred working hours
- contribute to securing decent pension incomes as well as reducing the risk of poverty for working-age households by enabling more continuous employment for both sexes through their child-rearing years and into their older years
- encourage modern forms of work organisation (including service delivery) that meet the needs of both workers and business.

As a result a fragmented and uneven evolution of working-time policy combined with an outdated social protection system constrains the options that individuals face. The under-developed linkages between different policy issues mean that work/life balance policies are still focused primarily on child-related issues. Most policies are labour market driven and are primarily concerned with enhancing women's employment and not with addressing men's working hours in order to increase fathers' time in care work. Debates about how to promote 'active ageing' rarely consider the impact of care responsibilities over the life course on employment behaviour in later life. In particular, gender differences in working time associated with care responsibilities fuel gender differences in wages and income over the lifetime, yet this life-course perspective on gender inequalities in working-time and wages is rarely integrated or 'gender mainstreamed' into active ageing policy design, at least in the UK. In Sweden and the Netherlands basic pension and social security entitlements have been adjusted substantially to reduce the care penalty (Anxo and Boulin 2005, European Foundation 2005).

5.3 Working-time accounts

The countries which have been most successful at developing a ‘flexible life-course perspective’ in working-time policy are those where the options are set centrally at a national level, mainly through legislation, while the detail and implementation is developed through sector or company agreements (Anxo and Boulin 2005, O’Reilly et al. 2000).

Germany is one of the countries which has led the way in developing working-time accounts, which are used to support a more dynamic approach to working-time routes across the life course and which allows for more deviations from one standard (see Box 6).

Box 6: Working-time accounts in Germany*

Working-time accounts are the predominant form of providing working-time flexibility in Germany and have been introduced in an estimated 67% of German companies. Many different schemes have been negotiated. Key to ensuring benefits to employees are detailed negotiations at workplace level and realistic (shorter rather than longer) time periods for using up ‘saved’ hours. There is considerable variety in the type of working-time accounts that are in operation regarding:

a) The bandwidth in which daily and weekly working time can fluctuate

b) The source of the hours that are being saved:

- Overtime (for 86% of working-time accounts)
- Flexitime (for 70% of working-time accounts)
- Collectively agreed bandwidth variations (for 35% of accounts)
- Bonus for night or weekend work (for 24%)
- Time credits for attending in-company training (for 13% of accounts)

c) The time period in which credits or deficits have to be equalised:

- More than 1 year (6%)
- 1 year (41% of accounts)
- 6 months (6%)
- 3 months (8%)
- 1 month (1%)
- no set period (28%) *continues*

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d) The maximum hours that can be saved or debited:

In 84% of accounts limits are set to the number of hours that can be accumulated. Most schemes have lower limits for time owed by the employee than time owed to the employee: median for time credit is 75, for time debt is 40 hours.

e) Procedures for preventing excessive time from being accumulated:

Many accounts include a 'traffic light' warning system to make sure that accumulated hours are used: above a set threshold the supervisor and the employee must ensure that no additional time is accumulated and that saved time is spent.

In 21% of private sector accounts and 38% of public sector accounts any time not 'spent' within the equalisation period is written off (especially in accounts based on flexitime schemes).

f) Purpose of accounts (many employees accumulate time in different accounts):

- Save time for daily short-term needs for time off (100%)
- Save up for longer time off (63% of accounts)
- Save time for training and further education (15% of accounts)
- Save time for early or gradual retirement (14% of accounts)

g) Who decides when to 'spend' time:

- Decided jointly with supervisor (67%)
- Decided with team (30%)
- Decided by employee alone (20%)
- Decided by supervisor alone (4%)

h) What happens to a working-time credit when a company goes bankrupt:

Insolvency insurance is used by 26% of companies in relation to working-time accounts.

*Source: Seifert (2005a)

The practical operation of working-time accounts can be seen in the example from Airbus in Germany, Box 7. This example shows how working-time accounts were a solution agreed between the works council and the company to balance out peaks and troughs in an unpredictable production cycle with opportunities for employees to work shorter hours and use their working-time account to reduce their working hours as they approached retirement. There has been a very positive impact on the retention of staff and company competitiveness.

Box 7: Airbus, Germany: security through flexibility

In 2003 the management and works council of Airbus signed an agreement, ‘Security through flexibility’ (running from 2003 to 2012). The agreement resulted in the development of three working-time accounts, which aimed to prevent job losses during times of fluctuating activity and deal with temporary workload problems. This was deemed necessary in an industry that is typified by cyclical business ups and downs.

The result is a win-win-win, for employees, the company and for society. For employees, jobs are secure even in times of crisis, short-time working during times of low activity has been eradicated and full-time and temporary staff are treated equally.

For the company, by adapting quickly to changing market conditions in times of high production and in times of crisis, the company retains valuable staff, it minimises the possibility for industrial action and there is legal certainty and motivation and it is viewed as an attractive employer. For society, a large workforce is able to improve their pensions and is not a burden on the social welfare system, jobs are secured and new jobs are created, training is provided and the labour market is stimulated.

Three working-time accounts have been created: the basic account, the reserve account and the lifelong working-time account.

The basic working-time account enables workers to bank each time credit – this can be flexitime or overtime. Employees can withdraw credit hours from the working-time account for free time, as time off in lieu. However, it is not always possible to reduce the number of hours worked or take time off, in which case these hours can be transferred into a reserve account or to a lifelong learning working-time account. When a credit of about 80 hours accumulates a discussion takes place between an employee and his or her manager about how these hours can be used: either time off in lieu, in the reserve account or in the lifelong working-time account. The aim is to ensure that there is benefit from all the working hours that are accumulated. In addition, overtime bonuses are not paid in monetary rates but are treated as flexitime and credited to the working-time account as ‘plus-time’ credits.

The reserve account enables the company to *continues*

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manage short and medium-term capacity problems. In agreement with the management and works council, hours can be withdrawn from the reserve account, without loss of pay. When the reserve account is full, a transfer can be made to the lifetime working-time account. In special emergencies, and in consultation with management and employee representatives, hours can be withdrawn from the reserve account for individual needs.

The lifetime working-time account enables employees to take up early retirement with full pay. Employees invest time, this is converted into money, at no investment risk to the employee and the nominal value of the fund is guaranteed. The fund is graded by age and the composition of the investment changes with age. The pay is subject to taxation only when it is being paid (in time), the employer also pays the employers' social insurance contribution and because the working time was accumulated in advance, it is taken into account for the assessment of the pension. The company does not save on the wage bill, rather, the pay of employees is invested as a provision for the future.

Section six

The role of social partnership: case studies

6.1 Introduction

Flexibility in working time cannot be achieved without a dynamic approach to change that directly involves trade unions working in partnership with employers. Trade unions are very much part of finding solutions to the increasing complexity and diversity of people's working lives and the challenges of competitiveness. Since working time interacts closely and intimately with people's lives, workers need to be involved in the organisation of work and working time. This can bring benefits to both employee and manager.

As we showed in the previous chapter a life-course approach offers an innovative and strategic focus. In this chapter we show how some of the most innovative approaches to flexible working time at the enterprise level have had trade unions at the centre of the process of change and implementation. In practice implementing flexible working hours requires more collective negotiation and more extensive union organisation at the workplace and enterprise level.

Trade unions have increasingly focussed on negotiating modernised working-time practices and regulations, which aim to secure both production requirements and enhanced working-time options and time autonomy for employees. Many workforces have a diverse range of domestic circumstances and working-time preferences (Boulin and Hoffman 1999, TUC 2002a). It is not uncommon for workers to be seeking time changes rather than pay rises in order to gain work/life balance. Social partnership plays a crucial role in the balancing of employer and employee time-needs in the workplace, which in turn has become central to positive workplace flexibility, to sustainable work/life balance policies for employees and contributes to high-performance workplaces.

Trade unions have negotiated innovative and creative ways to create work/life balance through flexible working hours and to maximise employee choice and maintain quality employment while improving service delivery (Morris and Pillinger 2006). Partnership working and joint problem-solving have enabled staff to examine different working-time arrangements, in areas such as annualised hours, compressed hours, flexible hours, including part-time work, job-sharing, term-time working and time banking. Initiatives such as the TUC's

The role of social partnership: case studies

Changing Times process¹⁰ have raised awareness of the need for a change in the culture of work, including a process for discussing, planning and implementing new working-time arrangements through team and partnership working. Pilot projects in the public sector have demonstrated that it is possible to improve work/life balance for staff through flexible working hours and extended service delivery, showing that it is possible to have a triple win for the employee, the employer and the customer (Cressey 2001, Morris and Pillinger 2006).

Despite these positive developments, many good examples and a growing awareness of different models achieving work/life balance through partnership working, there remain fundamental problems in the UK's approach to this balance. We suggest that the absence of a powerful regulatory framework and a voluntarist approach to industrial relations strongly curtails the room for manoeuvre and the possibility for more positive economic and social changes that could result from more innovative approaches to flexible working time. Without a more systematic approach to partnership and a stronger regulatory framework round working time and working conditions it is likely that these good examples will be one-off rather than systemic changes.

6.2 Case studies

The case studies that follow show how the successful introduction of flexible working time takes place where unions played a central role in devising and agreeing the changes that were introduced. In the previous chapter we showed how the German Airbus working-time accounts were achieved in a social partnership context and that the solution to peaks and troughs in economic activity could be found through a life-course approach and social partnership.

The cases studies have one thing in common: they used social partnership and joint problem-solving methods to find solutions at enterprise level to improving competitiveness, customer focus and the quality of working life for employees.

In the Dutch case study of Heineken (Box 8) changing working practices and 'smart' working were a response to the need to address growing competition and falling prices. The workers did not lose their jobs as a result of changes taking place in the industry, rather, 'smart' working, using a flexitime scheme based on a model of working-time accounts were introduced. In the Irish case

¹⁰ The TUC's guide to work/life balance *Changing Times* argues that work/life balance requires a reorganisation of work, the development of trust, partnership approaches and joint problem-solving. This marks a clear change in the way that industrial relations is organised and the move towards more consensual, joint and partnership working is regarded as a key instrument of the process of change. The TUC *Changing Times* process consists of an eight-stage model based on successful joint union-management initiatives. The process puts an emphasis on the need to ask employees about their preferred working patterns and to involve staff in identifying problems and finding solutions.

of global changes in the industry, while also moving towards a more efficient study of the manufacturing company Tegral (Box 9), the New Work Organisation Programme was introduced to enhance competitiveness at a time focus on greater investment in workers' education and training and changes in work organisation through a process of joint problem-solving and joint decision-making between the management and the unions.

Box 8: 'Smart' working: Heineken, the Netherlands

Heineken is a Dutch brewer with 40,000 employees in 170 countries, 5600 of whom work in the Netherlands. Labour conditions are agreed collectively between the trade unions and the management and there are good processes of social dialogue.

At the national level a 'Platform on working smart' has been established to stimulate smart working through new technology, new forms of organisation and better labour relations between employees and employers. This has been achieved by showing best practice and knowledge and helping to stimulate company and branch-level agreements. Working smart themes include flexible working times, policies on ageing workers, improved working conditions and employability.

Changing working practices and smart working was introduced in Heineken in response to major changes taking place in the market, including declining beer consumption, growing competition and falling prices. A decision was made to introduce smart working rather than downsize the workforce. This has included the introduction of time resource management, the development of more flexible working patterns, shared control of working-time arrangements, work/life balance and remuneration based on exchange of time and money.

In the traditional organisation of the company peak times were accommodated through a combination of overtime and temporary agency work, whereas the modern organisation of time now takes place through a flexitime model and temporary agency work. This has been achieved through the introduction of a flexible rota where production times are more systematically linked to working times. Rather than overstaffing being a problem during times of low activity and additional employment costs being borne during times of peak activity, this new model has provided more predictability for the company and opportunities for staff to exchange time and money through a sophisticated flexitime scheme.

A key factor in the ongoing success of this project is that there is a recognition that the interests of the employer and the employee are at least partially shared. Working together and agreeing joint solutions are therefore seen as a win-win. Technical and social innovation are regarded as being equally important to business success in the future.

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Box 9: New Work Organisation: Tegral, Metal Forming Company, Ireland

Tegral, a subsidiary of a Belgian multinational company, is a manufacturing company supplying steel sheeting and accessories to the construction industry. It has 80 employees. The unions in the company (SIPTU and TEEU) have had good, although adversarial relations with management. An overtime compensation agreement for new technology led to a search for alternative forms of development and a New Work Organisation programme (NWO) was established in the late 1970s. This shifted the focus on industrial relations away from a historical approach of negotiated settlements and compromise through an adversarial approach to a NWO approach based on partnership working, joint decisions and consensus between unions and management.

The objectives of the partnership were to enhance competitiveness by developing new products and processes, adapt to market changes more rapidly and increase profitability and long-term viability. On the one hand, this required higher-skilled, better educated employees and higher-paid employees and, on the other hand, new forms of work organisation.

The key elements of the process of change were principally achieved through partnership working. Support was provided through external facilitation and through team working and mentoring. A key objective had been to retain existing staff and changes included the introduction of team working and team leaders, and increased spending on training (from 1% of the payroll in 1999 to 5% of the payroll in 2004), and cross-skilling and up-skilling of employees.

Flexible working time was one of the other key elements of change, including the introduction of annual-time contracts, flexitime and part-time working. What has been learnt from this pilot is that a partnership approach and consulting widely with staff and managers helped to build trust in the process of change. One of the issues was to avoid apathy and passive participation. For this reason having champions from both the staff side and the employer side were important to keep the change process alive.

There has been positive reaction to the changes and partnership working is now considered a permanent feature of the organisation. One real gain is that there has been a visible improvement in safety performance (in 1999 there were 16 accidents and a loss of 230 days, in 2004 this fell to 4 accidents and a loss of 45 days). The cost effect has been neutral, there has been an increase in basic earnings and strong profitability has been maintained. There has been a combined increase in productivity and flexibility, reduced customer complaints and improved customer service (with 96% on-time deliveries).

The unions and management took a wide ownership of the process of change and this has resulted in an ingrained culture of continuous improvement and change and a commitment to continue to enhance employee skills, education and culture.

In the public sector there have been some highly innovative models of working time based on social partnership. The Italian project and case study Time in the City (Box 10 on page 64) shows that the better organisation and streamlining of work and family policies is connected to the need for more integration of care services, education, training, transport and leisure services. The objective is that time schedules are integrated so that women are not penalised and city services become more customer-focussed. Trade unions have been important partners in city-time projects across Italy; these innovations have been achieved through cooperation between local government, unions and community representatives. Finally, in the case study of Bristol City Council (Box 11 on page 65) a project to implement changes in and improve the quality and opening times of municipal services resulted in widespread staff consultations and a partnership approach to problem solving. Flexible working hours not only improved the quality of working life for employees but services were also enhanced.

Box 10: Time in the City, Milan

The city of Milan was one of the first municipalities to develop city-time experiments. These are innovative and creative working-time experiments located in many Italian cities. They are linked to extended service provision and citizen-friendly policies.

Trade unions have been actively involved in the experiments and have participated in their success. The aim of the experiments has been to create citizen-friendly cities by finding a balance of people's working hours, their social time and their needs for extended and citizen-friendly services. Agreements in Modena, Rome, Naples and Milan have involved a dialogue with both service providers and service users with an objective to develop instruments that maximise the provision of services and reconcile the needs of workers with those of citizens in order that they may balance their working and private lives. In addition, the experiments have sought to ensure that urban and service schedules meet the needs of groups such as the elderly and the marginalised and take into account the requirements of women and people living in the suburbs.

In 1990 local mayors in Italian cities were given the power to restructure working time and opening hours across all sectors, including public services, schools, transport, business, shops and banks, in order to improve the quality of services to citizens.¹¹ These negotiations have taken place through local collective bargaining forums representing the employers, unions and government – the Concertazione – which have adopted broad economic, political and social agendas. These innovations have had important implications for the organisation and flexibility of working time, for new ways of delivering services and with active trade union involvement.

In Milan the city-time project began in 1994 following an agreement between the Commune, the Prefecture of Milan, the Milan Chamber of Commerce and trade union organisations. The 'atlas' or map of services developed in the project was divided into five main areas of activity: queues and waiting times, balancing work and life, mobility and traffic flows, the active city and restructuring of the municipality of Milan. City-time policies were developed through a roundtable of 40 organisations with the view to formulating actions.

¹¹ Based on Law 142/90 which gives Italian mayors responsibility for coordinating schedules and for harmonising public services and commercial life.

Box 11: Bristol City Council: Time of Our Lives

The *Time of our Lives* project in Bristol City Council (BCC) was led by the TUC and the Employers' Organisation for Local Government. The project explored the potential for innovative working patterns that would improve both the quality of council services and employees' ability to balance their paid work with family and personal lives. A key objective was to develop models of partnership between trade unions and employers to enable them jointly to identify better ways to organise work and time and to create a positive model of flexibility that benefitted employees, employers and customers.

The project consulted widely with staff. A survey of 700 staff showed that nearly 80% of respondents wanted some form of flexible working. A higher proportion of women (35%) than men (25%) wanted opportunities for education and training and men (34%) were more likely than women (26%) to say they wanted more family time. Focus groups with staff helped to discuss new working patterns and to identify new solutions.

A number of successful pilot projects of specific services has resulted in more innovative working practices. In the Library Service, the local branch secretary recognised the potential value of a partnership approach to flexible working while meeting the public's request for extended opening hours. Sunday working was introduced but was voluntary and accompanied by the usual additional payments. Sunday opening also resulted in a big increase in library use. Team-based self-self rostering was also introduced and this gave staff some control over their working life.

A similar project was carried out in Health and Environmental Services: in Pest Control a successful pilot project was carried out with the principally male employees. One objective was to extend the service and provide a more customer-focussed, income-driven, competitive service. New staffing and working arrangements using compressed hours and working from home gave staff more choice in working hours with an added benefit of avoiding the rush-hour traffic congestion. The service being open for longer periods each day, with staff agreeing their hours on a team basis. The benefits to management and staff were increased productivity, increased income, increased customer satisfaction and new working-time opportunities that increased staff satisfaction and staff autonomy in planning their work.

Local trade unions played a key part in the project, especially in helping to raise staff awareness. An added advantage for the local unions was that the project helped to raise the profile of union activity and this helped to increase union membership. One trade union representative said: "We have more solidarity amongst the team and the union is seen as working for the members in a positive way". The service manager also saw the benefits and stated that "In order to deliver the service, we need a flexible workforce, this means that both the business and the workers 'win'!"

Section seven

Recommendations

Our research has shown that the organisation of work has not adequately responded to the demands of economic, social and family relationships in the 21st century. The implementation of workplace flexibility has remained slow and uneven and the framework for pensions and social security continues to penalise those who deviate from the full-time continuous employment norm.

In comparison to Germany and the Netherlands, the UK suffers from a fragmented and individualised approach that limits the productive and transformative potential of a more systematic approach to work organisation and working time.

The rationing approach to flexibility, which limits rights to new working patterns to parents of small children and some adult carers, increases the difficulties of effective implementation of flexible working, is in danger of causing resentment from employees not covered by the provisions and potentially acts to reinforce rather than reduce the existing polarisation and inequality in working hours, earnings and provisions for old age between men and women. The narrow focus on a selective group of employees misses opportunities to develop flexible working options to meet broader social and economic goals, particularly in relation to lifelong learning and active ageing.

Meeting the demands of economic, social and family relationships for the 21st century requires a new and broad-ranging approach to flexible working time and work/life balance, based on a dynamic model of social partnership within a strong regulatory framework.

Our recommendations for future policy concern the following four areas:

- A regulatory framework on working time is the starting point: this should extend the coverage and right to flexible working, address the long-hours culture and investigate means to increase the predictability of working time.
- Partnership working, workplace dialogue and consultation and a positive and dynamic role for trade unions in relation to working time are essential to a new model of flexibility.
- Changing the organisation of work is central: this means ensuring that changes in working time are effectively managed alongside other changes in work organisation and job content.
- Flexible working hours need to be seen across the life course so that flexible working time includes a coordinated and integrated policy approach that includes care, pension and social security considerations.

Recommendation 1: A regulatory framework on working time is an essential start for the future development of flexible working time

We propose that the right to request flexible work legislation is strengthened by:

- Extending the right to request flexible work to all workers, irrespective of their reasons for seeking change. This will create a broader base for the effective implementation of flexible working rights, lower potential resentment from those currently excluded from it and encourage a more systematic and strategic approach to working time. The example of the Netherlands shows that there is no ‘natural’ limit to flexible working.
- Providing clearer rights to temporary changes in working-time arrangements. We also recommend the introduction of a transitional right to part-time work during parental leave, as exists in Germany. This avenue might also be pursued in collective bargaining at sector and workplace level. Clearer rights to temporary reductions can reduce the apprehension of men regarding a reduction in working hours.
- Introducing a procedural right for part-time employees to request an increase in their working hours, as is included in the Dutch and German legislation. Such a provision recognises that many part-time employees would prefer more substantial jobs and are employed below their potential, skills and previous experience. It can increase managers’ awareness of the potential of part-time workers.
- Increasing the powers of employment tribunals to require employers to trial new working patterns and better to align procedures with those available under the Sex Discrimination Act; and a greater role for ACAS to intervene in disputes over individual requests for flexible working.

Our review of the evidence regarding the right to request flexible work has identified a number of knowledge gaps regarding its effectiveness which we recommend be addressed in the review of the right to request flexible work announced by the Government for 2006, as well as provided for in the legislation and the Warwick Social Policy Forum in 2004:

- **Part-time penalty:** It is not clear from the evidence whether, or how many, employees changing to part-time work are experiencing a deterioration in their pro-rata pay and are forced to accept jobs with lower scope or career potential. Case study evidence suggests that this penalty is continuing. More systematic monitoring of the conditions under which employees change working hours, and more public information and education regarding the right to change within the same job, might remedy such practices and speed up the access to part-time working in managerial jobs.
- **Refusal of requests:** It is not clear from the evidence why there are differential rates of refusals for requests, for example whether they reflect gender stereotyping, differential responses by employers to different types of requests or the intransigence of particular employers. *continues*

Recommendations

- **Flexitime and other forms of flexible working that do not involve a cut in pay:** Flexitime is the most frequently requested flexible working type for men; more information on where it is requested, how employers are responding and examples, particularly from the private sector, would be informative.
- **Men and flexible working:** the evidence from the DTI's evaluation and from our evaluation of flexible working tribunal cases shows that men's requests for flexibility are more likely to be refused and that men's appeals against employers decisions are more likely to be lost, dismissed or ruled out procedurally. The evaluation needs to address why this is and identify means of strengthening men's procedural ability to take up their rights to flexible working. This is in addition to broader efforts aimed at encouraging men to explore flexible working practices and demonstrating their feasibility in predominantly male workplaces.

We propose a re-evaluation and strengthening of other aspects of working-time regulation in the UK and recommend:

- A recognition of the negative interaction of the UK long-hours culture, the individual opt-out under the Working Time Directive and the policy objectives of the right to request flexible work. We recommend that the Working Time Directive needs to be properly enforced and the UK opt-out ended, and that incentives and other measures be introduced to encourage employers and unions to re-examine work organisation and identify productive and 'smart' ways of working in order to move away from a routine reliance on long hours.
- That measures are investigated and implemented to provide greater predictability and encourage forward planning by employers on work schedules in recognition of the particular difficulty that variable-hours working poses for caring, education, volunteering and other regular pursuits. Examples are provided by Dutch statute which requires employers to notify employees at least one month in advance of their basic shift patterns and the days on which they are expected to work.

Recommendation 2: Partnership working should underpin all working-time developments

We propose that:

- Arrangements under the UK implementation of the Information and Consultation Directive be used as a means of ensuring staff involvement in any decisions regarding working time and new working-time arrangements.
- Unions and employers ensure that working time and time control is a central negotiating issue alongside pay in collective bargaining at sectoral and workplace level. In addition employers and unions may consider setting up workplace working groups to consider how the organisation of working time might be improved and how workers could be given increased choice regarding their working-time arrangements.
- Unions and employers, at sectoral and workplace level, review payment structures and how these feed into gender differentials in earning and working time, with a view to eliminating inducements to long-hours working and ensure decent levels of pay do not rely on long-hours working.
- Financial support be provided, for example, through a new work/life balance partnership challenge fund, to trade unions working in partnership with employers to develop pilot projects and work/life balance projects.

Recommendation 3: Changing the organisation of work is central

We propose that:

- Training of managers and supervisors in managing working time be strengthened. Government and employers should develop training packages, particularly for first-line supervisory staff, so that they can more effectively manage modern workplaces based on more diversified working patterns. This should be based on a partnership approach that involves staff and their representatives and that links changes in working time to changes in work organisation. Also there should be an examination of the possibility of establishing incentives for line managers to develop 'smart' working practices and reductions in long working hours.
- In support of active ageing, employers, managers and unions address the implications for the organisation of work of an older workforce, especially job design, training and development and working-time policies. Longer-term approaches to working time, such as through working-time accounts, should be investigated to provide greater options for gradual retirement.
- In support of lifelong learning, a creative use of working-time flexibility and time accounts to facilitate and reward employees pursuing education and development, as carried out in Germany. A similar principle might also be extended to support volunteering and community work.

Recommendations

Recommendation 4: Flexible working hours need to be seen across the life-course perspective

We propose that:

- A life-course perspective should underpin all policy developments that impact on flexible working and that the government examine the role and implementation of a range of life-course policies on working time.
- The government, with the social partners, should investigate and develop a new framework for social protection which recognises that the assumption of a household breadwinner with a lifetime pattern of full-time continuous employment is outdated. Instead social protection systems should be designed to acknowledge and support working-time adjustments over the life course, rather than to penalise those who deviate from a full-time, continuous profile.
- Flexible retirement schemes should be developed as an integral part of future pension reform, as a way of retaining older workers who wish to remain in the labour market.

Appendix A: Comparison of legal provisions on flexible working hours in the Netherlands, Germany and the UK

	The Netherlands	Germany	UK
Changes in work organisation covered	<ul style="list-style-type: none"> - Reductions in contractual working hours - Related scheduling of working hours (weaker test) - Increases in contractual working hours (weaker test) 	<ul style="list-style-type: none"> - Reductions in contractual working hours - Related scheduling of working hours - Increases in contractual working hours (preferential consideration for vacancies) 	<ul style="list-style-type: none"> - Number of contractual hours - Scheduling of hours - Location of work
Change implied	Permanent change to employment contract	Permanent change to employment contract	Permanent change to employment contract
Who can apply?	All employees with a minimum of 12 months' tenure	All employees with a minimum of 6 months' tenure	Employees with a minimum of 6 months' tenure who seek change to look after a child under 6 or a disabled child under 18
Frequency of applications?	Once every 24 months	Once every 24 months	Once every 12 months
What employers are covered?	Employers with more than 10 employees (weaker regulations apply to small employers)	Employers with more than 15 employees	All employers
How to make a request?	In writing, at least four months before proposed starting date. The request must specify starting date and proposed scheduling of hours.	In writing, at least three months before proposed starting date. The request must specify starting date and proposed scheduling of hours.	In writing, including starting date, proposed scheduling of hours and explanation of "what effect, if any, the employee thinks the change applied for would have on his employer and how, in his opinion, such effect might be dealt with". Notice period not specified.
Employer response?	Must respond a month before proposed starting date; process for considering response not provided in law; left to collective/workplace agreements.	Must respond a month before proposed starting date; process for considering response not provided in law; left to collective/workplace agreements. If employer fails to respond in time, employee request is automatically accepted.	Must set up meeting within 28 days of receiving request and provide written decision 14 days after meeting took place.
Permissible employer grounds for rejecting a request	<p>'Serious business reasons' re request to reduce hours (law includes, for example, health and safety concerns, inability to recruit additional staff).</p> <p>Weaker test for scheduling of hours and increase in hours.</p> <p>Courts have the right to scrutinise the business grounds in detail.</p>	<p>Business and organisational reasons which substantially affect the organisation of work or health and safety or cause disproportionate costs.</p> <p>Decisions regarding the reduction of hours and the scheduling of hours are subject to the same test.</p> <p>Courts have the right to scrutinise the business grounds in detail.</p>	<p>A rejection must specify one or more of seven business grounds:</p> <ul style="list-style-type: none"> - Burden of additional costs - Detrimental effect on meeting customer demand, on quality, or on performance - Inability to re-organise work among existing staff - Inability to recruit additional staff - Planned structural change <p>Employment tribunals do not have the right to scrutinise the business reasons in detail.</p>

Recommendations

Appeals process	Not specified in law	Not specified in law	Employee has 14 days after rejection to submit appeal notice; employer then has 14 days to hold appeal and 14 days to provide written decision.
Legal challenge of employer decision	The employer's decision can be challenged in court. The court can enforce a contractual change in working time arrangements.	The employer's decision can be challenged in court, as a claim for contract variation. No penalties/damages are awarded. The court can enforce a contractual change in working time arrangements	The employer's decision can only be challenged on procedural grounds or if the justification includes a ground not covered in the law. Damages of up to 8 weeks of £270 per week. Employment tribunals cannot enforce a change in working time arrangements.

Section eight

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