



UNIVERSITY OF LEICESTER

EWL Seminar 2016

UK Report

Working Time Issues



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1. What are the sources of the working time regulations in your country?

(a) General legal context

The UK legal system is shaped by the common law and this is a distinctive characteristic of the English law. The common law is the bedrock of the English legal system, whereby judicial rulings that result from case law form bindings precedents and constitute a source of law.

Other than the common law, legislative acts emanating from parliament and European Union (EU) laws are sources of law in UK.

In relation to the application of EU laws into the national legal system, the legal authority for such transposition is the European Communities Act 1972. The act provides for the direct application of EU treaty provisions and empowers governmental departments to enact statutory instruments such as regulation to give effect to EU Rules that lacks direct effect.¹

(b) Sources of working time regulation in the UK

Prior to the transposition of the Working Time Directive (WTD) into the national legal system, the UK lacked statutory control and a homogeneous legal framework on working times. The majority of the existing legislations dated back to 19th and 20th centuries and were the results of sectorial regulations or collective bargaining in specific factories or plants.

As illustration, the Shops Act 1950, now repealed, were concerned with working time and restricted the working hours of women and children. Also, the national engineering agreement provided for a 39 hours basic working week in 1979.²

Further, the employment relationship is the result of bargaining between parties who freely agree on terms and conditions of this relationship. Generally, the employment contract will be an additional source of working time regulation as it will contain express details, often introduced or interpreted by common law, in relation to working times, breaks, holidays, etc.... Section 1(4) of Employment Rights Act 1996 (ERA) obliges the employer to issue employee with statement of working conditions including his working time.

¹ European Communities Act 1972 s 2

² Simon Deakin and Gillian S Morris, *Labour Law* (6th edn, HART 2012) 334-336

Equally, as noted above, domestic and European case law have hugely influenced the regulation on working times in the UK by clarifying or interpreting the existing directive or regulations. For example, the European case of *HRMC v Stringer*³ confirmed that paid statutory holidays continue to accrue throughout any period of sickness. National Courts applied the European interpretation in *NHS Leeds v Larner*⁴.

The current legislation on working time derives from the EU Working Time Directive (93/104/EC) 1993 and is now encapsulated in the Working Time Regulations 1998, which governs a worker's basic entitlements in relation to the length on their working week, the right to rest and breaks including annual leave.

This brief review of sources of WTR in UK reveals that it's a patchwork of measures following contractual agreements, collective bargaining, common law rulings as well as the implementation of EU laws in statutory provisions.

2 What are the goals of the regulation?

The goal of the regulations in the UK was to conform with the requirements of the WTD. The WTD aims is to ensure that working hours and patterns are shaped in a way that safeguard workers' health and safety. This objective is clearly stated in its preamble: *'The improvement of worker's safety, hygiene and health at work is an objective which should not be subordinate to purely economic considerations.'*⁵

The Directive was introduced as a health and safety measure in reaction to growing concerns that employees were being required to work extensive hours which endangered their lives.⁶

Research established that there is a clear connection between long hours and many health related issues. A recent publication by the Trade Union Congress (TUC) suggests that excessive long hours have detrimental impact on both physical and mental health as there is a likelihood of injury through fatigue or lack of concentration. This can lead to severe health complications, amongst others, stress, depression, stroke, diabetes and even premature death. Referring to a study of civil servants carried out in 2011, the TUC explains that adults

³ [2009] UKHL 31

⁴ [2012] EWCA Civ 1034

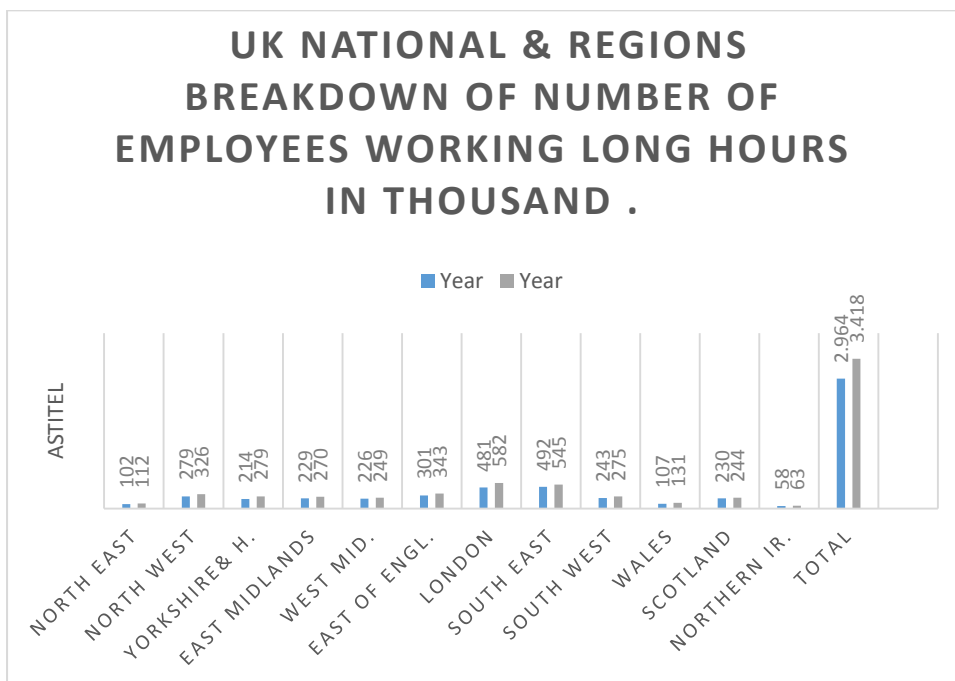
⁵ WTD

⁶ RCSE "The implementation of the Working Time Directive, and its Impact on NHS and the Health Professional" available at <https://www.rcseng.ac.uk/policy/documents/wtd-taskforce-report-2014>

working more than eleven hours a day were 67% more likely to develop heart diseases compared to those who work eight hours a day.

However, the TUC recognizes that the current legal framework has contributed in reducing the Britain culture of long working hours. As illustration, in 1998 17% of workers were working long hours compared to 12% in 2010. Yet, at the same time,

the TUC warns that there is a sharp increase in number for those working more than 48 hours a week in the past five years.⁷



8

Source: TUC

It should be noted that this situation is more than a decade after the enactment of the WTR.

3 How did your country implement the working time regulation directive and the part time directive?

This part outlines the British approach to the transposition of the WTD and the Part Time Directive and mentions the core rights guaranteed.

- Method of implementation of the WTD

⁷ <https://www.tuc.org.uk/international-issues/europe/workplace-issues/work-life-balance/15-cent-increase-people-working-more> last access 25.02.16.

⁸ Bleu bar represents the year 2010 and the grey bar is for 2015.

The UK government was opposed to the WTD and brought an action for annulment of the directive on four grounds amongst them a defective legal basis and a lack of correlation between health and safety of workers and the provisions of the WTD. At the time of the enactment of the Working Time Directive, a Conservative government was opposed to social policy measures coming from the European Union.

In 1992, the UK government had opted out of the social chapter and was therefore against the introduction of labour rights via the health and safety basis of the Treaty. The European Court of Justice (ECJ) rejected UK claims and held that the principal objective of the WTD was the protection of employees' health and safety including their welfare.⁹

Following the unsuccessful legal battle, the process of transposition took shape with the enactment of the Working Time Regulations (WTR) 1998 (SI 1998/1833) which came into force on 1st October 1998. Further, this statutory instrument brought into force certain aspect of the Young Workers Directive relating to rest, break and night work¹⁰.

- Legal Transposition of the WTD



The WTD obliges member states to adopt measures necessary to safeguard the health and safety of the workers by imposing limit on the working week and granting rests, breaks and annual leave.

- According to the directive, the **maximum working hours in a week** should not exceed 48 hours (art.6). Similarly, reg 4 of the WTR adopts akin rule and restricts the working week to a maximum of 48h. However, one of the features of the WTR is the possibility for individual worker to opt out in writing to this 48 h maximum.

⁹ *United Kingdom v Council (Working times)* [1996] ECR I-5755 case C-84/94

¹⁰ Simon Deakin(N° 2) 339

- With regard to the **definition of the working time**, art 2 WTD explains that working time is any period during which a worker is at the employer's disposal carrying out his duties.

The WTR has identical definition in reg 2. As result of the rulings in *SIMAP* and *Jaeger*, courts clarified that time spent on call counts as working hours, but only if the worker is at the employer's premises.¹¹

Looking at the definition of **night work**, both instruments have similar provision. Nevertheless, in the WTD this period is referred to as a period not less than seven hours including at least the period between midnight to five am (art 2.3) while under the WTR, it is regarded as a period between ten pm and seven am (reg 2). The regulations define a night worker as an individual who works, at least 3 hours, between 11.00pm and 6.00am. Such individual should not work more than 8 hours in 24hours and should be offered free health assessment (reg 7.1).

Art 7 of WTD provides for a minimum entitlement of a 4 weeks' **annual leave**. The WTR grants generous minimum paid annual leave compared to the WTD and there is not qualifying period for this right. With effect from 2009, UK workers are entitled to 5.6 weeks paid annual leave in contrast to the 4 weeks under the WTD.

- Scope of the WTR

The WTR has a wide scope and covers workers defined as an individual who has entered into or work under a contract of employment. (Reg. 2) However, certain categories of worker are excluded such as those working in the emergency service or armed forces, police and civil protection services. (Reg. 18)

Further, WTR allow flexibility and modification where the employer and workers' representatives reach a voluntarily agreement through collective bargaining, or workforce agreement. These agreements can modify or exclude certain statutory rights and entitlement such as the right to rests and breaks.

¹¹ Ian Smith and Aaron Baker, *Smith & Wood's Employment Law* (12th edn, OUP 2015) 257

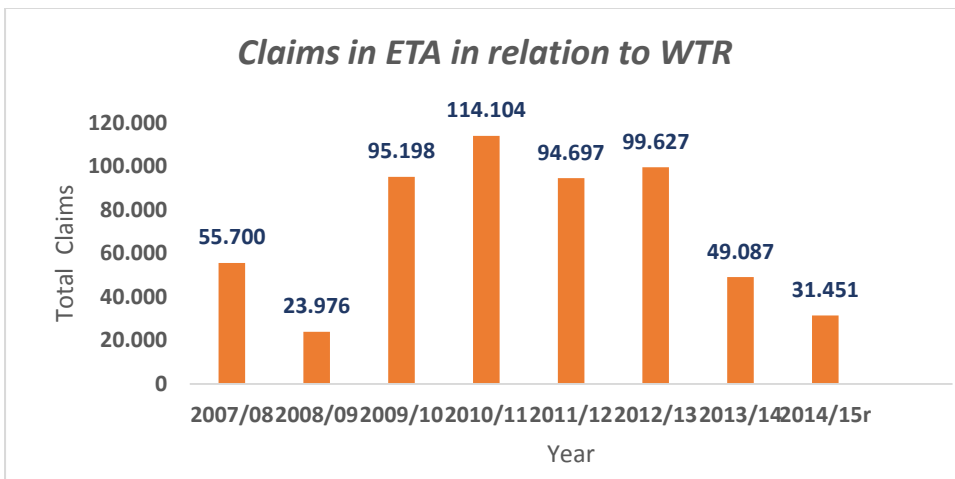
- Entitlements under WTR

The WTR offers statutory protection in relation to the maximum of weekly, rests and breaks, night working and annual leaves. The core rights under the WRT are summarized as follow:

Maximum working week: The WTR provides that a working time for each week, including overtime, should not exceed an average of 48h. Nevertheless, there is a possibility for individual worker to opt out in writing to this limit 48 hours restriction.

Rest and breaks: An adult worker is entitled to eleven consecutive hours daily rest in each 24 hours period (Reg. 10); twenty minutes break every six hours during the working day (Reg. 12).

The enforcement of the WTR is fragmented between different authorities. The limits and the health assessments for nights' workers are the competence of the Health and Safety Officers while the entitlements to rests and leave are enforced trough employments tribunals.



Source: Ministry of Justice (ETA – Employment Tribunals Applications)

Part time Workers Regulations

In relation to part-time workers, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations¹² (PtWR) make it unlawful for part-time workers to be treated less favourably because of their status than their full time counterparts unless there is an objective justification. This statutory instrument implements the EU Directive on part-time workers and came into force on 1st July 2000. The regulations aim to prohibit discrimination against part-time workers and promote flexible working¹³.

It is estimated that 8.27 million work part-time in UK accounting for 1 in 4 workers. Women account for 6.13 million part-time workers and men for 2.14 million.¹⁴

Prior to implementation, claims for less favourable terms of employment were lodged on the ground of sex discrimination as most women were affected.¹⁵

The PtWR confers rights to workers defined widely to include for example agency workers and those working from home. Further, it extends to part-time workers most of full time entitlements such as annual leave, contractual maternity or paternity benefits based on the principle of pro-rata (reg 1.2) and there is no minimum qualifying service under the regulation.

In addition, reg 3 promotes flexible working by allowing full time worker to request to switch to part-time within the same establishment.

Under, reg 6 a part-time worker who believes that he has been treated less favourably because of his status can request in writing and receive a written statement from his employer providing reasons for this less favourable treatment.

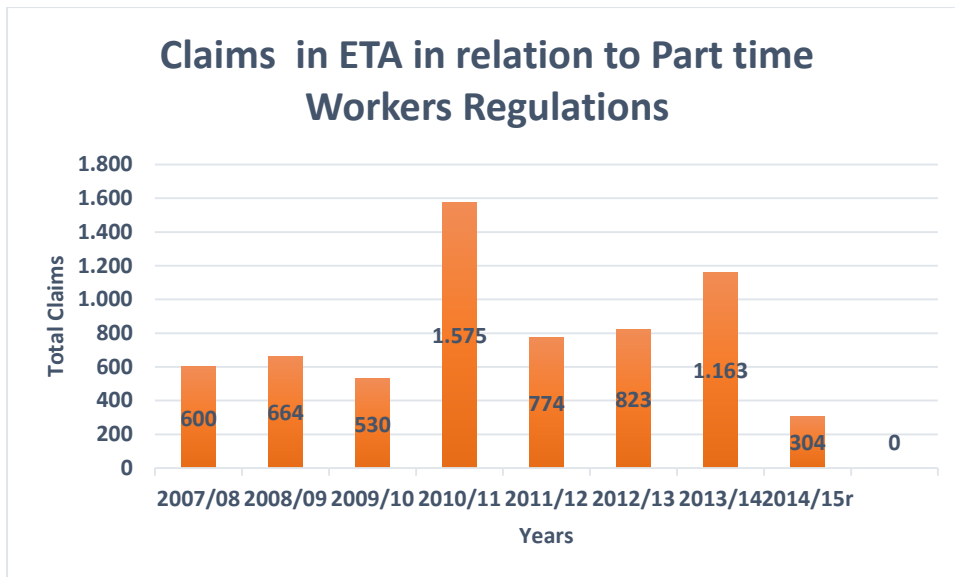
¹² SI 2000/1551

¹³ Aileen McColgan, 'Missing the Point? The Part-Time Workers (Prevention of Less Favourable Treatment) Regulation 2000(SI 2000 N01551)' (2000) 29(3) ILJ 260-267

¹⁴

<http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetype/s/bulletins/uklabourmarket/2015-08-12>

¹⁵ Linda Macdonald, *Tolley's Managing fixed-term & part-time workers: A practical Guide to Employing Temporary and Part-Time Staff* (2nd edn, Routledge 2011) 78



Source: Ministry of justice¹⁶.

4. Is there, in your country a general framework about working time (i.e. a legal or conventional or statutory working time rules, weekly rest, holidays, and specification for overtime working hours). What is the scope of this regulation (workers, employees, others...)?

(a) General Framework

The general framework seen in the UK around working time is known as the Working Time Regulations 1998. These regulations apply statutory limits or entitlements in four main areas which are¹⁷:

- The 48 hours maximum working week
- Night working
- Rest breaks
- Paid annual holiday

Regulation 2(1) of the Working Time Regulations 1998 provides that 'working time', in relation to a worker, means:

a) any period during which he or she is working, at the employer's disposal and carrying out his or her activity or duties

¹⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434176/tribunal-gender-statistics-jan-mar-2015.pdf

¹⁷ I Smith and A Baker, *Employment Law* (12th edn, OUP 2015) 251

b) any period during which he or she is receiving 'relevant training', i.e. in house training or work experience, and

c) any additional period which is to be treated as working time for the purposes of the Regulations under a 'relevant agreement'.

(b) 48 hour maximum working week

The regulations state that a worker's working time should not exceed an average of 48 hours for each seven days in any particular reference period.¹⁸ This includes any overtime worked. The averaging process is key here, as it does not mean a maximum of 48 hours per week, and fluctuations in week may be accommodated. This is where the reference period becomes important. Regulation 4(3) states that a reference period is 17 weeks. There are occasions where the reference period may be extended. Regulation 21 which looks at 'Other special cases' allows the reference period to increase to 26 weeks and a collective agreement can raise it to a maximum of 52 weeks, where it is advantageous for employers wanting to vary workers hours to accommodate seasonal work¹⁹.

There is one exception to the 48 hour maximum working week whereby it does not apply at all to a worker, if they have agreed in writing that this regulation does not apply to them. This is known as 'opting out'. This agreement is given in writing, and can be indefinite or for a specified amount of time. A worker can also terminate this agreement by again, giving written notice, of either three months, or seven days in default of coverage of the agreement. It has been noted that some employers in specific industries, such as the manufacturing sector and financial sector, have implemented individual opt-out agreements because "limiting the average working week to 48 hours would impair efficiency" and "the costs of running [a] business would increase significantly"²⁰. However it was evident that the individual opt-out is used widely, and is the most convenient and effective mechanism for avoiding the 48-hour limit of weekly working.²¹

¹⁸ Working Time Regulations 1998 reg 4(1)

¹⁹ Regulation 23(b)

²⁰ C Barnard, S Deakin & R Hobbs, 'Opting Out of the 48-hour Week: Employer Necessity or Individual Choice? An Empirical Study of the Operation of Article 18(1)(b) of the Working Time Directive in the UK.' (2003) ILJ 3 2(4)

²¹ Ibid 4, page 2

(c) Night working

A 'night worker' is defined as a worker who normally works at least three hours of his daily working time during the night²² and their normal hours of work in any reference period are not to exceed an average of 8 hours in each 24 hours²³. The same averaging process applies as seen with maximum weekly hours. There is an exception to the averaging process where the night work involves 'special hazards or heavy physical or mental strain'²⁴, whereby the limit is 8 hours in any 24 hour period in which night work is done²⁵. Due to the health and safety implications of working nights, there are two extra obligations laid down to night workers. The first is that they must undertake a free health assessment before they start night work, and that they must then have the opportunity to further regular free health assessments. Most employers carry out an annual health assessment on their night workers. The second obligation is that if for some reason they become medically unfit to carry out night work, the employer must transfer them on to non-night work. There are no permissible derogations to this duty.

(d) Lone Workers

A Lone Workers Risk Assessment, specific to the nature of their role, should be carried out and procedures implemented to negate any risk that is identified.

(e) Rest periods

A worker is entitled to the following rest periods:

- (1) A daily rest period of not less than 11 hours in each 24 hour work period;²⁶
- (2) A weekly rest period of not less than 24 hours in each seven-day work period;²⁷
- (3) A rest break of at least 20 minutes (subject to any longer time agreed in a collective agreement or workforce agreement) where daily working time is more than 6 hours²⁸

²² Regulation 2(1)

²³ Regulation 6(1)

²⁴ Smith and Baker (n17) 260

²⁵ Regulation 6(7)

²⁶ Regulation 10(1)

²⁷ Regulations 11(1)

²⁸ Regulation 12(1) – (3)

(f) Paid annual leave

A worker is entitled to 5.6 weeks of paid leave each year. This is the equivalent of 28 days for someone who typically works a five day week. Normally the employer would state when the leave year begins and ends, however, if this is not provided, it would then run from the date of commencement in employment. The leave is to be taken in instalments, and can be carried over into the next leave year, if an individual is unable to take their leave, for example due to sickness, and can be paid in lieu upon termination of contract²⁹. This again is in line with health and safety provisions to ensure that workers receive a rest from work.

(g) Scope of the regulations

This set of regulations is to be applied to the entire workforce and the regulations refer to a 'worker'. In this instance, a worker is an individual under a contract of employment or any other contract. This includes whether it is oral or written, express or implied³⁰, and 'whereby the individual undertakes to do or to perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual'³¹.

When the regulations were first enacted there were three general exclusions which related to the transport industry, activities of services such as the armed forces, police and civil protection services, and doctors in training³². Overtime, amendments were made to the regulations which meant that where junior doctors in training were originally excluded, a phased 48 hour week was introduced, and the general exemption of transport was narrowed by special rules which related to certain transport workers. There were no changes seen to those working in the armed and emergency services. It was noted in *Pfeiffer v Deutsches Rotes Kreuz*³³ that this exception was:

Adopted purely for the purpose of ensuring the proper operation of services essential for the protection of public health, safety and order in cases, such as a catastrophe, the gravity and scale of which are exceptional and a characteristic of which is the fact, by their nature, they do not lend themselves to planning as regards the working time of teams of emergency workers.³⁴

²⁹ *NHS Leeds v Larner* [2012] EWCA Civ 1034 (CA)

³⁰ Smith and Baker (n17) 253

³¹ Regulation 2(1)

³² Smith and Baker (n17) 253

³³ Case C-397/01, [2004] ECR I-08835

³⁴ *Ibid.*, para. 55

Agency workers are covered by these regulations, however there are special regulations which cover young workers. These regulations restrict their working to 8 hours a day and no more than 40 hours a week. They are also entitled to rest break of 30 minutes for every 4.5 hours worked, as well as two days off each week³⁵

(h) Overtime

Overtime is hours worked over and above an individual's contracted hours. Employers don't have to pay for overtime, for example it could be taken by the employee as time off in lieu, but if it is paid, then the payment must be no lower than the national minimum wage. Normally, an employee's contract would state how overtime is calculated and paid. Overtime is voluntary, unless it is a contractual obligation, and the hours worked must not exceed that of the 48 hour limit, unless the individual has signed an opt-out agreement. Unless the overtime is contractual, an employer can stop an individual working overtime at any point.

(i) Sunday working

Part IV of the Employment Rights Act 1996 regulates Sunday work for those who work in either a retail or betting shop. It states that:

- Shop workers who started their employment on or before 26 August 1994 (2 January 1995 for betting workers) have the right not to work on Sundays unless they are employed to work Sundays only
- Shop/betting workers who started their employment on or after the above dates and who are required to work on a Sunday under their employment contract can give three months' notice to their employer, in writing, of opting out of Sunday work (one month in certain circumstances - see below)
- Shop/betting workers in either of the two categories above can decide to opt-in to Sunday work if they wish to by giving their employer written notice

Employers must tell employees of their Sunday working rights when they first start work. Where shop workers started work on or after 26 August 1994, or as a betting worker on or after 2 January 1995 and are required to work on Sundays under their employment contract, this explanation has to be in a prescribed written form and be issued within two months of

³⁵ ACAS publications, 'Working Hours' < <http://www.acas.org.uk/index.aspx?articleid=1373> > – accessed 24 March 2016

the individual agreeing to do Sunday work. If this is not done then the individual only has to give the employer one month's notice of opting-out of Sunday work.

There is no requirement within the law to pay staff a higher rate for working on Sundays.

5. What is the legal, contractual (individual contracts) conventional (collective agreements) or statutory system about working time?

(a) Derogations

When the regulations were drafted, there were three forms of agreement that were specifically agreed. These are:

- Individual agreement which applies in relation to opting out of the 48 hour per week only;
- Relevant agreement which is defined as a workforce agreement. In this case any provision of a collective agreement which forms part of a contract between the worker and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer;³⁶
- Collective or workforce agreement imports obvious elements of protection and is adopted for some of the major exclusions

These agreements are important, especially the reference to a workforce agreement. The workforce agreement is to apply to workers who do not have any terms and conditions set by a collective bargain³⁷. The regulations set out what must happen in these instances. This agreement ensures that all the different types of worker are included and captured in the scope of the regulations.

One of the main derogations is seen in regards to Regulation 20 (Unmeasured Working Time) where by the provisions of the 48-hour maximum working week, the length of night working and daily/weekly rest and rest periods do not apply 'in relation to a worker where, on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself'³⁸. The examples given by the Regulations include 'managing executives or other persons with autonomous decision-making powers', family workers and religious celebrants.

³⁶ Regulation 2(1)

³⁷ Smith and Baker (n1) 254

³⁸ H Collins, KD Ewing and A McColgan, *Labour Law* (CUP 2012) 255

These examples are narrow and guidance suggests that only those with complete control over their hours would be excluded from the regulations³⁹.

The second derogation is contained within Regulation 21 which states that the provisions on length of night working and daily/weekly rest and rest periods do not apply in relation to a worker in a range of activities such as security and surveillance activities where a permanent presence is required, where a continuity of care is needed, for example, medical staff, where there is a foreseeable surge of activity, for example tourism, and where the employee's activities are affected by unforeseen circumstances outside of the employers control.

(a) Overtime

The definition of overtime is any hours worked by an individual over and above their contracted hours. Overtime is not obligatory, and in most cases workers are asked to volunteer to work the overtime. Any hours worked as overtime, need to be included in reference period when working out the average working week, to ensure a worker does not exceed the maximum 48 hours that can be worked, unless an opt-out agreement has been signed. There are usually no repercussions if a worker refuses to do overtime. The only time repercussions might be seen is if the overtime is mandatory and a worker refuses, or they agree to the overtime and then do not work it. This could potentially be dealt with under an employer's disciplinary procedure.

If overtime is worked then usually a worker is either paid these additional hours as part of their payslip or they may take the time they worked back, to take as compensatory rest at another time. These arrangements are often detailed as part of a collective agreement, and could also determine areas such as what rates of pay the overtime will be paid at, or if a worker is going to take the time as compensatory rest, when this rest must be taken by.

(c) Flexible working

Workers have the right to request flexible working to either increase or decrease their working hours. A worker normally has to have at least 26 weeks continuous service, make the application in writing, and can only make one application within a 12 month period. Prior to 30 June 2014, only workers who had child care responsibilities were able to request

³⁹ Ibid, 255

flexible working, however every worker 26 weeks continuous service is now able to apply for this right⁴⁰. Employers are able to refuse such a request, but it must be due to a business reason listed below:

- The burden of additional costs
- An inability to reorganise work amongst existing staff
- An inability to recruit to additional staff
- A detrimental impact on quality
- A detrimental impact on performance
- A detrimental effect on ability to meet customer demand
- Insufficient work for the periods the employee proposes to work
- A planned structural change to the business

A worker has the right to appeal the decision of a flexible working request.

6. How is working time organised over the week, the month or the year? Do working time accounts exist? What are the consequences on wages? What are the consequences on rest periods?

(a) Working Time in the United Kingdom

As previously discussed, working time is implemented in the United Kingdom throughout the Working Time Regulations 1998. The regulations govern the hours most workers can work and set limits on an average working week. The regulations also stipulate the statutory entitlement to paid leave for most workers, the requirements for rest periods, limits the normal hours of night work and regulate health assessments for workers (Night workers and young workers)⁴¹. For more information on who is covered under the regulations, refer to question 4.

According to the office of National Statistics, the average working hours of full time workers in the United Kingdom is around 39.1 paid hours per week.⁴²

A government study on the impact of the Working Time Regulations over the UK labour market⁴³ indicates that since 1998 there has been a decline in the incidence of long-hours

⁴⁰ Flexible Working Regulations 2014, reg.3

⁴¹ ACAS publications, Working time < <http://www.acas.org.uk/index.aspx?articleid=1373>> accessed 21st March 2016

⁴² Office for National Statistics, Annual Survey of Hours and Earnings: 2015 Provisional Results

⁴³ The Impact of the Working Time Regulations on the UK labour market: A review of evidence 2014

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389676/bis-14-1287-the-

working in the UK and a general trend towards shorter working hours. It is believed that this is in part, due to the introduction of the 48-hour maximum working week despite the existence of the opt-out. The same survey suggests that the impact of the regulations has increased employment of workers doing shorter working weeks, rather than reducing the total hours worked.

The study also suggests that long-hours working is generally more prevalent in high income and highly skilled occupations compared to lower income and medium and low-skilled occupations. The study also find that long hours working is more prevalent amongst males, people with management positions, and in certain sectors. Evidence suggests that many people working long hours do so for short periods of time, perhaps indicating that employees do exercise a choice over whether they work long hours.

A survey conducted by the Department for Business, Innovation & Skills ⁴⁴ which involved a sample of 2,011 workplaces, found that 45% of the employees surveyed work Monday to Friday, 36% of the employees surveyed operated seven days a week and 15% six days a week.

With regards to overtime work, just over half of establishments 51% offer pay to compensate employees for overtime working. The next most common practice to compensate overtime was to offer time off in lieu, cited by 23% of workplaces. A total of 11 % of businesses offered no paid compensation for overtime and 3% had no set policy.

A workplace Employment Relations Study which involved almost 750,000 workplaces, found that 31% of the employers have at least one employee working under a shift based structure, 7% of workplaces had employees working on annualised hours contract, 8% of the workplaces had at least one employee working under zero hours contracts (zero hours contracts normally mean there is no obligation for employers to offer work, or for workers to accept it) and 25% of workplaces had some employees on temporary or fixed-term contracts⁴⁵.

In light of the picture depicted above, the way working time is organised (over the week, month and year) depends on the contractual arrangements, either individually negotiated or influenced by collective agreements. The Working Time Regulations provide for statutory maxima and minima, with the possibility to derogate at an individual or collective level. Most

[impact-of-the-working-time-regulations-on-the-uk-labour-market-a-review-of-evidence.pdf](#) accessed 28 March 2016

⁴⁴ The Fourth Work-Life Balance Employer Survey (2013) < <https://www.gov.uk/government/publications/fourth-work-life-balance-employer-survey-2013>>

⁴⁵ Workplace Employment Relations Study (2011) < <https://www.gov.uk/government/publications/the-2011-workplace-employment-relations-study-wers>>

of those statutory provisions are explained in section 4 but are re-indicated below for comparative purposes and for the sake of completeness in answering the question’.

(b) 48-hour working week

The maximum 48-hour working week is taken as an average, with a reference period of 17 weeks. It is also permissible to disapply the requirement by way of an opt-out agreement, signed by the worker. The 17 week reference period can be varied by way of collective or workforce agreement, provided the variation is for technical or organizational reasons (Regulation 23(b)).

(c) 11 hours daily rest

Workers are entitled to 11 hours daily rest in every 24-hour period under Regulation (10).

It should be noted that the minimum daily rest period does not apply to ‘shift workers’ (Regulation 22(1)). ‘Shift work is defined as ‘any method of organizing work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks’. The requirement can also be varied by way of collective or workforce agreement (Regulation 23(a)).

If an exemption is claimed, under Regulation 22(1) or 23(a), then the worker must be provided with ‘compensatory rest’ Regulation (24). In *Hughes v Corps Commissionaires Management Ltd* [2009] IRLR 122 ‘Compensatory rest’ was determined to be ‘a period of equal length to the rest denied, taken at a time when the worker would otherwise be working, as soon after as the rest should have been afforded’. There is no requirement for a worker to be paid for periods of compensatory rest. In exceptional cases, where it is not possible to offer even compensatory rest, that can be objectively justified, the worker must be afforded ‘appropriate protection’ to safeguard their health and safety (Regulation 24(b)). No definition of ‘appropriate protection’ has been given by legislation or case law.

(d) 24 hours weekly rest

Under regulations 10 and 11 workers are entitled to weekly rest of 24 uninterrupted hours in every seven-day period. At the employer’s choice, the weekly rest period can consist of two uninterrupted 24-hour rests or one uninterrupted 48-hour rest in every 14-day period. The same exceptions and rules that apply to the daily rest provisions in relation to shift workers, compensatory rest and collective agreements also apply to weekly rest periods.

Rest Break

The provisions in relation to minimum rest breaks can be varied by way of a collective or workforce agreement (Regulation 23(a)), subject to the 'compensatory rest' provisions. It should also be noted that only 1 period of 20 minutes rest is needed, if a period of work exceeds six hours (12 hours work does not entitle the worker to 40 minutes rest).

(e) Sunday working

Part IV of the Employment Rights Act 1996 regulates Sunday work of shop and betting workers:

- Shop workers who started their employment on or before 26 August 1994 (2 January 1995 for betting workers) have the right not to work on Sundays unless they are employed to work Sundays only
- Shop/betting workers who started their employment on or after the above dates and who are required to work on a Sunday under their employment contract can give three months' notice to their employer, in writing, of opting out of Sunday work (one month in certain circumstances - see below)
- Shop/betting workers in either of the two categories above can decide to opt-in to Sunday work if they wish to by giving their employer written notice

Employers must tell employees of their Sunday working rights when they first start work. Where shop workers started work on or after 26 August 1994, or as a betting worker on or after 2 January 1995 and are required to work on Sundays under their employment contract, this explanation has to be in a prescribed written form and be issued within two months of the individual agreeing to do Sunday work. If this is not done then the individual only has to give the employer one months' notice of opting-out of Sunday work.

There is no requirement within the law to pay staff a higher rate for working on Sundays.

(f) Relevant Agreements

There are a number of circumstances in which employers and workers may enter into an agreement that has the effect of supplementing, or in some instances derogating from, the strict application of the Regulations. Employers, workers or worker representatives who wish to have some degree of latitude as to compliance with the Regulations should be aware of the types of agreement that can be reached and should consider their application to the individual circumstances of the workplace.⁴⁶

⁴⁶ IDS Volume 15 - Working Time, Chapter 1 - Scope and Key Concepts, Agreements, 1.70

There are three types of possible agreement under the Regulations:

- collective agreements
- workforce agreements
- relevant agreements.

(g) Collective agreements

A 'collective agreement' is defined by [Reg 2\(1\)](#) as a 'collective agreement within the meaning of [S.178' of the Trade Union and Labour Relations \(Consolidation\) Act 1992 \(TULR\(C\)A\)](#). [S.178\(1\) TULR\(C\)A](#) provides that a collective agreement is 'any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations'.

(h) Workforce agreements

A workforce agreement is a mechanism whereby an employer may agree a modification of, or derogation from, the terms of the Regulations with elected representatives of the workforce. The provisions that can be modified or derogated from by a workforce agreement are the same as those which apply in the case of collective agreements and are listed below under '[Scope of collective and workforce agreements](#)'. The definition of a 'relevant agreement' includes a workforce agreement. It follows that a workforce agreement may also modify or derogate from the provisions listed below under '[Relevant agreements](#)'.

A collective or workforce agreement may:

- provide that a person who is likely to work a specified proportion of his or her annual working time during night time is a night worker - [Reg 2\(1\)](#)
- identify work that involves 'special hazards or heavy physical or mental strain' for the purposes of the provisions on length of night work - [Reg 6\(8\)\(a\)](#)
- specify the details of the statutory rest break for adult workers, including its duration and the terms on which it is granted - [Reg 12\(2\)](#) and [\(3\)](#)
- extend the reference period in relation to the average 48-hour week to a maximum of 52 weeks for objective or technical reasons or reasons concerning the organisation of work - [Reg 23\(b\)](#).

(i) Relevant Agreements

The final category of agreement recognised by the Regulations is a catch-all agreement which includes the other two. A 'relevant agreement' is defined by [Reg 2\(1\)](#) as 'a workforce agreement which applies to [the worker], any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer'. It follows from this definition that a relevant agreement may include the written terms of a contract of employment. However, it will not include oral agreements between the employer and the worker, and nor will it include matters merely notified to the worker by the employer, as there must be an 'agreement' between the two parties.

A relevant agreement may:

- define a period of at least seven hours, including the period between midnight and 5 am, as 'night time' for the purposes of the provisions on night work - [Reg 2\(1\)](#)
- extend the definition of 'working time' - [Reg 2\(1\)](#)
- specify the start of the 7- or 14-day reference period in relation to the weekly rest period - [Reg 11\(4\)\(a\)](#)
- specify the start date of the annual leave year - [Reg 13\(3\)\(a\)](#)
- provide for any additional annual leave to which the worker is entitled under [Reg 13A](#) to be carried forward into the following leave year - [Reg 13A\(7\)](#)
- subject to certain conditions, provide for an additional annual leave entitlement of 1.6 weeks or eight days (whichever is the lesser) in place of the worker's statutory entitlement to additional leave under [Reg 13A](#) - [Reg 26A](#)
- specify the amount of any payment in lieu of holiday due on termination of employment - [Reg 14\(3\)\(a\)](#)
- provide for the worker to compensate the employer where the employment is terminated during the course of the leave year and the proportion of annual leave taken exceeds the proportion of the leave year that has expired - [Reg 14\(4\)](#)
- vary or exclude the statutory provisions concerning notice of annual leave - [Reg 15\(5\)](#)

7. Are there legal or other rules about paid leaves (holidays, week days off, etc.)

Question 4 covered some of the legal rules with regards to annual leave. This section expands on the right to annual leave and presents other type of leave that is also regulated in the United Kingdom.

The Working Time Regulations 1998 provide workers with a statutorily guaranteed right to paid holiday. Subject to certain exclusions, all workers are entitled to 5.6 weeks' paid holiday in each leave year beginning on or after 1 April 2009 - comprising four weeks' basic annual leave under Reg 13(1) and 1.6 weeks' additional annual leave under Reg 13A(2). The entitlement to 5.6 weeks' leave is subject to a cap of 28 days.

[Regulation 13A\(3\)](#) states that the maximum amount of leave that can be taken under [Reg 13\(1\)](#) and [13A\(2\)](#) is '28 days'.

The effect of this is that workers whose normal working week is in excess of five days are proportionately worse off under the Regulations than workers whose normal working week is 5 days or less.⁴⁷ However according to the Department of Business Skills and innovation a survey conducted on work life balance⁴⁸ showed that 65% of full time employees receive more than the statutory legal minimum. 75 % of full-time employees took the full amount of leave offered to them by their employer, compared with 79 % of part time workers.

(a) Start of the leave year

Where a worker's employment began after 1 October 1998, his or her leave year begins on the date on which his or her employment began and on each anniversary of that date - [Reg 13\(3\)\(b\)](#).

(b) What constitutes leave?

As with the Working Time Directive (No2003/88) the regulations do not provide a definition of annual leave. As such, guidance is taken from regulation 2(1) which states: "rest period", in relation to a worker, means a period which is not working time, other than a rest break or leave to which the worker is entitled under these Regulations.⁴⁹

⁴⁷ IDS Working Time (Thompson Reuters 2016) page 126

⁴⁸ The Impact of the Working Time Regulations on the UK labour market: A review of evidence 2014 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389676/bis-14-1287-the-impact-of-the-working-time-regulations-on-the-uk-labour-market-a-review-of-evidence.pdf accessed 28 March 2016

⁴⁹ Ibid

(c) Instalments

[Regulations 13\(9\)](#) and [13A\(6\)](#) provide that the statutory annual leave entitlement may be taken in instalments. In other words, it needs not be taken all at once.⁵⁰

(d) Carrying over

[Regulation 13\(9\)\(a\)](#) provides that the statutory annual leave entitlement of four weeks may only be taken in the leave year to which it relates. Employers and workers can, however, agree to carry over any *additional* statutory leave (1.6) into the next leave year (but not beyond) by means of a relevant agreement.

(e) What should be included in holiday pay?

In the United Kingdom, the Working Time Regulations 1998 are read in conjunction with the Employment Rights Act 1996 in order to establish what is included in holiday pay. A distinction is made in the relevant provisions of the ERA 1996 between employees with "normal working hours" and those with "no normal working hours". Generally, a worker who has "normal working hours" will have their week's pay calculated with reference to those hours. For employees with normal working hours whose pay varies, either by reference to the hours worked or the amount of work done, a week's pay is calculated using the employee's average remuneration over the previous 12 working weeks. However, recent rulings have indicated that holiday pay should not be limited to "normal working hours".⁵¹

In *British Gas Trading Ltd v Lock and another*⁵², the Employment Appeal Tribunal upheld an employment tribunal's decision that the Working Time Regulations 1998 can be interpreted to provide that results-based commission should be included in statutory holiday pay derived from the Working Time Directive. The judgment came after a request that the European Court of Justice interpreted this specific question. Holiday pay should therefore be the same as the average take home salary, not only the basic pay without commissions.

In *Bear Scotland Ltd v Fulton and others*⁵³ the EAT held that the WTR 1998 can and should be interpreted to conform with Article 7 of the WTD, so that holiday pay (for the four weeks' statutory leave) includes non-guaranteed overtime for employees who would not otherwise be entitled to these elements under the ERA 1996.

⁵⁰ Ibid

⁵¹ Practical Law UK, Legal update: EAT confirms WTR 1998 can be interpreted to include results-based commission in statutory holiday pay

⁵² UKEAT/0189/15

⁵³ UKEATS/0047/13

8. Are there legal or other rules for situations with specific working time models such

as :

(a) Part-time work

(i) The statutory **definition** of a part time worker is rather broad: The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (2000) define part-time workers as those who are paid wholly or in part by reference to the time they work and is “not identifiable as a full-time worker”⁵⁴. There is no specific number of hours that makes someone full or part-time but a full-time worker will usually work 35 hours or more a week.⁵⁵

Part-time workers are, therefore, any workers who are contractually required to work less than the hours the employer identifies as full-time.

Part-time working allows for greater flexibility in supporting a healthy work-life balance and enables workers with personal commitments to manage these pressures. Workers may choose to work part-time for many reasons, such as managing childcare and other responsibilities at home.

Types of part-time working include:

- Job-share - where a full time job is divided into two part time jobs
- Term-time work - where a worker can take time off or work reduced hours during school holidays
- Evening or weekend work
- Casual work.⁵⁶

Workers who are established as working full-time within their organisation have the right to request a reduction in their working hours to work part-time if their circumstances change or they wish to do so, this is a statutory entitlement contained in the Employment Rights Act

⁵⁴ The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000

⁵⁵ <https://www.gov.uk/part-time-worker-rights>

⁵⁶ <http://www.acas.org.uk>

(1996)⁵⁷. The right to request flexible working was extended in 2014 to include all employees and not just parents and carers.⁵⁸ (as discussed in question 5)

According to the UK Labour Market Office for National Statistics, there was an increase in the number of men working part-time by 21,000 meaning there were 2.14 million in 2015. In comparison to this the number of women working part-time decreased by 18,000 to 6.13 million; a positive social contrast for equality which may suggest more men are taking advantage of family friendly policies within the workplace.

Part-time workers have access to the following rights according to the Part-Time Workers Regulations:

- not to be treated less favourably than a full time worker doing the same or similar work regarding the terms of employment (for example holiday entitlements and hourly pay rates should be pro rata).
- Part-time workers have the right to request a written statement of reasons for any treatment which is less favourable than a comparable full time worker
- Part-time workers should be selected as a full time worker would be for promotion or redundancy.
- receive the same rates of Pay
- not be excluded from training simply because they work part-time
- receive holidays pro rata to comparable full-timers, have any career break schemes, contractual and parental leave made available to them in the same way as for full-time workers
- not be treated less favourably when workers are selected for Redundancy⁵⁹

Differential treatment can be objectively justified.

(ii) Wages for Part-Time Workers

Part-time workers should receive the same basic and enhanced hourly rates of pay as comparable full-time workers. This could include payments such as shift allowances, bonuses, unsocial hours' payments or other additional payments.

⁵⁷ Employment Rights Act 1996

⁵⁸ Stephen Taylor and Astra Emir, *Employment Law, an introduction* (2015, OUP)

⁵⁹ <http://www.acas.org.uk/index.aspx?articleid=1576>

Depending on the nature of the payment, it may or may not be appropriate to apply a pro rata reduction. Employers should consider the most appropriate approach in relation to each term. For example:

Shift allowances - where an employer offers an allowance or enhanced rate of pay for full-time workers who work certain shifts, the same rate or allowance may be applied to part-time workers.

Bonus - depending on the type of bonus awarded, the employer may offer a pro-rata share, based on the relative proportion of time worked by the part-time worker.

Unsocial hours – a standard payment for working during a certain period (for example, midnight until 6am) should apply equally to full-time or part-time workers if they worked the same period.⁶⁰

With regards to paying overtime to a part-time employee, if full-time workers receive a higher rate of pay once they have worked their full-time hours, a part-time worker will receive a higher rate of pay once they have also reached the full time equivalent working hours⁶¹. In *Voss v Land Berlin*⁶² a female teacher claimed she suffered a detrimental when working overtime and not receiving a higher rate of pay for it due to working part-time and that she was not receiving equal pay in comparison to her male colleagues working the same extra hours. The ECJ decided that this was potentially discriminatory and a breach of Article 141 and was not objectively justified.

However in *Stadt Lengerich v Helmig*⁶³ there appeared to be a different decision, whereby it was determined there was no discrimination in not paying overtime rates to part-time workers when the hours they worked were within the normal hours worked by full-time workers.

It is clear that employers must take great care when allocating overtime and fixing rates of pay for overtime between full-time and part-time workers. Employers may be vulnerable to claims under the Equality Act 2010

(b) Weekend Working

⁶⁰ <http://www.cipd.co.uk/hr-inform/employment-law/employees-and-workers/part-time-workers/indepth.aspx>

⁶¹ <http://www.cipd.co.uk/hr-resources/employment-law-faqs/part-time-overtime-rates.aspx>

⁶² *Voss v Land Berlin*, unreported Case C-300/06 6 December 2007, ECJ

⁶³ *Stadt Lengerich v Helmig* [1995] IRLR 216, ECJ

Rules about Sunday working are explained in the report earlier on (Sunday Trading Act 1994).

Some categories of large shops are exempt from the Sunday Trading Act 1994:-

- Airport shops
- Pharmacies
- Goods from exhibition stalls
- Farm shops that sell their own produce (including fishmongers)
- Petrol filling stations
- Railway stations
- Motorway service stations⁶⁴

(c) Night work

The definition and regulation of night pay is discussed in previous sections.

It is however worth noting that night workers are entitled to be paid in accordance with the National Minimum Wage⁶⁵, however there is currently not a provision for a higher night worker rate of pay. Positions involving a sleep shift during the night period will count towards the working hours if the worker meets the required criteria of being both on call and in the workplace; for example a care worker⁶⁶. The worker may be paid a flat rate allowance for a night shift but the average pay must not be impacted by this or fall below the NMW standards.

9 - Is there a debate in your country about working time? And if so, what are the issues discussed especially in the context of economic crisis?

The Conservative Government is currently looking to change the law on Sunday Trading.⁶⁷ Last year Chancellor George Osborne set out plans for the biggest shake-up of Sunday trading laws in 20 years in his summer Budget, claiming the changes would see a boost to the economy. His plan is to devolve powers over deciding Sunday trading hours to councils and elected mayors, allowing for shops to be open longer where it is believed it will be of benefit to the local economy.

⁶⁴ <https://www.gov.uk/trading-hours-for-retailers-the-law>

⁶⁵ National Minimum Wage Act 1998

⁶⁶ <https://www.gov.uk/night-working-hours>

⁶⁷ <http://www.usdaw.org.uk/CMSPages/GetFile.aspx?guid=dbd3cc71-40b4-40c4-be68-98a274a656e9>

He also said that allowing councils in England and Wales to decide whether larger stores should be able to stay open for longer than the current maximum of six hours could help "struggling" high streets to compete with online retailers.⁶⁸

The Bill was not popular, including among members of the Conservative party and was defeated in March.

⁶⁸ <http://www.independent.co.uk/news/business/news/sunday-trading-hours-what-does-the-government-want-to-change-how-will-it-affect-workers-a6920971.html>

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