An evaluation of the Working Time Regulations in the United Kingdom

Alex Mak

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Abstract
This study evaluates the impact of the Working Time Regulations in the UK focusing on key industrial sectors with working time arrangements failing short of or marginal to the regulatory standards. Studies of the WTR have tended to focus on the consequences of the working time protections for employment while neglecting the dynamic process of adjustment that such protection may give rise to. A particular feature of this study is the attention paid to adjustment processes. Drawing on a combination of survey and case study evidence, the study reveals employers’ and employees’ responses to the Regulations and examines the implications for working practices. This study explores employers' responses to the Working Time Regulations and their implication for working time arrangement, holiday entitlement, and work organisation. Employees' reactions to such working time protections are also explored. This study concludes by addressing a number of policy-related issues.
Introduction

This study explores the impact of the Working Time Regulations (hereafter WTR) in the UK focusing on the key industrial sectors with working time arrangements failing short of or marginal to the regulatory standards. These sectors were identified using the New Earning Survey and the Labour Force Survey. Before the introduction of the WTR, the Labour Force Survey 1998 (Eurostat, 1999) revealed that around 20 per cent of workers in the UK worked a total usual hours of 48 or above in their main job despite a steady decline in the total hours worked over the decade. The high proportion of the workers working long hours could be explained by the limited nature of labour market regulations that had led employers to adopt a more defensive labour market strategy, heavily relying on numerical flexibility. The excessive use of numerical flexibility raises questions about how employees are being affected in terms of their basic and actual hours of work under the WTR. In addition, how the changes imposed by the Regulations might affect their level of earnings and to what extent will their pattern of work and leisure be affected. On the other hand, employers might also be affected by the Regulations to the extent that restrictions on working time may have an impact on unit labour costs and the level of output. Thus, employers will have to come to terms with these restrictions by adjusting working practices. Furthermore, the study concerns how establishments have accommodated the WTR so as to minimise potential constraints.

The findings presented in this study are derived from 192 postal questionnaire responses and six case studies. This study explores the consequences of employers' responses to the Working Time Regulations and their implication for working time arrangement, holiday entitlement, and work organisation. Employees' reactions to such working time protections are also explored. The paper is organized in four sections. The first section provides a review on working time development in the UK and those empirical studies surrounding the WTR and establishes the key concerns of the present study. The survey findings are reported in the second section and it is followed by the case study evidence in the third section. The paper concludes with a discussion of the key findings and the policy implications.
Working Time Development and Empirical Researches

The Labour government incorporated the Working Time Directive (WTD) into British law on 1 October 1998 marking an end of the neo-liberal approach to the labour market adopted by its Conservative predecessor. During the years of Conservatives between 1979 and 1997, a series of legislative reform were made in an attempt to remove legal obstacles in the labour market to pave the way for greater labour market flexibility. These reforms involved undermining the power of trade unions and removing certain employment protections from workers through deregulating the labour market. The legislative reforms under the Sex Discrimination Act of 1986 and the Employment Act of 1989 removed all laws regulating the hours of women and young people worked and abolished the Wage Councils (Hepple, 1990).

Deregulation had made the UK labour market to be one that is less highly regulated than most other EU counties. Britain had no legal limits on working hour and lacked legal standards on holiday entitlement. As the result, Britain has the most diverse working time arrangements within the EU. Full-time employees in the UK, especially men, worked the longest average hours in Europe, whereas part-time workers have the shortest average hours of work compared with other EU states (Eurostat 1999). The rational for the Conservatives to pursue a freer labour market was to permit market forces to influence the setting of employment conditions and the level of employment more directly. Also by agreement or through practices, employers and employees would be able to determine their own work arrangement and norm without the use legal reinforcement (Mackie, 1992).

Given the influence that employers had in determining working conditions under the Conservatives, the Labour government’s minimalist approach to the implementation of the WTD could be said to represent a ‘balancing act’, addressing the demand imposed by the European Commission while taking account of the long hours and flexible working arrangements demanded by many employers. See Appendix 1 for the key provisions of the WTR. In addition, the way the government took advantage of the possible use of derogations in the WTD can also be seen as indicative of its concern to ‘strike a balance’ between employers’ interest and employees’ right
(Undy, 1999). However, given the insufficient time to consult the details of the WTR with all social partners (Blair et al., 2001a, b) the uncertainty raised by the Regulations was a concern of employers and employees alike in both public and private sectors (Arrowsmith & Sisson, 1999).

Drew upon data from the 1999 Warwick Pay and Working Time Survey, covering senior managers in 212 organizations of four sectors, Arrowsmith (2000) found that long working hour remained a common feature except in the retail sector, a sector that predominantly hires part-time staff. His study indicated the varying degree of implication would have to these sectors in the near to medium terms when considering different provisions of the WTR. A subsequent study by Goss & Adam-Smith (2001) also utilized survey data to address the effect of employer responses to the WTR from 416 companies in private sectors. Unlike that of Arrowsmiths, their study captures the actual effect of the WTR on weekly working hour, night work, rest breaks and holiday entitlement. Their finding showed that majority of companies have made use of the flexibilities in the WTR instead of making the changes necessary to comply with the standards imposed by the provisions, and they further explored the significance of sector, company size and trade union representation towards working hours and holiday entitlement.

In an attempt to explore the impact of the WTR in depth, evidences gathered from 20 case studies by Neathey & Arrowsmith (2001) not only confirm these survey findings, but also shed light on the various approaches organisations had taken to minimise the statutory restrictions. The implementation process of the WTR was also the focus of their research. Their findings include different ways information regarding the Regulations were passed on to the workforce and the extent to which line management and workers participated in decisions relating to the implementation of the Regulations.

A comparative analysis was adopted in the studies conducted by Blair et al. (2000 & 2001a, b), in which evidences were drew from survey and interview. Based on the responses of personnel managers, their earlier study compares the effect of the WTD had on companies in the retail and banking sectors within the UK and the Netherlands, while the latter studies focused on UK companies in sectors that had a
tradition of long hour culture and shift working, covering both managers and workers’ representatives. The former study found that managerial staff is the one in both countries who work consistently over 48 hours per week whereas the holiday entitlement is rather mixed, despite the fact that part-time workers in the UK now entitle to a pro-rata leaves. The latter studies shown employees continue to work long hours given the way the WTD was incorporated into the British law.

All mentioned studies highlighted the implication of the WTR and suggested that the overall impact of the WTR was limited given the ways the WTR was introduced. Nevertheless, there exist methodological limitations amongst these studies. The two surveys did not provide information on the extent to which the WTR have impacted on working time arrangements, employment levels, and working practices. Although Goss & Adam-Smith (2001) investigated into the implication of the provisions on holiday, rests breaks and rest periods, their findings were based solely on the information gathered from management representatives. In addition, steps taken by employers to offset the costs imposed by the Regulations were not considered in these studies. From those studies by Blair et al. (2001a & 2001b), no actual data were shown to support the extent of the regulatory impact. The case studies evidence from Neathey & Arrowsmith (2001) covered a mix of respondents from both public and private sectors. However, workers’ views were neglected although their representatives did participate in their interviews. Thus, workers’ reactions to the WTR and the way they were affected cannot be judged.

More recently, Hurrell (2005) focuses his study on the impact of the WTR in the hospitality industry and have found that the limited impact of the WTR on employers was very much due to the extensive use of labour flexibility, especially that of the numerical and temporal forms. The limitation of this study was that the findings were based on only two case investigations, thus, hard to generalize the impact to a greater extent.

The manner in which the government implemented the WTD reflects the comment made by Taylor (1998b), who labeled the political approach adopted by the Labour government as a 'softly-softly revolution' in respect of labour market regulation. In other words, the Government has regulated the labour market in such a way that
employers have been given significant concessions. It appears that the government's objective is to lightly regulate the labour market so that a balance between 'fairness' and 'flexibility' is achieved; that is, fairness for people at the workplace and the flexibility deemed necessary to sustain employers' competitiveness. Thus, this study focuses on the consequences of the WTR and the dynamic process of adjustment that had taken place within workplaces in the UK.

Method

The findings presented in this study are derived from survey and case study evidence. The survey data were gathered from 192 postal questionnaire responses obtained from a sample of 931 establishments (see Table 1) between November 1999 and May 2000. For cost reasons the West Yorkshire Region was selected owing to the diverse industrial activities. Industry sectors that were most likely to experience the impact of the standards set by the WTR were selected from the region. Stratified random sampling by establishment size was applied to three of the five selected industry sectors. The sectors excluded from the random sampling process were agriculture, and mining/ quarrying for the reason that they were fewer in number within the region. Hence all establishments belonging to these sectors were automatically selected for the survey. The managing director or manager with responsibility for the implementation of the WTR was assigned to complete the survey, since the objective of the survey was to examine the extent of the impact and the possible trade off brought about by the Regulations at establishment level.

Table 1. Comparison of sample and respondent establishments

<table>
<thead>
<tr>
<th>Sectors</th>
<th>Number of questionnaires distributed</th>
<th>Number of questionnaires received</th>
<th>Response Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining/quarrying</td>
<td>39</td>
<td>6</td>
<td>15.4</td>
</tr>
<tr>
<td>Construction</td>
<td>137</td>
<td>28</td>
<td>20.4</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>491</td>
<td>117</td>
<td>23.8</td>
</tr>
<tr>
<td>Agriculture</td>
<td>67</td>
<td>13</td>
<td>19.4</td>
</tr>
<tr>
<td>Service</td>
<td>187</td>
<td>28</td>
<td>14.9</td>
</tr>
<tr>
<td>Total</td>
<td>931</td>
<td>192</td>
<td>20.6</td>
</tr>
</tbody>
</table>

The second stage of the investigation consisted of an intensive study of six establishments. The characteristics of these establishments are summarised in Table 2. The selected establishments were not in any way statistically representative but
were chosen because their working practices reflect different approaches to accommodating to the Regulations, as indicated from their survey respond. A total of 51 individual face-to-face interviews were conducted with key personnel involved in the WTR implementation, production and line managers, trade union representatives, where applicable, and workers between August 2000 and April 2001. The objective of this aspect of the investigation was to generate qualitative data, assisting the development of an in-depth understanding of the impact of the WTR.

Table 2. Characteristics of the case study establishments

<table>
<thead>
<tr>
<th>Size</th>
<th>Ownership</th>
<th>Sector</th>
<th>Interview Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 – 24</td>
<td>Private UK</td>
<td>Textile #1</td>
<td>8 employees, 2 supervisors and 2 directors</td>
</tr>
<tr>
<td></td>
<td>Private UK</td>
<td>Textile #2</td>
<td>5 employees, 1 supervisors and 1 company secretary</td>
</tr>
<tr>
<td>50 – 99</td>
<td>Private UK</td>
<td>Quarrying</td>
<td>5 employees, 1 supervisory and 2 directors</td>
</tr>
<tr>
<td>100 +</td>
<td>Private UK</td>
<td>Food and drink #1</td>
<td>6 employees, 1 line manager, 1 HR manager, and 1 director</td>
</tr>
<tr>
<td></td>
<td>Private (Foreign)</td>
<td>Food and drink #2*</td>
<td>4 employees, 2 union reps, 1 HR manager, and 1 director</td>
</tr>
<tr>
<td></td>
<td>Public</td>
<td>NHS *</td>
<td>4 staff, 1 union rep, 1 union secretary, 2 employee relations officers (including 1 head)</td>
</tr>
</tbody>
</table>

* with unionised representation

The study explores different ways in which the Regulations have been implemented and the changes employers have made to accommodate them. It also assesses the impact of various provisions contained within the Regulations and investigates how changes in working practices brought in to accommodate the Regulations have affected employees.

The Survey Evidence

Implications for working hour arranges

The questionnaire contained a number of questions designed to assess the extent to which provisions of the WTR were implemented and how the Regulations had impacted on different establishments. Amongst the most notable consequences of the WTR revealed by the survey was the relatively little impact on the basic working
hours (both day and night). Of those 117 establishments from manufacturing, only five had reduced the duration of the working week as a consequence of the WTR. Seven establishments had reduced the basic hours of day work, in which three of those had reduced the length of day shifts. Moreover, four establishments from the same sector experienced a decrease in the basic hours of night work (three of them had reduced the length of night shifts). Only one establishment from construction indicated that the basic hours of day work, the duration of the working week, as well as the length of day shifts had all been reduced as the result of the WTR. In terms of rest break arrangements, four manufacturing establishments reported that they had increased the number of in-work rest breaks (paid and unpaid). The same number of establishments from the service sector also reported that the WTR had the same impact on their in-work rest breaks arrangement, with one other reported that the number and the length of paid breaks had reduced and the number of unpaid breaks increased.

With regards to shiftwork arrangement, around half (51 per cent) of the 192 establishments reported that they had operated shifts before the introduction of the WTR. The majority of them that operated shift were from manufacturing (70 establishments) and service (20 establishments) sector. Out of the establishments from manufacturing and service sector, it was found that two-shifts and three-shifts arrangements were commonly applied to manual workers in manufacturing establishments, while weekend shift was the case for establishments in service sector. The data revealed that the majority of those establishments operating shifts did not experience any alteration to their shiftwork pattern; only five per cent of all establishments operating shifts had altered their shift patterns as a result of the WTR. Three of the affected establishments were from the manufacturing sector, and two other affected establishments were in the service sector.
**Table 3. Establishments having employees working over 48 hours, including overtime**

<table>
<thead>
<tr>
<th>Sector</th>
<th>Manual</th>
<th></th>
<th>Non-manual</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% of</td>
<td>Total number of</td>
<td>% of</td>
<td>Total number of</td>
</tr>
<tr>
<td></td>
<td>establishments (N)</td>
<td>establishments</td>
<td>establishments (N)</td>
<td>establishments</td>
</tr>
<tr>
<td>Mining/quarrying</td>
<td>40 (2)</td>
<td>5</td>
<td>0 (0)</td>
<td>6</td>
</tr>
<tr>
<td>Construction</td>
<td>22 (6)</td>
<td>27</td>
<td>11.5 (3)</td>
<td>26</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>10 (11)</td>
<td>110</td>
<td>4 (4)</td>
<td>100</td>
</tr>
<tr>
<td>Agriculture</td>
<td>27.3 (3)</td>
<td>11</td>
<td>50 (3)</td>
<td>6</td>
</tr>
<tr>
<td>Service</td>
<td>0 (0)</td>
<td>14</td>
<td>0 (0)</td>
<td>24</td>
</tr>
<tr>
<td>All sectors</td>
<td>13.2 (22)</td>
<td>167</td>
<td>6.2 (10)</td>
<td>162</td>
</tr>
</tbody>
</table>

Note: Only figures for full-time workers are shown since establishments had reported that no part-time workers worked over 48 hours a week.

When overtime is considered (see Table 3), however, about 13 per cent of 167 establishments reported that they still have full-time manual employees working over the statutory limit, and 6 per cent of 162 establishments with full-time non-manual employees having to do so. Having employees to work over the statutory limit was made possible by the use of opt-out, a flexibility feature of the WTR. Table 4 shows the number of establishments having used the opt-out and how it varied between sectors. One issue that is worth noting from the data is that more establishments were having their employees opted out of the WTR than there were establishments with employees working over the statutory limit. From those establishments having used the opt-out, the survey revealed that there were reasons other than longer hours required for the job. The majority of establishments from mining/quarrying (60 per cent) and agriculture (51 per cent) had reported that their main reason for opted out was in accordance with employees’ wish. As for other establishments the pattern was rather mixed, since the main reason for opted out varies between manual and non-manual employees. Around 50 per cent of the establishments from construction and service sectors had reported that the main reason for manual employees to have signed the opt-out was that employees would have experienced a loss of income, while 33 per cent of establishments from these sectors both reported that the main reason for non-manual employees was the continuous service when required by the job. As for manufacturing establishments, around 38 per cent and 45 per cent of
them have reported that the opt-out was signed by manual and non-manual employees, respectively, in accordance with their wish. While another 33 per cent of establishments reported that a loss of income that would have experienced by their manual employees was the reason for opted out.

Table 4. Percentage of establishments having employees opted out of the WTR

<table>
<thead>
<tr>
<th>Sector</th>
<th>Manual % of establishments (N)</th>
<th>Total number of establishments</th>
<th>Non-manual % of establishments (N)</th>
<th>Total number of establishments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining/quarrying</td>
<td>60.0 (4)</td>
<td>6</td>
<td>50.0 (3)</td>
<td>6</td>
</tr>
<tr>
<td>Construction</td>
<td>48.1 (13)</td>
<td>27</td>
<td>33.3 (9)</td>
<td>27</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>39.8 (45)</td>
<td>113</td>
<td>29.3 (31)</td>
<td>101</td>
</tr>
<tr>
<td>Agriculture</td>
<td>36.4 (4)</td>
<td>11</td>
<td>20.0 (1)</td>
<td>5</td>
</tr>
<tr>
<td>Service</td>
<td>40.0 (6)</td>
<td>15</td>
<td>33.7 (12)</td>
<td>27</td>
</tr>
<tr>
<td>All sectors</td>
<td>51.5 (71)</td>
<td>171</td>
<td>33.7 (56)</td>
<td>166</td>
</tr>
</tbody>
</table>

Besides the opt-out option, the WTR also provides flexibilities that enable employers to derogate certain restrictions imposed by the WTR. Of the 184 responses from the survey, a majority of establishments had reported that these regulatory flexibilities were neither important nor applicable. Of those establishments finding these features important, only ten per cent had indicated the ability to adjust the regularity of the rest break was important to allow them to introduce the Regulations in a flexible fashion. Nine per cent of these establishments cited the ability to extent the reference period for day work as an important derogatory feature in order them to comply with the Regulations. Moreover, eight per cent of establishments indicated that the ability to rearrange the adult daily rest period and the weekly rest period allowed them to introduce the changes in a flexible fashion. Only 7 per cent of the respondents indicated that the freedom to extend the night work reference period was important.

Implications for holiday entitlement

Unlike that of the 48-hour provision, employers must comply fully with paid holiday provision by providing employees the minimum days of paid holiday as required by the WTR. Table 5 shows that only a handful of establishments had increased paid holiday entitlements as the result of the WTR, except in the case of establishments in
the service sector where almost half of the establishments had reported that their full-time and/or part-time employees had an increase in holiday entitlement. As the result of such increase, almost all establishments had experienced an increase in labour costs. Although around 15 per cent of the establishment had to increase the holiday entitlement to meet the statutory standard that does not imply other establishments are providing the days necessary to fulfil the paid holiday provision. The survey revealed that around 54 per cent of 187 establishments had counted some or all public holidays as part of full-time employees’ statutory entitlement, and as much as 63 per cent of 173 establishments having done so for part-time employees. The use of statutory holidays was particularly marked in mining/quarrying with as much as 84 per cent of establishments reported to have counted these holidays towards the holiday entitlements for both full-time and part-time employees. This was followed by manufacturing, where 64 per cent and 72 per cent of establishments reported to have counted these holidays towards the holiday entitlements for full-time and part-time employees respectively. In terms of other sectors in our sample, around 47 per cent of establishments from both construction and service sectors had reported that they have counted some or all of the statutory holidays towards the holiday entitlement for full-time and part-time employees. With only about 17 per cent of establishments from agriculture not adopted this mal practice for full-time employees while as much as 50 per cent of them have included statutory as the holiday entitlement for part-time employees.

Table 5. Establishments which had increased paid holiday entitlement as a result of the WTR

<table>
<thead>
<tr>
<th>Sector</th>
<th>Full-time employees*</th>
<th>Part-time employees**</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>% of establishments (N)</td>
<td>% of establishments (N)</td>
</tr>
<tr>
<td>Mining/ Quarrying</td>
<td>16.7 (1)</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Construction</td>
<td>8.7 (10)</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>4.4 (5)</td>
<td>4.5 (3)</td>
</tr>
<tr>
<td>Agriculture</td>
<td>8.3 (1)</td>
<td>0 (0)</td>
</tr>
<tr>
<td>Service</td>
<td>46.2 (12)</td>
<td>45.5 (10)</td>
</tr>
</tbody>
</table>

* Based = 187  
** Based = 115
Implication on other arrangements

Another purpose of the survey was to capture the way the Regulations had impacted on the level of employment and working allowances. The survey revealed that 10 establishments from the manufacturing sector had made some changes while only a smaller number of establishments in construction (1 establishment) and service (3 establishments) sectors had made any changes. No establishments from mining/quarrying and agriculture sectors had made any changes.

The survey data showed that three of the seven establishments from the manufacturing sector had increased the employment of full-time workers, with two of these establishments had also increased the use of agency workers and temporary employees respectively. In addition, one establishment had reduced the employment of full-time workers and subsequently increased the employment of part-time staff. Moreover, two establishments from the service sector reported that they had increased the use of temporary staff, in which one of them had also reduced the level of full-time and part-time workers. Similarly, one establishment from construction had reduced the employment of full-time staff, and subsequently increased the employment of agency workers and subcontracting more workers to outside firms. These changes of employment arrangement could be a strategy for the establishment to transfer the cost of the Regulations to sub-contractors and employment agencies. Finally, establishments from agriculture reported that one of them had increased the employment of temporary staff while another had increased the use of sub-contractors.

In terms of allowances, only one affected establishment, without trade union recognition, from the manufacturing had reduced both the day shift and night shift premiums. Such reduction on shift premiums may indicate that this establishment was able to minimize the cost of the WTR by transferring the cost to employees. Nevertheless, two establishments from the same sector reported that they increased the clocking allowance and the washing up time respectively.
Methods of offsetting costs

Respondents were asked how their overall costs had been affected by the Regulations. The data suggested that 29 establishments (out of a total of 192) have experienced a cost increase. Amongst those whose overall costs had been affected, 67 per cent of them had experienced an increase of less than 4.1 per cent. On the other hand, 20 per cent of those affected reported that overall costs had increased by more than 6 per cent, while the rest of these establishments had an overall increase in cost of between 4.1 and 6 per cent.

Those establishments reporting an increase in overall costs were asked to assess the importance of certain approaches, listed in Table 6, to offsetting increases. Despite the fact that a majority of the respondents claimed that each of the approaches listed were either unimportant or not at all important in offsetting the increase in cost, there are a few interesting findings. Increased labour flexibility at work was considered by 19 per cent of respondents to be important to offset cost increases while 24 per cent considered it to be very important. Similarly, 19 per cent of the establishments reported that increases in workers’ effort were important, and another 19 per cent of establishments also considered increases in workers’ effort to be very important in offsetting the increased costs that brought about by the WTR. Furthermore, 19 per cent and 3 per cent of the respondents considered increased use of machinery to be important or very important respectively.

Table 6. The importance of approaches to offset the increase in costs

<table>
<thead>
<tr>
<th>Approach</th>
<th>Not at all important</th>
<th>Unimportant</th>
<th>Neither important nor unimportant</th>
<th>Important</th>
<th>Very important</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reduction in un-paid non-working time</td>
<td>73</td>
<td>11</td>
<td>14</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Reduction in paid non-working time</td>
<td>70</td>
<td>16</td>
<td>11</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Reduction in washing up time</td>
<td>82</td>
<td>5</td>
<td>14</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Reduction in the premium on overtime</td>
<td>68</td>
<td>8</td>
<td>11</td>
<td>8</td>
<td>3</td>
</tr>
</tbody>
</table>
The Case Studies Findings

The survey evidence has identified the ways in which establishments from various sectors had responded to the WTR. The focus now shifts to the interview evidence derived from six organisations. These organisations consist of two manufacturers from the textile industry in which one is a carpet weaver and the other is a processor in shrink-proofing wool. Another two were from the food and drink industry (one bakery and one brewer). The rest were from the mining/quarrying industry and a home care unit from the National Health Trust. To enriching the survey findings, these cases provided an in-depth investigation into the processes of adjustment that had taken place as well as employees’ response to the legal standards. Furthermore, the findings also shed light on the complexities of the issues raised by the WTR.

The implication on working time arrangements

No organization had reported to have cut down on employees’ working hours; nevertheless, they have reported that some of their employees’ working arrangement had to be changed in order to accommodate the legal standard. Changes were made to working pattern at the brewer due to the fact that the previous shift pattern at the packaging area did not provide employees with the minimum required daily rest period when overtime was required on Saturdays. The team performing the evening shift from 02:00pm to 10:00pm one week was required to work on that Saturday from 06:00am to 02:00pm when overtime arose, and workers had only eight consecutive hours of break between the two working days. In order to provide employees with at least 11 consecutive hours rest period between each working day, the WTR entailed changing the rota for Saturday working. Instead of the two-ten shift working Saturday overtime, the work was given to the six-two Friday shift.
Having resolved the matter of the daily rest period, the company still faced a second problem, concerning the 35-hour period of rest to be taken within a working week. Under the old system each shift had rotated once a week from “morning to night” to “night to evening”. In other words, employees working the six-two shift one week would work the ten-six shift the next week. Thus, the change made to the daily rest period by allocating the six-two shift to work on Saturday morning could not have complied with the weekly rest break provision, since finishing at 2:00pm on a Saturday and start the shift again on Sunday at 10:00pm only give worker a total of 30 hours rest. In order to comply with the WTR the work committee, consisting managerial personnel and union representatives, had agreed to reserve the rotation of the shift, which now ran from morning to evening, then from evening to night. However, such changes were unwelcome by some workers, since they could no longer have an extended time off towards the weekend when they worked the six-two shift. A canning worker expressed the view that:

"We would rather do it the way we used to because finishing off on a Friday night we can't go out on Friday night anyway. So we would prefer to have this weekend off, then we have got two clear weekends."

The implication here reflects that different people may have different preference towards a balanced work-life. In this case, affected workers would prefer to have less rest one week to more leisure opportunities in the two weeks that follow, thus, not appreciating the health and safety protection the provisions on rests have provided them. Another issue raised against the WTR is the extent of exemptions which could apply to special circumstances. In the case of residential homes at the health trust, staff’s obligations included sleep-in duties, constant care and assistance to clients, which would require their permanent presence. As the result, in-work rest break was a grey area for the residential staff and this matter was resolved during the implementation process. It was considered that it was not possible for staff at the residential homes to comply with the provisions on in-work rest breaks and that on the daily rest period. The decision was supported by the Regulations (Reg. 21(c)) that “services relating to the reception, treatment or care provided by hospitals or similar establishment, residential institutions and prisons” are treated as special cases.
One of the residential staff expressed her view on not having any rest breaks away from the workplace:

"We can't just leave [the clients] here, go out and take a twenty minutes walk. It just wouldn't work. We have dinner and tea breaks with our clients. That is how it works in all residential homes within the trust … but we would welcome a proper break just like anybody else. It is after all not a fair piece of legislation."

The extent of exemptions embedded in the WTR signifies the effectiveness of the WTR was based on lack of social partner consultation. As the result, it has led to deficient set of standards being set. The standards of protection, in terms of its fairness, is thus in doubt.

**The use of opt-out agreement**

The minimal effect that the WTR had on organisations can also be explained by the fact that in all cases opt-out agreements were used in order to maintain existing working time arrangements. One manager from the textile industry explained:

"The opt-out has limited the impact [of the Regulations] by giving this company some flexibility in not having to set down the rules … to such a degree they have not affected us at all."

However, the extent to which opt-outs were applied varied between organisations. In the case of the brewery plant, opt-outs were only used in an ad hoc basis to cope with customer order. The management from the bakery had almost all their workers at the shop-floor sign the opt-out agreement whereas the work manager at the quarry had only applied the opt-out to permanent night workers, despite day time workers constantly worked over the legal limit. The work director at the quarry site expressed that there was no need to inform the day time workers about the weekly statutory limit and the opt-out agreement since these workers were contracted to work a 55-hour week. Thus, the implication of this action indicated that workers were not given the right to acknowledge the regulatory standards.
The use of opt-out agreement at workplaces depended upon the objectives of both employers and employees. In terms of employers, having employees opt-out of the provision on the weekly hour limit meant that long hours of work could be continued or production could be extended when necessary without the need to hire extra labour or adjust working arrangements in order to maintain production or service.

On the other hand, many employees preferred to work beyond the statutory limit so as to gain additional income from overtime. This study found that there are two categories of workers with the preference to work over the statutory limit. These are employees who are regularly working long hours, with overtime pay being part of their regular earnings, and those who are prepared to work longer hours when the opportunity arises. In the case of the health trust, the extra pay generated from performing sleep-ins, which involved working beyond the statutory limit, has become part of its staff’s regular earning at the residential home. When staff performed two sleep-in duties within a week, which was their usual norm, the total weekly hours worked reaches 66 hours.

Employees prepared to work beyond the weekly hour restriction when the opportunity arises were found to be the case for those with lower incomes. Evidence from the case study indicated that these were employees from the textile industry. The incentive for employees within the said industry to work beyond the statutory limit can be seen from their basic hourly rate they earned. Processing workers at one textile manufacturer earned an hourly rate of £3.83. Any overtime they worked was paid £4.61 per hour and £5.69 for any work performed during the weekend.

In addition to the low rate of pay, the unpredictability of workload was also a matter of concern for those employees in the textile industry. Any lack of customer orders would directly affect workers’ working hours, hence their pay. They signed the opt-out so that when orders picked up they could work the hours without being constrained by the provision on working hours. A worker from one of the textile companies explained:
"The job is up and down, and it is not something that will guarantee that every week will be the same hours. So we just work with the work that comes in. We just have to keep up with the hours."

**The holiday entitlements**

Unlike the weekly working hours and other provisions on rest breaks and rest period, all organisations are required to comply with the provision on holiday entitlement. All six companies involved in the study had provided paid holiday entitlement (including statutory holidays) beyond the statutory requirement of twenty days. Organisations with union recognition had provided relatively more paid holidays than the non-unionised counterparts. For example, some employees from the health trust were entitled to a minimum of five weeks plus eight statutory holidays whereas the bakery had only provided a minimum of 23 days, including public holidays, to those with less than two years of employment with the company.

The introduction of the WTR had forced the bakery to adjust the holiday entitlement arrangement, since the arrangement prior to the WTR had not entitled employees in their first year of employment to any paid holidays, except statutory holidays. Moreover, it was only after employees had completed their first year of employment that they become entitled to a twenty-day paid holidays. As a result of the statutory requirement, the company had changed the way paid holidays were provided. The change had been agreed via a workplace ballot. The outcome of the ballot was that all employees who had joined the company prior to April 1998 would continue with the old holiday arrangement, whereas employees who had joined the company thereafter would be entitled to a 15-day paid holidays plus eight statutory holidays for the first two years of employment, after which time the entitlement would increase to 20 days.

After the workplace ballot, the company was running two pay holiday arrangements. Under the new holiday arrangement, however, monitoring employees’ pay roll had proven to be a difficult task, since it was time consuming to monitor 147 employees who owed the company money and vice versa. The management identified that eventually there would be two groups of people taking the same amount of holidays,
twenty days; but one group would be paid based on what they have earned during the
current year while other would be paid according to what they had earned the
previous year. Under the two-tier holiday arrangement, one of the workers benefited
from the old holiday arrangement commented:

"We can take it [paid holidays] on the first week in April and have four weeks of
holidays with four week's pay. Under the new holiday scheme [the company] only pays
you what you have accrued … You can still take holidays in April but you just don't get
paid, which we didn't want."

Moreover, managers and supervisors reflected that most of the time new staff did not
know their pay entitlement under the new arrangement. Some new workers still
expected the company to provide paid leave whenever they took holidays, but it was
not always possible because their entitlement depended on how many days they had
accrued.

A similar holiday arrangement was also adopted by the carpet weaver. In this case
employees' paid holiday depended on the number of days they had accrued, that is a
sum equivalent to 8.81 per cent of the worker's weekly wage. However, this holiday
arrangement proved to be more problematic than that in the bakery. The problem
emerged when the company decided to put the workforce on short time, with
employees working an alternative week. As a result of short time working due to
lack of customer orders, workers were not working enough hours to generate
sufficient paid holiday towards their statutory holiday entitlement. Although,
employees were still allowed to take as many holidays as they wished up to twenty
days, they were only being paid for the number of days they had accrued. The
employees’ response to the new holiday arrangement was an unsatisfactory one. As a
carpet menders explained:

"[I] used to get 20 days plus statutory holidays and I could take as many of them as I
liked without worrying about not getting paid. Now I don't know how many days I am
getting since I am on short time."

Other workers across the shopfloor expressed similar views toward the new holiday
arrangement. For example:
"I don't agree with the [new holiday arrangement] really. I'd rather just get the paid for the two weeks wages that [the company] owe me for the holidays then I take off. I don't like this holiday credit because … the only way you can build it up and get more money is by working extra hours and overtime, which we never seem to do these days." [loom tuner]

"We have been on short time, we are down [in hours]. …We are probably £200 down in holiday credits. It doesn't work in our favour. It would have been if we were working full-time, we can be slightly better off because we can do a bit of overtime." [Carpet mender #2]

In summary, the existing holiday entitlements for full-time workers were in excess of the WTR requirement of minimum of four weeks in all the case study companies. Nevertheless, holiday pay had caused concern in two of the companies. For the bakery the change had resulted in the operation of a two-tier holiday arrangement for the staff. On the other hand, the change made at the carpet company was in breach of the Regulations since under the new arrangement employees could find themselves entitled to fewer paid holidays than the statutory requirement.

Cost implications

All case companies had reported that the cost implication of the WTR was minimal, and such cost was absorbed by the company and had not pasted on to their customers. The reason for the minimal cost implication amongst these companies was that they had long been working within most of the limits and requirements imposed by the Regulations, and the cost incurred was for the preparation of the opt-out agreement. In the case of the health trust the cost of implementation was borne by the trust's budget, although the trust had to cut spending in other areas, such as medical equipment. However, it was stressed by a manager of the trust that:

"If the entitlement to issue the waiver disappears that will have a major implication for [the trust] cost-wise and staffing-wise."

In the case of the brewer there was no cost implication imposed on the company for the change of working pattern at the packaging department, since it had not led to
any financial consequence. It was simply the case that employees had to adjust their working pattern to such change.

The bakery had absorbed all the administrative costs incurred from the opt-out, which was reported by the managers that such cost was an insignificant sum. However, the provision on holiday entitlement had a greater cost implication, since the company had to provide paid holidays to employees in their first year of employment. The company had minimised costs by providing employees with only 15-day of paid holidays plus eight statutory holidays in the first two years of their employment. In other words, by splitting up the cost of providing paid holidays for employees in their first year of employment by reducing the entitlement of those staff in their second year of employment, and then made up the rest to fulfill the statutory requirement by including statutory holidays.

**Discussion and Implications**

Compared to earlier empirical studies of the impact of the WTR, the above empirical findings have also suggested that the WTR have had minimum impact on working time practices and working arrangements within establishments, despite employers' initial fear that the Regulations could have a negative impact on British industry. The majority of establishments took part in the survey have not responded to working hour restriction by reducing the number of hours worked by employees, nor did they make more use of atypical workers to overcome the implication of the break periods and holiday entitlement. The survey data explained that opt-outs and derogations were used as ways to minimised the possible impact of the WTR. With the use of derogations and opt-out option provided by the WTR, the extent of labour flexibility has not been restricted. Employees could carry on with the working time practices as they had done before the Regulations were introduced, and, when necessary, employers could continue to extend the duration of a working day or working week to cope with production demand. Furthermore, with agreements being reached between employers and employees, certain restrictions imposed by the WTR could be derogated enabling the workforce to maintain its working arrangement unchanged.
It was only from the interview data that the study revealed the fear that they would suffer a drop in income emerged as a major reason why employees were compliant in signing the opt-out agreement. The case studies found that workers considered that it was worth working long hours in order to maintain their financial security. This was especially the case for lower paid workers who relied on overtime pay or earnings from working longer hours as part of their regular income package. Two of the case studies indicated that workers signed the opt-out specifically to maintain the earnings they gained from working long hours. In the remaining four cases workers signed the opt-out so that they could have the opportunity to work longer hours for extra pay without having to be restricted by the working hours limit. Thus, employees in all cases indicated that in order to maintain their income or at least to have the right to work longer hours when the opportunity arose, they had signed the opt-out agreement. However, with the continuation of working long hours by employees, their ‘work-life’ balance has not been positively changed by the introduction of the WTR. It is revealed from the study that the willingness to work longer hours by employees seems to be a means of securing sufficient income necessary to enjoy life outside work. In order to generate the sufficient amount of income, employees had to trading-off their legal protections by taking on the possible risks to their health and safety on their own accord.

The findings from the study indicated that trade unions did not use the WTR as a springboard to open up negotiation with employers to secure better terms on working time arrangements for employees, nor did they use the Regulations to negotiate for further reduction in working hours. The failure that trade unions had not made use of the WTR to enhance a better ‘work-life’ balance for employees could be that most unionized establishments had already entitled employees with working conditions over and above the WTR specification. On the other hand, this may signal that trade unions could have lost their role as collective bargaining institution as the result of an unsuccessful compromised between stabilizing operation at the workplace and the need for better protections and rights for workers. Non-unionised establishments, however, were more likely to be affected by the WTR, since some of them had not previously provided rights and entitlements within the WTR specifications. For instance, holiday entitlement was an area where the impact was felt by non-unionised
establishments. In the view of employees, the holiday entitlement had provided them with the paid breaks that some of them may not have enjoyed previously, especially those part-timers working for non-unionised establishments.

The implication of this study suggests that long hour that continues to characterize the British economy may undermine the intention of the EU social policy on health and safety. The way WTD was adopted by the Labour government can be considered as reflecting a minimal commitment to regulation in order to achieve its objective of a 'fair' and 'flexible' labour market. In respect of the WTR, it has been observed that fairness at the workplace means allowing employees to decide on whether or not they should have the right to work longer hours. However, this is done in such a way that they have to choose between health and safety and maintaining their income.

The flexibilities and the opt-out option provided by the WTR had led to the continuation of long hour working possible in the UK may at the same time encourage employers to continue to complete on the existing level of skill and technology, rather than upgrade the production processes and human capital. The introduction of the WTR is a welcoming improvement in protecting the health and safety of workers. Nevertheless, the extent in which the provisions were set reflects the belief that long working hours remains an important element for labour market competitiveness in the UK.
Appendix

Key Provisions of the Working Time Regulation (see DTI 1998):

1) Average of 48 working hours per week over a reference period of 17 weeks (Reg. 4).

2) A minimum of 20 minutes in-work rest break for any working day longer than six hours (Reg. 12), an uninterrupted daily rest period of at least 11 hours (Reg. 10), and a weekly rest period of at least 24 hours for each seven days (Reg. 11).

3) Limiting the duration of night work to an average of eight hours in any 24-hour period (Reg. 6), and a maximum of eight hours if work involves special hazards of heavy physical or mental strain (Reg. 6(7)).

4) A minimum of three weeks paid holidays entitlement (increased to four weeks from 23rd November 1999) (Reg. 13(2) and (7)).

The derogations:

1) Employees working in the transport sector (e.g. Air, rail, road and sea) (Reg. 18), and those whose working time is ‘unmeasurable’ (e.g. Managing executives) (Reg. 20) are excluded from limitations on weekly and nightly working time and rest periods.

2) Employers do not have to comply with the 48-hour weekly provision if a formal individual agreement has been reached with each employee (employer must allow employee to bring this agreement to an end) (Reg. 5).

3) Exemption can apply to rest period and night work provisions provided that either collective agreements (with trade union representatives) or workforce agreements (with representatives of non-union employees). With similar agreements the reference period for day work can also be extended to a maximum of 52 weeks (Reg. 23).

4) Through collective agreements or workforce agreements (Reg. 23) the provision on in-work rest breaks (Reg. 12(1)) may be modified or excluded.
References


