

Amicus response to DTI consultation document *Working Time – widening the debate*

Amicus is the UK's largest manufacturing, technical & skilled persons' union, with over 1.2m members in the private & public sectors. We have been campaigning for improvements in the way the Working Time Directive has been implemented in the UK, ever since the Working Time Regulations were first introduced. The UK has the longest working hours in Europe and is the only country to have made use of the opt-out.

Amicus, along with the TUC and other Trade Unions, is fundamentally opposed to the opt-out, even for workers that wish to work over 48 hours, just as we are opposed to workers being able to put their health in danger by, for example, working without suitable personal protective equipment in hazardous environments.

We therefore feel constrained in our response to this consultation, as it asks questions based on the assumption that the opt-out will continue indefinitely. Along with the TUC, we are calling for the opt-out to be removed from the Working Time Regulations as soon as possible, with a short phase-out period. We support the TUC's response to this consultation and our answers below refer to how the opt-out should be operated during the period in which the opt-out is phased-out.

Making sure workers have a real choice about long hours

1. Opt out agreements to be in writing

Q. If you have used opt outs, did the current system of written consent work well?

This question is aimed at employers rather than unions. However, Amicus notes that there has been considerable research on the effects and workings of the opt-out and that the overwhelming weight of evidence points to widespread abuse and malfunctioning of the system of written consent etc. This has been supported by verbal examples in a series of regional conferences on the subject of working time that Amicus ran in 2003. The essence of these comments was summarised in our previous submission on this matter.

Q. Would you, or workers in general, benefit from extra information in the document they signed?

Yes, it is essential that employees are given information which informs them of their rights to a limit on their working hours, that "opting-out" of this limit is a choice for them to make freely, and information on how they can "opt in" if they have previously opted-out. Providing this information should be compulsory for any employer that allows staff to opt out.

2. Making clear in legislation or guidance that it is unlawful to ask employees to agree to work long hours in their employment contract

Q. Would a change like this help highlight that workers have a free choice?

Yes, clearly some employers either do not know the legal position or are counting on their new staff not knowing it. Not only should any opt-out be separate from the contract of employment, but also there should be a settling in period between the signing of a contract and the signing of any opt-out, to prevent employers presenting an opt-out for signing as a separate document, but at the same time as the contract, with the implied pressure this would bring.

3. Making it unlawful to ask someone to agree to work long hours at the same time as signing their employment contract

Q. Would a change like this give workers more chance to make a free choice?

Yes. However, it is still likely that a whole range of subterfuges would emerge to replace those that apply presently, and it is hard to see this separation of decisions made on contract agreement and opting out being rigidly adhered to in practice.

Q. What should be the required minimum gap between starting work and giving consent to work more than 48 hours a week?

This should be somewhat longer than the worker's probationary employment period, with the proviso in any situation where the probationary period is extended, the gap should be extended similarly.

Q. What problems might arise if there was a delay between a worker starting work and being able to opt out?

In organisations where there is a long hours culture, newly starting workers would effectively experience different working conditions from others.

4. A time limited opt out, which expires after a set period of time and must be renewed

Q. Would this kind of change make it easier for workers to change their mind about long hours?

Yes, as they would not have to take any action to end their opt-out and thus avoid some degree of awkwardness in having to write to their employer with an opt-in letter. The renewal of long hours working could become a pressure point on some workers in appraisals. Withdrawal of long hours working could be seen as a sanction on some workers, particularly where they are not willing to work long hours to the extent or pattern demanded of them. The renewal period should be no longer than one year with a notice period to opt back in of no more than one month.

Q. How difficult would it be for employers and workers to keep track of whether an agreement was about to expire, and to re-sign if they wished?

This should not be difficult at all, if employers were required to keep written details of any opt-out agreements signed.

Making sure people are protected while they are doing long hours

5. A “cap” on the maximum number of hours opted out workers can do

Q. What would be the effect on long hours workers’ hours and pay if there was a cap?

The whole point of the EU Working Time Directive was to set a maximum weekly working time of 48 hours. 48 hours is already a very long working week, and introducing another “maximum” weekly limit could have the unintended effect of increasing the number of workers working above the 48 hour limit, increasing the number of hours worked by those already working long hours and by default introducing a two stage approach to limits on the length of the working week. Where there is (in effect) a higher limit than 48 hours, one could imagine that this might give rise to widespread use of the higher limit, and the whole purpose of the Directive would have been undermined.

Also it must be remembered that the 48 hour limit was brought in under health & safety legislation. Working long hours has clear health and safety implications, both for those who work them, and for others who may be put at risk by a fatigued worker performing jobs with inherent hazards when operatives are inattentive.

For these reasons, we believe that introducing an additional “cap” would be a retrograde step, just as would be introducing a higher acceptable limit for exposure to asbestos or other dangerous substances.

Q. Would employers find it difficult to keep track of the two sets of limits for long hours and other workers?

Amicus opposes the introduction of a higher limit.

Q. If a limit were to be set, how should we gather information to decide what that limit should be?

Amicus opposes the introduction of a higher limit.

6. Risk assessments for businesses using opted out workers

Q. How well would such risk assessments identify problems?

As long as the process for introducing these risk assessments is carried out in consultation with the HSE, Trade Unions and health professionals, they would most likely be very effective at identifying problems. Making them compulsory would in itself be a big step, giving employers reason to actually think about the implications of their employees working long hours.

Q. Should workers who were facing a health risk be forced to cut their hours even if they did not want to?

The first steps in any situation where an employee is facing a health and safety risk from their job is to reduce the hazards, re-design the job, or find suitable alternative work for them, but where none of these is possible then of course the employee must not be allowed to work such long hours - just as employees working with dangerous substances or in dangerous environments should not be given a choice about whether to work less safely.

7. Health assessments for long hours workers

Q. Would this system identify health problems?

This would depend on the health assessment not being “offered” but being compulsory – compulsory for employers to give it and compulsory for employees to complete it before starting to work long hours. It should also be reviewed regularly and backed up with free medical examinations at regular intervals for employees who wish it.

Q. How many night workers take up the offer of health assessments at the moment, and how much does this cost their employers? Would the same level of costs apply for this idea?

Amicus does not have any figures for our members. If the assessment was similar then the level of costs would be the similar, just multiplied by more employees.

8. Record keeping

Q. If we were to make changes, which area should we focus on?

The 1999 regulations removed the requirement that employers keep detailed records of long hours workers’ actual hours and this was a negative step for workers’ health and safety. The very people in respect of whom records are most important are those working long hours, so in this respect the 1999 changes were perverse. The first change should be to rescind this.

Q. How would such changes benefit workers’ health and safety?

Detailed records could be used to ensure workers are being given (and taking) their full entitlements to rest breaks and time off, as well as monitoring the extent of hours worked by individuals over a period of time in order to assess the effect on their health and safety.

Making sure people know about their rights

9. Awareness campaigns

Q. Would an awareness campaign bring real benefits – would workers have a better chance of choosing whether to work long hours?

Yes. Many workers, particularly in non-unionised workplaces, have no idea of their legal rights to limits on their working time or other employment rights. If one does not know one's rights it is impossible to ask for them. Even for those that do know their rights, they need reassurance that they can enforce their rights, with the backing of the relevant enforcing authority. The enforcement regime is currently inadequate and needs strengthening.

Q. What would be the best way to make sure any messages reached, and stayed with, those who need it?

In unionised workplaces, unions would be able to give new employees information on their rights in their new job. In non-unionised workplaces, Worker Safety Advisors (WSA) could possibly carry out this function, but as yet the WSA scheme is in its infancy and by no means comprehensive enough to cover all new employees. This gap could be filled if employers were compelled to consult with trade unions operating in their industry and pass on any such relevant information to new employees. Another idea would be to ensure that all employees received a statement of their basic legal employment rights once a year at the same time as they received their P60 statement.

Q. Would it help if employers had to give an information sheet to workers agreeing to work long hours? If so, what information should it contain?

Yes, at a minimum it should contain a brief guide to working time rights, the opt-out, and contact details for where to get more information – ie ACAS, the HSE, the DTI, the TUC etc.

10. Good practice guidance

Q. Would this kind of guidance help you, and if so how?

Yes, Amicus is always keen to work more closely with employers and the Government to benefit our members and the UK workforce in general. If produced with unions, it would show that the relationship between unions and employers does not have to be confrontational.

Q. What kind of issues should it cover?

A brief guide to rights under the working time regulations, plus details of other related issues such as paternity and maternity leave, family friendly and flexible working and the Government's work life balance agenda - and contact details for where to get more information – ie ACAS, the HSE, the DTI, the TUC etc.

11. Code of practice

Q. Would you find a code of practice helpful, and if so why?

Yes, guidance is too easily and too often ignored by rogue employers and some will only respond to clear instructions on what their obligations to their employees are. Legally it will also make matters much clearer as there is far too much room for confusion in the way the working time regulations are currently written.

Q. If it would be helpful, should it be a national code, or would more specialised ones (for particular sectors, or even businesses) be better?

There should be a national code, with additional guidance for areas of work where there are particular exceptions or arrangements, such as drivers, offshore workers, doctors, etc. The opt out is not the only problem with the Working Time Regulations of course, and sector or business codes should also clarify the general working time rights for offshore workers for example.

Making sure businesses effectively monitor their employees' working hours

12. Monitoring working hours

Q. Do you know the proportion of your workers working sustained long hours?

18% of Amicus members regularly work over 40 hours a week and 6% work over 48 hours. This figure rises to 9% working over 40 hours and 46% working over 40 hours for members of UNIFI, whom Amicus is in the process of merging with.

Q. How do you monitor working hours?

Detailed surveys of Amicus and UNIFI members' working hours carried out in 1993.