

EUROPEAN AND EXTERNAL AFFAIRS COMMITTEE

Date: 25 March 2004

Time: 09:00

Venue: Committee Rooms 3 & 4, National Assembly Building, Cardiff Bay

Title: Revisions to the Working Time Directive

Purpose

1. This paper provides a summary of views expressed so far in relation to COM(2003) 843 final - a Commission communication on the re-examination of Directive 93/104/EC concerning certain aspects of the organisation of working time, and a draft response to the Commission consultation based on these views.

Action

2. Members are invited to consider the contents of the paper, and agree a final response to the Commission consultation. (The final response must reach the Commission by 31 March.) Some suggested key points for a response are listed in paragraph 24.

Background

3. The European and External Affairs Committee identified Commission Communication - COM(2003) 843 final - on possible changes to the Directive on Working Time, for further scrutiny at its meeting on 22 January.

4. The Chair of the Committee wrote to all subject committees drawing their attention to the document and seeking their comments. The particular relevance of the proposals to the Health and Social Services, Local Government and Public Services and Economic Development and Transport Committees was noted in the letters to them.

5. The European and External Affairs Committee received feedback from some Committees at its

meeting on 26 February. As some subject committees had not had the opportunity to consider the proposals, it was agreed that the Commission proposal would be revisited at the European and External Affairs Committee meeting on 25 March.

What Does the Working Time Directive Do?

6. The Working Time Directive aims to ensure that workers are protected against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disrupted work patterns. It provides for

- a maximum 48 hour working week averaged over a reference period
- a minimum daily rest period of 11 consecutive hours a day
- a rest break where the working day is longer than six hours
- a minimum rest period of one day a week
- a statutory right to annual paid holiday of 4 weeks
- night working must not exceed eight hours a night on average

7. A number of categories of worker who are excluded from the Directive:

- Managing executives or other persons with autonomous decision-making powers
- Family workers
- Workers officiating at religious ceremonies in churches and religious communities.

8. The police and other employees in the civil protection services, which include the ambulance service and the fire service are excluded to the extent that their duties 'inevitably conflict' with the provisions of the Regulations.

WHAT DOES THE PROPOSAL SAY?

9. The document is a consultation on the implementation of the Working Time Directive. It focuses on a number of key issues:

- the 'opt-out', which allows individuals to waive their rights under the directive
- the operation of a reference period for calculating working time
- the impact of case law of the European Court of Justice (ECJ) concerning the definition of working time and the qualification of time on call

Opt-out

10. The UK is the only country that currently makes widespread use of opt-out provisions. The

conditions for the opt-out are:

- The worker must agree to work more than 48 hours a week
- No worker should be disadvantaged by deciding not to opt-out
- The employer must keep up to date records of all workers who carry out such work (the records must be made available to the competent authority, who can restrict working hours above the maximum for health and safety reasons)

11. The European Commission reports that around 16 per cent of the UK workforce is currently working more than 48 hours a week. About 8 per cent work more over 55 hours a week, 3.2 per cent over 60 hours per week and 1 per cent over 70 hours a week. Furthermore the Commission's figures show that the UK is the only EU Member State where weekly working time has increased in the past decade.

12. The Commission is concerned that the implementing legislation in the UK does not offer all the guarantees required by the Directive. In particular, by allowing employers to include an opt-out clause in the contract that workers sign when they are recruited they are effectively not being offered a choice. It is also concerned that, since the UK working time regulations were amended in 1999, employers only have to keep records of which workers have opted out, rather than the hours they actually work.

Definition of working time

13. The 1993 Directive defines working time as: "any period during which the worker is working, at the employer's disposal and carrying out his activities or duties, in accordance with national laws and/or practice."

14. A rest period is defined as 'any period which is not working time'. The directive does not allow for any interim category. When they transposed the Directive, Member States defined working time in different ways in national legislation. Some left the definition to collective agreements between employers and workers; others defined categories beyond the two in the Directive, which generally excluded time 'on call' from the definition of working time.

15. In 2003, the ECJ was asked on two occasions to rule on cases involving the definition of working time. Both cases turned on whether time spent 'on call' constituted working time, and both concerned the health care sector. In both cases the ECJ ruled that time spent 'on call' should be regarded as working time.

16. Detailed impact assessments of the impact of the judgements still need to be carried out, but some preliminary estimates were given during the two court cases.

The UK indicated that it would be necessary to recruit between 6,250 and 12,550 doctors and 1,250 staff other than doctors, at a cost of £380-£780 million (€540-1100 million).

17. The Commission proposal seeks ideas for a way forward on the definition of working time and on the use of opt outs.

Views Expressed

Local Government and Public Services Committee

18. Mike German AM reported the views of the Local Government and Public Services Committee at the European and External Affairs Committee meeting on 26 February. The Committee agreed with the Directive in principle, but had concerns about its practical implications across many public sector staff. Examples of categories affected would include social workers, care home workers, fire fighters, road maintenance staff, health workers and other groups required to be on call. As well as the immediate impact that changes in the Directive could have on the delivery of public services, the Committee was concerned that skill and labour shortages would limit capacity to adapt in some services.

19. The Committee agreed that there was a need to plan for the removal of the current opt-out and for the Welsh Assembly Government to assess the impact and costs of full implementation of the Directive. To facilitate implementation, the Committee favoured the development of sector-specific opt-out arrangements.

20. Opt out arrangements should allow workers to agree to additional commitments, but should not provide an opportunity to compel any group to work long hours.

Health and Social Services Committee

21. Rhodri Glyn Thomas AM reported at European and External Affairs Committee on 26 February that the Health and Social Services Committee's views echoed many of those expressed by the Local Government and Public Services Committee.

22. The Directive had significant implications for health and social care as it was a sector where many people worked long hours. It was felt that regulation in this area was positive in the context of the Government of Wales' aims and objectives in creating a healthier working environment for people but there was an issue in how to manage and control the process of implementing it.

Other Committees

23. The Chair of the Economic Development and Transport Committee agreed to report back the views of that Committee at the meeting on 25 March.

Other comments

24. The Committee also received comments from the CBI Wales and the Federation of Small Businesses Wales. Both reflected concerns that the existing flexibility of implementation in the UK should be maintained, in particular:

- maintaining individual opt-outs
- keeping the administrative burden to a minimum
- acknowledging the needs of small and medium sized enterprises
- lengthening the reference period
- maintaining people's choice to work shorter or longer hours
- revising the definition of working time in the light of the ECJ interpretation

Suggested Points to Raise in Response to the Consultation Document

25. Based on the views expressed so far, the Committee might wish to consider the following points in drawing up a response to the Commission Communication:

- Support the Working Time Directive in principle and its attempts to protect workers and develop a healthier working environment
- Support people having the choice to work longer hours, but agree that this should be carefully regulated
- Express concern about the implications of the ECJ judgement, particularly in the public sector and support a new definition of working time which deals explicitly with time 'on call'
- Concerned by the blanket use of opt-outs in the UK and suggest that sector-specific opt-out arrangements might be more appropriate

Contact point

Members' Research and Committee Service