

**REFLEXIVE LAW, CORPORATE SOCIAL RESPONSIBILITY AND THE
EVOLUTION OF LABOUR STANDARDS:
THE CASE OF WORKING TIME**

ESRC Centre for Business Research, University of Cambridge
Working Paper No. 294

By

Catherine Barnard
Jean Monnet Chair of European Law
Email: csb24@cam.ac.uk

Simon Deakin
Robert Monks Professor of Corporate Governance
Centre for Business Research
Email: s.deakin@cbr.cam.ac.uk

Richard Hobbs
Research Fellow, CBR
Centre for Business Research
Email: rjh57@cam.ac.uk

December 2004

This Working Paper forms part of the CBR Research Programme on Corporate Governance

Abstract

Through an empirical study of working time in the United Kingdom, we explore the scope for initiatives based on corporate social responsibility (CSR) to engender voluntary action by employers to raise labour standards. Our evidence suggests that a CSR-based approach faces considerable problems of implementation in this area, in large part because the legal mechanisms which might underpin CSR ('reflexive law') have not yet been effectively developed.

Keywords: corporate social responsibility, labour standards.

JEL Codes: J53, J81, K31.

Further information about the Centre for Business Research can be found at the following address: www.cbr.cam.ac.uk

Reflexive Law, Corporate Social Responsibility and the Evolution of Labour Standards: the Case of Working Time

‘Management invariably claims the right to decide when overtime is necessary; but this right carries with it the obligation not to squander human resources. The facts indicate that in much of British industry this obligation is largely unrecognized.’ (Flanders, 1964: 230).

1. Introduction

The aim of this paper is to examine certain claims made in connection with the theory of ‘reflexive law’, using an empirical case study based on the regulation of working time. We show that the theory of reflexive law can be adapted to argue in favour of a model of regulatory competition which seeks to preserve diversity and experimentation at local level, a model which has much in common with the concept of the open method of coordination. As an example of this, Directive 93/104/EC on Working Time can be understood by reference to the idea that self-regulation by the social partners and other actors in civil society is preferable to the imposition of uniform regulatory solutions. An analysis of European-level discourse on working time highlights the links which have developed between the Directive and the development of OMC via the employment strategy and, more recently, the beginnings of a debate about corporate social responsibility as a mechanism for the implementation of labour standards.

However, when we go on to contrast this high-level discourse with an empirical study of the operation of the Directive in the UK, a much less optimistic picture emerges. We can see that the Directive is at risk of degenerating into a weak and partial mechanism for the realization of social rights. The appropriate institutional mechanisms are not yet in place to enable the policy goals of the Directive to be implemented at a local level in the UK; in particular, the regulatory environment is not conducive to the kinds of collective reflexion and learning which this strategy requires. To that extent, our study highlights the potential obstacles to wider reliance on reflexive forms of governance.

To address these issues, we begin, in section 2 below, by outlining the concept of reflexive law, relating it to the open method of coordination and exploring the

relevance, in this context, of corporate social responsibility. In section 3 we look at the evolution of labour standards governing working time in the UK, charting the successive phases of factory legislation and collective bargaining up to the point of the implementation of the Working Time Directive. We then provide an overview of the Directive, its policy goals, and the highlighting, within policy documents, of ‘reflexive’ strategies for its application through collective (and individual) bargaining and CSR. In sections 4 and 5 we present our empirical study, which examines how far this strategy has succeeded in practice. Section 6 concludes.

2. Basic concepts: working time, reflexive law, and the open method of coordination

The concept of reflexive law is, at one and the same time, a positive or descriptive theory, and a normative one. In its positive sense, it aims to explain the mechanisms through which the legal system relates to other sub-systems, such as the economy or, more specifically, the industrial relations system. As Ralf Rogowski and Ton Wilthagen (1994: 7) suggest, ‘[r]eflexive law reminds legal intervention that it is dependent on self-regulation within the regulated systems... a sophisticated labour law approach tries to “regulate” not only through “performance” but also through influencing centres of “reflexion” within other social subsystems’. In its normative sense, it not only offers guidance on the appropriate form of legal regulation in a complex and uncertain environment; it can be seen as promoting a multi-level approach to governance which depends, for its effectiveness, on de-centralised forms of deliberation (Smismans, 2004). As two of us have suggested elsewhere, with reflexive law

‘the preferred mode of intervention is for the law to underpin and encourage autonomous processes of adjustment, in particular by supporting mechanisms of group representation and participation, rather than to intervene by imposing particular distributive outcomes. This type of approach finds a concrete manifestation in legislation which seeks, in various ways, to devolve or confer rule-making powers to self-regulatory processes. Examples are laws which allow collective bargaining by trade unions and employers to make qualified exceptions to limits on working time or similar labour standards’ (Barnard and Deakin, 2002: 219-220; see also Deakin, 1999).

The implementation in the UK of the EU Working Time Directive¹ therefore provides an opportunity to study the operation, in practice, of legislation which incorporates these ‘reflexive’ goals. Prior to the implementation of the Directive, regulation of working time in the UK had taken two forms: statutory regulation of hours of a traditional kind, dating back, indeed, to the very earliest forms of factory legislation in the period of the industrial revolution; and voluntary collective bargaining, carried out at national or sectoral level between trade unions and employers’ associations, with a further layer of regulation operating through plant-level agreements. Strikingly, factory legislation and collective bargaining were conceived of as alternatives; statutory controls only applied in the absence of self-regulation. The Working Time Directive radically changed the picture. Now, legislation set for the first time for the UK a near-comprehensive set of working time limits, the centerpiece of which was the maximum 48-hour working week. However, many of these limits took the form of default rules which could be avoided by derogations of various kinds. Among other routes, it was now possible for collective agreements to derogate from or otherwise vary the standards set by statute. Although this had long been a feature of continental European systems of regulation, it was novel for the UK.

The particular regulatory form of the Directive was the result, in part, of political concessions granted, during its negotiation, to the UK and other member states. However, it also reflected, in a more positive light, the multiplicity of objectives set for the Directive: motivated primarily by health and safety concerns (and formally justified on these grounds in terms of the competence of the Community legislator), it could also be presented as a mechanism for improving productivity, on the grounds that reduced hours of work could provide an incentive for the more efficient utilisation of labour. In this respect, a crucial aspect of the Directive was the flexibility which it appeared to offer to employers and unions to craft local-level solutions to deal with the trade-offs involved in negotiating working time settlements. In that sense, the Working Time Directive provides an example of ‘reflexive harmonization’:

‘Reflexive harmonization operates to induce individual states to enter into a “race to the top” when they would have otherwise had an incentive to do nothing (the “reverse free rider effect”) or to compete on the basis of the withdrawal of protective standards (the “race to the bottom”). This is done by giving states a number of options for implementation as well as by allowing for the possibility that existing, self-regulatory mechanisms can be used to

comply with EU-wide standards. In these ways, far from suppressing regulatory innovation, harmonization aims to stimulate it' (Barnard and Deakin, 2002: 220).

This type of regulation has much in common with the mode of governance which has become known as the open method of coordination or OMC. In its various manifestations including the Employment Strategy, the OMC involves a number of mechanisms which provide for experimentation and learning:

'fixing guidelines for the Union, establishing quantitative and qualitative indicators and benchmarks as a means of comparing best practice, translating these European guidelines into national and regional policies by setting specific targets, and periodic monitoring, evaluation and peer review organized as "mutual learning processes"'.²

The term 'reflexive law' anticipates OMC by a number of years, as do the legal measures to which, at a European level, it relates, in particular the so-called third and fourth generation of Directives in the areas of consumer protection and labour market regulation, which date from the late 1980s and early 1990s (see Armstrong and Bulmer, 1998; Deakin, 2001). However, there is a case for regarding these provisions, of which the Working Time Directive is one, as prototypes for what later became the OMC. The norms contained in framework directives are often sufficiently loose for them to take on the quality of 'benchmarks' and 'targets', to be implemented in varying ways according to local conditions. It is true that the norms contained in even these Directives have a 'hard law' aspect which is missing, for example, from the guidelines laid down in the Employment Strategy. However, it is plain here that we are talking about a spectrum of different forms, which exhibit combinations of 'hard' and 'soft' law in varying degrees.

A crucial aspect of reflexive law is that it involves not simply an attempt to delegate rule making authority to self-regulatory mechanisms such as collective bargaining, but also an effort to use legal norms, procedures and sanctions to 'frame' or 'steer' the process of self-regulation; to that extent, the implementation of the frame is a matter of institutional construction, and is not left entirely to spontaneous forces (De Schutter, 2004). In the case of the Working Time Directive, the frame is provided by a number of elements: these include the basic standards set in the default rules themselves (such as the rules on the maximum working week, or the maximum duration of night work), and the procedural

conditions attaching to derogation (such as the requirements for agreement to be made either with a certain collective party, such as a recognized trade union, or employee representatives capable of concluding a workforce agreement). Further framing is provided by the recognition that working time protections can qualify as fundamental social rights: this is provided by the Charter of Fundamental Rights of the European Union, which was applied by the ECJ in *ex parte Bectu*³ in such a way as to clarify the meaning of the Directive.

The question nevertheless remains of whether ‘framing’ of this kind is sufficient. The implementation of the Directive in the UK occurred at a time when the previously dominant form of regulation of working time, operating through sectoral collective agreements, was in steep decline. Are the new, multi-layered forms of reflexive regulation truly an effective substitute for the organic solidarity offered by collective bargaining?

The success of a reflexive law strategy depends on its capacity to engender responses of a certain kind within the relevant sub-systems. In the context of working time, two particular types of responses are relevant. One set operates at the level of the industrial relations system: we refer here to the various mechanisms (collective, ‘workforce’ and individual agreements) by which derogations from the default rules set by the Directive are allowed. How effective, in practice, are these self-regulatory devices in promoting the regulatory goals of the Directive? A second set of mechanisms operates at the level of the enterprise and the competitive pressures acting upon it through labour, product and capital markets. Here, the notion of corporate social responsibility or CSR comes into play: enterprises can, it is argued, combine respect for labour standards with enhanced competitiveness by trading off reduced working hours in return for higher productivity. Again, the question is posed of how far the Directive and its implementing Regulations do enough to induce this kind of response from firms.

3. The evolution of working time regulation: from the Factory Acts to corporate social responsibility

3.1 Working time as a ‘traditional’ labour standard: the Factory Act model and collective bargaining

The earliest Factory Acts had been concerned with the conditions of employment and working hours of children, and specifically with those of pauper apprentices. As early as 1784 the Manchester magistrates passed a resolution to prohibit indentures of parish apprentices to cotton masters under terms which could require them to work at night or for more than ten hours in the day. An Act of 1793 gave the justices power to fine employers for mistreatment of apprentices, and in 1802 the Health and Morals of Apprentices Act set a statutory 12 hour day and prohibited nightwork for parish apprentices employed in mills and factories. The measure was ‘in reality not a Factory Act properly speaking, but merely an extension of the Elizabethan Poor Law relating to parish apprentices’ (Hutchins and Harrison, 1926: 16). A series of Acts between 1819 and 1833 then achieved in gradual stages the exclusion of all children under the age of 9 from factory employment; a maximum 9-hour working day and 48-hour week for the under-13s; a 12-hour working day and 69-hour week for those between 13 and 18; and the abolition of nightwork for all under 18, although these regulations applied only to textile mills.

The working conditions of women were first the subject of regulation in the early 1840s. The Mines Regulation Act of 1842 barred women from underground working and the Factories Act of 1844 applied to women textile workers the restrictions on working hours which governed the employment of the under-18s. The fact that early industrial regulation took a legislative rather than a voluntary form reflects the weakness of the factory-based unions during the period prior to 1870 and their inability to achieve agreements through collective bargaining; at the same time, the legislature was reluctant to countenance general interference with the freedom of contract of adult males, rejecting a number of Bills to this effect in the 1850s. Male workers indirectly benefited from the controls over the hours of women and children because the working hours of each group were closely integrated; when employers attempted to defeat this effect through the ‘relay system’, under which the hours children were permitted to work were spread over a number of separate ‘relays’ across the different shifts worked by adults, Parliament enacted further legislation in 1850 and 1853 to counter this by requiring

common starting and finishing times for all workers in a given factory. However, it stopped short of extending the Acts to cover all adult males. Instead, the pattern of regulation in textiles was gradually extended to cover printing, dyeing and bleaching and lace working. The Factories Acts Extension Act of 1867 applied the same principles to all factories of fifty or more employees, and the Workshops Regulation Act of the same year restricted hours of work in smaller manufacturing establishments, although allowing for longer operating hours. Again, these regulations only applied to women and the young. The 1867 Extension Act governed iron foundries and works manufacturing glass and metals, but very few women and children worked in such establishments and so the restraint on their hours did not affect the working hours of men.

After the 1870s, however, the flow of legislation began to dry up. In 1873 a Bill was introduced to establish a 9-hour day and 54-hour week for women and young workers in factories, but this was rejected in favour of a more limited measure which was passed in 1874 reducing maximum weekly hours in textiles to only 55.5. By the early 1900s collective bargaining was already beginning to improve upon the hours set by legislation, and women workers covered by the Factories Acts frequently worked longer hours than male workers who had the protection of shop floor or sector-level agreements setting a working day of around 9 hours. From around this time, legislation regulating non-factory employment permitted longer statutory hours than was normal either for core factory employment within the Acts, or for employments regulated by collective bargaining. This was the case for domestic workshops employing family members and ‘women-only workshops’ under the Factories Act of 1878, and for legislation such as the Shops Act 1886, which set a 74-hour maximum week for shop assistants, and the Laundries Act 1907, which set a maximum 68-hour week.

The Royal Commission on Labour which reported in 1894 came down against introducing statutory compulsion in the hours of adult male workers, but the minority trade union report was more favourable to legislative intervention, as were most of the general unions at this time. Small steps were taken in the direction of more general legislative controls over working time in the Railway Servants (Hours of Labour) Act of 1893, the Factories and Workshops Act of 1895 and the Coal Mines Regulation Act of 1908, and, as we have seen, a statutory scheme of minimum wage setting was established for the coal industry in 1912. However, most employment legislation of this period maintained the tradition of partial, as opposed to general, regulation. ‘The law’, wrote Hutchins and Harrison in 1903, ‘is still ostensibly

based on the idea of “protection for those who cannot help themselves”, instead of openly and avowedly adopting the more fruitful principle of raising the standard of life and health for the common good’ (Hutchins and Harrison, 1926: 309).

The increasingly selective and subsidiary character of regulatory legislation was not accepted without opposition. The general unions, in particular, supported the campaign for a statutory eight hour day at the TUC and in their evidence to the 1894 Royal Commission. The Commission discovered that

reduction of the normal standard hours of labour has always been one of the leading objects of trade unions; the aim of the modern movement is the attainment of this end by legislation. The working classes are as yet by no means unanimous as to the superiority of legislative over voluntary action in this matter; but to judge by the history of trade union congresses and other indications, the party of legislative intervention has been steadily gaining ground during recent years.⁴

The minority, trade-union influenced report of the 1894 Royal Commission argued, on the other hand, for statutory controls which would be generally applicable:

for the mass of workers an eight hours day with the effective suppression of habitual overtime, can be secured only by further legislative enactment. We have been much impressed by the great preponderance of working class witnesses in favour of the legal limitation of hours of labour, and still more by their practical unanimity as to the principle involved. Nothing appears to us more striking than the almost universal acceptance and rapid development of the movement for this explicit extension of the Factories Acts to all classes of labour.⁵

Regulations on a trade by trade basis, contrast, ‘would not only consume much valuable time, but would, in our judgment, result at best in a lopsided regulation of industry’.⁶ Legislation should therefore set a universal eight hour standard, to be brought into effect gradually through orders made by the Board of Trade after consultation.

However, the majority rejected a standard set of regulations for all trades as not ‘a proposal which bears serious examination’.⁷ The majority report also considered, but rejected, a ‘trade exemption’ model, under which standard working hours would be

laid down by law, with the possibility of an exemption being granted on the basis of a vote of members of the relevant trade. This was contrasted with the 'trade option', effectively the status quo of regulating working hours by collective agreement. The 'trade exemption' model had received support through TUC resolutions around the time the Commission was hearing evidence; Tom Mann, one of the union-based commissioners, proposed a variation under which statutory controls would come into force if three fifths of the workers in the trade voted for them. The majority came down against the 'exemption' on the grounds of the difficulties and expense involved in organising a vote of all the workers concerned.

At the same time, the majority did accept a significant extension of the legal power to regulate working hours. Under the Factories and Workshops Act 1891, the Board of Trade had the power to make rules for employment in dangerous manufacturing processes; the majority suggested extending this power to permit the regulation of male working hours in selected industries. Section 28 of the Factories and Workshop Act 1895 was the result. This authorised

the making of special rules or requirements prohibiting the employment of, or modifying or limiting the period of employment for, all or any classes of persons in any process or particular description of manual labour which is certified by the Secretary of State... to be dangerous or injurious to health, or dangerous to life and limb.

According to Hutchins and Harrison (1926: 203), 'in these apparently unimportant provisions which at first sight read only like a trifling extension of regulations already enacted, the principle is however, implicitly granted that, cause being shown, the protection of the law can be extended to men as well as to women and children'. However, the section was not subsequently used as a basis for general working time regulation. It was confined in its scope to the specific effect of long hours on health and safety. Although the principle of state intervention to provide for safe and sanitary working conditions for all workers gradually took shape in numerous subsequent Acts and regulations governing health and safety, general legislation on hours and wages was not to emerge for another one hundred years.

Subsequently the main instrument of regulation was the sector-level or multi-employer collective agreement, covering employers in a given industry or trade. The state intervened directly through legislation only in those sectors of the economy where collective bargaining had failed to develop of its own accord

(mainly the sectors in which there were trade boards or wages councils). Indirect government encouragement was given for voluntary arrangements for multi-employer bargaining at industry or sector level, and these forms (collectively known as the 'Joint Industrial Council' model) became widespread in British industry during the inter-war period. In the 1920s, a basic 48 hour week was established in the engineering industry by collective bargaining, and from this point on the national engineering agreement set a benchmark for industry-level practice. The national engineering agreement brought about reductions in the basic working week to 44 hours in 1927, 42 hours in 1960, 40 hours in 1965 and 39 hours in 1979. Other sectors tended to follow engineering in reducing working hours after a gap of a few years. For much of this period, although the basic week was being reduced, overall hours worked remained constant as overtime filled the gap (Flanders, 1964: 224-226). Even at its height in the immediate post-1945 period, the system of sectoral collective bargaining was more concerned with ensuring premium rates of pay for overtime and unsocial hours working, than with restricting working hours as such. During the 1980s, what little legislation there was on the subject of working time was repealed, at the same time as sectoral collective agreements were also on the decline. This process reflected the then policy of 'lifting the burden' of regulation in the labour market (Deakin, 1990).

3.2 A new approach: the Working Time Directive of 1993 and the Working Time Regulations of 1998 and 1999

Given this historical context, a significant cultural change seemed in prospect following the adoption of the Working Time Regulations 1998, implementing the EC Working Time Directive. Thus Regulation 4(1) of the 1998 Working Time Regulations (henceforth 'WTR') replicating Article 6 of the Directive, provided that a worker's working time, including overtime should not exceed an average of 48 hours for each seven days over a basic reference period of 17 weeks.⁸ A number of derogations were provided for in both the Directive and the Regulations. From the perspective of reflexive regulation, the most significant of these is Regulation 23, which concerns collective agreements and workforce agreements. Using 'collective agreements and agreements between the two sides of industry at national or regional level', as envisaged by the Directive, to implement, derogate or negotiate working time limits presented particular difficulties in translating the Directive into UK law. Legislation dating from the 1970s has favoured the recognized trade union as the 'single channel' to worker representation. However, in Case C-383/92 *Commission v. UK*⁹ the Court ruled that the UK had

failed to fulfil its obligations under Articles 2 and 3 of Directive 75/129/EEC (now Directive 98/59/EC) on collective redundancies by not providing a mechanism for the designation of workers' representatives in an undertaking where the employer refused to recognise a trade union. At this point, over half the British workforce worked in workplaces where trade unions were not recognised. The ECJ's ruling eventually led to the emergence of modified form of the single channel, where worker representation is primarily conducted by recognised trade union but, in the absence of such representation, workers can be represented by elected representatives who negotiate a 'workforce agreement'. This is the approach adopted in the Working Time Regulations. Most importantly for current purposes, under regulation 23 a collective or workforce agreement can be used to vary the 'reference period' over which the 48-hour week can be averaged from the default period of 17 weeks to up to 52 weeks for objective or technical reasons concerning the organisation of work.

In addition, the UK took advantage of the individual opt-out permitted by Article 18(1)(b) which allowed workers to agree with their employers that the 48 hour ceiling did not apply to them. The 1998 Regulations laid down detailed record keeping rules but business complained that this 'gold-plated' the Directive. As a result of amendments made to the Working Time Regulations in 1999¹⁰ the record keeping requirements were significantly watered down. Regulation 4(1) now provides that '[u]nless his employer has first obtained the worker's agreement in writing to perform such work a worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days'. Regulation 4(2) simply requires the employer to 'keep up-to-date records of all workers who carry out work to which it does not apply by reason of the fact that the employer has obtained the worker's agreement as mentioned in paragraph (1)'.

3.3 Working time in the context of the open method of coordination: the European Employment Strategy and corporate social responsibility

At the European level, the Working Time Directive was conceived as a measure to protect health and safety, but over time been linked to other social and economic objectives and to the emerging CSR debate. The Directive was adopted under the legal basis of Article 118a EC Treaty (now Art. 137), which provides that the Council shall adopt, by means of directives, minimum requirements for encouraging improvements, especially in the working environment, to ensure a

better level of protection of the safety and health of workers. However, several documents recently published by EU institutions emphasise the relationship between CSR and health and safety. The CSR *Green Paper* stressed that ‘within the company, socially responsible practices primarily involve employees and relate to issues such as...health and safety’.¹¹ Furthermore, the Council Resolution on CSR emphasised that ‘undertakings should address not only the external aspects of CSR, but also the internal aspects such as health and safety at work and management of human resources’.¹²

Likewise, the inter-linkage between CSR, health and safety and working time was expressed in the Commission Communication, *Adapting to Change in Work and Society: a New Community Strategy on Health and Safety at Work 2002 – 2006*.¹³ This Communication cross-refers to the Commission *Green Paper* on CSR, and stresses that ‘health at work is one of the ideal areas for voluntary “good practices” on the part of firms which want to go beyond existing rules and standards.’¹⁴ The Communication also calls for ‘a global approach to well-being at work’ and states that,

‘The objective of the Community’s policy on health and safety at work must be to bring about a continuing improvement in well-being at work, a concept which is taken to include the physical, moral and social dimensions. In addition, a number of complementary objectives must be targeted jointly by all the players...taking account of changes in forms of employment, work organisation arrangements and working time.’¹⁵

At the same time, the documentary evidence indicates that at the European level the relationship between CSR and working time is not viewed through the single lens of health and safety. Rather, EU level policymakers connect CSR and working time through the dual prism of health and safety on the one hand and the modernisation of work organisation linked to the European Employment Strategy on the other. This dual vision is evident in the Commission’s 2002 Communication, *Corporate Social Responsibility: A Business Contribution to Sustainable Development*. This states that, ‘employment and social policy incorporates the principles of CSR, in particular, through the European Employment Strategy... and the Health and Safety Strategy.’¹⁶

The harnessing of the Working Time Directive to the OMC and specifically to the European Employment Strategy follows the adoption of the Lisbon strategy to

make the EU ‘the most competitive and dynamic, knowledge based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion.’¹⁷ The Lisbon European Council stated that ‘adaptability through flexible management of working time and job rotation’ was one of the key areas to be addressed in developing an active employment policy and more and better jobs for Europe.¹⁸ In this context, it is noteworthy that the Commission President Romano Prodi should have expressed the view that the Lisbon European Council made ‘a special appeal to companies’ corporate sense of social responsibility regarding best practices on...work organisation’.¹⁹

The Lisbon strategy reinforces the Employment Strategy for the attainment of a high level of and subsequently full employment.²⁰ Indeed, the conclusions of the Lisbon European Council make a direct link with the Luxembourg process: the Lisbon strategy is designed to enable the Union to regain the conditions for full employment, and to strengthen regional cohesion in the European Union.²¹ Reform of working time is part of the process of modernising work organisation, which in turn is central to the adaptability pillar of the employment guidelines adopted under the Luxembourg strategy.

The 2002 Employment Guidelines provide that ‘in order to promote the modernisation of work organisation and forms of work, which inter alia contribute to improvements in quality of work, a strong partnership should be developed at appropriate levels (European, national, sectoral, local and enterprise levels)’. Accordingly, the social partners are invited ‘to negotiate and implement at all appropriate levels agreements to modernise the organisation of work, including flexible working arrangements, with the aim of making undertakings productive, competitive and adaptable to industrial change, achieving the required balance between flexibility and security, and increasing the quality of jobs.’ Subjects to be covered include working time issues such as the reduction of working hours, the reduction of overtime, the expression of working time as an annual figure, the development of part-time working, access to career breaks, and associated job security issues.²² In much the same vein, the Nice European Council Conclusions on the European Social Agenda talk of ‘supporting initiatives linked to the social responsibility of undertakings’ and supplementing ‘Community legislation on working time’.²³

Turning now to the UK, the British government has made clear that in general terms the improvement of working conditions is a key element of CSR. For

example, the government has been keen to set out ‘the business case for CSR’ to explain why companies should ‘spend time and energy on helping communities, on protecting the environment or on improving working conditions’.²⁴ However, in more specific terms the UK government’s discourse on the relationship between CSR and working time has concentrated on promoting work-life balance as an important element of the CSR agenda and in turn has portrayed working time regulation as underpinning the work-life balance agenda.

The UK government’s coupling of the work-life balance agenda to the CSR agenda is evident in *Business and Society: Developing Corporate Social Responsibility in the UK*. In demonstrating ‘the strength of the business case’ the DTI points to the report by the Business Impact Task Force²⁵ indicating that ‘a company’s approach to managing...work/life balance [is] central to competitiveness’ (emphasis added).²⁶ A subsequent DTI publication, *Business and Society: Corporate Social Responsibility Report 2002*, further illustrates how the UK government views work–life balance as ‘a central plank of CSR’.²⁷ In a section of this publication entitled ‘Legal frameworks: embedding responsible behaviour’ the DTI argued that ‘the Employment Bill [now the Employment Act 2002] underlines the government’s commitment to create highly productive, modern and successful workplaces through fairness and partnership at work. It will deliver a balanced package of support for working parents while reducing red tape for employers. It will simplify rules governing leave and pay for maternity, paternity and adoption’ (Department of Trade and Industry, 2002a: 14)

Although this particular publication highlights the significance of maternity and parental polices, other DTI publications illustrate how the government conceives of the Working Time Regulations as a fundamental element of the legislative framework underpinning the work-life balance agenda. One such publication is called, *Work-life Balance: The Business Case. Your Business Can’t Afford to Miss It* (Department of Trade and Industry, 2002b). A section of this publication setting out ‘the legislative imperative’ of the work-life balance agenda refers to the provisions of the Working Time Regulations along with other regulatory provisions on disability, maternity leave, parental leave, part-time working, paternity leave and time-off for dependants (Department of Trade and Industry, 2002b: 42-43). Another DTI publication, *The Essential Guide to Work-Life Balance*, also indicates that the Working Time Regulations provide a regulatory underpinning for the work-life balance agenda. In this publication the provisions of

the Working Time Regulations are referred to in a section entitled ‘Rules and regs – the letter of the law’ (Department of Trade and Industry, 2002c: 60).

It should also be noted that in its approach to implementing the Working Time Directive, the current Labour administration has accepted that the regulation of working time is fundamental to the enhancement of a productive workforce, a view which fits in with the EU position on the link between working time laws and the adaptability pillar of the Employment Guidelines. Thus the *Fairness at Work* White Paper (Department of Trade and Industry, 1998: para.5.6.) stated that ‘there is no advantage to employers in exhausted employees. On the contrary, the need to work within fair maximum hours is likely to promote more efficient working practices and innovation’.

The documentary evidence therefore suggests that policymakers at both EU and UK Government level have strong conceptions of the relationship between CSR and working time. How has this link been realised in practice?

4. The Working Time Directive and the industrial relations system²⁸

4.1 Methodology of the empirical study

The European Commission initiated a review of the WTD in 2002. Directive 93/104 states that the provision allowing individuals to opt-out from the 48-hour working week²⁹ is to be reviewed before the expiry of a period of seven years after the Directive came into force (on 23 November 1996). As part of the review process the authors of the present paper were commissioned by the Directorate-General for Employment and Social Affairs to produce a report on the use and necessity of the individual opt-out in the UK. Although the report concentrated on how extensively opt-outs have been used, the reasons why they have been used and the potential for using other derogations, the study also addressed the issue of how industrial relations actors perceive the relationship between working time regulation and corporate social responsibility.

The study was based on evidence gained from a total of forty interviews conducted in the period August-November 2002. Interviews were conducted with a range of public officials with responsibility for working time. The officials represented the Department of Trade and Industry (DTI), the Advisory Conciliation and Arbitration Service (ACAS); Health and Safety Executive (HSE), and a Local

Government Environmental Health Department. A search of the register of cases at the offices of the Employment Tribunal Service (ETS) was undertaken. An employment law practitioner was also interviewed. Interviews were also carried out with twelve trade union officers,³⁰ the TUC, seven employers' organisations,³¹ and HR managers in thirteen case study employers. Table 1 sets out the characteristics of the case study employers. Here, a 'unionised' employer is one which recognised an independent trade union for the purposes of collective bargaining for all or part of its workforce.

Table 1: Characteristics of case study employers

NAME	SECTOR / DESCRIPTION	UK STAFF	UNIONISED
	HEALTH		
H1	Hospital Trust providing emergency and elective acute medical services	6000	Yes
H2	Hospital Trust providing emergency and elective acute medical services	5000	Yes
	MANUFACTURING / ENGINEERING		
ME1	A first tier manufacturer supplying components directly to the automotive industry	148	Yes
ME2	Manufacturer of high pressure aluminium die castings mainly for the automotive industry	420	No
ME3	Subsidiary of an international construction company specialising in foundation and underground engineering.	220	Yes
ME4	Service engineers for supermarket commercial refrigeration equipment. Another (unionised) company in the same Group manufactures the equipment.	350	No

4.2 The impact upon working hours

A number of studies have demonstrated that while the new regulation has had some impact in terms of reducing working hours and stimulating changes to working practices, the familiar features of the system remain largely intact. A TUC study from February 2002, based on analysis of the government's Labour Force Survey and a TUC-commissioned survey, suggests that the numbers working in excess of 48 hours per week has fallen by only 3.5% since the

implementation of the Working Time Regulations. According to the TUC report, nearly 4 million persons or 16% of the labour force were working over 48 hours per week compared to 3.3 million (then 15%) in the early 1990s, and that the numbers working over 55 hours per week had risen to 1.5 million. The average working week for the UK was 43.6 hours, compared to an EU-wide average of 40.3 hours. Long hours were particularly prevalent among managerial and professional workers of both sexes, and among male workers in more highly skilled jobs in manufacturing, construction and transport. The main reason given by managers and professionals for working long hours was excessive workloads, while for manual workers it was the need to enhance earnings through overtime.³²

A DTI research note (Hicks, 2002) reported in July 2002 that 16% of all employees and 22% of full-time employees were working over 48 hours per week in the spring of 2001. Three quarters of those working such long hours were men. Almost 9% of full-time employees were working over 48 hours per week without receiving overtime. This note also reported that long-hours working in excess of the 48-hour figure differed substantially across occupational groups. The highest proportions of employees working in excess of 48 hours per week were found in 'managers and senior officials' (37%), 'professional occupations' (30%) and 'process, plant and machine operatives' (28%). By industry, the sectors reporting the highest numbers of workers working for more than 48 hours per week were 'agriculture and fishing', 'transport and communication', 'construction' and 'energy and water', which were all in excess of 25%.³³

This DTI research also reported on the impact of the WTR 1998. The proportion of employees reporting that they regularly worked for more than 48 hours per week fell slightly in 1998, and this small reduction was repeated in 1999, 2000 and 2001. Prior to this, the numbers reporting hours over 48 per week had risen consistently since the early 1980s. The fall in hours after 1999 was driven by a reduction in the hours of male workers. The DTI note attempted to estimate one of the possible effects of removing the individual opt-out from the 48 hour week, by calculating the numbers employed for more than 48 hours a week over period in excess of the default reference period of 17 weeks. Analysis of the Labour Force Survey showed that 16% of all full-time employees or three million individuals approximately usually worked more than 48 hours per week on two successive quarterly reporting points (three months), and 10%, or two million individuals, over five successive quarters (twelve months). On this basis it was concluded that 'approximately three million people would be affected by a removal of the

[individual] opt-out in the UK (because they said that they usually worked for over 48 hours on two successive quarters when they were interviewed)’. While a segment of this group could benefit from collective or workforce agreements with lengthened the normal 17-week reference period, the note concluded that this would not help the 2 million working in excess of 48 hours per week on a year-round basis. However, the note did not consider that a certain proportion of this group might fall under the derogation for ‘unmeasured working time’ provided for in Regulation 20.

Case study evidence on employers’ responses to the WTR is provided by Neathey and Arrowsmith’s 2001 study, carried out for the DTI.³⁴ This research was based on a non-random sample of 20 employers, selected to reflect a variety of different types of organisations. Around a third of the sample reported that, as a result of the implementation of the Regulations, working practices had been reviewed with the aim of putting in place a ‘work smarter’ strategy. Shorter working hours and/or the reduction of operating time to a reduced number of working days had led to greater flexibility of employment and, in some cases, improved operational efficiency and customer satisfaction. However, half of the sample reported that the Regulations had had little or no impact on them. These organisations tended to be smaller establishments, those making use of individual opt-outs and/or derogations established through collective agreements or workforce agreements, and those with working practices which were already in line with the Regulations.

The study found that management had been proactive in implementing the new standards, and that while there was evidence that collective agreements (in five cases) and workforce agreements (in three cases) had been used to implement derogations and flexible working arrangements, the principal form of employee involvement was consultation rather than negotiation. The individual opt out was the most common response to the need to provide for working in excess of the 48-hour week, but collective and workforce agreements were also used to change reference periods. A number of sample employers had also achieved compliance with the 48-hour week by changing working practices, increasing staffing levels, and revising shift arrangements.

Neathey and Arrowsmith’s case studies were supplemented by evidence from the Warwick Pay and Working Time Survey. This is based on a sample of around 300 employers in four sectors (printing, engineering, health, and retail). The WTR was reported to be a significant factor in changing working time practice, in particular

in health, printing and retail, but to a lesser degree in engineering. Around half of printing and engineering employers, three out of five NHS trusts and virtually all the retail employers had either made or proposed a collective or workforce agreement in order to derogate from aspects of the WTR. Unions were involved in changes in all but one of the relevant NHS trusts, half of the print employers, and two thirds of the engineering and retail employers. Two thirds of engineering employers reported making use of individual opt-outs, along with half of the sample in each of the other three sectors.

These existing studies therefore suggest that the extensive use of individual opt-out agreements has been a significant reason for the relatively limited impact of the Working Time Regulations. In our sample, about 90% of the workforce had opted out in most case study employers in the manufacturing and engineering and financial and legal sectors. Almost 100% of supervisory and managerial staff in the Hospitality sector had signed opt-out agreements.³⁵ Hospital Trusts used opt-outs extensively in areas where there were labour shortages such as radiologists, pathologists, anaesthetists, career grade doctors and some nurses.³⁶ More generally, CBI survey evidence reported by the TUC indicates 47% of companies use opt-outs (TUC, 2002).

4.3 Industrial relations mechanisms and the perceived conflict between the Working Time Regulations and business efficiency

It was evident from the interview evidence explaining why individual opt-outs are used that the impact of the working time regulations has been limited because there is a deeply embedded perception held by many employers that limiting the average working week to 48 hours would impair what they see as business efficiency considerations.

Several employers, in particular in the manufacturing and engineering sector and in financial and legal services, argued that if the opt-out were not available, the costs of running their business would increase significantly as they would have to recruit more labour to do the work. Furthermore, additional recruitment would create practical problems and indirect costs, such as the need for extra plant and machinery or extra space in the office, staff restaurant or staff car park. The EEF relayed to us the opinion of a domestic appliance manufacturer that ‘the consumer will have to bear’ the ‘significant cost’ of complying with the 48-hour limit, which ‘will make our products less competitive against foreign competition.’ Moreover,

not all companies are able to pass on additional costs. For example, one of the small engineering companies in our sample believed that they could ultimately be put out of business because they supplied a major motor manufacturer, and the terms of their contract dictated that there should be annual price decreases.

Some employers made the slightly different argument that existing staff were trained and experienced, and that it would therefore be more efficient to utilise them for longer hours than to recruit additional staff. Furthermore, the investment banks and international law firm argued that it was necessary to develop very strong personal relationships so as to support the needs of very demanding clients. Their business was therefore ‘often personality driven, so you really want the same person doing the work.’³⁷ Moreover, critical knowledge of issues involved in particular projects was often stored in the minds of individuals rather than being written down. So, additional recruitment and limiting individuals to 48 hours per week was not seen as a practical way forward.

Certain employers also argued that individual opt-outs provided operational flexibility that could not be satisfactorily compensated for even by averaging the 48-hour limit over a reference period as long as 52 weeks. For example, a subsidiary of the food manufacturer, a bakery, supplied supermarkets and orders fluctuated by as much as 50% on a daily basis. The company felt that the opt-out was necessary because it was not feasible to handle such wide daily fluctuations in demand through a formalised system of annualised hours. Similarly, the investment banks and the international law firm in our sample said that opt-outs were necessary because merger and acquisition deals required intense periods of working so as to complete documents and to finalise deals within very strict time scales. These firms felt that although it was possible to compensate for these intense working periods through informal systems of time off in lieu, it was not feasible to plan these periods into a formal annualised hours system. The CBI also argued that it is not always straightforward to move to annualised hours or other systems based on reference periods because ‘you have still got to do enormous amounts of monitoring and to know exactly what people are doing.’

On the other hand, there was evidence supporting the claim that long hours working can lead to the inefficient utilisation of labour. For example, one of the small engineering companies said that on some occasions, when they had asked workers to do additional shifts and extra hours to meet demand, ‘the following week half of them go sick. So, it does not always pay’. The HR Director of a

subsidiary of food manufacturer ME6 also accepted their 57½ hour standard week (39 hours basic and the rest paid as overtime) was unproductive because workers were often tired. But, without any legislative imperative to implement change it was difficult for the company to ‘make people suddenly lose their hours because they have mortgages based on this level of income.’ According to the AMICUS representative we interviewed, long hours working was not so much at the core of British business efficiency as a reflection of ‘the British disease of low productivity.’ In his view, this reflected a culture traditionally concerned with ‘measuring inputs into the process rather than measuring outputs or outcomes. Typically a manager will be asked by his superior, “how many [overtime] hours have you got in this week?” And if they are in then the manager is praised rather than being condemned for not being able to do the work in the right time.’

Other evidence illustrated how reducing working hours could improve efficiency. The Working Time Officer we interviewed told us of one firm which ‘had done a cost exercise, got lots of additional staff in, cut down the overtime, and in the longer term they have actually saved money because [they do not have] all the overtime to pay for.’ AMICUS also provided two examples where union representatives and employers had jointly recognised the ‘disadvantages in going along the long hours route [because] much of the overtime they were doing simply reflected low productivity.’ In these particular companies issues had been resolved through negotiation and ‘there has been a great deal of partnership and co-operation at the local level in improving productivity.’

On this basis, several respondents on the trade union side argued that the use of individual opt-outs was disadvantageous for UK business because it meant that both employers and unions could avoid negotiating over the reorganisation of working patterns, with the effect that inefficient practices were perpetuated. According to the TUC, ‘the Working Time Regulations have [thus] been a much less useful instrument to reduce working time and to go through this process of thinking about pay, hours and productivity because the individual opt-out was implemented.’³⁸ Several union respondents pointed to the difficulty of voluntarily negotiating reductions in working hours without any legislative imperative to do so when the consequence would be lower earnings and living standards for their members. The TUC acknowledged that this explained why work reorganisation has not been high on many union agendas.

The notion that the individual opt-out is a barrier to innovation was given further weight by the CBI acknowledgement that ‘certain companies may be over reliant on the individual opt-out [in that] there are currently companies out there that have yet to begin that process of reorganising working [patterns] where it is warranted.’ Also, the EEF were disappointed that there had not been more innovation in work organisation: ‘We certainly expected that the introduction of the Working Time Regulations, in particular the 48 hours, would encourage rather more companies to think about [changing working patterns], certainly annualised hours. There has been an interest, but I don’t think it has been quite as prevalent as we thought it might have been.’

In addition, the TUC pointed to some examples where employers had been motivated to negotiate changes in the belief that the opt-out will be removed following the review of the Working Time Directive in 2003. One such case was a dairy company where 70 hours per week had been the norm because of the need to meet the requirements of supermarkets. However, the company had moved to annualised hours, had offered employees a range of shift patterns between 40 and 48 hours per week, and now produced the same amount of milk more efficiently. The TUC argued that these examples of negotiating in the shadow of an anticipated change in the law illustrated how the availability of the opt-out was presently a barrier to innovation.

On the other hand, there was also evidence indicating that use of the individual opt-out does not necessarily preclude innovation. In the study by Neathey and Arrowsmith, referred to above, three-quarters of the case studies were using individual opt-outs but twelve of the twenty organisations had seen changes in their working time arrangements. In most cases changes were prompted by competitive pressures to better meet customer needs.³⁹ In our study all thirteen case study employers used opt-outs, but nine of them had recently introduced changes in working practices. In some cases this amounted to the introduction of flexible working. In other cases, such as the two small engineering manufacturers ME1 and ME2, there had been radical reorganisation of shift patterns.

ME1 said it had been through ‘a massive change process with changing working practices accompanied by job losses.’ The company previously worked a day shift and a night shift four days per week, ‘which allowed everyone to work overtime on Friday and Saturday.’ The company had now moved to ‘double-day shifting of 6 a.m. – 2 p.m. and 2 p.m. – 10 p.m., working five days a week.’ ME2 used to run a

day shift of 8am-4.15pm and a night shift of 8 p.m. – 8 a.m. for four nights per week. The company now operates alternating day shifts of one week 6 a.m. – 2.15 p.m. and the following week of 2 p.m. - 10.15 p.m. There is also a fixed night shift of 10 p.m. – 6.15 a.m. Both companies stressed the changes were not driven by the Working Time Regulations. ME1 had been taken over by a French sister company and the French management had introduced a more ‘continental culture.’ More significantly, the company had suffered a 50% reduction in demand ‘due to market conditions, closures in the automotive industry and relocation to foreign countries.’ According to ME2, ‘the main driving force...whether there was a Working Time Directive or not, was that [the previous shift pattern] was not operationally economic for us. So, by our own process of change we changed it to three shifts.’ Both companies believed it was necessary to retain the individual opt-out.

4.4 The inability of the industrial relations system to support collective derogations

As pointed out above, the European Commission views moves to calculating working hours on an annualised basis as an important element of modernising work organisation. The Working Time Directive provides for the reference period for averaging the 48-hour limit to be extended from 17 weeks to up to twelve months by means of collective agreements or agreements between the two sides of industry at national or regional level.⁴⁰ Only four case study employers had used either a collective or workforce agreement to extend the reference period beyond the default of 17 weeks.

A major problem with using collective agreements to vary the reference period is that effective mechanisms of employee representation are lacking in many UK workplaces. Figures from the Labour Force Survey published in 2002 reveal that only 29.1% of employees in the UK were union members and only 48% of employees were in a workplace where trade union members were present. Moreover, the pay of only 36% of UK employees’ was affected by collective agreement, and in the private sector collective bargaining coverage was only 22%.⁴¹ In contrast, in most other EU Member States 70% or more of employees are covered by collective agreements, multi-employer bargaining prevails and there are legal mechanisms for the extension of the terms of collective agreements. In the UK, single employer bargaining prevails and there are no mechanisms supporting sectoral collective agreements along continental European lines.

This is not to portray some British or Anglo-Saxon ‘model’ standing next to and contrasting with a Continental European ‘model’. The institutional systems that underpin and support the labour market differ widely across the EU. The rest of the EU does not comprise one collective alternative. The British ‘model’ is therefore not one of two but one of several models in Europe, all of which are evolving. Nevertheless, the CBI did argue that the *general* difference between the British system and the collectivist industrial relations systems in Continental Europe was extremely important:

‘Of course we are the only country to take advantage of the individual opt-out, but that does not mean to say that we are somehow a case apart. There are many other opportunities in the Directive for flexibility and each country will naturally take what is tailored to its own labour market... For the UK it is the individual opt-out versus the collective agreement... If you have a collective agreement system then it is an entirely different matter. You can approach it in an entirely different way. That is one of the reasons why [the Directive] can have an effect [in the UK] that is entirely different.’

Workforce agreements (‘WFAs’) could provide an alternative in non-unionised workplaces.⁴² A WFA can be completed directly with groups of workers or their representatives, and are designed to provide a mechanism for employers to agree working time arrangements with workers who do not have any terms and conditions set by collective agreement.⁴³ However, from the evidence it would seem that their incidence across the UK is extremely limited. An Institute of Personnel and Development survey indicates that only 18% of employers had introduced or were thinking of introducing a WFA (IPD, 1999). None of the case study employers in our sample had considered a WFA and the entire study, although not exhaustive, revealed evidence of only seven such agreements.⁴⁴

The prevalence of opt-outs and limited use of workforce agreements in non-unionised workplaces was explained in the interviews by two factors. First, employers are daunted by the complexity of the WFA procedure. The EEF told us that they had drafted a WFA for a firm of service engineers, but that the firm had been so daunted by the procedure they decided to issue individual opt-outs instead. Secondly, the WFA route was perceived as contrary to the culture of British industrial relations. On the one hand, Britain has a tradition of ‘single channel’ employee representation through recognised trade unions. On the other hand, the legal practitioner suggested that none of the non-unionised employers he dealt with

would have the structures in place to create a WFA. This view is supported to some extent by evidence from the most recent Workplace Employment Relations Survey (WERS) which suggests that only 20% of workplaces with less than 100 employees and only 43% of workplaces with 100-999 employees operated some kind of 'joint consultative committee'.⁴⁵ Moreover, even if the structures were in place, the legal practitioner believed employers 'would not want to be seen to be negotiating with the workforce about these sorts of issues... which are classic collective bargaining issues.' The CBI also suggested that staff representatives on *consultative* committees would not want to step into the shoes of an absent trade union and start *negotiating* terms and conditions.⁴⁶

The study therefore highlighted the potential difficulties of transplanting a regulatory framework into an unreceptive environment. In this sense the individual opt-out can be seen as being responsive to the present characteristics of the British industrial relations system. In contrast to collective derogations, the individual opt-out provides employers with a low-cost and simple to administer mechanism to avoid the 48-hour limit. Collective derogations are complex to arrange, in particular for employers who, in the absence of a recognized trade union, only have available the route of a workforce agreement.

5. Perceptions of working time as a CSR issue

5.1 Recognition of the relationship between CSR, health and safety and working time

There was evidence in the interviews suggesting that some employers and employers' associations recognise the interrelationship between working time regulation, health and safety and CSR. According to the Chartered Institute of Personnel and Development (CIPD),

'There is an ethical issue about working time...employers believe there are ethical issues underpinning the Regulations... Even though employers did not welcome the [Working Time Regulations] our members told us that they did understand what the Regulations were driving at. They did oppose the Regulations as a matter of principle... [but] there was, certainly in the HR community, an understanding that there were issues about health which arguably are ethical issues.'

International law firm FL3 also accepted broader concerns about responsibility for the health of employees are underlying the Working Time Regulations. Hospital Trust H2 believed that, ‘there is quite a lot to be said for corporate social responsibility for public organisations, in particular from a risk management point of view. If you look at the research that says people working long hours are not giving of their best, then I think [working time is an element of CSR]. There is an issue about the service to patients when people who are overtired are not making quality decisions.’

However, other evidence suggested that employers have not been fully receptive to the discourse of EU level policymakers. There are two aspects to this. In part it is due to the fact that EU level policymakers have distorted and blurred their own communication by conducting the discourse on working time regulation and CSR through the dual prism of both health and safety and modernising work organisation. According to the Engineering Employers’ Federation (EEF),

‘There are rather confused messages about it. If it really is, and I recognise this is open to question, a health and safety measure, we are kind of then saying what effect is this having on competitiveness, and is this promoting competitiveness or will this impact on competitiveness. [This] seems to start to straddle rather different issues...And then it is talked about [in terms of] what effect will this have on competition as if it is a measure that is unconnected with health and safety.’

In addition the CBI argued that cognisance of the Working Time Regulations as a resource for promoting modernisation of work organisation and business efficiency was diminished and distorted by the fact that the Working Time Directive was conceived as a measure to protect health and safety. According to the CBI, ‘the Working Time Regulations are there to protect workers with a basic set of minimum standards. The role of the Working Time Regulations is not to act as a catalyst [for more efficient working practices]. That should not be the intention of the legislation.’

The second aspect is that some employers have formed their own, alternative conception of their social responsibility. This is demonstrated by the fact that three case study employers argued that responsibility for employees’ health and safety is counterbalanced by a perceived social responsibility to provide employees with a decent standard of living job security. For example, construction firm ME4 said

that, ‘we aim to be a good employer at all times, with health and safety of our workers paramount. [However], increased earning potential as a result of overtime availability obviously affects the employee and their family in bringing increased affluence.’ Food manufacturer ME6 also argued that there was a balance to be made between CSR for working time and providing workers with a decent standard of living.

‘If you asked me that question [i.e. is working time an aspect of CSR?] in isolation I would say ‘yes’. If you said to me how do you feel about working for a business as a personnel director where your employees are working a sixty-hour week I would say ‘I do not like it. It is wrong.’ But it is not that simple. I would also say that we have a responsibility to pay our people a liveable wage. If the only way they can earn a liveable wage is to work long hours then we have to live with that. You cannot go out on a limb as a company and overpay your people or you will not survive and you will not have jobs at all. So, it is not that simple. It is not one-dimensional. I also think we have a number of other responsibilities and it is getting a balance between them all.’

Foreign-owned car manufacturer ME5 also argued that a balance had to be made between different elements of CSR:

‘Clearly [working time is part of CSR]. It is part of a wider responsibility, which in our case is health and safety. We have been nominated number one company in the UK for health and safety. But, you can also link CSR to job security and particularly for our kind of work, where it is shop floor manual work, job security is the number one attraction... Overtime flexibility allows us to ride out the peaks and troughs. That in turn allows us to provide job security [for workers]. So, you cannot just look at one particular aspect [of CSR]... Obviously making sure people have an appropriate financial stability is another aspect as well as making sure that people have a reasonable work situation whether that is in terms of facilities, working hours etc. All those things need to be balanced.’

5.2 Recognition of the relationship between CSR, work-life balance and working time

There was evidence indicating that some employers do conceive of a correlation between working time, work-life balance and corporate social responsibility. Hotel chain HC2 said that working time is ‘absolutely’ an element of corporate social responsibility given that ‘one of our values is around being people centred [and we have] a very strong culture around how we should treat our associates in terms of being really positive with them. There is nothing in the Working Time Regulations that is counterproductive to that.’ According to investment bank FL1, ‘I think [the Working Time Regulations] have had a small positive role in increasing awareness of, I suppose, a social view that there should be a greater work-life balance.’ The respondent at ACAS also believed that at least some employers perceive there to be such a correlation: ‘I think the [Working Time Regulations] are a part of the [work-life balance] agenda... I think it is part of...a general move towards good employment conditions and caring employers...corporate responsibility in that respect.’ Furthermore, the finance industry union UNIFI was impressed by the approach taken by a major high street bank with regard to CSR and work-life balance:

‘It is all about peoples’ lives outside work and having some sort of responsibility for your workforce beyond just getting the last pound of flesh from them... It is about attracting the best staff and keeping them. It is also about promoting a positive image in the labour market and to customers. But, I think there is a belief in the moral aspects as well... They mean it. They really, really mean it and the business imperative underlies the moral desire to do things right.’

However, other evidence indicated that many UK employers do not recognise the interrelationship between working time regulation, work-life balance and corporate social responsibility in the same way as the UK Government. Some evidence demonstrated that even where there is recognition of the linkage between CSR and work-life balance, very few employers regard the regulation of working time as underpinning the work-life balance agenda. For example, the Institute of Directors (IOD) distinguished between the Working Time Regulations, which they opposed, and corporate social responsibility for working time, of which they were in favour:

‘Certainly from any official announcements on policy from the IOD centrally I think we would assume that working time is an issue that comes under the rubric of corporate social responsibility and I am sure a lot of individual directors would take that view as well... As well as obviously wanting to look after ones workers as well as one can in terms of not actually imposing long hours upon them we know from our own research that a lot of directors have made quite liberal or progressive moves to workplace flexibility. We know a large number of directors, for example, allow employees to work at home or to work flexi-time and we know they are great supporters of part time work... So, in that respect I think it is quite a nice little counterbalance towards our attitudes towards the Working Time Regulations.’

Similarly, the HR director of hospital trust H1 did not recognise the regulation of working time as part of the work-life balance agenda:

‘Outside of the local authority we are the biggest employer in the area and so we have a social responsibility. Working hours is part of that...it is called “Improving Working Lives” in the NHS... We are running a project to co-ordinate childcare arrangements across the two health communities we serve...We have had an enormous amount of success with employee led rostering... So, I think it is issues like that that have more impact than the regulations on working time... Giving people control of their own working patterns is a real benefit for them and if we are serious about the work-life balance, regulation should assist that process not inhibit it.’

The TUC also indicated that employers view the regulation of working time as distinct from the work-life balance agenda:

‘[Employers] might say something about work-life balance. But I think that has got more to do with increased participation in the labour market by women who are...looking for flexibility that enables them to balance their work and their caring responsibilities... And employers understanding better that to retain good employees they need to offer them a degree of flexibility on family friendly issues... Some flexibility of hours, the right to work part-time, perhaps paid paternity leave or paid parental leave. But, that is about it. It is that angle that gets picked up, if it gets picked up at all, in the CSR debate... But, this does not get to the really difficult question which is what are you going to do about all the people who are working more than 48 and

around about 60 hours per week... My sense is that the two rhetorics of excessive working hours on the one hand and work-life balance on the other are still going down separate tracks.’

5.3 Viewing CSR as an ‘external issue’

There was evidence that employers conceive of CSR as incorporating a set of external issues concerning the image and reputation of the company rather than the issue of its employment conditions. According to the TUC,

‘Employment standards in British companies is not something that has featured as an aspect of CSR. CSR is about poor people in developing countries. It is not about how you treat your workers at home. We are struggling to work with Business in the Community to try and get their member organisations to understand that it is important. The way you treat your workforce is a hallmark of how responsible you are as an employer and as a company. But, I would say it has simply not featured in the mainstream of the CSR debate at all.’

AMICUS provided a similar view about companies’ attitudes to the content of CSR.

‘CSR is what happens outside the workplace as far as [companies] are concerned. It does not relate at all to what goes on within. Many of the companies that have apparently good policies on [CSR] issues are some of the worst examples of working hours. Not so much with their own staff, but three quarters of the staff they employ are contractors and they know that the contracts that they issue must demand that the contracted staff work these additional hours. It is the only way it can happen.’

Evidence from the EEF also illustrated the external orientation of CSR policies in many companies:

‘I do not think the Working Time Regulations are seen as a central part of CSR. I think CSR is very much external. One of the criticisms that we, as well as others, had about the Commission’s [Green] Paper was that it was so focussed on the workforce. We said, ‘hold on a minute, we thought CSR was

about the environment, exploitation of child labour you know those sorts of issues'. We were very surprised to see that this was a DG Employment agenda being pushed through under the guise of CSR. To some extent that has an educational function [as some employers] have now learnt that some of their company policies are CSR... if they can tie it into CSR then they see it as a bonus. But they will have focussed on building relationships with the community and relationships with schools, and the environmental [aspects]. I do not think their focus has changed at all.'

The respondent from the CIPD endorsed the view that most employers conceive of CSR as relating to external matters:

'As far as they do, [companies] usually think of [CSR] in relation to community activities or terms and conditions of overseas workers, company reputation. They take a very external view of CSR. I would be very cautious about putting the words working time and CSR together because I do not think the debate takes place in those terms.'

Similarly, the HR Director of investment bank FL1 believed that 'to a large extent' CSR is conceived in terms of external factors like the environment and the community. So, although the firm was 'quite good in terms of our involvement in the community like monetary donations' he was 'not convinced [working time] would be viewed automatically' as an aspect of CSR.

This interview evidence appears to indicate a significant dissonance between the conceptions of employers and policymakers as to what constitutes CSR. However, the emphasis given to the external dimension of CSR by UK employers can be seen as reflecting the UK Government's discourse on CSR. This is evident from an examination of the two major DTI publications on CSR, *Business and Society: Developing Corporate Social Responsibility in the UK*⁴⁷ and *Business and Society: Corporate Social Responsibility Report 2002*.⁴⁸ These publications make only brief mention of internal issues such as improving working conditions, workforce diversity and work-life balance. Moreover, the content of both publications is very much weighted towards the external dimension of CSR. For example, in *Business and Society: Developing Corporate Social Responsibility in the UK*, the DTI presents twelve case studies to demonstrate the 'business case for CSR'. These case studies are:

- A supermarket scheme entitled ‘Stores in the Community’ aimed at developing good community relations
- A hotel and restaurant that purchases local produce, employs local people and saves resources through recycling and monitoring water and power use
- A DIY chain that has educated foreign suppliers to adopt safer and fairer practices
- An energy retailer providing a fixed payment scheme for pensioners
- A printing company that has invested in new technology to improve efficiency and reduce pollution
- A travel company offering a specialised service for blind and partially-sighted people
- A telecommunications company with a programme of school visits designed to improve young people’s communication skills
- A television retailer that has funded community projects
- A construction company providing training programmes for local people from disadvantaged backgrounds
- A box manufacturing company that has developed close ties with local schools
- A multinational manufacturer of food, home and personal care products that has developed a strong system of global reporting on environmental performance which has helped to reduce waste and emissions
- An electronics manufacturer organising and subsidising training at work and in the community. Only this last case study can be said to be a case study on the internal dimension of CSR.

This suggests that while the EU has made clear it conceives of CSR as including employee relations and working conditions, the UK Government needs to communicate the message much more clearly if it is really serious about the interrelationship of CSR and working time.

5.4 Wider scepticism towards CSR

The interview evidence indicates that, for some, corporate social responsibility is still in the very early stages of evolution in the business community. The Engineering Employers’ Federation (EEF) stated that, ‘not many people are into CSR so far’ and the CIPD believed that ‘most people do not use the term CSR.’ AMICUS also argued that CSR is ‘a myth.’

Some of the interviewees expressed the view that it was difficult to say whether working time was an aspect of the CSR agenda because as yet there is no clear definition of what the CSR agenda incorporated. For example, the CBI respondent argued that,

‘There are problems around this term...you know corporate social responsibility has come on to the agenda in the last few years and I think as yet people and policy makers are still groping around to see what it covers. For a lot of people it is about relations with the developing world, for others it incorporates issues nearer to home. I think it depends on how you define corporate social responsibility. I think a lot more work needs to go into that.’

Engineering company ME1 also believed there was uncertainty about what was incorporated under the CSR umbrella.

‘CSR has not been defined yet, guidelines and regulations have not been laid down, for anybody. There are lots of consultants making a fortune about telling everyone what they think. We are taking the view that when we know what it is we are supposed to be corporately responsible for we will do it.’

In addition, the evidence suggested there is a relationship between the degree of cognisance of corporate social responsibility and the size of companies, with smaller companies being more concerned with surviving as a business rather than embracing concepts such as CSR. For example, the TGWU expressed the following opinion:

‘I think [CSR] is almost a function of size. The larger companies are conscious of CSR for image reasons. They do not like bad publicity. While very small companies, which are almost at the margins of survival, are not interested in CSR. They are only interested in survival. So, CSR is a function of size.’

The EEF were also of the opinion that smaller companies had very little cognisance of corporate social responsibility:

‘If you were to go and ask your average ABC Metalcraft in the West Midlands what corporate social responsibility means they would give you a

very old fashioned look. Big companies are aware of the need to be seen as a good employer but for ABC Metalcraft I think they would just wonder what you are on about.’

ACAS also posited that, ‘at [one] end of the spectrum there are employers who are just trying to survive... and therefore things like working time [and CSR] are not exactly peripheral but [those companies] do not have the same awareness of their impact.’

This anecdotal evidence was to a large extent borne out by the case studies of the two smaller engineering companies. For example, ME1, an engineering company with 150 employees, believed that corporate social responsibility is ‘just another burden on the employer’. Similarly, ME3, with 350 employees stated that ‘CSR is something that we have not considered’. ME2 said they always tried to treat their 420 employees fairly, but the company had little cognisance of CSR: ‘We do not have a CSR policy as such.... We are just trying to operate within the law within the constraints that we have... at the end of the day we are in manufacturing and there is not a lot of spare money, things are very tight... I am not sure where corporate social responsibility goes. We just do our best’.

However, there was also evidence to suggest that it is not only small companies on the brink of survival that have little or no cognisance of corporate social responsibility. For example, FL2, a large, European-owned, investment bank, said that ‘as an organisation we have not given this subject any formal consideration as yet... as a company we have not formally considered the implications of CSR or work-life balance.’

Furthermore, there was also anecdotal evidence indicating that even where the business system was aware of CSR, this did not translate into a substantive change in operational terms. For example, one of the respondents from the TUC was very sceptical as to the operative substance of CSR in the majority of cases:

‘I try and avoid using the rhetoric of CSR because I do not like it... There are some employers that take it seriously... But, I think a lot of it is just an attempt by companies to avoid reputational risk or to maintain what they see as the integrity of their brand very often through adopting nice window-dressing.’

The personnel director of ME3 was similarly sceptical about the adoption of corporate social responsibility policies by larger employers.

‘I am a little bit cynical in some ways. We get involved with companies like [supermarket XYZ plc] for example. [XYZ plc] are great at waving the flag with regard to their involvement with their employees and blending the whole work-life balance correctly and having a social responsibility within the society and all of these things. Regretfully if you peel away the layers of that what you are left with is an advertising ploy.’

6. Conclusions

In this paper we have contrasted the recent public discourse of EU and UK institutions concerning CSR and labour standards with an empirical study of the implementation, over the same period, of the Working Time Directive in the UK. The evidence suggests that the high hopes invested in reflexive law in general and the ‘new CSR’ in particular as a mode of regulation have not so far been borne out by the experience of the implementation of the WTD. Thanks to the wide derogations contained in the Directive and the parallel UK regulations, the new statutory limits on working time have been easily avoided in many workplaces. Little has been done to shift the predominant culture of long-hours working. This is despite recognition, on the part of at least some of the actors concerned, that extended working and reliance upon overtime result in sub-optimal utilisation of labour. But many employers are simply unwilling to visualise the WTD as an instrument for improving efficiency, and instead see it as an instance of external governmental interference which should be resisted on the grounds of flexibility. The ‘new CSR’ has done little or nothing to help shift perceptions. While some respondents did see working time as an issue with CSR implications, in particular where it was linked to health and safety and work-life balance concerns, there was also widespread reluctance to see CSR as touching upon ‘internal’ issues of employment relations. We also encountered deep scepticism on the part of certain respondents who saw corporate use of CSR as ‘window dressing’.

While it would be premature to rule out the use of corporate governance mechanisms, including shareholder activism, as a means of advancing a more progressive approach to HRM, it would be equally unwise to assume that adequate conditions currently exist in the UK context for CSR to play the role intended for

it. In addition to the considerable barriers which exist in terms of information asymmetries on the shareholder side of the equation (see Armour, Deakin and Konzelmann, 2003), the present study has highlighted significant blockages in the transmission of a CSR agenda to the arena of employment relations. For the majority of UK employers and employers' organisations, the conduct of HRM is an issue for managerial prerogative, on which 'soft law' and corporate governance mechanisms barely impinge. Under such circumstances, it is not surprising that trade unions have difficulty in convincing their own members to accept the complex trade-offs involved in moving away from reliance on overtime to supplement basic earnings.

A generation ago, in his study of the Fawley productivity agreements, Allan Flanders wrote of the systematic use of overtime in British industry that its 'fatalistic acceptance was symptomatic of management's casual attitude towards the use of human resources' (Flanders, 1964: 223). Forty years on, it would seem that little has changed.

Notes

¹ Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, OJ 1993 L 307/18.

² Presidency Conclusions, Lisbon European Council, 23-24 March 2000, at para. 37.

³ Case C-173/99 *R. v. Secretary of State for Employment, ex parte Bectu* [2001] ECR I-4881.

⁴ Royal Commission on Labour, *Majority Report*, British Parliamentary Papers, 1894 vol. XXXV. 1, at para 162.

⁵ *Ibid.*, *Minority Report*, British Parliamentary Papers, 1894 vol. XXXV. 1, at p. 140.

⁶ *Ibid.*

⁷ *Majority Report*, at para. 320.

⁸ On the 1998 Regulations, see Barnard, 1999.

⁹ Case C-383/92 [1994] ECR I-2479. The Court reached similar conclusions in Case C-382/93 *Commission v UK* [1994] ECR I-2479 in respect of Directive 77/187/EEC on transfers of undertakings (now Directive 2001/23).

¹⁰ On the 1999 Regulations, see Barnard, 2000.

¹¹ European Commission, *Promoting a European Framework for Corporate Social Responsibility. Green Paper* COM (2001) 366 final, at p. 9.

¹² Council Resolution of 6 February 2003, OJ 2003 C 039/3.

¹³ COM (2002) 118 final.

¹⁴ *Ibid.*, at p. 16

¹⁵ *Ibid.*, at p. 8

¹⁶ COM (2002) 347 final, at p. 19.

¹⁷ Presidency Conclusions, Lisbon European Council, 23-4 March 2000, para.5.

¹⁸ *Ibid.*, at para. 29.

¹⁹ *Ibid.*, at para. 39. See also R. Prodi ‘Innovation and responsibility: Business and the citizen in a changing world’ Speech delivered to *The European Business Summit*, Brussels, 11 June 2000.

²⁰ This was agreed at an Extraordinary meeting of the European Council in Luxembourg on 20-21 November 1997 (the so-called Jobs Summit). Under the ‘Luxembourg process’ the first guidelines outlining policy areas for 1998 were

agreed by the Member States and adopted by the Council of Ministers. See Council Resolution of 15 December 1997 on the 1998 Employment Guidelines (OJ [1998] C30/1). The Member States were then obliged to incorporate these guidelines into National Action Plans (NAPs). The guidelines have centred on four main ‘pillars’: *employability* which focuses on the prevention of long term and youth unemployment; *entrepreneurship* which attempts to make the process of business start-ups more straightforward; *adaptability* which encourages negotiation over the improvement of productivity through the reorganisation of working practices and production processes; and the *equal opportunities* pillar which is concerned with raising awareness of issues relating to gender equality in terms of equal access to work, family friendly policies, and the needs of people with disabilities.

²¹ Para.6.

²² 2002/177/EC: Council Decision of 18 February 2002 on guidelines for Member States' employment policies for the year 2002, O. J. L60, 01/03/2002, para. 14.

²³ This point is made under the heading ‘Anticipating and capitalising on change in the working environment by creating a new balance between flexibility and security’, and refers specifically to finalising the provisions for the road transport sector and maritime and air transport.

²⁴ Department of Trade and Industry, 2001: 14.

²⁵ The Business Impact Task Force was initiated by Business in the Community. It published its report *Winning with Integrity* in November 2000 (see www.business-impact.org).

²⁶ Department of Trade and Industry, 2001: 4.

²⁷ DTI, 2002a: 14. Although this term is used directly in relation to ‘the fundamentals of equal opportunities, the provisions of the Employment Act 2002 relating to work-life balance were presented under the same heading, ‘Ensuring equality’.

²⁸ We draw in this section on our report for the Commission on the individual derogation from the 48-hour working week (Barnard, Deakin and Hobbs, 2002), a copy of which may be obtained by a request in writing to the Commission’s Directorate-General for Employment and Social Policy, and on a previous account of the report’s main findings (Barnard, Deakin and Hobbs, 2003).

²⁹ Art.18(1)(b)(i).

³⁰ The officers represented the following trade unions: AMICUS, Association of University Teachers (AUT), General Municipal and Boilermakers’ Union (GMB),

National Union of Teachers (NUT), National Association of Schoolmasters and Union for Women Teachers (NASUWT), National Association of Teachers in Further and Higher Education (NATFHE), Transport & General Workers Union (TGWU), UNIFI, the largest finance sector union, and UNISON, the public sector union.

³¹ These were: Confederation of British Industry (CBI), Institute of Directors (IOD), Chartered Institute of Personnel and Development (CIPD), Association of Colleges (AOC), Engineering Employers' Federation (EEF), Local Government Employers' Association (LGEA), and London Investment Banking Association (LIBA). The Department of Health, The Law Society, the Universities and Colleges Employers' Association were contacted for their views but were not interviewed.

³² Trade Union Congress, 2002. See also the evidence of long-hours working reported in DTI, *UK Workers Struggle to Balance Work and Quality of Life as Long Hours and Stress Take Hold*, press release, 30 August 2002.

³³ Similar evidence of long hours working and the absence of overtime pay in many sectors was found in research carried out for the DfEE by the Institute of Employment Research, University of Warwick and IFF Employment Research in 2002 (IER/IFF, 2002).

³⁴ Neathey and Arrowsmith, 2001. Evidence on employers' attitudes is also provided by two reports from the Chartered Institute of Personnel Development (1999, 2002).

³⁵ This represented about 10% of the total workforce. Opt-outs were rarely used for general staff in the sector although one hotel company used opt-outs for seasonal staff covering Christmas and Summer.

³⁶ This amounted to about 15% of the workforce.

³⁷ Interview with Investment Bank FL2.

³⁸ Interview with TUC.

³⁹ Neathey and Arrowsmith, 2001: 11.

⁴⁰ Art. 17(3), para. 1. Where it is in conformity with the rules laid down by such agreements, derogations can be made by means of collective agreements or agreements between the two sides of industry at a lower level (Art. 17(3), para. 1). Member States where there is no system for ensuring the conclusion of collective agreements or agreements between the two sides of industry or Member States where there is a specific legislative framework may allow derogations by

collective agreement or agreement between the two sides of industry at the appropriate collective level (Art. 17(3), para. 2).

⁴¹ See *Trade Union Membership: an analysis of data from the Autumn 2001 Labour Force Survey*, available at http://www.dti.gov.uk/er/emar/artic_01.pdf. 73% of public sector employees are covered by collective agreements.

⁴² On ‘workforce agreements’, see regulation 2(1) and Schedule 1 WTR; Deakin and Morris, 2001: 308.

⁴³ Sch 1, para.2.

⁴⁴ Three of twenty case study organisations studied by Neathy and Arrowsmith (2001) had used a WFA. Two of these organisations had long established procedures for negotiating with in-house staff associations as opposed to an independent trade union. It is known that one WFA has been the subject of an Employment Tribunal case (see *Watson v Swallow Hotels* Case 6402399/99, Carlisle Industrial Tribunal) and the Engineering Employers’ Federation told us that one of their members had introduced a WFA. The employment law practitioner we spoke to had drafted two workforce agreements, one for a weather and disaster forecasting company and the other for an airfreight company. Both companies had complex 24-hour shift patterns and the WFA was used to cover the whole ambit of working time limits and entitlements, with nightworking a particularly important issue, rather than just the 48-hour limit.

⁴⁵ As reported in Department of Trade and Industry, 2002d.

⁴⁶ Evidence from WERS suggests that where there were ‘joint consultative committees’ in place, only 50% dealt with pay issues, whereas working practices (88%) and health and safety (86%) were the most common issues dealt with (see Department of Trade and Industry, 2002d).

⁴⁷ Department of Trade and Industry, 2001.

⁴⁸ Department of Trade and Industry, 2002a.

References

- Armour, J., Deakin, S. and Konzelmann, S. (2003) 'Shareholder primacy and the trajectory of UK corporate governance' *British Journal of Industrial Relations*, 41: 531-555.
- Armstrong, K. and Bulmer, S. (1998) *The Governance of the European Single Market* (Manchester: Manchester University Press).
- Barnard, C. (1999) 'Working time in the UK' *Industrial Law Journal*, 28: 61-75.
- Barnard, C. (2000) 'Working Time Regulations 1999' *Industrial Law Journal*, 30: 167.
- Barnard, C. and Deakin, S. (2002) 'Market access and regulatory competition', in C. Barnard and J. Scott (eds.) *The Law of the Single Market: Unpacking the Premises* (Oxford: Hart).
- Barnard, C., Deakin, S. and Hobbs, R. (2003) 'Opting-out of the 48-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' *Industrial Law Journal*, 32: 223-252. Also published as CBR Working Paper no. 282 (April, 2004).
- Barnard, C., Deakin, S. and Hobbs, R. (2002) *The Use and Necessity of the Article 18(1)(b)(i) of the Working Time Directive in the United Kingdom. Report for the European Commission*. Mimeo, University of Cambridge. Also published as CBR Working Paper no. 282 (April, 2004).
- Chartered Institute of Personnel Development (1999) *The Impact of the Working Time Regulations on UK plc* (London: CIPD).
- Chartered Institute of Personnel Development (2002) *Employment Law. Survey Report* (London: CIPD).
- De Schutter, O. (2004) 'The implementation of fundamental rights through the Open Method of Coordination', in O. De Schutter and S. Deakin (eds.) *Social Rights and Market Forces: Is the Open Coordination of Employment and Social Policies the Future of Social Europe?* (Brussels: Bruylant), forthcoming.
- Deakin, S. (1990) 'Equality under a market order: the Employment Act 1989' *Industrial Law Journal*, 19: 1-23.
- Deakin, S. (1999) 'Two types of regulatory competition: competitive federalism versus reflexive harmonisation. A law and economics perspective on Centros' *Cambridge Yearbook of European Legal Studies*, 2: 231-260.

- Deakin, S. and Morris, G. (2001) *Labour Law* 3rd. ed. (London: Butterworths).
- Department of Trade and Industry (1998) *Fairness at Work* Cm. 3968 (London: DTI).
- Department of Trade and Industry (2001) *Business and Society. Developing Corporate Social Responsibility in the UK* (London: DTI).
- Department of Trade and Industry (2002a) *Business and Society: Corporate Social Responsibility Report 2002* (London: DTI).
- Department of Trade and Industry (2002b) *Work-life Balance: The Business Case. Your Business Can't Afford to Miss It* (London: DTI).
- Department of Trade and Industry (2002c) *The Essential Guide to Work-Life Balance* (London: DTI).
- Department of Trade and Industry (2002d) *High Performance Workplaces. The role of employee involvement in a modern economy. Discussion paper* (London: DTI).
- Flanders, A. (1964) *The Fawley Productivity Agreements: A case study of management and collective bargaining* (London: Faber).
- Hicks, S. *Long Hours Working: A Summary of Analysis from the Labour Force Survey* (London: DTI).
- Hutchins, B. and Harrison, A. *A History of Factory Legislation* 3rd. ed. (London: P. & S. King).
- IER/IFF (2000) *Work-Life Balance Baseline Study* (Warwick and London: Institute for Employment Research/IFF Employment Research).
- Neathey, F. and Arrowsmith, J. (2001) *Implementation of the Working Time Regulations* EMAR series no. 11 (London: DTI).
- Rogowski, R. and Wilthagen, T. (1994) 'Introduction', in R. Rogowski and T. Wilthagen (eds.) *Reflexive Labour Law* (Deventer: Kluwer 1994).
- Smisman, S. (2004) 'Reflexive law in support of directly deliberative polyarchy: reflexive-deliberative polyarchy as a normative frame for the OMC', in O. De Schutter and S. Deakin (eds.) *Social Rights and Market Forces: Is the Open Coordination of Employment and Social Policies the Future of Social Europe?* (Brussels: Bruylant), forthcoming.
- Trade Union Congress (2002) *About Time. A New Agenda for Shaping Working Hours* (London: TUC).