



House of Commons  
Trade and Industry Committee

---

**UK Employment  
Regulation:  
Government Response  
to the Committee's  
Seventh Report of  
Session 2004–05**

---

**Fourth Special Report of  
Session 2005–06**

*Ordered by The House of Commons  
to be printed 19 July 2005*

**HC 365**  
Published on 21 July 2005  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## The Trade and Industry Committee

The Trade and Industry Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Trade and Industry.

### Current membership

Peter Luff MP (*Conservative, Mid Worcestershire*) (Chairman)  
Roger Berry MP (*Labour, Kingswood*)  
Mr Peter Bone MP (*Conservative, Wellingborough*)  
Mr Michael Clapham MP (*Labour, Barnsley West and Penistone*)  
Mrs Claire Curtis-Thomas MP (*Labour, Crosby*)  
Mr Lindsay Hoyle MP (*Labour, Chorley*)  
Miss Julie Kirkbride MP (*Conservative, Bromsgrove*)  
Judy Mallaber MP (*Labour, Amber Valley*)  
Rob Marris MP (*Labour, Wolverhampton South West*)  
Mrs Maria Miller MP (*Conservative, Basingstoke*)  
Anne Moffat MP (*Labour, East Lothian*)  
Sir Robert Smith MP (*Liberal Democrat, West Aberdeenshire and Kincardine*)  
Mr Mike Weir MP (*Scottish National Party, Angus*)  
Mr Anthony Wright MP (*Labour, Great Yarmouth*)

### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [http://www.parliament.uk/parliamentary\\_committees/trade\\_and\\_industry.cfm](http://www.parliament.uk/parliamentary_committees/trade_and_industry.cfm).

### Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Philip Larkin (Committee Specialist), Grahame Allen (Inquiry Manager), Clare Genis (Committee Assistant) and Joanne Larcombe (Secretary).

### Contacts

All correspondence should be addressed to the Clerks of the Trade and Industry Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5777; the Committee's email address is [tradeindcom@parliament.uk](mailto:tradeindcom@parliament.uk).

# Fourth Special Report

---

The previous Committee published its Seventh Report<sup>1</sup> of Session 2004-05 on 21 March 2005. The Government's response to this Report was received on 20 June 2005 and is published as an Appendix to this Special Report.

## Government response

---

### Labour market flexibility

1. Whilst the pace of regulatory change might have created problems for some firms, the evidence for any serious impact is limited and, at least to some extent, based on general impressions about the nature of the economy and the regulatory environment. We can find little hard evidence to support the assertion that UK competitiveness is being threatened by overly stringent employment regulation. Consequently, we found the obsession with the growing burden of regulation slightly bemusing. Whilst we acknowledge that there has been reregulation of the labour market since the late 1990s, the UK still has a more lightly regulated labour market than most comparable economies. In the Porter Report, which reviewed UK competitiveness, excessive labour market regulation was not cited as a concern, nor deregulation seen as a useful strategy for improving the country's competitive position. (Paragraph 20)<sup>2</sup>

2. The debate about regulation versus flexibility is in danger of losing sight of the important issues—namely the pursuit of competitiveness and the need to ensure good, minimum standards of protection for employees. Flexible labour markets and regulation are good only in so far as they contribute to these goals. We welcome the principles set by the Lisbon Strategy, combining flexibility with social cohesion. The realisation of this strategy might involve the introduction or the removal of specific regulations, but this would need to be judged on an ad hoc basis. But it should be reiterated that the main challenges that the UK economy faces are not exclusively matters of regulation or deregulation, but in areas that we have addressed in several Reports, including skills and training, R&D and technology transfer, the supply of capital for investment, and narrowing the productivity gap with our competitors. (Paragraph 21)

3. The Government's emphasis on regulation as a last resort, only to be used where the required goals cannot be achieved through other means, is significant and it is a position that we support (Paragraph 23)

The Government welcomes the Committee's comments. Growth and jobs are essential for our prosperity and for social justice. Jobs remain the cornerstone of social cohesion and

---

1 Seventh Report from the Trade and Industry Committee, Session 2004-05, *UK Employment Regulation*, HC 90-I

2 All paragraphs in bold font are quotations from the Committee's Seventh Report.

prosperity. And business needs labour markets that are adaptable to enable companies to adjust to change and maintain the competitiveness that enables growth and job creation.

In the UK, we have shown it is possible to regulate in an intelligent way that supports rather than hinders job creation. The Hampton and Arculus reports, published alongside the budgets set out our core “Better Regulation” principles, including risk-based enforcement and proper consultation with stakeholders. We now need to apply these principles at EU level, by legislating only when it is clearly demonstrated that this is the appropriate way to proceed. And we need to ensure our transposition of EU rules does not impose any additional burdens on business.

With this approach we have achieved the longest period of unbroken economic growth in our history and since 1997 an increase of just over 2 million people in employment.

It is because we can see the success of this approach that we strongly support the renewed focus on jobs and growth in Europe, where the European Council has given new impetus to the Lisbon agenda for economic reform. 60% of our trade is with our European partners and therefore our continuing growth and prosperity and indeed our ability to compete in an increasingly competitive global economy is strongly influenced by the economic success of our European partners. In parallel we are working closely with other member states on promoting the Better EU Regulation agenda and there is strong EU political support for vigorous better regulation programme.

## **The National Minimum Wage ('NMW')**

**4. The Committee is not in a position to make recommendations on the appropriate rate for the NMW. We do, however, acknowledge the widespread praise for the work of the Low Pay Commission ('LPC'). It seems that it has managed to maintain a broad consensus on a contentious subject to date, and the difficulty of setting the NMW at a rate that is, at once, affordable to business and fair to workers, especially given the wide regional variations in the cost of living that exist, should not be underestimated. The LPC has, by necessity, adopted a fairly cautious and experimental approach to NMW rates, setting them low initially, and then increasing them on the basis of experience. Given the relatively recent introduction of the NMW, it seems too soon to establish a formula dictating future rises, and we believe the LPC should continue to exercise the discretionary approach that, it would appear, has worked so successfully until now. (Paragraph 32)**

**5. Whilst we are concerned that the lower rate might have seen a few employers reducing pay for 18 and 19 year olds, we are mindful that youth employment is an area that can be damaged by regulation and so we endorse the cautious approach of the LPC to date. Given this, it does not seem sensible, at present to abolish the lower rate for 18 to 21 year olds in one step, though we do note that this lower rate has risen faster than the full rate and it may be that, in time, the convergence is such that the lower rate can be abandoned. (Paragraph 33)**

**6. We welcome the extension of the NMW principle to 16 and 17 year olds. We can see no reason why all those entitled to work should not be protected by a minimum wage limit. But again, whilst the rate is low, we are mindful of the need for caution in order**

to maintain employment. Experience would suggest that this rate will be increased relatively rapidly. We are not concerned that guaranteeing a certain level of pay to younger workers will act as an incentive to abandon education or training early. The rates have been set at a level below that already being paid to many school-leavers. The NMW will ensure a moderate rate of pay for the very lowest paid and, as such, cannot really be seen as a very tempting alternative to continuing education. (Paragraph 34)

The Government notes the conclusions of the Committee.

## **Enforcement of the NMW**

7. The companies who are ignoring the NMW, inadvertently or otherwise, are unlikely to be unionised or members of trade associations, and consequently are difficult to detect. There is a clear danger in relying on employees, who may not know they are being exploited or who may fear for their jobs, to report breaches of NMW regulations. Consequently, we are pleased to see that the enforcement unit established in the Inland Revenue to ensure NMW compliance takes a proactive approach. It runs a helpline, investigates complaints, including anonymous complaints, and conducts surprise investigations at companies' premises. For example, 60 percent of the investigations conducted are based on its own analysis and 'risk assessment' based on tax returns. It would seem a model that might be extended beyond enforcement of the NMW to other areas of regulation. (Paragraph 36)

We welcome the Committee's comments on enforcement of the NMW and note the suggestion that this model of enforcement might suit other areas of regulation. We are committed to ensuring that employees benefit from employment rights which are effectively enforced. We are considering issues around effective enforcement of regulation in the context of the recent report by Philip Hampton on effective inspection and enforcement.

## **Homeworking**

8. A full investigation of the condition of homeworkers is beyond the scope of this inquiry. However, we recommend that our successor Committee conduct a dedicated inquiry to establish the extent to which homeworkers do indeed suffer from a systematic non-compliance with regulations designed to ensure minimum standards. We urge the Government to look more closely at the problem. (Paragraph 37)

The Government is keen to ensure all workers, including homeworkers, have appropriate rights and protections. We have recently introduced new legislation for fair piece rates for output workers, including homeworkers, which came into force in October last year which should make it easier for both employers and homeworkers to understand their rights under the minimum wage. We worked closely with the National Group on Homeworking (NGH) on raising awareness through publicity.

## **Agency workers**

9. The business organisations and the Government, by focussing on the six week derogation period, are missing the more important issue which is the scope of the

Agency Workers Directive. We fully support the principle that temporary agency workers should, in most respects, enjoy the same working conditions as the permanent staff. Whilst the agency worker is in place, he or she should be entitled to the same hours and to have access to the same facilities, for example, as directly employed colleagues. This should be the case from the day that the assignment starts and should not be subject to any derogation period whatsoever. If the intention of the Directive is to ensure that agency workers enjoy adequate conditions in their temporary posts, we can see no reason why they should have to wait six weeks before enjoying this 'privilege'. A 12 month derogation would make the Directive almost meaningless given that only a very small minority of temporary assignments last beyond 12 months. (Paragraph 50)

10. Matters such as pay, pensions, and training are more difficult. Whilst not, in principle, against attempts to ensure equivalent pay for temporary agency workers, we are mindful of the difficulties of implementing this. There are clear means that the user undertakings can employ to avoid equal pay and it is not necessarily the case that temporary agency staff will be able to do the same job to the same standards as those they are covering for. The means by which wage levels are set for agency workers also create difficulties for making proper comparisons with the permanent staff. The agency charges the user undertaking a fee which covers the wage of the agency worker and a mark-up for overheads and profits. Furthermore, if, as maintained, the key employment relationship is between the agency and the agency worker, the responsibility for training or for pensions falls to them rather than the user undertaking. Whilst a company the size of Manpower is able to provide these for their staff, it will certainly present problems to the smaller, independent agencies. (Paragraph 51)

11. We were told that employers would not respond to an increased cost for temps by substituting permanent employees. Instead, whilst the need for a degree of flexibility would still result in the use of temporary agency workers, there would be a reduced demand. The danger, then, is rather than promoting permanent employment, the employment prospects of some of the more peripheral members of the labour market are simply undermined. (Paragraph 52)

12. We are, however, aware of clear abuses, where agency workers are kept on long term, temporary contracts as employers attempt to avoid making a proper commitment to them. We were told that some of the large, financial institutions maintained large pools of long term, temporary agency workers. The Higher Education sector is another where, it seems, long term temporary contracts, renewed annually, are common. We are genuinely concerned about situations such as these and can see no reason why, if a post has been filled by a temporary agency worker for 12 months, it cannot then be considered permanent. (Paragraph 53)

In relation to the Agency Workers Directive, the Government continues to support the underlying principles of the Directive. We would wish to reach an agreement on the proposed directive based on a text which reflects the concerns of all Member States and indeed during the Dutch Presidency the UK and a number of Member States unsuccessfully tried to find a way forward. However, views remained and remain very

polarised and there is disagreement on more than one part of the Directive. For example, on Article 4 (a requirement to review restrictions and prohibitions on the use of agency worker), the Government supports the Commission text which would require the removal of restrictions that cannot be justified on eg health and anti-abuse grounds but others are opposing this text.

The Government fully agree that agency work can act as a stepping stone to employment. Around 40% of UK agency workers find non-agency jobs within a year of starting agency work and 36% were “outsiders” (unemployed, starters or other non-participants) before starting agency work.

The Government recognises there may be abuses of the system, for example so called “permatemps”—where agency workers are used for extensive periods as substitutes for permanent employees. In the last year however, we have legislated to restrict practices relating to the charging of transfer fees which deterred some employers from employing temporary agency workers on a permanent basis.

The Government believes that the private recruitment sector should be appropriately and effectively regulated. That is why we have legislation and an inspection body to set and enforce minimum standards for the conduct of those in the sector and to prevent potential abuses. The DTI’s Inspectorate investigates every relevant complaint it receives alleging a breach of the legislation governing the conduct of employment agencies. The Inspectorate also undertakes targeted spot checks.

## **The Working Time Directive (‘WTD’)**

**13. With the WTD only aiming to limit the working week to an average of 48 hours, it would seem to us that there is plenty of scope for particularly long hours to be reduced without encountering the problems faced by countries with significantly shorter working weeks. Consequently we are not convinced of the necessity of maintaining the opt-out. All the business organisations told us that they thought it unlikely individuals would be required to work more than 48 hours a week for a prolonged period. We fully understand that, at times, it will be necessary for employees to put in very long working weeks: peak periods of demand, large orders, or deadlines are just a few of the common examples where this is likely. However the WTD has a 17-week reference period over which the 48 hour average can be calculated. We consider that a period of over four months should amply allow for such contingencies. (Paragraph 63)**

**14. Whilst nobody has brought to our attention examples where the 17-week reference period is inadequate, if these are of sufficient number or scale, then an extension of the reference period should be considered. The business organisations all argued that, if the WTD opt-out were to be lost, they would prefer a 52-week reference period—and, indeed, this is one of the revisions to the Directive suggested by the European Commission. Even so, the Government told us that they estimate that there are 1.7 million people who are working in excess of 48 hours a week over a year. What is not yet clear is who they are or why they are working such long hours or even whether, for example, they would even be covered by the WTD. (Paragraph 64)**

**15. Ultimately, though, we remain to be convinced of the necessity of retaining the WTD opt-out. Whilst we have heard arguments in favour of its retention, we cannot help but agree with the CIPD who said that the opt-out has taken on “totemic significance”, and with the Minister for Employment Relations when he told us that it has become a “cause célèbre” and that there is “a greater attachment to its importance than there needs to be”. (Paragraph 65)**

We cannot agree with the conclusions reached by the Committee. Although businesses correctly identified that individuals cannot, under the Working Time Directive, be required to work more than 48 hours a week for a prolonged period, the fact remains that many choose to do so. Some businesses rely on workers’ willingness to do this; for example, Business in Sport and Leisure (in their letter of 18 June 2004 to the Trade and Industry Committee) estimated that 200,000 workers in the sector regularly exceed 48 hours a week, and said that “removal of the Opt Out would be severely damaging to the leisure and hospitality sector”.

Of the 1.7 million workers work in excess of 48 hours a week over a year, two thirds of these are paid for the extra hours. This means that they are unlikely to be working “unmeasured time”, and so probably fall within the scope of the Directive. This also highlights one of the main reasons they give for working long hours; they want to increase their income, and would be very likely to lose income if their hours were reallocated to other workers or hours were simply cut altogether.

It is true that for some businesses and individuals, the freedom to opt out has acquired significance beyond its economic impact. However, the impact is still important, as is the point of principle on allowing workers to work longer hours provided they freely choose to do so.

## **Flexible hours and parental leave**

**16. We are pleased to see that, to date, the parental leave regulation has been so well received and appears to be being embraced by employers. The principle behind the regulation is clearly beneficial to both employers and employees but only if implemented in a sensible way. It seems to have been introduced in a way that allows employers the flexibility to embrace it without detriment to their firms and without excessive bureaucracy. But the parents of young children are not the only section of the population with caring obligations. One in six people aged over 16 are caring for a sick, disabled, or elderly person, and the burden falls disproportionately on women. With an ageing population, this is a figure that will increase. Given this, we are pleased that the Government is reviewing how the right to request flexible working principle could be effectively extended to include all those with caring responsibilities. (Paragraph 71)**

We agree with the Select Committee’s conclusion that the flexible working legislation has been well received, and that employers have been broadly supportive of requests. The current law is targeted at those parents who face the greatest challenges in balancing work and childcare responsibilities. It is designed to be light touch and straightforward, enabling parents and employers to arrive at a working pattern that suits them both. The DTI also seeks to facilitate a culture where flexible working is seen as the norm, by encouraging

employers to follow best practice and offer flexible working opportunities right across the workforce.

Building on the success of this approach, we are now formally consulting on the case for extending the scope of the right to request to carers of sick and disabled relatives, and to parents of older children. The options are set out in the consultation document, ‘Work and Families: Choice and Flexibility’. The closing date for responses to the consultation was 25 May this year.

**17. As for a general extension of flexible working, there seems limited scope for public policy to effect this other than by increasing awareness amongst employers of the potential gains. For parents with young children one possibility is a form of the existing right to request flexible working; but any regulation would risk involving Government in the detail of the way in which companies organise their work. Furthermore, there seems little point in putting in place extra regulations when it is the attitudes underlying them that is crucial. The Work Foundation cited an example of an investment bank with exemplary paternity policies which they claimed to be using to “weed out the losers”. Clearly such puerile machismo will undermine the best designed policy, so any progress depends on improving awareness of the benefits that can be gained. The FSB noted that the small business sector already has a good record on flexible working and is able to do so because of the relatively informal nature of the working relationships. Overall, this is an area that is still developing but has the potential to benefit all concerned. (Paragraph 73)**

The law was designed to encourage constructive dialogue between employers and employees and this has been critical to its success so far. As survey and research evidence has shown, employers and employees often do not use the law, even if it applies to their circumstances, preferring more informal means to introduce and manage flexible working.

The Government believes this demonstrates the positive change in attitudes that has been taking place over the past few years where increasing numbers of employers are seeing the benefits of flexible working. For all employers, the DTI has gathered together advice, case studies and other support and this is available on the Achieving Best Practice pages of the DTI website.<sup>3</sup>

In the consultation document, ‘Work and Families: Choice and Flexibility’, we specifically ask how we can build on the existing support and guidance to help employers manage flexible working requests.

**18. With a stable or falling-age working population and low rates of unemployment, the greatly increased participation of women in the labour force has made a major contribution to relieving labour shortages and restraining wage inflation. This situation looks set to continue whatever the economic circumstances because of the UK’s demography. It is therefore in employers’ self-interest to motivate and retain experienced staff. Although we recognise that a number of companies—especially SMEs—will find it difficult to accommodate the proposed extensions to parental leave,**

---

<sup>3</sup> [www.dti.gov.uk/bestpractice](http://www.dti.gov.uk/bestpractice)

**to some extent this should be off-set by the greatly enhanced ability to plan afforded by the suggested requirement on mothers to provide better notice of their date of return. (Paragraph 78)**

The Government recognises it is crucial that we deliver our commitments in ways that meet not only the needs of children and families but also employers. We are therefore consulting on a range of measures to support business. This includes reviewing notice periods but also consideration of statutory payment mechanisms, including the case for transferring payment of Statutory Maternity Pay, Statutory Adoption Pay and Maternity Allowance from employers to Inland Revenue.

Ministers and officials will continue to meet with employers and their representative bodies and we look forward to receiving employers' responses to the consultation. We also welcome the support of the Work and Families HR Advisory Group whose expertise and experience in HR and payroll will be invaluable as we work through the design of the delivery mechanisms.

It is important to remember that our proposals build on what is already available. Most employed mothers currently have a right to 12 months' maternity leave and many businesses implement family friendly policies that go beyond the statutory minimum because they recognise the business sense in doing so. Finally, the experience of the 2003 employment laws demonstrates it is possible to reach a consensus between parents and employers of all sizes.