- Positive action is allowed to encourage 'persons of a particular age' to take advantage of employment opportunities where this 'prevents or compensates for disadvantages linked to age suffered by persons of that age who do the work'.
- Claims may be brought in employment matters before an employment tribunal and potential claimants may serve a questionnaire to obtain information from a potential defendant. The county court will take claims in non-employment areas, e.g. discrimination in further or higher education.
- Post-termination discrimination is covered as where the ex-employer refuses a reference.
- Employees are obviously covered but also the self-employed, partners in a partnership, contract workers, office holders, members of trade organisations and those in vocational training are included.

The regulations apply in the case of age discrimination in terms both of recruitment and once in employment.

Exceptions

Regulation 3 provides that discriminatory treatment may be justified if it is a proportionate means of achieving a legitimate aim. This applies to direct and indirect discrimination. Examples given are:

- The setting of age requirements to ensure the protection or promote the vocational integration of people in a particular age group. This could include the health, welfare and safety of the individual, including protection of young people or older workers.
- The fixing of a minimum age to qualify for certain advantages linked to employment or an occupation so as to recruit or retain older people where perhaps these are underrepresented in the workforce. This could include travel facilities and gift vouchers.
- The fixing of a maximum age for recruitment which is based upon the training requirements of the post or the need for a reasonable period in post before retirement. This is a general rule but the regulations provide more specifically that where a person is older than the employer's normal retirement age or will be within six months, or 65 if the employer does not have one, the employer may refuse to recruit that person.

Regulation 26 gives a further exception where employers must comply with other legislation, e.g. the law that prohibits under-18s from being employed in bars where alcoholic drinks are sold.

Default retirement at age 65

It will not amount to age discrimination if employers retire employees at or above age 65 where it is a genuine retirement. Employers are able to continue the employment of people beyond the default age. A retirement age below 65 will in general be unlawful. A lower age will be permitted, but only if the employer can satisfy the objective justification test.

In this connection the ruling of the EAT in *Payne* v *Royal and Sun Alliance Group plc* [2005] IRLR 848 is instructive although not a case brought under the Age Regulations. Mr Payne's contract provided for him to retire at age 65. The employer changed the retirement age, unilaterally and without Mr Payne's consent, to 62 and then terminated Mr Payne's contract at that age. Mr Payne successfully claimed wrongful and unfair dismissal by reason of breach of contract by the employer in terminating his contract at 62 and therefore not in accordance with its terms. The EAT agreed with the tribunal ruling in an area where there has previously been no clear authority that the normal retirement age cannot be earlier than the contractual retirement age unless the employee consents. Mr Payne's claim was not

prevented by s 109(l)(a) of the Employment Rights Act 1996 (no claim by those who have reached retirement age).

Comment The case is of importance under the Age Regulations because under the regulations a retirement below 65 is forbidden unless the employee consents or the employer can justify it on objective grounds. The *Payne* case shows what will happen if employers do unilaterally retire workers below age 65 and cannot justify it.

Fair dismissal only on planned retirement date

The upper limit for bringing unfair dismissal claims which was 65 has been removed. However, reg 29 states that it will not be unlawful to dismiss an employee who is over 65 where the reason for the dismissal is retirement. For a dismissal on the planned retirement date to be fair regardless of the employee's age an employer who intends to dismiss for retirement must:

- give the employee not more than one year's and not less than six months' notice of the intention to retire him or her; and
- comply with a new duty under Sch 7 to the Age Regulations to notify the employee that he or she has a right to make a request not to retire on the intended date;
- consider a request by an employee to continue working, and meet with the employee within a reasonable time to discuss the request.

If the employer refuses a request to continue working, the employee has a right of appeal and another meeting must be held before the retirement dismissal takes effect. The employee's request must be in writing and made no more than six months nor less than three months before the retirement date. The employee must specify whether the request is to stay on indefinitely, or for a stated period or until a stated date. An employee can make only one request. At the meeting to consider the request the employee has a right to be accompanied by a fellow worker but not a trade union representative. If the fellow worker is not available the employee can postpone the meeting to a date convenient to the parties and within seven days of the date set by the employer. The employer is under no obligation to give a reason for rejecting a request to stay on. It is advisable, however, to do so, since failure to do so may lead to challenges under other discrimination laws, e.g. disability.

Where an employer fails to follow the above procedures, the employee may claim compensation of up to eight weeks' pay, currently capped at £310 per week but normally revised upward every 12 months.

Service-related pay and benefits

Older employees are more likely to qualify for these benefits, e.g. extra holiday entitlement, which might be regarded as discrimination against those of a younger age. To cover this, the Age Regulations include specific exemptions and one general provision as follows:

- nothing will prevent an employer from using length of service up to a maximum of five years as a criterion for awarding benefits, those with less service being denied them;
- the benefits must, however, be awarded to all employees who meet the length of service requirement and whose circumstances are not materially different;
- there is a general exception for all other service-related benefits provided that the employer reasonably believes that awarding benefits in this way fulfils a business need.

Where an employer is following statutory benefits based on age, this is lawful or where he or she is following more generous benefits in the statutory situation based on length of

service, this will be lawful. This will apply in particular to statutory redundancy payments or more generous contractual redundancy payments. The exception covers only benefits based on length of service and not pay or other differentials on the ground of age nor does it extend to experienced-based criteria which may indirectly discriminate and which employers will have to justify objectively.

Other employee rights

- There is now no upper or lower age limit for claiming redundancy payments. The statutory formula will be calculated as before on a 20-year maximum service. These changes are further considered later in this chapter when dealing with redundancy.
- Age discrimination in recruitment will be permitted where candidates have reached 65 or will do so within six months of application.
- As regards pensions, there are special rules in Sch 2 to the Age Regulations so that, for example, it will not be unlawful to fix an age for admission to a pension scheme or for benefits to have different contribution requirements.
- Whenever the dismissal is other than for retirement the statutory dismissal and grievance procedures will apply.

Finally, the Department of Trade and Industry envisages a future where there will be no default retirement age because of trends in life expectancy, and it will review the matter again in 2011.

Asylum and Immigration Act 1996

This Act is relevant in terms of recruitment. It contains provisions designed to prevent illegal working by immigrants, overstayers and those breaching their immigration conditions. Employers must take steps to check the existence (but not the authenticity) of documents such as birth certificates or certificates of registration or naturalisation to prevent illegal working. If such checks have been carried out but nevertheless illegal working occurs, the employer is not liable. Failure to check regarding this responsibility can lead to a fine on the employer of up to £5,000. In the case of a corporate employer, directors and other officers and management of the company may be similarly prosecuted if they have connived at the offence or it has been committed as a result of their neglect. There is no need to check existing employees, who were employed when the legislation came into force.

The Immigration, Asylum and Nationality Act 2006 introduces a scheme of civil penalties including fines on the employer of up to £2,000 per illegal employee and a possible two-year custodial sentence and unlimited fine for those who have knowingly used or exploited illegal workers. This has manifested itself particularly in the cockle picking trade.

The Act does not apply to employees under the age of 16 or to the self-employed or to the clients of agencies in terms of agency workers. Furthermore, the transferee employer is not required to check the status of employees who come to the organisation following a transfer of undertakings.

Criminal records

The government has set up the Criminal Records Bureau (CRB) under the provisions of ss 112–127 of the Police Act 1997. It is put forward as a one-stop shop for those going through recruitment procedures to access a variety of information sources to ascertain criminal records.

There are *standard* disclosures and *enhanced* disclosures and these are wider and intended for those employing persons where the job involves regular contact with children and/or vulnerable persons. There are also *basic* disclosures for all other employments.

Employers have to register with the CRB and there is a charge for each request. This can be paid either by the would-be employer or the applicant. The standard and enhanced disclosures are sent to the applicant and to the employer. Basic disclosures are sent only to the applicant. It is then a matter for the applicant whether he/she shows them to the potential employer. An offer of employment can be legally withdrawn or a promotion refused if there is failure to disclose. Advertisements should state that a request for disclosure will be made. Employers who are registered with the CRB must abide by a code of practice and have a policy with regard to the employment of ex-offenders.

Protection during employment

Once an employee has taken up employment, there are the following safeguards.

The contract of employment

The Employment Rights Act 1996 (ERA) provides that an employee is entitled to one week's notice after one month or more of service. After two years' service, the minimum notice is increased to two weeks, and for each year of service afterwards it is increased by one week, to a maximum of 12 weeks after 12 years' service. The statutory minimum period of notice which an employee must give is one week, irrespective of the period of employment, provided he has been employed for one month. No other period of service is required.

In addition, an employer must give his employee written information about the terms of employment. The statement must be given to employees within two months of starting work but not if the job is for less than one month unless in fact it lasts for more than one month. This statement must contain the names of the employer and the employee; the date when the employment began; whether employment with a previous employer is to be counted as part of the employee's 'continuous period of employment' and, where this is so, the date on which it began (this is important to the employee, for example, in terms of redundancy payments and unfair dismissal); the title of the job, though under the ERA the employer can give a brief job description instead; the scale or rate of remuneration or the method of calculating remuneration; the intervals at which remuneration is paid; any terms and conditions relating to the hours worked, entitlement to holidays and holiday pay, sickness or injury and sick pay, pensions and length of notice. The rules for calculating continuous employment, normal hours and a week's pay are in the ERA.

There must also be a note specifying any disciplinary rules, the name of a person to whom the employee can apply in case of any disciplinary decision or grievance; and the disciplinary and grievance procedures. These procedures are now governed by the Employment Act 2002 and regulations made under it. All employers must include disciplinary and grievance procedures in the statement. These may be the employer's own or the statutory procedures but in any case the statutory procedures will apply and can be used by employees normally where the employer's procedures are inferior. A typical statutory procedure is set out on the facing page.

DISCIPLINARY PROCEDURE

(a) The employer must set out in writing the employee's alleged conduct or characteristics or other circumstances which lead him/her to contemplate dismissing or taking disciplinary action against the employee.
(b) The employer must send the statment, or a copy of it, to the employee and invite the employee to attend a meeting to discuss the matter.

Meeting
(c) The meeting will take place before action is taken except in the case where the disciplinary action consists of suspension.
(d) The meeting must not take place unless –
(i) The employer has informed the employee what the basis was for including in the statement referred to above the ground or grounds that he/she has given in it, and
(ii) the employee has had a reasonable opportunity to consider his response to that information.
(e) The employee must take all reasonable steps to attend the meeting.
(f) After the meeting the employer must inform the employee of his/her decision and notify him/her of the right to appeal against the decision if he/she is not satisfied with it.

Appeal
(g) If the employee does not wish to appeal he/she must inform the employer.
(h) If the employee informs the employer of his/her wish to appeal the employer must invite him/her to attend a further meeting. The employee must take all reasonable steps to attend the meeting.
(i) The appeal meeting need *not* take place before the dismissal or disciplinary action takes effect.
(j) After the appeal meeting the employer must inform the employee of the final decision.

GRIEVANCE PROCEDURE

(a) The employee must set out in writing the grievance and send the statement or copy of it to the employer.

Meeting
(b) The employer must invite the employee to attend a meeting to discuss the grievance.
(c) The meeting must not take place unless –
(i) the employee has informed the employer what the basis for the grievance was when he/she made the above statement, and
(ii) the employer has had a reasonable opportunity to consider his/her response to that information.
(d) The employee must take all reasonable steps to attend the meeting.
(e) After the meeting the employer must inform the employee of his/her decision as to his/her response to the grievance and notify him/her of the right to appeal against the decision if he/she is not satisfied with it.

Appeal
(f) If the employee does not wish to appeal, he/she must inform the employer.
(g) If the employee informs the employer of his/her wish to appeal the employer must invite him/her to attend a further meeting.
(h) The employee must take all reasonable steps to attend the meeting. After the appeal meeting the employer must inform the employee of his/her final decision.

As regards hours worked, it should be borne in mind that the Working Time Regulations 1998 provide for a maximum 48-hour working week averaged over 17 weeks, except where an individual employee has specifically opted out (see below).

Further particulars are required as follows:

(*a*) the duration of temporary contracts;
(*b*) work location or locations;
(*c*) collective agreements with trade unions affecting the job;
(*d*) where the job requires work outside the UK for more than one month, the period of such work; the currency in which the employee will be paid; and any other pay or benefits provided by reason of working outside the UK. Employees who begin work outside the UK within two months of starting the job must have the statement before leaving the UK.

Particulars can be given by instalments, provided all are given within two months. However, there must be a 'principal statement' in one document giving the following information:

(*a*) the identities of the parties;
(*b*) the date when the employment began;
(*c*) where the employment counts as a period of continuous employment with a previous one, a statement that this is so and the date when it began;
(*d*) the amount and frequency of pay, e.g. weekly or monthly;
(*e*) the hours of work;
(*f*) holiday entitlement;
(*g*) job title (or description);
(*h*) work location.

Certain particulars can be given by reference to a document, e.g. a collective agreement with a trade union, but any such document must be readily accessible to the employee. These particulars are pension arrangements, sickness provisions, notice entitlement and details of disciplinary matters and grievance procedures.

An employee who does not receive written particulars or who wants to dispute their accuracy or sufficiency may refer the matter to an employment tribunal. The tribunal may then make a declaration that the employee has a right to a statement and what particulars should be included in it or amended within it. The statement approved by the tribunal is then deemed to have been given by the employer to the employee and will form the basis of his rights.

Section 38 of the Employment Act 2002 provides for tribunals to award monetary compensation to an employee where on a claim being made, e.g. for unfair dismissal it appears that the particulars the employee has received are incomplete or inaccurate. Where this is so the tribunal may increase any award made against the employer by between two and four weeks' pay according to whether the statement is merely inaccurate or has never been issued at all. One or two weeks' pay is also to be awarded where compensation is not a remedy for the particular complaint or is not a remedy chosen by the tribunal as where it awards reinstatement in the job. Formerly there was no monetary penalty on the employer where particulars were incomplete, inaccurate or non-existent.

Exemptions from the written particulars requirements

There are some situations under the ERA where the employer does not have to give the written particulars. Those which may be found in the average business are as follows:

- employees with fully written contracts or letters of engagement containing all the necessary items need not be given also the written particulars;
- as already briefly noted it is not necessary to give an employee written particulars if he or she is employed for a specific job e.g. to clear a backlog of office work which is not expected to last more than one month. If it does last for more than one month, the worker is entitled to written particulars.

It should be noted that the former exception that there was no need for particulars where the employee was the husband or the wife of the employer is repealed as is the exemption formerly available to employers with fewer than 20 employees in regard to particulars of disciplinary procedures. All employers have now to state these in the particulars and the statutory ones are available anyway.

Working time

The Working Time Regulations 1998 (SI 1998/1833) came into force on 1 October 1998. They enact the European Working Time Directive (93/104). From that date there are detailed rules which govern hours of work and entitlement to paid holidays as set out below:

- a maximum 48-hour working week, averaged over 17 weeks, or 26 weeks in some cases (see below);
- at least four weeks of paid annual leave;
- a daily rest period of at least 11 consecutive hours between each working day;
- a weekly rest period of at least 24 hours in each seven-day period. This may be averaged over a two-week period, i.e. a worker is entitled to 48 hours' rest in 14 days, or two periods of 24 hours rest in 14 days;
- an in-work rest break of 20 minutes for those working more than six hours a day. This should not be taken at either the start or the end of a working day and should not overlap with a worker's daily rest period;
- the normal hours of night workers should not exceed an average of eight hours for each 24 hours over a 17-week period.

Who is a worker?

Generally speaking, a worker is a person employed under a contract of service, but the majority of agency workers are included as are trainees who are engaged on work experience. The Regulations also apply in part to domestic employees, though the working time limits do not apply but they are entitled to the rest breaks, rest periods and paid annual leave. Those who are genuinely self-employed are not covered. However, those businesses that take on self-employed workers for contracts of some length could be obliged to offer them holiday pay (see *Wright* v *Redrow Homes (Yorkshire) Ltd* [2004] 3 All ER 98, where self-employed bricklayers engaged by Redrow succeeded in a claim for holiday pay, having been engaged in some cases for a seven-month period). Developers and contractors would appear to be most involved.

Partners are not included since they own the firm. Salaried partners are if, as is usually the case, they are regarded in law as employees.

What is working time?

Working time is defined by the Working Time Regulations (WTR) as when a worker is working at his employer's disposal and carrying out his duty or activities. *Training time* is included but, according to DTI Guidance, time when a worker is 'on call' but is otherwise free to pursue

his own activities or is sleeping would not be working time. Lunch breaks spent at leisure would not be working time, but working lunches and working breakfasts would be. Travelling to and from a place of work is unlikely to be working time. The Regulations usefully allow workers or their representatives and employers to make agreements to add to the definition of working time.

Following the ruling of the ECJ in *Sindicato de Médicos de Asistencia Pública (Simap)* v *Conselleria de Sanidad y Consumo de la Generalidad Valenciana* Case C-303/98 [2001] All ER (EC) 609, it can be taken that overtime is working time and so is on call time where workers are obliged to be at their place of work to be ready to provide services immediately to the undertaking.

Can the WTR apply to a non-worker?

In *Kigass Aero Components* v *Brown* [2002] IRLR 312 the Employment Appeal Tribunal ruled that an employee who had been off work for a considerable time with a longstanding back injury was entitled under the 1988 Regulations to be paid the statutory holiday pay due to him *even though his entitlement had accumulated while he was not working*. It appeared from this decision that so long as workers are on the payroll they can build up holiday-pay entitlement even though they are not actually at work.

However, in *Inland Revenue Commissioners* v *Ainsworth* [2005] IRLR 465 the Court of Appeal held that *Kigass* was wrongly decided and was overruled. A worker on long-term sick leave is not entitled to four weeks' annual leave in a year when he or she has not been able to work, so that a claim for holiday pay must fail.

The 48-hour week

The law does not say that employees cannot work more than 48 hours in any one week. The 48-hour limit is averaged over a 'reference period' which will generally be a 17-week rolling period, in the absence of any other agreement. This gives a certain amount of flexibility for businesses to cope with surges in demand, so long as the average over the whole reference per period is not exceeded.

The reference period may be increased to 26 weeks if the worker is a special case, as in hospital work, or where there is a foreseeable surge of activity as in agriculture, tourism and postal services. The reference period can be increased to 52 weeks by a workforce agreement (see below) or by individual agreement with the employer (see below).

A High Court judge has ruled that all contracts of employment should be read as providing that an employee should not work more than an average of 48 hours in any week during the 17-week working time reference period, unless the relevant employee has opted out in writing. The judge also ruled that if the average hours are equalled or exceeded during the reference period, an employee may refuse to work *at all* during the remainder of the period until the working hours come down to the required level (see *Barber and Others* v *RJB Mining (UK) Ltd* [1999] 613 IRLB 16).

Mr Justice Gage gave his ruling in a case brought by five members of the pit deputies' union NACODS against RJB Mining, their employer. They had all been required to carry on working, although they had all worked in excess of 816 hours in the 17-week reference period. The judge also granted them an injunction (breach of which by the employer could lead to sanctions of contempt of court) to the effect that they could refuse to work any more during a 17-week reference period where the 48-hour average had been equalled or exceeded. The decision could present a number of employers with major problems, particularly in terms of staff in key areas. They could face the prospect of a number

of workers being able to refuse to do any more work until their hours came down to the required level.

Paid annual leave

The entitlement is to four weeks of paid leave. Leave under the Regulations is not additional to contractual entitlements so that taking contractual paid leave in a particular leave year counts against the worker's entitlement under the Regulations. In the absence of any agreement, the employer can require a worker to take all or any of the leave at specified times, subject to giving the worker notice of at least twice the period of the leave to be taken. The worker is also required to give notice to the employer of the wish to take leave. The notice period must again be at least twice the period of leave to be taken.

A week's leave is the equivalent to the time a worker would work in a week. A full-time worker working five days a week is entitled to 20 days' leave. A part-time worker working two days a week would have a right to eight days of leave. Where the work is expressed in hours, annual leave may be so expressed, e.g. a worker works 24 hours a week and gets 96 hours leave entitlement. The leave cannot be replaced with a payment in lieu except on termination of employment.

Furthermore, the ECJ has decided that workers who do not take all of their minimum four weeks' leave during a given year must be allowed to carry it forward to the next year. In the same case the ECJ gave a confirmatory ruling that to give pay in lieu of minimum holiday leave is illegal. The basis of the rulings is that minimum leave must actually be taken for health and safety reasons (see Case C-12/405 *Netherlands Federation of Trade Unions* v *Dutch Government*).

Leave in the first year

The four weeks (or 20 days) of leave accrue during the first year of employment. After six months of the leave year therefore an employee is entitled to 10 days' paid leave and fractionally less at earlier stages of employment.

Leave in advance of entitlement

There is no harm in allowing employees to take leave in excess of the accrued entitlement but unless there is a provision in the contract of employment an employer cannot recover holiday pay where the relevant leave has been taken in advance of accrued entitlement and the worker resigns before he or she has accrued the necessary leave to match the leave actually taken (see *Hill* v *Chapell* (2002) EAT/1250/01).

Miss Hill gave in her resignation after taking 15 days holiday in six months of the leave year. Her contract had no provision about recovery of holiday pay in this situation and the EAT turned down the employer's claim for it.

This is an aspect of the WTR that should be considered by employers when making employment contracts. It is often convenient to allow leave to be taken in advance of entitlement. However, the contract of employment should allow recovery of any excessive sum of holiday pay where, e.g. the employee resigns before completing the necessary entitlement period.

If a worker's employment ends he/she has a right to be paid for leave accrued but not taken. This applies even where an employee is fairly dismissed (see *Witley and District Men's Club* v *Mackay* [2001] IRLR 595) where the dismissal was for dishonesty.

It should be noted that leave does not accrue on a pro-rata basis after the first year. All this means is that the worker is not obliged to wait until holiday has accrued before being allowed to take it. Of course, problems such as those seen in the *Hill* case above will arise but may be provided for in the contract of employment.

Paying a rolled-up rate

Calculating the various leave entitlements of a workforce is a time-consuming job for the employer and some have resorted to paying a rolled-up rate by including a proportion of holiday pay with the weekly or monthly basic pay.

In a number of conjoined appeals from the UK Court of Appeal, the ECJ ruled that rolled-up pay was unlawful. However, where the employer has *before the ruling* operated a system of rolled-up pay and the payments have been made in a transparent and comprehensible manner so that the worker can identify what is pay and what is holiday pay, the pay can be set off against future leave entitlement. However, *after that* an employer must not proceed with further rolled-up pay payments. The Department of Trade and Industry has also issued a statement to a similar effect: contracts must be renegotiated for the future.

The ECJ ruling is to be found in *Robinson-Steele* v *RD Retail Services Ltd*; *Clarke* v *Frank Steddon Ltd*; *Caulfield* v *Marshalls Clay Products Ltd* [2006] All ER (D) 195 (Oct).

Length of night work

Night work is presumed to be work between 11 pm and 6 am, unless otherwise defined by agreement.

Excluded sectors

The Regulations, other than those parts which apply to young workers (see below), were not applied to workers employed in the following sectors:

- air transport;
- rail;
- road transport;
- sea transport;
- inland waterway and lake transport;
- sea fishing;
- other work at sea, e.g. offshore work in the oil and gas industry.

In this connection, the *Working Time (Amendment) Regulations 2003 came into force on 1 August 2003*. They cover the above sectors but disapplying the following in regard to them:

- the average 48 hour working week;
- four weeks' paid annual holiday;
- rest breaks;
- health assessments for night workers; and
- an eight-hour limit on night working;
- the 1998 regulations are disapplied in their entirety in the case of seafarers, workers on board sea-going fishing vessels and workers on certain ships and hovercraft on inland waterways.

Although the WTR are applied to the police and armed services there will clearly be times when their working time cannot be measured or predetermined and in these situations they will be exempt from the WTR under the derogation mentioned below.

Other derogations

As regards road transport, the Road Transport (Working Time) Regulations 2005 now give working time protection for all mobile workers (in general, drivers and crew travelling

in vehicles that are subject to tachograph requirements), such as goods vehicles over 3.5 tonnes, coaches and inter-urban bus services. The Regulations cover mobile workers in the haulage industry and those who work for companies with their own transport section and agency drivers.

Employees whose working time is not measured or predetermined are exempt from the provisions relating to the 48-hour week, daily and weekly rest periods, rest breaks and limits on night work but not the holiday provisions. Examples given in the WTR include 'managing executives or other persons with autonomous decision making powers, family workers and ministers of religion'. This seems to be a very limited exception that will only cover individuals who can choose the hours which they work. It is not likely to cover professional staff who have core hours but work additional hours as required. Since the definition is not entirely clear, employers would be advised to make the position clear by agreement.

A salaried partner, although a 'worker', may well be exempt under this head since he/she will not normally have core hours.

Collective and workforce agreements

The Regulations allow employers to modify or exclude the rules relating to night work, daily and weekly rest periods and rest breaks and extend the reference period in relation to the 48-hour week – *but not the 48-hour week itself* – by way of agreement as follows:

- a collective agreement between an independent trade union and the employer (or an employers' association);
- a workforce agreement with representatives of the relevant workforce *or if there are 20 workers or fewer the agreement may be with a majority of the workforce which obviates the need to elect worker representatives*. As regards worker representatives, these may be representatives elected for other purposes, e.g. health and safety consultation;
- for, e.g., technical reasons or reasons concerning the organisation of work the 17-week averaging period may be extended by up to 52 weeks by a collective workforce agreement;
- individuals may also choose to agree with their employer to work in excess of the 48-hour weekly time limit. *This is all that an individual agreement can cover*;
- this individual agreement must be in writing and must allow the worker to bring the agreement to an end. The agreement may specify a notice period of up to three months and if no period of notice is specified, only seven days' notice by the employee is required. The worker must give written notice to the employer;
- in addition, a workforce agreement may apply to the whole of the workforce or to a group of workers within it.

These agreements can only last for a maximum of five years before renewal.

Records

In outline the position is as follows:

- An employer must keep adequate records to show that he has complied with the weekly working time limit. The records must be kept for two years. It is up to the employer to determine what records must be kept. Pay records may adequately demonstrate a worker's working hours.
- Similar provisions apply in regard to records showing that the limits on night work are being complied with. Records need not be kept in regard to rest periods and in-work rest breaks nor in regard to paid annual leave.