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Contested Time: Family-Friendly Working Time Policy in Germany and the United Kingdom (1997-2005)

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Abstract

Access to family-friendly working time arrangements is unequally spread both within and between workplaces, leaving many working parents with difficulties in combining employment with family responsibilities. The British and German governments have started to address this problem, but have done so in different ways. Focusing on time allocation in the work/family interface and its implications for gender and employment relations, this thesis explores the differences between the British and German government strategies to improve access to family-friendly working time arrangements for working parents, and how variation can be explained. As the flexibility requirements of employers and employees often diverge and can be in conflict, the thesis further investigates to what extent the German and British policy strategies were designed to empower working parents to access the time flexibility they need. It applies an empowerment perspective to the analysis of policy choice and design and draws on the policy making literature to analyse cross-national variation.

Between 1997 and 2005, the incoming centre-left New Labour and ‘Red-Green’ governments both introduced information campaigns and employment rights to improve access. The lack of economic incentives for the provision and take-up of family-friendly working time arrangements reduced the overall empowering potential of the British and German strategies. Although similar at the level of policy choice, employment rights and information campaigns varied at the level of policy design with different implications for access. The thesis concludes that family-friendly working time policy did not achieve a significant redistribution of control over working time to employees in either of the two countries. This can be in part explained by a strong employer lobby and opportunities to influence policy choice and design, but also by the ‘competitive advantage’ of childcare services over family-friendly working time policy, directing government resources to more ‘employer-friendly’ reconciliation policies.

Table of contents

DECLARATION	2
ABSTRACT	3
TABLE OF CONTENTS	4
LIST OF FIGURES	8
LIST OF TABLES	8
ACKNOWLEDGEMENTS	9
LIST OF ACRONYMS	10
1. INTRODUCTION	12
I. The reconciliation of work and family life on government agendas	14
II. The role of government policy in facilitating work-family reconciliation	17
III. Family-friendly working time arrangements: a definition	20
IV. Research Design	25
Research question and analytical approach.....	25
Scope of the study.....	27
Research methods and data collection	28
The comparative framework and choice of countries	31
V. The structure of the thesis	36
2. ACCESS TO FAMILY-FRIENDLY WORKING TIME ARRANGEMENTS IN GERMANY AND THE UNITED KINGDOM	38
I. Reconciliation choices and government policy in the late 1990s	39
The gendered allocation of time to earning and caring.....	39
Government policy and work-family arrangements	43
Reconciliation policies in the United Kingdom	43
Reconciliation policies in Germany.....	46
II. Access inequality in the British and German working time regimes	50
European working time policy.....	51
Statutory regulation of working time at the national level.....	52
Collective bargaining over family-friendly working time arrangements.....	53
Family-friendly working time arrangements at the level of the workplace.....	58

Variation in provision across workplaces	58
Barriers to the provision of family-friendly working time arrangements	61
Access variation within workplaces and the role of workplace culture	63
Conclusions.....	66
3. A FRAMEWORK FOR COMPARATIVE ANALYSIS.....	70
I. A framework for the comparison of policy choice and design	72
1. The government’s ‘tool kit’: instrument choice.....	72
Regulation.....	73
Economic means	74
Information	75
The basis of division: degree of authoritative force / empowerment.....	76
Policy packages.....	77
2. The devil lies in the detail: comparing policy design	79
1. Breadth of coverage	79
2. Precision of targeting	80
3. Scope of employee control over working time flexibility	80
4. Enforceability.....	81
5. Opportunity costs.....	82
II. Analysing variation in instrument choice and design.....	84
Conclusions.....	95
4. FAMILY-FRIENDLY WORKING TIME POLICY IN THE UNITED KINGDOM	98
I. 1997 to 2001 – New Labour’s first term in office.....	99
The Work-Life Balance Campaign	101
Family-friendly employment rights	102
The Work and Parents Review 2000: to legislate or not to legislate?.....	105
II. 2001 to 2005 – New Labour’s second term in office.....	109
The right to request flexible working.....	109
‘Time to care’ through paid family leave.....	111
‘Time to work’ through the externalisation of care	111
Family-friendly working time and the issue of long hours	113
Extending a ‘toothless right’	114
‘Time to care’ versus ‘time to work’: variation over the care cycle.....	116
III. Policy choices over time: from best practice promotion to the regulation of best practice.....	120
Continuity on the path of voluntary best practice promotion	121
Regulating ‘best practice’	123
The absence of economic incentives.....	125
Conclusions.....	128

5. FAMILY-FRIENDLY WORKING TIME POLICY IN GERMANY	131
I. 1998 to 2002 - the ‘Red-Green’ Coalition’s first term in office	132
The Alliance for Jobs, Training and Competitiveness	132
The Part-time Work and Fixed-term Contracts Act	134
Parental Leave Reform	136
The reform of the Works Constitutions Act	139
Family-friendly working time in the context of equal opportunities	140
II. 2002 to 2005 - the ‘Red-Green’ Coalition’s second term in office	144
The Alliance for the Family	146
‘Time to work’ through the Day Care Expansion Act	148
From ‘time to care’ to ‘time to work’: towards a facilitation of dual-earner/dual-carer arrangements	151
III. Policy choices over time: via regulation back to information	153
The regulatory drive during the first years in office	154
No less than a u-turn: the return to best practice	156
Conclusions	160
British and German policy strategies compared	162
6. EMPLOYMENT RIGHTS IN COMPARATIVE PERSPECTIVE	165
I. Policy Design	167
1. Breadth of coverage	167
2. Precision of targeting	174
3. The scope of employee control over working time flexibility	176
4. Enforceability	181
5. Opportunity costs	189
The empowering potential of employment rights	192
II. Explaining variations in policy design	195
Trade-off 1: Inclusion on the basis of employee characteristics versus employer characteristics	195
Trade-off 2: Substantive flexibility versus procedural control and enforceability	198
Conclusions	201
7. INFORMATION CAMPAIGNS IN COMPARATIVE PERSPECTIVE	203
I. Policy Design	205
1. Breadth of coverage	205
2. Precision of targeting	208
3. The scope of employee control over working time flexibility	215
4. Enforceability	219
5. Opportunity costs	223
The empowering potential of information campaigns	225
II. Explaining variation in policy design	228

Conclusions.....	234
8. CONCLUSIONS AND IMPLICATIONS FOR RESEARCH AND POLICY.....	236
Summary and key findings	237
(1) What policy strategies were pursued?	237
What work-family arrangements were facilitated by family-friendly working time policy?	238
(2) What were the differences in the empowering potential to working mothers and fathers?	240
(3) Why did the British and German policy strategies differ?	242
Reflections on the comparative framework.....	247
Implications for further research and policy	250
APPENDIX A: LIST OF INTERVIEWS	253
APPENDIX B: LIST OF INFORMANTS	254
APPENDIX C: EMPLOYERS FOR WORK-LIFE BALANCE.....	255
APPENDIX D: MINISTERIAL ADVISORY COMMITTEE ON WORK-LIFE BALANCE	256
APPENDIX E: WORK AND PARENTS TASKFORCE.....	257
APPENDIX F: ALLIANCE FOR THE FAMILY	259
APPENDIX G: FLEXIBLE WORKING ARRANGEMENTS	260
REFERENCES.....	261

List of Figures

Figure 1: Alternative policy solutions to address the problem of work-family reconciliation	18
Figure 2: Examples of flexible working time arrangements.....	21
Figure 3: Policy examples by type of instrument category.....	76
Figure 4: The empowering potential of the governing effort by instrument types	77
Figure 5: Factors influencing policy choice and design	95
Figure 6: Summary of the comparative framework	96
Figure 7: Family-friendly working time policy in the UK, 1997-2005	119
Figure 8: The 'empowering potential' of the British policy strategy over time.....	127
Figure 9: Family-friendly working time policy in Germany, 1998-2005	153
Figure 10: The 'empowering potential' of the German policy strategy over time.....	160
Figure 11: Breadth of Coverage	168
Figure 12: Scope of employee control over working time flexibility.....	177
Figure 13: Enforceability	182
Figure 14: Opportunity Costs.....	190
Figure 15: The empowering potential of employment rights.....	193
Figure 16: Inversed Empowerment Trade-offs	195

List of Tables

Table 1: Women's employment rates and gender employment gap by the presence and age of child, 1998.....	40
Table 2: Actual and preferred employment patterns among couple families with a child under six, 1998.....	40
Table 3: Actual and preferred hours of work of men and women with and without children in the same household, 1998.....	41

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List of Acronyms

ACAS	Advisory Conciliation and Arbitration Service
AFSFJ	Ausschuss für Familie, Senioren, Frauen und Jugend (Select Committee for the Family, Senior Citizens, Women and Youth)
AG	Aktiengesellschaft (incorporated company)
ArbZG	Arbeitszeitgesetz (Working Time Act)
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände (Confederation of German Employers' Associations)
BDI	Bundesverband der Deutschen Industrie (Federation of German Industries)
BERR	Department for Business, Enterprise and Regulatory Reform
BERzGG	Bundeserziehungsgeldgesetz (Federal Child Raising Benefit Act)
BetrVG	Betriebsverfassungsgesetz (Works Constitutions Act)
BMAS	Bundesministerium für Arbeit und Soziales (Federal Ministry for Labour and Social Affairs)
BMFSFJ	Bundesministerium für Familie, Senioren, Frauen und Jugend (Federal Ministry for the Family, Senior Citizens, Women and Youth)
BR	Bayern (Bavaria)
BT-Drs.	Bundestagsdrucksache (Bundestag Printed Paper)
BT-PL.	Bundestags Plenarprotokoll (Bundestag Plenary Protocol)
BUrlG	Bundesurlaubsgesetz (Federal Vacation Act)
CAB	Citizens Advice Bureau
CAC	Central Arbitration Committee
CBI	Confederation of British Industry
CDU	Christlich Demokratische Union Deutschlands (Christian Democratic Union of Germany)
CEDAW	Committee on the Elimination of All Forms of Discrimination against Women
CIPD	Chartered Institute of Personnel and Development
Cm	Command Paper
COM	European Commission Communication
DE	Deutschland (Germany)
DfEE	Department for Education and Employment
DfES	Department for Education and Skills
DGB	Deutscher Gewerkschaftsbund (Confederation of German Trade Unions)
DIHK	Deutscher Industrie- und Handelskammertag (German Chambers of Industry and Commerce)
DM	Deutsche Mark (currency)
DTI	Department of Trade and Industry
EC	European Commission
EEC	European Economic Community
EIROnline	European Industrial Relations Observatory on-line
EOC	Equal Opportunities Commission
EU	European Union
FDP	Freie Demokratische Partei Deutschlands (Free Democratic Party of Germany)
FFG	Frauenförderungsgesetz (Women's Promotion Act for the Public Sector and the Federal Courts)

FSB	Federation of Small Businesses
FT	Full-time
GDP	Gross Domestic Product
GleiBG	Gleichberechtigungsgesetz (Law for the Enforcement of Equal Rights for Women and Men)
HBV	Gewerkschaft Handel, Banken und Versicherungen (Trade, Banks and Insurances Union)
HC Deb	House of Commons Debate
HM Treasury	Her Majesty's Treasury
IAB	Institut für Arbeitsmarkt- und Berufsforschung (Institute for Labour Market and Employment Resesarch)
Ibid.	Latin, short for ibidem, "the same place"
IG BCE	Industriegewerkschaft Bergbau, Chemie, Energie (Mining, Chemical and Energy Industrial Union)
Int. De	Interview in Germany
Int. UK	Interview in the United Kingdom
IT	Information Technology
KJHG	Kinder- und Jugendhilfegesetz (Child and Youth Support Act)
NHS	National Health Service
NICHD	National Institute of Child Health and Human Development
OECD	Organisation for Economic Co-operation and Development
PISA	Programme for International Student Assessment
PT	Part-time
Q	Question
SC Deb	Select Committee Debate
SDA	Sex Discrimination Act
SGB 4	Sozialgesetzbuch 4 (Social Acts 4)
SI	Statutory Instrument
SMP	Statutory Maternity Pay
SPD	Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany)
TAG	Tagesbetreuungsausbaugesetz (Day Care Expansion Act)
TUC	Trades Union Congress
TzBfG	Teilzeit- und Befristungsgesetz (Part-time Employment and Fixed-term Contracts Act)
UK	United Kingdom
UN	United Nations
USDAW	Union of Shop, Distributive and Allied Workers
WERS	Workplace Employment Relations Survey
WPT	Work and Parents Taskforce
WSI	Wirtschafts- und Sozialwissenschaftliches Institut der Hans-Böckler-Stiftung (Institute of Economic and Social Research of the Hans Böckler Foundation)
ZDH	Zentralverband des Deutschen Handwerks (German Confederation of Skilled Crafts)

1. Introduction

European welfare states face the challenge of how to maintain and improve economic competitiveness in the face of rapid globalisation and technological change and at the same time ensure the welfare of their citizens. Demographic change is one of the main challenges European societies are facing in the 21st century. Low fertility rates and longer life expectancies lead to populating ageing. Predictions expect a fall in the size of the working-age population (15-64 years) of the 25 EU Member States by 48 million by 2050. The dependency ratio is expected to double and to reach 51 per cent by 2050, which means that the European Union will change from having four to only two persons of working age for each citizen aged 65 and above (COM (2006) 571 final p.4). In response to the demographic challenge, the European Commission has advocated to promote *demographic renewal* in Europe by encouraging families to have the number of children they desire (Ibid.). Demographic change requires:

efforts to allow those men and women who wish to work and to raise families to have children without having to sacrifice their careers, by promoting gender equality and by facilitating the reconciliation of work, family and private life, taking into consideration the equal participation of fathers in family tasks (Council of the European Union 2007 p.2).

The example of demographic change illustrates that while it is in the long-term interest of welfare states to promote the reconciliation of work and family life, it is not necessarily in the immediate interest of employers, whose managerial decisions tend to be directed by short-term objectives. In theory, there are benefits to employers that have been associated with the provision of workplace support for working parents, such as improved recruitment and employee retention and a reduction in casual absenteeism (Bevan et al. 1999). The Organisation for Economic Co-operation and Development (OECD) doubts however that the ‘business case alone can be relied upon to spread family-friendly workplaces more widely’ (OECD 2007 p.170). There is concern that ‘if the provision of workplace support were left to individual and collective bargaining, such support will be restricted to a few measures [...] and groups of workers in certain sectors’ (Ibid.). This creates access inequalities, which, if left unaddressed by government policy, constrain working parents in their attempt to reconcile work and family life and might discourage them from having the number of children they desire.

The aim of this thesis is to explore how this problem of unequal access has been addressed by government policy. On the basis of qualitative research on national government policy in two European Member States, Germany and the United Kingdom, the formulation and design of government strategies to improve access to family-friendly working time arrangements is analysed. Family-friendly working time policy - as such policy strategies are referred to in this thesis - is a showcase of the tensions between family and business interests as control over working time is contested. Employers want to retain managerial freedom over the organisation of work in order to be able to flexibly respond to market fluctuations. Working parents on the other hand wish to have greater flexibility in their working hours in order to be able to adjust their work and family schedules.

The family-friendly organisation of working time - as an issue for government policy - therefore provides an interesting platform to analyse the way governments deal with the challenge of accommodating conflicting interests while pursuing their own policy goals. Governments further face the challenge of having only limited capacity to directly influence the organisation of working time. Unlike financial transfers to families or services, which can be directly provided through the welfare state system, flexible working hours are subject to negotiation between employers and employees and are therefore beyond the direct control of government. Governments wanting to increase access to family-friendly working time arrangements thus face the challenge of steering from a distance, by trying to persuade employers to provide flexibility, or by empowering employees to negotiate the flexibility they need with their employer.

The following sections of this chapter outline the growing importance of work-family reconciliation on political agendas (I), and discuss the role of government policy in the distribution of time, money and services to working parents (II). Working time flexibility is very important to parents trying to reconcile work and family life. However, flexible working arrangements can be employer-driven. Therefore a certain degree of control over working time flexibility by the employee is a necessary criterion for family-friendly working time arrangements, which are defined in the third section (III), followed by a discussion the research questions, scope of the study and research design (IV). The final part of the chapter presents the thesis structure (V).

I. The reconciliation of work and family life on government agendas

The need to reconcile work and family responsibilities has been defined as a ‘new social risk’ in post-industrial, mature welfare states (Taylor-Gooby 2004; Bonoli 2005; Armingeon and Bonoli 2006). Those unable to juggle work and care are at risk of poverty and social exclusion. Policy measures improving the compatibility of work and care have moved to the core of social policy agendas, and from feminist scholarship to the mainstream of social policy research (Korpi 2000; Esping-Andersen 2002; Bonoli 2006). In the early 2000s, the compatibility of paid employment and care has been a crucial issue on both European Union and domestic policy agendas. In the past, the British and German governments considered the negotiation of working time flexibility as the responsibility, and right, of management and labour, whose collective bargaining autonomy over the terms and conditions of employment was institutionally protected (O’Reilly and Spee 1998; Anxo and O’Reilly 2000). Governments did not consider it their appropriate role to interfere. Since the mid 1990s, however, this attitude has changed. Both governments have started to promote a more family-friendly organisation of work in the broader context of creating a supportive infrastructure for the reconciliation of paid work and family responsibilities. In attempting to interfere in the realm of working time, they were faced with employer resistance, institutional constraints and ideational conflict over the neo-liberal claim that state interference in (labour) market mechanisms has a negative impact on employment, economic growth and global competitiveness (DIHK 2001; Lea 2001). What triggered the reconceptualisation of working time flexibility from an issue best left to management and labour to agree on, to an issue that governments should also address? Why did the issue of family-unfriendly working time practices become a ‘problem’ on policy agendas?

One answer to these questions lies in the pressures created by social, demographic, and economic developments (Hantrais 2004). Over the past decades, women’s education and professional qualification levels in Europe have increased strongly. Female labour market participation rates have risen continually since the 1960s aided by the progressive dismantling of formal institutional constraints to women’s educational and professional opportunities relative to men’s through the outlawing of sex discrimination in education and employment (Hakim 2000). Women’s growing share in employment, rising educational attainment, effective control of their fertility and

growing career aspirations has been paralleled by a decline in birth rates, rising divorce rates, and changing family structures (OECD 2007). These developments are accumulating in child-poor and ageing societies, particularly in Germany (Pack et al. 2000). In the UK, growing numbers of children are affected by poverty, many of whom are growing up in single-parent families (Sutherland 2002). These social and demographic developments in turn have led to political scares of ‘demographic time bombs’ looming over shrinking future generations. These are faced with problems such as high dependency ratios, labour shortages, and rising pension and health care costs that are associated with ageing societies, threatening the sustainability of the welfare state. Child poverty and labour market barriers for parents, especially single parents lacking access to a breadwinner in the family, have increased concerns about social exclusion in the UK (DSS 1999). In both countries, these developments have both fuelled and necessitated the continuously growing number of women in employment.

The use of women’s human capital and labour force is of growing economic and political importance as their inclusion in the national labour and talent pool is called for in response to demographically anticipated labour shortages (Rürup and Gruescu 2003). Their contribution to national social security and insurance funds is needed in the face of rising dependency ratios (Barr 2001). Women’s own career aspirations and desire for economic independence have grown (Hakim 2000). A minority of families express a preference for the traditional ‘male breadwinner’ family arrangement (OECD 2001a). With falling wages and rising living standard aspirations, many families cannot afford the income of a single breadwinner. In consequence, the proportion of dual-earner families has continually grown over the years, increasing the number of workers with substantial care responsibilities.

Despite women’s attraction to employment, and attractiveness as workers, comparatively little has changed in the unequal distribution of family care responsibilities (Gershuny et al. 1994; Gershuny and Sullivan 2003). Women still shoulder a disproportionate share of unpaid family care and household chores (Sullivan 2000). The unequal sharing of paid employment and unpaid family work between men and women, long identified as a fundamental barrier to gender equality by feminist scholars, was for a long time considered a private family decision by the British and German governments (Daly 2000; Scheiwe 2000; Daly and Rake 2003). The

importance of women's labour force participation raised the question of what governments can do to facilitate the reconciliation of paid work and family care responsibilities increasingly preoccupies policy makers at the European and national level. The 'problem' of work-family reconciliation has moved from being considered a private problem solved by the family, to being defined as a societal problem, which, if left unaddressed, will incur significant societal costs. These include a growing dependency ratio through falling birth rates, strain on social security systems, social exclusion and child poverty. While the recognition of the problematic of unsupportive framework conditions and the prevailing unequal gender division of labour are not new revelations in the political sphere, the issues had hitherto largely been confined to the social justice (gender equality) agenda and remained marginal to mainstream politics. The economic dimensions of the reconciliation problem, however, which have received growing attention since the late 1990s, have helped to push the reconciliation of paid work and family responsibilities to the centre stage of political agendas (Rürup and Gruescu 2003; Stratigaki 2004). The policy goal of increasing the provision of family leaves and childcare services, for instance, has been incorporated into European Employment Guidelines and National Action Plans (European Commission 1998).

The reconciliation of paid work and family responsibilities can be at once defined as a policy goal in its own right, and as a means to reaching other societal goals (OECD 2002). In its own right, successful work-family reconciliation enables individuals to 'increase the living standard for their family, fulfil individual aspirations to have both a career and family, and to give their children the care and support they need' (OECD 2002 p.3). Its importance to policy makers lies in the fact that the reconciliation of work and family life is instrumental to reaching a number of other policy goals. In the UK, for instance, it was fundamental to New Labour's social inclusion and poverty reduction agendas (HM Treasury 2004a). In Germany, gender equality considerations and later demographic change, in particular growing childlessness among qualified women and the related macro-economic implications, were major policy justifications for government intervention for an improvement of work-family reconciliation (Rürup and Gruescu 2003; Bertram et al. 2005). How government policy can provide support through the allocation of resources, providing both 'time to care' and 'time to work' is subject of the following section.

II. The role of government policy in facilitating work-family reconciliation

Government policies aimed at facilitating the reconciliation of paid work and family life, referred to hereafter as ‘reconciliation policies’, address two essential functions of the family: to provide economic security and care for its members. In modern welfare states, the dual function of economic provision - in today’s society mainly through the engagement in paid employment - and the provision of care for children, the sick, disabled and the elderly are shared between members of family units on the one hand, and between individuals, the state, the market and civil society on the other hand (O’Connor et al. 1999). Reconciliation policies can provide the resources needed in order to combine paid work with family care. The comparative welfare state literature focusing on the work/family interface commonly includes financial transfers (Daly 2000; Dingeldey 2000; Montanari 2000), entitlements to family leaves (Bruning and Plantenga 1999; Leitner 2003b), the provision or funding of child and elder care services (Anttonen and Sipilä 1996; Lewis 1998; Mahon 2002; Bettio and Plantenga 2004) and the regulation of working time (Gornick and Meyers 2003; Gornick and Heron 2006) as key elements of reconciliation policy. These elements can be summarised under three resource categories: ‘time’, ‘money’, and ‘services’. These resources have been identified as crucial dimensions in securing an individual’s ‘genuine choice’ to engage in paid work and/or unpaid care (Lewis 2006 p.111).

By modifying the availability of resources to families, reconciliation policies can influence the choices individuals make with regard to how much *time* they allocate to care and to work (Gornick and Meyers 2003). ‘Time’ is a useful analytical tool for the analysis of the work/family interface (Pillinger 2000). In the context of work-family reconciliation, time can be conceptually divided into ‘*time to work*’ and ‘*time to care*’ (Knijn and Kremer 1997; Gornick and Meyers 2003). At one extreme of providing ‘time to care’ stand family leave policies which imply a temporary withdrawal from work and the re-allocation of time from paid work to family care. At the other extreme, ‘time to work’ is provided through the externalisation of care from the parent to someone else, enabling employment on a full-time basis. Family-friendly working time policy is located in between those two solutions, as it aims to provide both ‘time to care’ and ‘time to work’ for working parents through the reduction of working time and/or flexible working time scheduling, thereby enabling a flexible adjustment of work and care responsibilities. This conceptualisation makes it possible

to indicate the degree to which either the unpaid care within the family or the employment participation of individuals with family responsibilities is prioritised. Figure 1 illustrates alternative policy options along a continuum ranging from ‘time to care’ to ‘time to work’ orientations. Although both ‘time to care’ and ‘time to work’ resources are necessary for genuine choice in the allocation of time to working and caring, in the practice of policy making, they often are *competing* rather than *complementary* policy solutions to the problem of work-family reconciliation. Government resources are rarely allocated equally across the continuum, leading to certain work-family arrangements to be more facilitated than others.

Figure 1: Alternative policy solutions to address the problem of work-family reconciliation

Policy orientation	‘Time to care’	←————→	‘Time to work’
Policy example	Family leave	Family-friendly working time policy	Care Services
Associated work-family arrangement	Breadwinner/family carer model	Dual-earner / dual-carer model	Dual-earner/ externalised care model

The distinction between ‘time to care’ and ‘time to work’ policy orientations is associated with different models of work-family reconciliation which are distinguished in the comparative feminist gender regime literature (Lewis 1992; Sainsbury 1994a; Crompton 1999; Gornick and Meyers 2003; Leitner 2003b). The literature commonly distinguishes between a strict gender division of labour at one extreme, where women assume full responsibility for family care in the home supported by the financial income of a full-time male breadwinner, and an adult worker model (Lewis 2001a; Lewis and Guillari 2005), or dual-breadwinner model (Crompton 1999), at the other extreme, where family care is externalised to such an extent that individuals with care responsibilities are able to engage in full-time employment. Between these two extremes lies the ‘dual-earner/dual-carer’ model in which both men and women assume both earning and caring responsibilities (Crompton 1999). This work-family arrangement makes the equal sharing of work and care responsibilities between men and women, and a more equal allocation of time possible, and therefore represents an ideal-typical reconciliation scenario viewed from a gender equality perspective (Fraser 1997; Rubery et al. 1998). Family-friendly working time policy can serve this ideal-

typical gender arrangement if it is aimed at increasing men's share in family care. Where is it targeted solely at enabling women's labour market participation through the externalisation of care rather than equal sharing of care between men and women, family-friendly working time policy serves a shift towards the dual-earner/externalised care model, thereby failing to address gender equity in family care (Threlfall 2000). The way resources are distributed indicates which option is encouraged.

Time as a 'resource' needed for both paid work and unpaid care does not exist independently. It is created by being backed up either by money or by care for individuals within the family unit enabling reallocation of time from one to the other. A worker who through her or his gainful employment provides economically for the family can only 'afford' to divert some or all of the time otherwise engaged in paid work towards unpaid care, if the financial needs of the family are otherwise met. The dedication of time to unpaid family care can be supported through the division of responsibilities within the family unit, if another family member provides the financial income needed (spouse or parent), through financial transfers from insurance funds (health or care insurance), employers (work-related benefits), or the state (via the benefit and taxation channels). The state is only one of many resource providers within the complex net of family-state-employer-market relations. However, in its ability to allocate resources universally, irrespective of family constellations, employment relations, and market provisions, government policy can go some way to redress structural constraints on choice based on the unequal access to resources.

This thesis focuses on the role of government policy in improving individual access to, and employer provision of, family-friendly working time arrangements. Although there has been a trend towards a more flexible organisation of working time over the past decades, this development has not always been to the benefit of employees, particularly for workers with care responsibilities. The following section explores the role of working time flexibility in the reconciliation of work and family life. It highlights the contested nature of working time flexibility between employer and employee interests and derives a definition of family-friendly working time arrangements.

III. Family-friendly working time arrangements: a definition

Working time flexibility is important for parents as it can provide both *time* to meet family responsibilities and *flexibility* to adjust working hours to the particular timing of family schedules, synchronising with the opening hours of day care facilities, doctor appointments, school plays, or family emergencies (Rürup and Gruescu 2005). In a German study on the expectations of working parents towards their employers, 36% of women and 28% of men with care responsibilities saw the greatest need for action in terms of providing family-friendly flexible working hours (Klenner 2004a). The possibility of starting work half an hour later in the mornings to be able to drop the children at the nursery before driving to work prevents what could otherwise be an insurmountable time clash of work and care demands. The possibility of working part-time hours in the mornings allows large numbers of mothers of school age children to be at home when their children come home from school. While the focus here lies on working parents and their time needs in reconciling work with family responsibilities, flexible working time arrangements also benefit workers without caring responsibilities who want to reduce work stress for health reasons or in transition to retirement, or who want to have time for other activities such as education or training, voluntary work and their social life (Jones 2003).

Working time flexibility can be defined in relation to the given working time norm, such as a standard, full-time, '9-5' working day, or a 'Monday to Friday' working week. What is considered the norm, or working time standard, has varied over time, and also differs between industrial sectors, workplaces and across countries (Linne 2002; DIHK 2004). The European Working Conditions Survey 2000 defined a 'standard weekdays' work schedule as daytime, under 10 hours and excluding weekend work (European Foundation for the Improvement of Living and Working Conditions 2003). Even though the notion of 'normal' working time cannot be generalised across industrial sectors and societies, it serves as a heuristic reference point for defining 'flexible' working time arrangements. Flexible working time arrangements deviate from this norm either in terms of *length* of working hours, that is working more, or less, hours than what is defined as the standard amount, or in terms of the *distribution* of working hours, for instance where the regular number of hours is worked, but at different times of the day, or on different days of the week, month or

year. Figure 2 provides an overview of the types of flexible working time arrangements¹.

Figure 2: Examples of flexible working time arrangements

VARIATION IN THE LENGTH OF WORKING TIME	VARIATION IN THE DISTRIBUTION OF WORKING TIME
Overtime	Flexible start and finishing times
Temporary reduced hours working	Staggered working hours
Job sharing	Time off in lieu
Part-time work	Compressed working week
	Shift work
	Week-end working
	Annualised hours (Term-time working)

While the increase in flexibility in both length and distribution of working hours creates opportunities for work-family reconciliation, these flexibility gains have not always been in the interest of employees. Working time practices have undergone a transition to increasingly flexible working hours over recent decades, ranging from very short to very long hours, and a flexible distribution of working hours across the day, week, month or even year. The growth in part-time employment over the past decades has been an important development in terms of providing individuals with caring responsibilities with the option of entering employment or re-allocating time from employment to family care. However, the shift from full-time to part-time employment often implies a ‘part-time penalty’ that goes beyond the pro-rata reduction in income (Equal Opportunities Commission 2005b). Compared to full-time workers, part-time workers face penalisation in terms of career progression, and until recent statutory reforms, part-time workers did not have the same access as full time workers to occupational pensions, and other benefits such as access to training (O’Reilly and Fagan 1998; Ginn et al. 2001). The availability of part-time employment predominates in low-status, low-paid jobs and is still relatively rare in management and the professions, with the result that many working parents who decide to reduce the time dedicated to paid work have to quit their jobs and work under their potential and qualification (Equal Opportunities Commission 2005a). Part-time employment is heavily gendered as it has predominantly been adopted in female-dominated job areas

¹ For definitions for each form of flexible working time arrangements consult Appendix G.

while male-dominated sectors rely on overtime and new shift patterns for working time flexibility (see for example Smith et al. 1998 p.52; O'Reilly and Bothfeld 2002; Equal Opportunities Commission 2005b). Where women's part-time opportunities come at the cost of low earnings, the loss of earnings is often compensated by very long hours worked by men assuming the primary bread-winning role in the family.

Flexible work schedules which involve shift working, evening, nights and week-end work can in some cases facilitate care arrangements within the family by enabling 'split-shift' parenting where parents work alternating shifts and take turns in childcare (Presser 1999). However, where family members are not available for childcare, shift, evening and week-end workers can face incompatibility between their work schedules and the operation hours of childcare providers (Le Bihan and Martin 2004). Further, a growing body of research is pointing to the detrimental effects on marriage and family life where work increasingly intrudes the traditional periods of 'family' or 'social' time (La Valle et al. 2002; Presser 1999, 2003).

The growing flexibility of business and working hours has also increased expectations towards employees to be flexibly available for work (Perrons 1999). This has a negative impact on the predictability of working time, and also blurs the boundaries between work and non-work time (Rubery et al. 2005). New technologies such as email, remote desktop access via the internet, and mobile phones, allows work to increasingly intrude into private life at the same time as creating opportunities for working from home or away from one's usual place of work. One of the consequences is that employees are increasingly 'on call' and expected to keep up with their emails during their free time or to answer work-related phone calls. The timing of the intrusion of work demands becomes unpredictable (Everingham 2002). The advance planning of care arrangements, however, requires the predictability of working hours (European Commission 2000; Le Bihan and Martin 2004).

The literature reviewed indicates that flexibility gains in working practices are a mixed blessing for working parents. Individuals may choose to work very short or long hours, at unsociable times if these working time patterns allow them to better adjust employment responsibilities with their care responsibilities. Overtime and atypical work schedules can however have a detrimental effect on work-family compatibility if the length and distribution of working hours is not oriented at the reconciliation needs of employees but dictated by business needs. Long working hours, 'unsocial schedules'

(long days or working during the evening/night) and high work intensity have been shown to have a negative effect on work-family reconciliation (Fagan and Burchell 2002). The ambiguous role of working time flexibility for working parents is due to the fact that working time flexibility is not always conducive to the reconciliation of employment and care responsibilities. As Pärnänen and colleagues put it:

To an individual, flexibility can mean both desirable and undesirable working time arrangements. At best, it offers the employee the possibility to adjust his/her working hours to suit personal and family needs. At worst, it means that one has to be flexible – work harder, longer and at inconvenient times – to meet the demands of the employer, without having a say oneself (Pärnänen et al. 2005 p.11)

The flexibility requirements of employers and employees often diverge and can be in conflict (European Commission 2000). It is therefore important to define the criteria which distinguish employee-oriented from employer-oriented working time flexibility² to arrive at a definition of family-friendly working time arrangements. Employer-oriented flexibility, which is adjusted to market fluctuations, operational requirements, and client needs rather than the time preferences of the employee, is beyond the control of employees and does not take their time needs into consideration. In contrast, employee-oriented working time flexibility implies that working time is arranged to meet the time needs of the employee. It implies that employees have a certain degree of *control* over the type of variation from the standard working time (Berg et al. 2004), be it in terms of the number of hours (working more or less hours) or in terms of their distribution (for example flexible start and finishing times, flexible distribution of working hours over the working week, month or year). Working time predictability, as well as flexibility, is an important issue to consider when defining employee-oriented working time arrangements (Le Bihan and Martin 2004; Rürup and Gruescu 2005). Predictability of working hours means that work schedules do not change at short notice and are known to the employee well in advance (Pärnänen et al. 2005).

Based on these defining characteristics, family-friendly working time arrangements shall be defined as: *employee-oriented working time arrangements that provide working parents with the time, flexibility, and predictability needed in their effort to reconcile employment with family responsibilities.*

² From the perspective of employees, Pärnänen et al (2005) distinguish between positive and negative flexibility where positive flexibility refers to the possibility of using flexible working time for one's own needs, whereas negative flexibility is dictated by one's tasks or supervisor.

Family-friendly working time arrangements include reduced working hours (part-time, term-time working, school hours working, voluntary reduction of hours, job sharing) and changed work schedules (flexi-time, compressed working week, annualised hours, staggered working hours, shift working, time off in lieu). Discussions of family-friendly working time arrangements often include alternative work locations (home or tele-working) as these also contribute to employee control over their working time as well as periods of family-related leave. Family leaves are for the purpose of this thesis excluded from the definition of family-friendly working time arrangements as they represent a temporary exit from employment rather than facilitating the simultaneous combination of employment with care responsibilities.

In this thesis, the term *family-friendly* working time is used to highlight the particular relevance of employee-oriented working time arrangements for working parents. The use of the term 'family-friendly' has become subject to debate in the literature. Increasingly, it is being replaced by the term 'work-life balance' which refers more broadly to a balance between work and private life, irrespective of the presence of caring responsibilities (DfEE 2000a), or 'work/personal life integration' (Rapoport et al. 2002), which is being advocated to replace the misleading term 'balance'. This more holistic approach is associated with the growing demand for universal access to flexible working arrangements and a concern for both work-family 'backlash' and the marginalisation of flexible workers through 'mommy tracks' (Lewis 1997; Young 1999). As the time needs of working parents are of concern in this thesis, the term 'family-friendly' seems more suitable than work-life balance.

The discussion of the diverging time interests between employers and employees has highlighted that in addition to gender arrangements in the allocation of time to earning and caring, power relations in the workplace play a key role in determining individual access to family-friendly working time arrangements. Family-friendly working time arrangements are a key resource facilitating the reconciliation of work and family life. However, access is constrained by a number of factors, not all of which are always or adequately addressed by government policy.

Within the context of work-family reconciliation, the focus of this thesis lies on the policy strategies pursued by the German and British governments to increase access to family-friendly working time arrangements, the design of which can have important implications for both gender and employment relations. The next section specifies the

research questions of this thesis and the analytical approach chosen to address them. This is then followed by a section on data collection. Finally, the choice of a cross-national two-country comparison, the choice of countries and the time frame of analysis are explained.

IV. Research Design

Research question and analytical approach

The research presented in this thesis has been guided by the following research question:

What policy strategies did the British and German governments pursue to improve access to family-friendly working time arrangements, in what ways did they differ, and why?

The first component of the research question is exploratory. As family-friendly working time policy developed as a new policy field in both Germany and the United Kingdom, the first objective of the thesis was to explore how the two governments addressed the problem of insufficient and unequal access to family-friendly working time arrangements in the face of conflicting interest group demands. In the policy debates preceding policy formation and implementation, the question of the appropriate policy strategy used to achieve greater family-friendliness was contested. The choice between regulating change through legislation or encouraging voluntary change through information and persuasion, rather than coercion, was subject to fierce policy debate and polarised interest group positions (CBI 2001; TUC 2001; Wilson and Harris 2001). Drawing on the instrument choice literature (Woodside 1986; Linder and Peters 1989; Vedung 2003), policy strategies were explored by surveying the government resources employed, differentiating, following Vedung (2003), between legislative reforms (regulation), financial incentives (economic means) and information campaigns (information) (see Chapter Three).

Through allocating reconciliation resources of ‘time’, ‘money’, and ‘services’, government policy facilitates either male-breadwinner/female carer, dual-earner/dual-carer or dual-earner/externalised care arrangements (Crompton 1999; Lewis 2001a).

Within the wider context of reconciliation policy packages of which family-friendly working time policy was part, the thesis explores:

What work-family arrangements were facilitated by family-friendly working time policy?

The second component of the research question, which aims to analyse the ways in which the British and German policy strategies differed, is comparative. Given the contested nature of working time flexibility between business and family time demands, the comparative analysis seeks to find out the potential of the different approaches to enable working parents to exert more control over working time flexibility. The difference between the two strategies is analysed in terms of their empowering potential:

What were the differences in the empowering potential to working mothers and fathers?

Five comparative indicators were developed to enable a systematic comparison of the ‘empowering potential’ of individual policy measures indicating the degree of ‘family-friendliness’ of family-friendly working time policy (see Chapter Three). These five Empowerment Criteria explore who benefits (*breadth of coverage*), whether policies address working parents directly or via intermediary actors (*precision of targeting*), the degree to which working parents have control over the type of flexibility of their working time arrangements (*scope of employee control over working time flexibility*), whether employee preferences can be enforced in the face of employer opposition (*enforceability*), and finally, whether policies address the opportunity costs attached to flexible working time arrangements, such as detrimental treatment or financial loss (*opportunity costs*). The framework is applied to two comparative case-studies of policy design. Chapter Six analyses the empowering potential of the design of German and British employment rights followed by the comparative analysis of information campaigns in Chapter Seven. These cases were chosen because they fall into distinct instrument categories - regulation and information - and they represent two distinct targeting strategies. Employment rights are directly targeted at working parents, whereas the information campaigns were addressed at employers, encouraging voluntary provision of family-friendly working time arrangements.

The third component of the research question which aims to find out why the policy strategies differed is explanatory. It seeks explanations for variation in the empowering potential of family-friendly working time policy strategies. Over-time changes in the 'empowering potential' of policy strategies as well as cross-national variation are explained with reference to the ideas and interests of actors involved in the policy process, and the nature of interactions between them. Policy makers mediate between conflicting societal interests which either favour or oppose empowering interventions. Yet, they are not neutral but share the wider 'normative and cognitive frames' with societal actors, with whom they interact (Surel 2000). Two propositions derived from the policy making literature guide the analysis of policy choices: first, policy makers are assumed to be more likely to opt for policy instruments which are congruent with their wider normative and cognitive frames, and second, policy makers are assumed to be more likely to accommodate interest group demands if they are in a relationship of interdependence. While policy choices are driven by the ideas and interests of actors, they are mediated by first, the policy context within which choices are made, which consists of both the policy legacies on which new policy builds and the policy goals which it serves, and second, the institutional context within which actors operate and which shapes the opportunities of different actors to influence policy (Hecló 1974; Immergut 1992).

Scope of the study

There are limits to the scope of this investigation which need to be clarified. The analysis focuses on government policy aimed at improving access to family-friendly working time arrangements at the workplace level. It is limited to national government policy. Although regional and local governments play an important role in advancing family-friendly workplace policies through information services and cooperation with local employers, a differentiated analysis of these levels of government would have gone beyond the manageable scope of this thesis and was therefore excluded. The analytical focus lies on policy formulation and design. The investigation of policy implementation at the workplace level and access implications for working parents in terms of policy outcomes are not subject of this study.

The analysis of family-friendly working time policy focuses on policies directed at parents. Flexible working time arrangements are important to all workers with care

responsibilities including caring for ill and frail relatives, friends and neighbours. Many of the arguments made in this thesis have broader relevance for these groups of carers. However, in order to contain the scope of reconciliation policies for comparative analysis, only those policies targeted at parents were included. The primary concern of this thesis relates to the time needs of employed parents. Policies directed at parents who are currently excluded from employment due to the lack of flexible working time arrangements and childcare services were not included in the policy analysis. Having formulated the research questions and clarified the scope of this study, the next section discusses the data base of this research.

Research methods and data collection

The primary research conducted for this thesis consisted in documentary analysis complemented by 32 expert interviews with policymakers and stakeholders, 16 in each country. In order to increase the validity and reliability of the interpretations made, a number of different data sources were used, following the principle of research triangulation (Bryman 2001).

Access to data sources varied strongly by policy type, linked to the different policy processes associated with their development. In both countries, the development of regulation through the parliamentary process was formally documented. Parliamentary minutes, Bills and regulations, select committee reports, and public hearings were available for download from government websites³. The use of economic means, such as tax allowances or benefits was traceable through the publications of annual budgets as well as government publications on family policy developments. More difficulty was encountered in accessing information on the development of information campaigns. Contrary to statutory legislation, information campaigns were developed by civil servants at the level of government departments. Documentary evidence on the development process was internal and not released for research purposes. Personal interviews with civil servants and stakeholders were used to obtain information on the process of policy development as well as its content, which was then complemented by the analysis of government publications such as consultation papers, policy statements and press releases.

³ For Germany, www.bundestag.de and www.parliament.uk for the United Kingdom.

A multitude of actors both within and outside government were involved in the process of policy formulation, instrument selection and design. Different policy making practices in each country led to different constellations of actors to be involved in the policy making process. I identified actors who were involved in the development of family-friendly working time policy on the basis on their documented involvement in the policy making process. This included civil servants in charge of developing policy programmes in the relevant government departments, ministers and members of parliament who participated in parliamentary debates, select committees, and public consultations. Interest groups and experts involved in the process were identified on the basis of their documented contributions such as consultation responses, policy positions, research reports, policy recommendations, and oral evidence during the process. Actors were further identified on the basis of their participation in various advisory committees, taskforces, and alliances (Appendices C-F).

Actor perceptions and policy preferences were analysed through a wide range of documentary data sources. Web site materials, press releases, newsletters, position statements, discussion papers, consultation responses and oral and written evidence to parliamentary hearings were analysed in view of identifying the respective policy preferences of political parties and interest groups. Discourse oriented analysts have emphasised the strategic use of political discourse which can mask real underlying intentions (Fischer 2003). Therefore, the strategic context within which policy preferences were expressed, and consistency of preferences across several sources, was carefully considered in the analysis.

Expert interviews were conducted with two categories of actors involved in the policy making process: first, government actors (civil servants, Members of Parliament) who were involved in the policy making process either in the relevant government departments or parliamentary committees and second, non-governmental actors (experts, interest group representatives) who were involved in the process of policy formulation and design through participation in advisory committees, taskforces, and alliances.

Relevant parliamentary actors were identified through parliamentary minutes and select committee reports, including members of the governing and opposition parties. Civil servants were identified by contacting the relevant government departments. Relevant non-governmental actors were identified through consultation responses, and

participation in advisory committees which included the main business organisations, trade unions, and family and women organisations. Interview partners in the UK were chosen among those individuals who were directly involved in the policy making process. The UK Government set up the Advisory Committee on Work-Life Balance and the Work and Parents Taskforce representing key interest groups. As membership on those groups was published, it was possible to identify the participants. In Germany, the interest groups involved in the relevant policy measures could be identified through joint statements and press releases. The respective work-life balance/flexible working experts were contacted for interview by e-mail with follow-up phone calls. In the UK, none of the politicians contacted were available for interview. The analysis of their policy preferences was consequently based on transcripts of speeches and parliamentary minutes. In Germany, two Members of Parliament were available for interview, but in neither country government ministers could be interviewed. Interviews with policy makers therefore covered primarily civil servants who had participated in the design of policy measures. Overall, three civil servants were available for interview in the UK, and 13 interest group representatives compared to two Members of Parliament, one political party representative, six civil servants and seven interest group representatives in Germany. The full list of interviews is included in Appendix A.

Interviews were conducted between July 2005 and October 2006 either face-to-face (in 25 cases) or over the telephone, where this was more convenient to interviewees (in seven cases). The length of interviews varied from twenty minutes to over two hours. All interviews were semi-structured with customised interview guidelines. Interviews were recorded and in the majority transcribed, coded and organised for analysis using the qualitative research and data analysis software NVivo. In order to protect the anonymity of the interviewees, I have treated the information obtained through interviews primarily to close gaps in my understandings and to verify the plausibility of my interpretations based on documentary evidence and the secondary literature. As far as possible I have refrained from directly quoting interviewees, as their identity could be easily traced even if not directly named in the text. Therefore I have largely treated my interview data for triangulation purposes citing as far as possible from published sources. All interviewees were assured anonymity in the text and have agreed to be listed in the list of informants in Appendix B.

Background research on the organisation of care and working time in comparative perspective included European labour force data (Eurostat New Cronos), the European Employment Options of the Future and Working Conditions surveys (Fagan et al. 2001; Bielenski et al. 2002; Fagan and Burchell 2002) and work-life balance surveys (Hogarth et al. 2001; Flüter-Hoffmann and Solbrig 2003; Woodland et al. 2003; Flüter-Hoffmann and Seyda 2006; Riedmann et al. 2006). Aggregate data on the coverage of employee representation was drawn from the Workplace Employee Relations Survey series in the UK, from 1998 and 2004, which has included more questions on work-life balance and family-friendly employment measures in the recent round (Cully et al. 1999; Kersley et al. 2006). For the German case, data from establishment surveys by the Institute for Labour Market and Employment Research (IAB) and the Works and Staff Council surveys by the Institute of Economic and Social Research (WSI) were used (Klenner and Lindecke 2003). The European Industrial Relations Observatory has produced a number of comparative surveys which provided a useful data source for better understanding of the role trade unions and other structures of employee representation in the promotion of family-friendly working conditions (www.eurofound.europa.eu/eiro).

Having discussed the analytical and methodological approach pursued to address the research questions guiding this research, the following section outlines the rationale for adopting a comparative, cross-national research perspective and explains the choice of countries as well as the time frame considered.

The comparative framework and choice of countries

Cross-national comparisons have become increasingly popular in social policy research. Comparative studies tend to either cover a small number of cases in reasonable depth, or a large number of cases. In the latter case, comparisons are generally based on statistical methods, conceptualising countries as representing a particular set of quantifiable variables such as levels of GDP, social spending or income inequality rates (Clasen 2003 p.94). With reference to Ragin (1991) Clasen points out that the analyses within such 'large-n' studies are constructed as co-variations between generally few variables, while countries as entities beyond these variables tend to disappear.

In contrast, 'small-n' studies tend to treat countries as multi-dimensional backgrounds for comparing the content of, or change within, particular social policy programmes or welfare states as a whole. In other words, the latter type of research conceptualises national social policies as embedded within different, and not always quantifiable, social, political, economic, cultural and ideological contexts which impinge on the shape and impact of particular policies (Clasen 2003 p.95).

This is the approach chosen for the present study, focusing on two national case studies.

The merit of a two-country framework as it is applied in this thesis deserves emphasis. Working with a small set of units allows the researcher to examine national patterns in greater detail and to focus attention on the complexities of small scale as well as large-scale variations (Daly 2000 p.12). In the context of research on the welfare state, studying two cases in detail is a release from the constraints of 'ideal types' and allows to be 'less concerned with neatness of fit and more with the messy and stubborn practices encountered in social reality' (Ibid.). While allowing the comparison to be detailed, a two-country framework retains the advantages of cross-national comparison, 'adding a certain degree of rigour by forcing concepts to travel across national frontiers, and compels us to develop a more complex argumentation' (Ibid.). The cross-national comparison of policy design permits the researcher to point to variations along certain analytical dimensions such as, in the present study, the policy orientations towards certain gender arrangements in the allocation of time to paid work and unpaid care, and the relative empowerment of employees to negotiate flexible working time arrangements.

One of the most prominent problems with the 'many variables, small n' design, however, is the problem of having to face a multiplicity of possible explanatory variables with only a limited set of evidence, leading to the problem of over-determination (Przeworski and Teune 1970). Findings of small-n studies cannot easily be generalised. A cross-national perspective also adds to the methodological problems of comparative research generally, such as generating comparable data, identifying appropriate concepts which can be applied across countries and achieving a sufficient sensitivity towards the different historical and cultural contexts in which national social policies are embedded (Clasen 2003).

Why compare Germany and the UK specifically? When choosing cases for comparative research, researchers are confronted with the need to justify their choices

(Mau 2003 p.55). The selection of a limited number of cases often follows the logic of a 'most similar systems' design based on the belief that systems as similar as possible with respect to as many features as possible constitute the optimal sample for comparative inquiry. Such a design anticipates that if some important differences are found among those otherwise similar countries, then the number of factors that can be attributed to these differences will be sufficiently small to warrant explanation in terms of those differences alone (Przeworski and Teune 1970 p.3). In this ideal conception, common systemic variables are conceived of as 'controlled for' whereas inter-systemic differences are viewed as explanatory variables.

To the extent to which variables across systems can be 'controlled for', there are a number of interesting parallels between Germany and the UK, which make these two countries attractive cases for the present comparison. First, both countries are members of the European Union and subject to provisions of the Treaty of Amsterdam. European Union policy directives and guidelines influence employment, working time, and equal opportunities policies at the national level (Hantrais 2000).

Second, both countries have been classified as strong male breadwinner regimes which are currently transforming (Lewis 1992; 2001a; Annesley 2003). Whilst classified as corporatist and liberal welfare regimes in Esping-Andersen's welfare regime typology (Esping-Andersen 1990), they have been, albeit for different reasons:

similarly residual [...] as regards family services. Liberals view servicing as a natural market activity, as an individual responsibility; conservatives insist that it be the prerogative of the families (Esping-Andersen 1999 p.83).

In the absence of comprehensive day care provision many British and German women work part-time (Fagan et al. 2001). In European comparison, both countries are characterised by significant gender gaps in working time, due to an above-average female part-time employment share and above-average male working hours (Bielenski et al. 2002).

Third, the two countries show political parallels in the recent past. Family policy in both countries has recently started to shift from implicitly assuming the male breadwinner family model, with a policy focus on financial support, towards actively supporting dual-earner families through policy packages in support of work-family reconciliation. Work-family reconciliation is no longer considered a private family matter, but is now explicitly supported by government policy, such as through the

creation and funding of childcare places and an emphasis on reducing employment barriers through family-friendly working arrangements. Both countries have recently introduced employment rights to working time reduction to increase access to family-friendly working time arrangements (Gornick and Meyers 2003; Hegewisch 2005; Fagan et al. 2006), making them useful case studies for comparison. This shift in policy orientation has broadly coincided with the coming to power of centre-left parties in 1997 (UK) and 1998 (Germany), in both cases succeeding four legislative periods of Conservative/Liberal governments in the 1980s and 1990s. Both Tony Blair's New Labour Government and Gerhard Schröder's 'Red-Green' Coalition Government were re-elected in 2001 and 2002 respectively.

The parallel change in government in the two countries 'controls' for temporal factors such as the high reform urge which can be expected from both incoming parties following 18 and 16 years in opposition boosted by high expectations for new policy reforms by the electorate towards the incoming parties (Bonoli 2005). In this respect, the general elections in 1997 and 1998 represent a 'critical juncture' in both countries opening a 'window of opportunity' (Kingdon 1995) for policy reform. The change in government from the political centre-right to the political centre-left allowed for new party ideas on the family, care and employment, to shape policy agendas. The much discussed Blair/Schröder paper in 1999 outlining the 'new centre/third way' approach illustrates the shared understanding regarding the overall direction of welfare reform in the two countries (Clasen 2005). This is the broader ideational context within which reconciliation policies, including family-friendly working time policy, were pursued since the late 1990s.

Germany and the UK differ, however, when compared on the basis of their national political economies, industrial relations systems and working time regimes (Esping-Andersen 1990; Crouch 1992; Crouch and Streeck 1997; Hollingsworth and Boyer 1998; Rubery et al. 1998; Anxo and O'Reilly 2000; Hall and Soskice 2001; Pierson 2001; Clasen 2005). Hall and Soskice characterised the UK as a liberal market economy, whereas Germany represents the prototype of a coordinated market economy (Hall and Soskice 2001). With particular reference to working time regimes, O'Reilly and Spee distinguished Germany and the UK by their different responses to the challenge created by the growth of working time flexibility. Germany was classified as a system of 'negotiated flexibility' involving the social partners where 'a moderate

level of statutory regulation [...] leaves room for a strong tradition of ‘free’ collective bargaining’ (O’Reilly and Spee 1998 p.265). The UK in contrast was classified as a system of ‘externally constrained voluntarism’ on the basis of its historically inherited industrial relations institutions emphasising free collective bargaining and a minimal but universal benefits system (O’Reilly and Spee 1998 p. 270-71), which has responded to the challenge of flexibility in a more liberal tradition. This liberal tradition, it appears, is associated with longer working time regimes. Rubery and colleagues classified countries according to how different aspects of working-time regulation and practices constitute a tendency for long working hours and high levels of unsocial hours working in a given country. Based on working time data from the mid-1990s, they classified Germany as having a moderate working time regime, whereas the UK was classified as a particularly long working time regime (Rubery et al. 1998). Chapter Two further elaborates on the differences in employment relations and working time negotiation and their impact on access to family-friendly working time arrangements.

The time frame delimited for the comparative analysis of government policy spans over the two first terms of the New Labour Government between 1997 and 2005 and the two terms of the ‘Red-Green’ Coalition Government from 1998 to 2005. Although family-friendly working time flexibility was a subject of political debate throughout the 1990s, it was under New Labour and the ‘Red-Green’ Coalition governments that significant policy reforms were brought underway, notably the introduction of employment rights in 2001 (Germany) and 2003 (UK). Furthermore, it was in 1997 that the UK agreed to end the opt-out from the European Social Policy Protocol so that EU policy provisions applied to both countries during the time span considered. Due to the change in government in Germany in 2005, it was decided to place the cut-off point there to control for the influence of the ideas of political parties. In order to place the policy developments since the change of governments in the late 1990s in historical context, relevant policy developments throughout the 1980s and 1990s were included in the analysis.

V. The structure of the thesis

Chapter Two discusses concerns of access inequality arising from the uneven spread of family-friendly working time arrangements between and within workplaces, drawing on an interdisciplinary literature review. The chapter further provides an account of the different policy legacies in the areas of working time regulation, employment relations and reconciliation policies in the two countries, providing different starting points for policy development under the incoming New Labour and ‘Red-Green’ governments in the late 1990s.

Chapter Three develops the comparative framework for the analysis of family-friendly working time policy, which revolves around the concept of empowerment. It is structured in two parts: the first part explains the method of comparison, deriving five criteria from the literature which are used to indicate the ‘empowerment potential’ of a given policy strategy. The second part of the chapter discusses the explanatory approach for the analysis of cross-national variation in policy choice and design derived from the political science literature. Particular explanatory relevance is attributed to the ideas and interest of actors and the policy goals which family-friendly working time policy is intended to serve, varying opportunities for actors to influence policy choice and design within nationally specific institutional settings, and the different policy legacies into which new policy developments are integrated.

Chapters Four and Five provide a chronological analysis of the development of family-friendly working time policy over time, contextualising policy choices within their wider policy agendas, particularly within the wider policy packages developed to improve the reconciliation of work and family life. They trace the process of agenda setting and policy formation, analyse the policy preferences of policy makers and stakeholders, and trace the choices between persuasion and regulation, cooperative and authoritative state-business relations between 1997 and 2005.

While similar policy instruments are used to promote the provision and use of family-friendly working time arrangements, there are considerable variations in policy design which are analysed in depth in Chapters Six and Seven. Using the case studies of employment rights in Chapter Six and information campaigns in Chapter Seven, differences in policy design and implications for the empowering potential are

systematically compared through the five Empowerment Criteria developed in Chapter Three. Similarities and differences between policy measures identified in the first part of the chapters are then explained in the second part.

Chapter Eight recapitulates the research questions and discusses the main findings of the thesis. The usefulness of the comparative framework applied in this thesis is reflected upon and the implications for further research and policy are discussed.

2. Access to family-friendly working time arrangements in Germany and the United Kingdom

Access to family-friendly working time arrangements is an important resource for working parents trying to combine earning and caring responsibilities. Control over working time flexibility however is contested between employers and employees whose time needs can be in conflict (Berg et al. 2004). In the absence of universal state regulation, access to family-friendly working time arrangements is primarily subject to negotiations between employers and employees, and their representatives. Asymmetrical power relations in the employment relationship imply that flexibility in working patterns is predominantly directed by business needs. Workplace practices that do not flexibly accommodate the time needs of working parents represent a structural barrier to the successful reconciliation of work and family life, as not all working parents who need flexible working hours to accommodate care needs have access to them. Access inequalities result in some parents withdrawing from employment due to incompatibility of their jobs with the time requirements of their children, and other parents experiencing work-family conflict, where the time requirements of employment negatively affect family life and child well-being (La Valle et al. 2002). The aim of this chapter is to contextualise the access problematic within the British and German national and temporal contexts in the late 1990s in order to provide an overview of access inequalities in the two countries and of the different starting points for policy development under New Labour in the UK and the ‘Red-Green’ Coalition Government in Germany who took office in 1997 and 1998 respectively.

The chapter is structured in two parts. Following a brief discussion of the gendered nature of work-family reconciliation patterns of parents in Germany and the UK, the first part of the chapter reviews the policy legacies inherited by the incoming governments. This policy review traces the origin of family-friendly working time policy within the wider policy approaches to work-family reconciliation by the British and German Conservative/Liberal governments in the 1980s and 1990s. Neither approach proactively encouraged the labour market participation of mothers. Although the importance of family-friendly working practices for parents was recognised by both governments, policy interventions were limited to information dissemination through brochures and conferences. Neither of the two countries universally regulated

access to family-friendly working time arrangements, and access inequalities between and within workplaces were not systematically addressed.

The second part of the chapter explores the nature and origin of access inequalities in the German and British working time regimes, moving beyond the structuring role of government policy to understand how access to family-friendly working time arrangements is determined in the absence of universal state regulation. Working time regulation and negotiation spans across different levels at which a range of actors are involved and interact with each other. In order to gain an understanding of the nature and determinants of access inequality, the relative role of these different levels and actors in providing access to family-friendly working time arrangements is discussed, drawing on the industrial relations literature and work-family research. The discussion moves from the European Union policy level, via national regulation and sectoral collective bargaining down to the level of the workplace and points to the relative role of each level and negotiation practice in shaping access to family-friendly working time arrangements. Drawing on the secondary literature, research evidence on the cultural and structural causes of access inequalities both between and within workplaces is presented.

I. Reconciliation choices and government policy in the late 1990s

The gendered allocation of time to earning and caring

Men and women differ in their time allocation to caring and earning and have different time needs. Women are less likely to be in employment than men, and those in employment work fewer average hours (Fagan 2001). Women take on the primary responsibility for family care and dedicate more time to family care than men (Sullivan 2000). Family responsibilities therefore affect their labour market participation patterns more strongly than men's. In European comparison, the gender gap in working hours for both German (9.9) and British (12.0) employees is above European average (of 8.5 hours) (Bielenski et al. 2002). Women tend to reallocate time from employment to unpaid care when they become mothers, whereas fathers are more likely to remain employed, and to work long hours to assume the main breadwinning role for the family. Many women (temporarily) leave employment to care for their children full-time, especially when these are young. This traditional gender arrangement is clearly

illustrated by the stark difference of over 30 percentage points in the gender employment gap between childless employees and parents of children under three (Table 1). Many women return to work as their children grow older, but their employment rates remain lower than those of childless women and significantly lower than those of fathers. As many mothers in Germany and the UK return to employment on a part-time basis, the time allocation between work and care remains highly gendered among working parents. Men, who assume the main breadwinning role, compensate women's reduced contribution to earnings through longer working hours.

Table 1: Women's employment rates and gender employment gap by the presence and age of child, 1998

	No children		Child (0-2)		Child (3-5)		Child (6-14)	
	Employ. Rate	Gender Gap	Employ. Rate	Gender Gap	Employ. Rate	Gender Gap	Employ. Rate	Gender Gap
DE	76.5	3.8	55.7	34.6	59.1	30.3	69.9	18.2
U K	81.5	1.5	60.0	32	61.9	26.4	73.3	13.2

Base: Persons aged 20-49; Source: European Labour Force Survey, Eurostat New Cronos 1998

A complete exit from employment to care for their children full-time is for many women not the preferred family arrangement. The gap between actual and preferred time allocation and reconciliation patterns has been highlighted by data from the European Employment Options for the Future Survey, conducted in 1998. Table 2 indicates that many parents are dissatisfied with the strong gender polarisation in working time associated with the traditional male breadwinner/female carer model.

Table 2: Actual and preferred employment patterns among couple families with a child under six, 1998

	UK actual	UK preferred	Germany actual	Germany preferred
Man FT, Woman FT	24.9	21.3	15.7	32.0
Man FT, Woman PT	31.9	41.8	23.1	42.9
Man FT, Woman not employed	32.8	13.3	52.3	5.7
Other Combination	10.4	23.6	8.9	19.4

Source: European Employment Options for the Future survey (OECD 2001b Table 4.3, p.136); FT= full-time; PT= part-time

Over 40 per cent of families would prefer a ‘modernised’ male breadwinner arrangement with women working part-time rather than not being employed. The discrepancy between actual and preferred reconciliation choices is strongest in Germany. In 52.3 per cent of couple families with a pre-school child, mothers were not employed, which was the preferred reconciliation choice for only 5.7 per cent of families. Although working women still shoulder the bulk of unpaid household and care work (Gershuny et al. 1994; Sullivan 2000; OECD 2001a; Statistisches Bundesamt 2003), pressure on men to increase their share in unpaid work has grown, and the gender time gap in unpaid family work has slightly narrowed over time (Gershuny 2000; Sullivan 2000; Yeung et al. 2001). The actual gender division in time allocation, however, still lags behind more gender egalitarian attitudes (Beckmann 2002). Increasingly, fathers desire to play a more active part in the upbringing of their children and to participate more fully in family life (Lewis 2000). Table 3 illustrates that fathers would prefer significantly shorter working hours than they currently work.

Table 3: Actual and preferred hours of work of men and women with and without children in the same household, 1998

	With children in the same household			Without children in the same household		
	Current hours	Preferred hours	Difference	Current hours	Preferred hours	Difference
UK (men)	46.9	38.3	-8.5	40.6	36.6	-4.1
UK (women)	28.3	25.8	-2.7	34.3	30.8	-4.2
DE (men)	43.4	37.4	-6.1	40.8	36.2	-4.7
DE (women)	28.9	27.8	-1.2	35.4	32.2	-3.3

Base: Dependent Employees; Source: Employment Options of the Future Survey 1998, Bielski et al. 2002, p. 61

The gender division of responsibility for earning and caring is associated with gender differences in the type of flexible working time arrangements working parents prefer. Mothers tend to request and use shorter working time arrangements that are compatible with school and day care operating hours, such as term-time working in the UK, and ‘half-day’ morning hours matching school hours in Germany. Fathers’ demand for

flexibility tends to focus on the distribution, rather than length, of working hours, in line with their breadwinning responsibilities. O'Brien and Schemilt's analysis of parents' demand using data from the UK Work-Life Balance Baseline Study in 2000 found that fathers were most likely to want access to flexitime (52 per cent), a compressed working week (46 per cent) and working at home (40 per cent), compared to a much lower proportion of fathers being interested in working time arrangements that involve reduced hours and lower earnings (14 per cent job sharing, 22 per cent temporary reduced hours working and 22 per cent part-time work). In contrast, 42 per cent of mothers wanted term-time working and 44 per cent were interested in working part-time (O'Brien and Shemilt 2003). These working time preferences reflect structural circumstances favouring the male breadwinner/female part-time earner arrangement.

In international comparative research on work-family reconciliation patterns based on variations of the 'male breadwinner' model (Lewis 1992), both German and British gender work patterns fall within the category of male breadwinner/female part-time earner arrangements, in which often low paid, part-time employment is taken up by mothers whose earnings contribute to the family income, which depends in its substantial part on a male breadwinner (Fagan et al. 2001). This gender time arrangement reflects cultural as well as structural contexts. Pfau-Effinger uses the concept 'gender culture' to refer to 'common assumptions about the desirable, 'normal' form of gender relations and the division of labour between women and men' (Pfau-Effinger 1998 p.178). The gender culture is reflected by prevailing attitudes towards maternal employment of mothers of pre-school children. In 1996, 72 per cent of West German women and 80 per cent of West German men fully agreed or agreed with the statement that 'small children would suffer if their mother was employed'⁴ (Klammer and Klenner 2003b). In the UK, in 1994, 48.1 per cent of women and 38.1 per cent of men disagreed with this statement (Scott et al. 1996). Social values and norms on gender roles, care and employment partly shape individual preferences (Pfau-Effinger 1998; Duncan and Edwards 1999). Individual preferences may also be mediated by structural determinants⁵ (Crompton 2006).

⁴ Only 49 per cent of East German men and women agreed with this statement, reflecting the socialist norm of female employment.

⁵ There is a vivid debate in the literature on the significance of individual choice versus social structure in decisions about work and care. See for example Catherine Hakim's Preference Theory (Hakim 2000).

The structural context shaping gender time arrangements includes a variety of individual characteristics such as educational attainment and employment status and income (Crompton 2006). Against the backdrop of prevailing gender wage gaps in both countries, women's income in most families is lower than men's (Corneließen 2005). Women's working time reduction from full to part-time employment or even to full-time care therefore incurs a lower relative loss in family income compared to men's (O'Brien and Shemilt 2003). The financial implications of working time reduction and unpaid leave, especially, has been cited in numerous studies as a major deterrent to take-up (see for example Vaskovics and Rost 1999; Yeandle et al. 2002). Especially men, who still assume the main breadwinning role in families, may feel unable to reduce their working time if this involves a loss in their earnings. Government policy can redress or reinforce these structural determinants.

Government policy and work-family arrangements

Government policy contributes to the structuring of reconciliation choices by mediating the financial, time, and care resources that are available to families, providing parents with 'time to work' as well as providing access to 'time to care' and making it financially affordable. A key structural determinant for women's employment is access to affordable, good quality childcare, as the externalisation of care enables mothers to remain in employment after childbirth and to return after a period of family leave (Beckmann 2001a). Childcare provision was low in both Germany and the UK in the late 1990s when New Labour and the Social Democrats came to power. Time to care is provided through statutory entitlements to family leave or working time reduction and financial resources for parents towards childcare costs are provided through nationally specific benefit, tax and social insurance structures (Fagan 2000; Garhammer 2000) (Dingeldey 2002). In the following section, reconciliation policies of the 1980s and 1990s will be briefly reviewed, providing the backdrop for policy developments discussed in subsequent chapters.

Reconciliation policies in the United Kingdom

In the UK, the role of government in providing a resource infrastructure for the reconciliation of paid work and family responsibilities was minimal until the late 1990s based on a liberal understanding of the residual welfare state (Esping-Andersen 1999) and the historical view that the problem of reconciling work and family was a

private decision (Lewis 2003). In the absence of an explicit family - or work-family reconciliation - policy, financial support directed at families through the tax and benefit system, such as the Family Income Supplement introduced in 1970, and later replaced by the Family Credit in 1988, was in the majority aimed at poverty reduction and targeted at low income families. Child Benefit, replacing previous family allowances and tax exemptions in 1977 formed the main source of general financial family support, paid irrespective of parental employment status to the main carer (Clasen 2005).

Public child day-care provision under the Conservative governments over the 1980s and 1990s was minimal (Randall 1999). The Conservative Government saw its responsibility in 'ensur[ing] acceptable standards of service and general guidance on good practice and standards' (UN CEDAW 1995), but not in the provision of a public care service infrastructure. Service provision for working parents was led by the private and voluntary sectors (Cohen 1990). Public service provision by local authorities was reserved for children in need (Randall 2000). A policy shift towards a somewhat more employment-facilitating child care policy started to emerge from the mid-1990s. In April 1993, the Government launched an Out-of-School Childcare Initiative with the overall aim of offering parents of school age children the chance to participate more fully in the labour market, by increasing the quantity and quality of out of school childcare provision. Between 1993 and 1998, 81,000 out-of-school childcare places were created under the initiative (UN CEDAW 1999 p.12). In October 1994, a Childcare Disregard for registered day care for working parents claiming in-work social security benefits was introduced, followed in the same year by the Conservative Government committing to providing a pre-school place for every four-year-old whose parents wanted it. A childcare voucher system was introduced in 1996 for part-time early education (Lewis 2003).

The Conservative Party had a liberal, non-interventionist interpretation of the role of the state with regard to employment relations which also determined the British approach to family-friendly working time policy during this era. Family-friendly employment rights were restricted to minimal maternity protection. Prompted by the European Pregnant Workers Directive, the UK introduced 14 weeks of maternity leave in the *Trade Union Reform and Employment Rights Act 1993*. Mothers who had worked for their employer for more than two years additionally received the right to

return to work any time until 29 weeks after birth. Most of this Additional Maternity Leave was however unpaid. Mothers qualifying for Statutory Maternity Pay (SMP) received an earnings-related benefit for six weeks (at 90 per cent of previous earnings) followed by a flat-rate benefit (£52.50 per week in 1994) for a maximum of 12 weeks. There was no equivalent leave entitlement for fathers or carers of adults.

The Conservative Government recognised the supportive function of family-friendly working time and family leave arrangements in parents' effort to reconcile work and family responsibilities and ideationally encouraged such practices. In the early nineties, two government booklets on the topic were produced: 'The Best of Both Worlds' in 1991 and 'Be Flexible' in 1993, highlighting the advantages to employers and employees alike of such working arrangements as flexible working hours, part-time jobs and job-sharing. It was not however considered the state's responsibility to *regulate* employment conditions to this purpose, nor was such intervention considered desirable. In their report to the UN CEDAW Committee in 1995, the UK Government stated on the subject of parental leave that it: 'should remain, like most other terms and conditions of employment, a matter for agreement between parties concerned and not for statutory intervention' (UN CEDAW 1995 p.16). The Conservative Government's position on family-friendly policies was further laid out by Cheryl Gillian, the Parliamentary Under-Secretary of State for Education and Employment, in a parliamentary debate on family-friendly employment in July 1996:

We believe that businesses should arrive at voluntary arrangements because they make economic sense for them. We do not want to burden business with excess legislation [...] to attempt to legislate for the introduction of such policies would be neither appropriate nor practicable (HC Deb 9 July 1996 vol 281 c 248).

In sum, in the late 1990s, there was no general statutory framework in place regulating the length or distribution of working hours. Family-oriented government intervention in the employment relationship was very minimal and limited to the entitlement to maternity leave and pay and the ideational support of voluntary employer-provided family-friendly arrangements. When New Labour took office in 1997, the policy legacy they inherited from their predecessors was one of minimal statutory provision in support of working parents and a strong liberal orientation of minimal government intervention in the employment relationship. In Germany, a more explicit family policy tradition was in place.

Reconciliation policies in Germany

The German reunification in 1990 brought together two very different reconciliation ideals, the male breadwinner/female carer model of West Germany and the dual-earner model of East Germany. The post 2nd World War separation of East and West Germany between 1961 and 1990 into different political regimes had led to strongly diverging paths with regard to the reconciliation of paid work and family responsibilities. West German reconciliation choices largely followed the male breadwinner/female carer family model with women typically leaving the labour market for extended periods of time when becoming mothers to care full time for their children. Long career breaks and short part-time work, when the children were older, characterised the employment biography of most West German mothers. The state's role in the care for, and socialisation of children, in the Federal Republic of Germany was conceptualised as subsidiary to the family, in line with Article 6, Section 2 of German Basic Law⁶. Due to the interpretation of Basic Law that the care for children was a parental responsibility, combined with the predominant view that young children were best cared for in the family, a comprehensive infrastructure of public child care provision was not developed (Gerlach 2004b). The public education system was developed on a part-time basis complementing the child's socialisation in the family, based on an underlying assumption of stay at home mothers. This implied that even when children had reached school age, full-time employment was difficult to achieve due to part-time, unreliable, school hours and the common practice of sending school children home for lunch (Scheiwe 2000). Parents were supported in their responsibility for the care and socialisation of children in the form of comparatively generous (general) financial transfers through the tax and benefit system (*Familienlastenausgleich*). The spousal income splitting system (*Ehegattensplitting*) introduced in the 1950s provided further financial benefits for married male breadwinner families (Dingeldey 2000). In the German Democratic Republic in contrast, female labour market participation was explicitly desired and supported by the state (Gerlach 1996). Reconciliation choices followed a dual-earner/externalised care model and over 91 per cent of women participated in employment (BT-Drs. 12/7560 1994). This high participation rate was made possible by a comprehensive system of public childcare provision and full-day schooling.

⁶ 'The care and socialisation of children are the natural right of the parents and their duty...', Article 6 (2) German Basic Law, author's translation.

Article 31 of the Unification Treaty (*Einigungsvertrag*), signed in May 1990, took account of these systemic differences and obliged the unified Government to adjust the statutory framework with regards to the reconciliation of paid work and family responsibilities. The *Child and Youth Support Act* passed in 1990 (KJHG) postulated that sufficient childcare services should be provided to meet the demand for care services for the under-threes and children of school age. Provision should be designed in a way as to facilitate the reconciliation of family and employment responsibilities. A year later, a further reform introduced a statutory entitlement for childcare for every child between the age of three and school age. It was triggered by the need for a new regulation of abortion law and the idea that unborn life could be more effectively protected by providing pregnant women with a support framework that facilitated their decision in favour of the child. It was passed under the Pregnancy and Family Support Act (*Schwangern-und Jugendhilfegesetz*) coming into force in 1996. Due to Germany's federal governing structure, according to which childcare and education fall under the responsibility of the Länder, the responsibility for funding and implementation of demand-oriented child care services was located at the local level (Evers et al. 2005). Financial constraints delayed the full implementation of the statutory entitlement for kindergarten places until 1999, and provision was developed predominantly on a part-time basis, which offered only limited time for parental employment (Scheiwe 2000; Auth 2002).

Government support for parental care was highlighted by the introduction of parental leave in 1986, which was extended to East German parents after reunification. The 1st *Federal Child Raising Benefit Act* in 1986 introduced up to one year of protected parental leave, for which, in contrast to British leave entitlements, both fathers and mothers were eligible. In order to qualify for the child raising benefit and employment protection, the parent on leave could only work up to 18 hours per week, to ensure that sufficient time was allocated to the care of the child. This threshold was increased to 19 hours per week in the 1990 amendment of the Act which also saw the leave entitlement extend to 24 months. A second amendment to the Act in 1992 further extended the leave entitlement to a total of 36 months up to the child's third birthday (Bothfeld 2005). Parental leave was granted per child. It was not an individualised entitlement. Employees, whose partners were not working, were for example not entitled to take parental leave, as it was assumed that their partners would be available for child care in the home. This assumption was consistent with the male breadwinner

logic of the Conservative-led Coalition Government under which it was designed (Falkner et al. 2002). If both parents were working, the leave could be taken by either the mother or the father of the child, or shared between them by taking up to three turns over the three years. Although parents were entitled to work part-time during the leave up to the 19 hour threshold, there was no statutory right to a reduction in working time in the same job. These regulations promoted a strict division of care and employment following the male breadwinner logic and discouraged a flexible combination of care and work by both parents.

Parental leave was complemented by leave entitlements to care for a sick child, introduced in 1992, which entitled parents to paid leave of ten days per parent per year, and up to 25 days per parent of several children, to care for sick or disabled children under the age of 12⁷. Parents taking the leave were fully paid, either by their employer or by their health insurance scheme (Pettinger 1999). The European Framework Agreement on Parental Leave in 1996, which introduced an individual, non-transferable right to three months of parental leave, to be taken until the eighth birthday of the child stimulated a renewed debate on the issue of parental leave in German Parliament. Opposition parties seized the opportunity to introduce motions for a far reaching reform, calling for a more flexible design of the parental leave scheme. A central demand was a statutory right to reduce one's working time and the introduction of flexible time accounts. The Social Democrats (SPD) wanted a time account of 60 hours per week to be shared by both parents (BT-Drs. 13/6577). The Green Party proposed a time account of three years of leave to be taken flexibly until the child's eighth birthday, including a statutory right to working time reduction (BT-Drs. 13/711; BT-Drs. 13/4526). Both motions were however outvoted in Parliament only months before the general election in 1998 (BT-Pl. 13/241).

In addition to parental leave entitlements, the issue of reconciling work with family responsibilities started to be addressed by the Federal Ministry for Family Affairs through a number of awareness raising initiatives in the early 1990s. In 1991, the first nationwide conference on equal rights between men and women (1990) was succeeded by a conference on the reconciliation of paid work and family responsibilities and on flexible working hours in 1992. Research on family-friendly working practices was commissioned and in 1993, family-friendly employers were awarded for the first time

⁷ Lone parents can take up to 20 days for one child, up to 50 days if they have several children.

following a nation-wide competition. In 1994, the Federal Government also launched a nation-wide campaign for the promotion of part-time work as part of its employment-creation and economic growth agenda (UN CEDAW 1996). The issue of family-friendly working was on the Government's agenda but similar to the UK, it was dealt with through information campaigns rather than regulatory intervention.

Summing up the findings so far, reconciliation choices of parents with young children in both Germany and the UK in the 1980s and 1990s predominantly followed the male breadwinner/female carer family arrangement, which was also the family model supported by government policy at the time, especially in Germany (Gottschall and Bird 2003; Morgan and Zippel 2003). Family leave entitlements in both countries illustrate this bias. While both men and women were eligible for parental leave entitlements in Germany, the scheme was based on a strict division of labour with only one parent at a time entitled to take the leave. Eligibility was limited to mothers in the UK. The generosity of these entitlements differed significantly. The UK provided 14 weeks of maternity leave with a right to return to work within 29 weeks of childbirth and no entitlements for fathers, compared to 36 months of protected leave after childbirth, which could be shared by both parents in Germany.

Both the British and German governments in the 1980s and 1990s implicitly or explicitly assumed that care responsibilities were a private matter (Lewis 2003). Care services were to be either purchased on the market and/or provided within the family (Lohkamp-Himmighofen and Dienel 2000). The British and German welfare states have respectively relied on the market and families as providers of family services, in line with their classification by Esping-Andersen as liberal and conservative welfare states (Esping-Andersen 1999). The low levels of state provision that existed could be conceptualised as a response to market or family failure, such as childcare services in the UK, which were targeted at children at risk (Randall 2000), and day care in Germany, which provided priority access to lone parents needing to work. Low levels of public care service provision or financial transfers in support of care externalisation meant that the dual-earner family arrangement was not actively supported in either country in the 1990s. This is in line with the finding that the improvement of access to family-friendly working time arrangements was not an actively pursued policy strategy.

Many parents were dissatisfied with the traditional division of labour and would have preferred a 'modernised' breadwinner arrangement with mothers working part-time (Bielenski et al. 2002). The discrepancy between actual and preferred reconciliation arrangements indicates a latent demand for family-friendly working time arrangements allowing mothers to return to employment while their children are young. In the absence of statutory entitlements for working time reduction and other family-friendly working time arrangements, parents wanting to adjust their working hours to family demands depended on collectively agreed and voluntarily provided flexibility by employers. The second part of the chapter explores access to family-friendly working time arrangements within the British and German working time regimes, and draws on industrial relations and management research to address equity concerns arising from unequal access to family-friendly working time flexibility both between and within workplaces.

II. Access inequality in the British and German working time regimes

National working time regimes, following Rubery and colleagues, refer to the 'set of legal, voluntary, and customary regulations which influence working time practice' (Rubery et al. 1998 p.72). Working time is regulated by a range of actors at different levels, ranging from the European Union level to national government; collective bargaining at sectoral and employer level; and between employers and employees at the workplace level (Anxo and O'Reilly 2000). This part reviews the different levels of working time negotiation and regulation with specific reference to the German and British cases in the late 1990s when New Labour in the UK and the 'Red-Green' Coalition in Germany came to power. The purpose is to explore the structural and cultural determinants of access to family-friendly working time arrangements and access inequalities both between workplaces and within workplaces. It is structured in four sub-sections. The first discusses the influence of policy developments at the European Union level on domestic working time policy. This is followed by a brief review of national working time regulation. The third section then turns to consider the role of collective bargaining structures and practice at the sectoral as well as workplace levels in increasing access to family-friendly working time arrangements. The final part focuses on the workplace level and discusses the main determinants for the introduction of family-friendly working time arrangements by employers; why some

employers are more likely to introduce them than others, and the barriers to access at the workplace level.

European working time policy

Domestic working time policies in Germany and the UK are subject to the influence of European policy developments. As members of the European Union, they are contractually bound to implement Council Directives into national law as stipulated by the Treaty of Rome. In the 1990s, the European Council passed four directives that impacted on the organisation of working time. Based on Article 118a of the EC Treaty, which allows the Council to regulate, by means of directives, minimum requirements for the protection of the safety and health of workers, the Pregnant Workers and Working Time Directives were passed in the early 1990s. On the basis of the Social Policy Agreement passed in 1992, the Parental Leave and Part-time Work Directives followed in 1996 and 1997. The Pregnant Workers Directive (92/85/EEC) provided that pregnant workers should not be obliged to work nights and should be offered alternative daytime work or leave from work. Furthermore, the Directive introduced 14 weeks of maternity leave, protection from maternity-related dismissal, and the right to time off for ante-natal examinations. The Working Time Directive (93/104/EC) laid down minimum requirements for periods of daily and weekly rest, annual leave, breaks and maximum weekly working time; as well as regulating certain aspects of night work, shift work and patterns of work. The Parental Leave Directive (96/34/EC) introduced a non-transferable, individual entitlement to 3 months parental leave as well as time off work for family emergencies on the grounds of force majeure (sickness or accident) (Falkner et al. 2002). The Part-time Work Directive (97/81/EC) passed in June 1997 introduced the principle of non-discrimination stipulating that workers should not be treated less favourable than comparable full-time workers (Clause 4) and encouraged better access to part-time work opportunities (Clause 5) (97/81/EC). As both the Parental Leave and the Part-Time Work Directives were passed under the Social Policy Agreement from which the UK Government had opted out, they did not apply to the UK until the incoming New Labour Government ended the British opt-out in 1997 (Kilpatrick and Freedland 2004). The British Government had also fiercely opposed the introduction of the Working Time Directive which counteracted its deregulation objectives. Despite concessions for the UK, such as a voluntary opt-out from the restriction of weekly working hours, the Major Government fought for the

annulment of the Directive before the European Court of Justice. It lost its case in November 1996, passing on the duty of implementation on to the incoming Labour Government. In sum, until New Labour came to power in 1997, the European influence on working time regulation in the UK had been minimal compared to Germany.

Statutory regulation of working time at the national level

When New Labour and the 'Red-Green' Government took office in the late 1990s, they inherited distinctly different legacies of working time regulation. By the late 1990s, following two decades of labour market deregulation policies by the Conservative Thatcher and Major governments, there was no general statutory framework regulating the length of the working day or week, or the number of rest days and holidays in place in the UK as the implementation of the European Working Time Directive had been delayed. In line with de-regulation objectives pursued by the Conservative/Liberal Thatcher and Major governments throughout the 1980s and 1990s, the state had largely withdrawn from statutory working time regulation by the late 1990s, with the exception of limited regulation applying to select industries, such as transport, based on health and safety concerns (Deakin 1990; Hepple and Hakim 1997; Fagan 2000).

In Germany, by contrast, comprehensive health and safety protection regarding the length and distribution of working time, and minimum rest periods were statutorily regulated in the late 1990s. The Working Time Act (*Arbeitszeitgesetz*) passed in 1994, replacing previous legislation dating back to 1938, harmonised working time regulations across Germany following reunification and it implemented the requirements of the European Working Time Directive. Compared to early protective regulation, the reform loosened a number of regulatory constraints on the flexible organisation of working time (Jacobi et al. 1998). Restrictions on maximum working hours, normally set at 40 hours per week distributed over an eight-hour day and a five-day week could be averaged over a six month period allowing employers to operate ten hour days or 60 hour weeks without special justification. Even longer working hours can be agreed via collective agreement (Jacobi et al. 1998). The Act also facilitated a more flexible distribution of working time over the working week. Sundays and public

holidays as days of rest are protected by German Basic Law⁸. While a general prohibition of work on Sundays and holidays was maintained, it was liberalised through a long catalogue of exceptions. For instance, industrial production work can be allowed ‘to avoid considerable losses’, ‘to safeguard employment’ and ‘to preserve the ability to compete with foreign countries’ (Jacobi et al. 1998). The Working Time Act was predominantly oriented at the flexibility needs of employers. It did however contain certain provisions oriented at time needs of working parents. Article 6, relating to night and shift work for instance stipulates that employers should accept requests of day shifts from parents of children under twelve, and carers of adults, who cannot rely on another carer in the household (Weiss 1997).

In sum, in the UK, there was no statutory framework regulating the length and distribution of working hours for the general population in the late 1990s. Germany, in contrast, had a direct working time regulation in place, which set maximum daily working hours and protected rest periods (including Sundays off). The health and safety of workers was the predominant *raison d’être* for statutory (protective) restrictions, which were, compared to earlier decades, loosened by the Working Time Act. In Germany, working parents enjoyed limited protection in relation to night and shift work. No such protective provisions for working parents were in place in the British context. In the late 1990s, neither country had a general family-oriented flexible working time policy in place, although throughout the 1990s, voluntary employer provision was ideationally supported and encouraged through information materials and events. In the absence of state regulation, the introduction of family-friendly working time arrangements was subject to collective agreements or unilateral employer decisions.

Collective bargaining over family-friendly working time arrangements

This sub-section reviews collective bargaining structures and practices in Germany and the UK, and explores the relative role of trade unions and works councils in negotiating employee access to family-friendly working time arrangements.

⁸ Article 140 of German basic law in combination with Article 139 of the Weimar Constitution protects ‘Sundays and holidays recognized by the Land shall remain under legal protection as days of rest from work and for the promotion of spiritual purposes’ (Article 139 of the Weimar Constitution) <http://www.constitution.org/cons/germany.txt> (13/02/07).

Due to systemic differences in collective bargaining practice, employee coverage of the terms and conditions negotiated by unions differed widely between the two countries, although a very similar proportion of workers were unionised. While 29.6 per cent of British employees and 32 per cent of German employees were unionised in 1998, just over one third (34 per cent) of British employees were covered by collective agreements compared to three quarters (74 per cent) of German employees (Bland 1999; Schulten 1999a). This difference can be largely explained by the prevailing dominance of multi-employer bargaining in Germany's highly centralised system of employment relations compared to the predominance of single-employer bargaining in a strongly decentralised system of employment relations in the UK⁹ (Zagelmeyer 2004). Collectively agreed working time regulations have a wider reach in the German context than they do in the UK, where agreements tend to apply to individual employers rather than entire sectors.

Working time negotiations in Germany and the UK are shaped by different legal frameworks of industrial and employment relations, which give German unions more procedural influence over working time regulation than unions in the UK. The institutional foundation of British industrial relations is commonly described as a 'voluntary system' or 'voluntarism' (Thomson 1996). Industrial relations have traditionally been based on a system of informal rather than legally codified rules and a laissez-faire approach to free collective bargaining between management and labour without state interference (O'Reilly and Spee 1998). The recognition of trade unions for collective bargaining purposes by employers was voluntary and where trade unions are recognised and collective agreements concluded, these are binding 'by honour only' unless included in individual employment contracts (Fagan 2000). In the late 1990s, British employees did not enjoy a statutory right to representation nor a statutory framework which facilitated representation. In contrast, industrial relations in Germany are legally regulated through the Collective Agreements Act (*Tarifvertragsgesetz 1949*) based on which collective agreements are legally binding to all members of the organisations that concluded them. Trade unions in the UK have a comparatively weaker bargaining position than in Germany, following a step-by-step

⁹ The impact of centrally negotiated agreements is larger as it affects working time of many workers at once. Decentralised bargaining in contrast is usually limited to the workforce of one employer or establishment where trades unions or works councils directly negotiate with a given employer. The agreements resulting from decentralised collective bargaining therefore only apply to a comparatively smaller number of workers.

programme of reform of industrial relations law and deregulation pursued by the British Thatcher and Major governments between 1979 and 1997 (Zagelmeyer 2004). By restraining the ability of trade unions to extend membership and mobilise for industrial action, trade union influence was weakened by one-sidedly shifting the balance of power in favour of employers.

At the level of the workplace, German employees have a statutory right to interest representation which in the UK is subject to management discretion. In Germany, the Works Constitutions Act (*Betriebsverfassungsgesetz*) provides employees in establishments with five or more employees with the right to elect works councils, which in turn have the statutory right to information, consultation and co-determination (*Mitbestimmung*) of certain aspects of the employment relationship, including the organisation of working time. This means that German employers cannot make any decisions on working time in the establishment, including breaks, short-time working, overtime, and annual holidays, without the agreement of the works council, and works councils can take initiative with regard to the re-organisation of working time. In practice, however, only around 10 per cent of eligible workplaces in the private sector had works councils in place in 1998, covering 48 per cent of private sector employees (Ellguth 2003 p.194). There is strong variation of employee access to representation across workplaces. Works councils are more likely to be found in large workplaces. While only six per cent of small workplaces with less than 50 employees had a works council in 1998, this applied to 95 per cent of establishments with more than 500 employees (Ibid.). Hence, the legal framework in place in Germany provides employee representatives with a much stronger negotiation position than the voluntary system in the UK, where employers can unilaterally determine aspects of working time organisation. Any involvement of employees or their representatives in the organisation of working time, such as consultation through joint consultative committees¹⁰, is subject to management discretion (Cully et al. 1999).

The research evidence on the role of unions and works councils in promoting the introduction of family-friendly working time arrangements is mixed. While a positive contribution by unions is noted in the literature, the overall prevalence of collectively agreed provision was low. Bond et al. (2002), based on research in seventeen UK based companies found that where unions were recognised, there was greater evidence

¹⁰ In 1998, in 53 per cent of workplaces with 25 or more employees, a joint consultative committee was in place at workplace or higher level (Cully et al 1999, p.99).

of codification of work-family policies, and the establishment of joint forums for representative participation by employees. It appeared that unions, in a strong labour market and with the support of legislation, were able to raise family-friendly issues through consultative and other joint bodies. However, there was little evidence of negotiated agreements: the pattern was for unions to raise or pursue a matter and for management to respond according to its priorities. Analyses of the 1998 Workplace Employee Relations Survey (WERS) in the UK have found recognition of trade unions and higher involvement of employees in decision making to correlate with the provision of family-friendly working arrangements in the UK (Dex and Smith 2002). However, while employees in workplaces with at least one recognised union are statistically significantly more likely than non-union workplaces to report the provision of parental leave, special paid leave, child care and job sharing, they were, in 1998, statistically less likely to report the availability of flexible hours and work at home options (Budd and Mumford 2004).

In Germany, survey evidence also indicates a positive effect of collective bargaining on the introduction of family-friendly arrangements: 29.3 per cent of employers surveyed in 2003 reported that they had introduced family-friendly measures as a consequence of collective agreements (*Tarifvertrag*) compared to 13.5 per cent, who had introduced such measures on the basis of management guidelines (Flüter-Hoffmann and Solbrig 2003). The analysis of 110 collective agreements in 30 sectors between 1998 and 2004, however found that collective agreements relating to the reconciliation of paid work and family life are still rare. There were predominantly found in those industrial sectors in which women represent a large proportion of the workforce, or where there was a shortage in qualified employees such as the chemical industries, banking and IT sectors. Collective agreements made provisions to facilitate the change between full and part-time employment, the adjustment of working hours to day care provision and the protection of working parents from family-unfriendly working schedules such as evenings and week-ends if child care needs made this necessary. However, only 17 of the 115 collective agreements analysed contained such protective clauses (Klenner 2005).

In addition to trade unions, German works councils contribute to the improvement of working conditions at the workplace level. 12.4 per cent of companies surveyed in Germany had introduced family-friendly measures on the basis of a workplace

agreement in 2003 (Flüter-Hoffmann and Solbrig 2003). Klenner and Lindecke, reporting on a special works and staff council survey on equal opportunities and work-family reconciliation conducted by the Institute of Economic and Social Research in the Hans-Böckler-Foundation (WSI) in the summer of 2003, found evidence of increasing attention to work-family issues by employee representatives: 67 per cent of works agreements on family-friendliness that were in place in 2003 had been agreed between 2000 and 2003. This in turn indicated that in the late 1990s, works councils had still been significantly less pro-active in this area. Nevertheless, although work-family issues were being addressed only in a minority of firms, it was most likely works councils who had taken the initiative in those firms where the problem was addressed (Klenner and Lindecke 2003).

There are several possible reasons why family-friendliness was not a high priority on German and British bargaining agendas in the late 1990s. One explanation is that the interests of workers with care responsibilities, many of whom are women in part-time employment, are under-represented on bargaining agendas (McCann 2004). In both Germany and the UK, only around one third of trade union members were women (Carley 2004). In the UK, only one in five part-timers are organised in trade unions compared to one in three full-timers (Bland 1999). Lack of representation leaves many without a collective voice to communicate and negotiate their working time needs. Women also form the minority of employee representatives. In 1998, two thirds (64 per cent) of union representatives in UK workplaces were male and one third (36 per cent) female (Cully et al. 1999). In Germany, only a quarter (25.4 per cent) of works councillors elected in 1998 were women (Zagelmeyer 1998). Women's minority on representative bodies may in part explain the marginal role of 'women's issues' on bargaining agendas. Another reason for family-friendly working time organisation taking a backseat is the relative priority accorded to other issues, notably job maintenance in time of high unemployment. A prominent trend in German collective bargaining rounds throughout the 1990s was the acceptance of increased employer-oriented time flexibility in return for job security (EIROnline 1998).

The structural characteristics of the employment relations systems in the two countries allow employee representatives in Germany considerably more influence over the organisation of working time, both at the sectoral and establishment level, than employee representatives in the UK. Due to the low priority accorded to family-

friendly working time arrangements on bargaining agendas in both countries, the role played by unions and works councils in improving provisions is relatively small. In the relative absence of collective bargaining for family-friendly working time arrangements at the sectoral or workplace level, the introduction of family-friendly working time arrangements is either unilaterally decided by the employer, or negotiated at the individual level between individual employees and their employers.

Family-friendly working time arrangements at the level of the workplace

Access to family-friendly working time arrangements is unequally spread across workplaces, as some employers are more likely to provide employee-oriented flexibility than others. Within workplaces where family-friendly policies are offered, there are access inequalities among the workforce, with some employees gaining access more easily than others. This section reviews evidence from the organisational literature to explore determinants and barriers to the provision and take-up of family-friendly working time arrangements at the level of the workplace.

Management interest in flexible working time organisation has grown over the past decades in the context of globalisation and the associated need for cost containment and the effective use of (human) capital to remain competitive in global markets (Linne 2002). In a recent establishment survey covering 20,000 companies in Germany, the main motivation for the choice of future working time strategy was for 57 per cent of companies to adjust to fluctuations in work volume and client needs, for 53 per cent to reduce costs, and for 29 per cent to make better use of their qualified staff. The working time wishes of employees, however, were considered a main motive by only 16 per cent of surveyed companies (DIHK 2004). Given that the working time preferences of employees do not always correspond to the working time prerogatives imposed by variations in work volume, client needs and other operational requirements, this raises the question under which circumstances employers do provide family-friendly working time arrangements voluntarily.

Variation in provision across workplaces

A growing body of organisational research on the work/family interface has pointed out that there is great variation in provision of family-friendly working arrangements, leading to unequal access to such flexibility across workplaces (see for example Dex

and Smith 2002). Based on data from the 1998 Workplace Employee Relations Survey in the UK, Dex and Smith (2002) found that family-friendly or flexible working arrangements¹¹ were more common in larger and public sector organisations. They were also more common where there were lower degrees of competition; recognised unions; human resource specialists; and good performance. Further, they were associated with management practices aimed at motivating employees to give high levels of commitment; more involvement of employees in decision making; equal opportunities policies that were implemented and monitored; larger proportions of women in the workforce; and a highly educated workforce using discretion. The main drivers for the introduction of family-friendly measures that have been identified in the organisational literature are discussed in turn.

Firms with a high female workforce tend to be most 'exposed' to work-family conflict and its consequences as women are more likely than men to assume responsibility for family care. Milliken and colleagues associated the provision of family-friendly working arrangements with the 'resource dependency' assumption that, as the percentage of women in the labour force grows, organisations become increasingly dependent on them and thus more likely to be responsive to their needs (Milliken et al. 1998). Empirical findings support this argument. In the service sector, in which women form the majority of the workforce, work-family arrangements are more prevalent than in manufacturing, which is male dominated (Dex and Smith 2002). Twenty per cent of service sector companies in Germany orient their working time strategy to the time wishes of employees compared to eight per cent in the male-dominated construction industry (DIHK 2004). Research has found that women tend to be more aware of family-friendly working options available to them (Meager et al. 2002a), and to request them more often than men (Holt and Grainger 2005). According to WERS 2004 data, managers were less likely to think that it was up to the individual to balance their work and family responsibilities where women made up more than half of the workforce, compared with managers in workplaces where women were not in the majority (60 per cent compared to 71 per cent). Employees in female dominated workplaces were more likely to report to have understanding managers (Kersley et al.

¹¹ The flexible or family-friendly arrangements covered by the WERS are: parental leave, job sharing, working only during term-time, working at or from home during normal working hours, a change from full-time to part-time hours, workplace or other nursery provision, help with the costs of child care, flexitime, paternity leave for all employees, and time off for emergencies for all employees (Dex and Smith, 2002).

2006). In Germany, Krell and Ortlieb, based on a survey with 500 establishments, found that systematic efforts of finding out about the work-family concerns of employees in the first place were more likely when women made up more than half of the workforce. Were this was the case, 52.4 per cent of employers consulted with their employees on work-family issues compared to 37.6 per cent of establishments where women formed less than 20 per cent of the workforce (Krell and Ortlieb 2003). Employees in female-dominated workplaces are more likely to have access to family-friendly working options than employees in male-dominated workplaces.

While the degree of organisational exposure is an important factor determining whether or not management 'notices' work-family challenges, Milliken et al. have shown that managers play an important role in determining how organisations respond to these pressures (on the role of line managers see also Yeandle et al. 2003). This depends on whether the issue is interpreted as *relevant* to the organisation (Milliken 1990). Accordingly, an organisation's work-family responsiveness would at least in part be a function of whether these issues had been noticed by key decision makers, and whether these managers perceived the issues as likely to have an impact on the organisation's functioning, if not addressed (Goodstein 1995; Milliken et al. 1998). Supporting this line of argument, a higher proportion of women in decision-making has been associated with a higher degree of sensitisation to the relevance of work-family reconciliation and a higher prevalence of family-friendly measures (Flüter-Hoffmann and Seyda 2006). Employee access to family-friendly working time policies is dependent on manager awareness and appreciation of the benefits of such policies to employees and organisations.

Organisational size and sector are associated with the likelihood of provision (Hogarth et al. 2001). Large firms have been found to be more likely to provide work-family arrangements than small firms¹² (Dex and Smith 2002). One explanation, as proposed by Goodstein, is that large firms are more visible and exposed to the public eye, and are therefore assumed to be more compelled to conform to societal pressures than small firms (Goodstein 1994). Another explanation is that they have more financial means and operational capacities than small firms to provide costly arrangements such as childcare provision or career breaks (Dex and Scheibl 2001). Larger workplaces

¹² Dex and Scheibl (2001) found that small and medium-sized organisations also provide flexible and family-friendly working arrangements, which tend to be less formalised than in large firms and might therefore escape survey questions.

more commonly have formal, written policies on family-friendly working practices, as they are more likely to have human resource specialists managing procedures (Cully et al. 1999). Public sector employers are more likely to provide family-friendly working time arrangements than private sector employers (Woodland et al. 2003). Organisational responsiveness to expectations for more family-friendliness is higher if the content of these expectations is consistent and congruent with an organisation's existing goals and policies (Oliver 1991). In the work-family domain, this factor has been identified as especially strong for public sector organisations as governments can use their power to authorise and legitimise policies and structures, and lead by good example (Scott 1987).

The ability to formulate a business-case for work-family arrangements is a determining factor in whether or not employers implement family-friendly working practices. Den Dulk theorised that implementation follows a cost-benefit evaluation in which the anticipated gains outweigh the costs (Dulk 2001). Cost benefits are associated with the reduction of stress among working parents, reduce absenteeism and unwanted turnover, and contribute to motivation, flexibility and productivity of the workforce (Bevan et al. 1999; Gray 2002; Prognos AG 2003; Nelson et al. 2004). The research evidence on the effects of family-friendly measures on business outcomes is mixed (Bloom and van Reenen 2006), leading the OECD to conclude that 'it is probably unrealistic to expect such practices to become quasi-universal' (OECD 2007 p.188). In the absence of state regulation, voluntary provision of family-friendly measures varies between workplaces and is mediated by structural and organisation factors such as employer size and sector and the gender composition of the workforce as well as management awareness and attitudes. Many employers did not offer family-friendly working time arrangements. The next section discusses some of the barriers to their introduction that have been identified in organisational research.

Barriers to the provision of family-friendly working time arrangements

Barriers to employer provision can be summarised under 'lack of awareness', 'lack of willingness', and 'lack of ability'¹³. A key barrier to the introduction of more family-friendly working time flexibility is lack of awareness that there is a need for it. One reason for limited awareness might be that employers do not communicate with

¹³ As systematic research on employer provision was not available for the late 1990s, this section draws on more recent data.

employees about their work-family reconciliation needs and working time preferences. Krell and Ortlieb reported that less than half (47 per cent) of German establishments indicated that they systematically asked employees about their working time preferences (Krell and Ortlieb 2003). In addition to awareness of employee needs, employers may lack awareness of the benefits associated with family-friendliness and therefore lack the incentive of introducing relevant measures (Evans 2001).

Secondly, non-provision can be ascribed to the lack of willingness. Even if employers are aware of their employees' working time wishes, they may not think that it is their responsibility to address them, or that the benefits of doing so would outweigh the costs. Among managers surveyed in the 2nd Work-life balance Study in 2003 in the UK the large majority agreed (63 per cent) or strongly agreed (21 per cent) that 'employers should make a special effort to accommodate the particular difficulties parents of young and disabled children face in balancing their work and family life' but a significant minority (29 per cent) thought that it was 'not employers' responsibility to help people balance their work with other aspects of their life' (Woodland et al. 2003). In Germany, 70.1 per cent of employers admitted that family-friendliness was not one of their first priorities (Flüter-Hoffmann and Solbrig 2003) and only 46.5 per cent thought in 2003 that family-friendly measures were important for their company (Flüter-Hoffmann and Seyda 2006). While there are examples of employers who report business benefits related to family-friendly measures such as a reduction in absenteeism or better recruitment and retention rates (DTI 2005), not all employers are convinced that such benefits would apply to their own business. Organisations with few women in the workforce and low rates of unwanted turn-over or absenteeism might lack the pressure of taking the time needs of their employees into account. Lack of organisational need has been cited by 66.7 per cent of German employers as a barrier to the introduction of flexible working time arrangements and tele-work (Flüter-Hoffmann and Solbrig 2003). A change in work organisation incurs administration costs and management time, which employers might not be willing to invest.

Finally, even when employers are aware of their employee's time needs and willing to address these, they might lack the ability to do so, either because operational constraints and costs oppose flexibility, or because they lack the know-how of introducing and managing flexible working patterns. The main reason for non

provision of flexible working arrangements, provided by just over two-thirds of employers (69 per cent) in the 2nd Work-Life Balance Employer Survey in 2003 was that such arrangements were not compatible with the nature of the business. Around three quarters of HR managers found operational pressures (78 per cent) and customer and service requirements (73 per cent) to be an important or very important constraint on the implementation of flexible working practices (Woodland et al. 2003). A CIPD survey found that the lack of senior level support was considered an important implementation constraint by 45 per cent of HR managers. Two thirds (67 per cent) considered the attitudes of line managers a primary constraint on implementation and 68 per cent saw a relevant constraint in the ability of line managers to effectively manage flexible workers (CIPD 2005b). Yeandle and colleagues, based on the analysis of over 100 line manager interviews in over 30 workplaces, point to the lack of adequate training in work-family issues leaving line managers struggling with the management of family-friendly working time arrangements (Yeandle et al. 2003).

Low levels of provision and variability between workplaces constrain employee access to family-friendly working time arrangements. However, even where family-friendly policies are formally offered, not all employees within a given workplace necessarily gain access. Unsupportive workplace cultures can further undermine employee's perceived access to family-friendly working practices.

Access variation within workplaces and the role of workplace culture

Even where family-friendly working time arrangements are formally provided, access can be hampered by discretionary organisational practices. The Work-Life Balance Baseline Study 2000 in the UK analysed the extent to which flexible working practices are restricted to certain types of staff and found that around two thirds of employers placed restrictions on eligibility to annualised hours, compressed working weeks, and part-time working (Hogarth et al. 2001). Widespread management discretion to negotiate flexible working on a case-to-case basis, in the absence of formal policies and/or training in how to interpret existing guidelines, has raised concern about the fairness of distribution (Yeandle et al. 2003). In the absence of formal entitlement, work-family arrangements tend to be conceptualised as 'benefits' (Dex and Scheibl 2001) or a 'perk for some members of staff rather than a right for all employees' (Kodz et al. 2002 p.29). Equity concerns are accentuated when provision is informal and based on management's assessments of individuals 'giving' to the firm (Dex and

Scheibl 2001 p.426). When such 'giving' is interpreted in terms of long hours and flexible availability to the job, working parents are at a disadvantage (Böhm et al. 2002). As caring responsibilities reduce both their time availability and flexibility, they are not on an equal playing field with non-carers (MacInnes 2005). The reliance on long working hours constitutes a barrier to equal opportunities for workers with caring responsibilities (Bailyn 2002).

Budd and Mumford found that employees with a lower hourly wage, shorter job tenure and lower levels of education, who work less hours and who are not managers or professionals are less likely to have access to work-life balance practices (Budd and Mumford 2003). Higher qualified employees tend to have greater time autonomy over their distribution of working time than the lower educated (Breedveld 1998) (Seifert 2001) (La Valle et al. 2002). These work-family benefits are however often offset by long hours worked by highly educated employees (Fagan and Burchell 2002).

The question of equal access not only involves differences between highly qualified employees and less qualified employees, whose needs for work-life balance may be the same, but whose retention value to the company may differ (Klammer and Klenner 2003a). Crompton et al. (2003) found that family-friendly arrangements are more easily available to lower-level employees, but that these jobs were often low paid and did not generate enough income to provide the sole support for a family. Concerns have been raised that family-friendly policies enable employees to work at the margins, but seldom challenge traditional patterns of work as the norm and ideal (Lewis 1997). Where work-family policies are implemented as marginal 'add-on' benefits, the goal of gender equity may be undermined, rather than advanced (Fletcher and Rapoport 1996; Rapoport et al. 2002).

Workplaces are still predominantly organised on the assumption of the 'male' worker, who is able to commit long hours to the job. This assumption is for example engrained in job assessment procedures, with male working behaviours and characteristics shaping evaluation criteria of what constitutes a 'committed' and 'competent' worker (Rubin 1997; Harrington 1999). Work-life balance policies can provide flexibility to reconcile employment with caring responsibilities in the home and can thus be used as a tool to advance gender equity in the workplace. However, findings have highlighted that workplace cultures which tend to equate willingness to give time with commitment and productivity, undermine the effectiveness of family-friendly

arrangements as they are perceived to have negative career consequences (Bailyn 2002; Böhm et al. 2002; Kodz et al. 2002).

When this is the case, take-up levels tend to remain low (Hochschild 1997; Yeandle et al. 2002). Further barriers to take-up of family-friendly working time arrangements include the concern of letting colleagues down in the context of work intensification, as they would have to shoulder more work to compensate for working time reduction or leave from work (Crompton et al. 2003). Phillips and colleagues, in a study on working parents of older adults, found the fear of being labelled as in need of help as a deterrent from take-up of supportive arrangements. Carers tended to make use of their annual leave instead (Phillips et al. 2002). In the context of increasing job insecurity, anxiety to lose one's job can also constitute a major barrier to the uptake of work-family arrangements and increase pressure to work long hours to show commitment to the firm (Lewis and Cooper 1999). Even where family-friendly working time arrangements are formally offered, employees may not always feel that they can use them (Eaton 2003).

Working time choices are shaped by the prevailing workplace culture and practices (Böhm et al. 2002). Organisational research in the United States and Europe has pointed out that organisational working culture can be in conflict with work-family reconciliation objectives (Lewis and Lewis 1996; Hochschild 1997; Lewis 2001b; Bailyn 2002). A long-hours culture in which presence is equated with performance, and long working hours are equated with commitment to the job, mediates the perceived entitlement to flexible or shorter working hours to which employees might be formally or legally entitled (Haas and Hwang 1995; Bailyn 1997; Højgaard 1998; Burke 2002; Eaton 2003; Sheridan 2004). There is a widespread perception among workforces, that management and supervisory positions require the input of long hours (Hochschild 1997; Kodz et al. 2002; Crompton et al. 2003; Rubery et al. 2005). The perception that management positions are not compatible with family leave and working time reductions represents a cultural barrier to the uptake of such work-family arrangements. While high qualification levels and managerial employment positions may strengthen an employee's bargaining position and time autonomy on the one hand, their indispensability to the employer may at the same time reduce their access to long leave allowances or working time reductions (Vaskovics and Rost 1999).

The likelihood of voluntary provision of family-friendly working time arrangements varies by industrial sector, organisational size, gender composition of the workforce and of decision makers, and management attitudes as to the relevance of family-friendliness for the organisation. Barriers to provision include lacking awareness, willingness and ability to offer employee-oriented flexibility. Requests for and take-up of family-friendly working time arrangements depend on the individual time needs as well as expectations whether a change in working time practice is possible or manageable. Individual working time needs are highly individual and are shaped by the employee's particular family arrangement, the nature of care responsibilities, the financial situation and access to care services (Perrons 1999; Phillips et al. 2002; Yeandle et al. 2002). Access to family-friendly working time arrangements at the workplace is further mediated by awareness levels, the degree to which the 'workplace culture' endorses a family-friendly ethos, the operational nature of the job, and approachability and understanding of supervisors or line managers (Haas et al. 2002; Meager et al. 2002b; Yeandle et al. 2003).

Conclusions

The purpose of this chapter was to contextualise the access problematic within the British and German national contexts in the late 1990s, when New Labour and the 'Red-Green' Government came to power. The first part provided a brief overview of the reconciliation choices of German and British families with children under the age of six and situated these within the context of government provided resources through a review of reconciliation policies in the 1980s and 1990s. Work-family reconciliation choices in Germany and the United Kingdom in the late 1990s were characterised by a strong gender division of labour reflecting the male breadwinner family model. While fathers assumed the primary breadwinning responsibility through working long hours, a significant proportion of mothers left employment to care for their infants full time and returned to part-time employment when their children were older (Table 1 and Table 2). The strong gendered impact of parenthood on parental employment patterns reflected structural constraints on work-family reconciliation, particularly as parental preferences strongly diverged from their actual reconciliation choices (Fagan et al. 2001; Bielenski et al. 2002). The review of government-provided reconciliation resources in the 1980s and 1990s revealed low levels of public childcare provision in both countries, full-time leave provisions, as well as financial incentives supporting the

male breadwinner arrangement, especially in the case of Germany. Neither country explicitly encouraged the externalisation of care or a dual-earner/dual-carer model. Although the benefit of family-friendly working time arrangements to parents was acknowledged, neither government intervened in private sector employment relations to improve parental access to family-friendly working time arrangements.

The second part then considered access constraints in the German and British working time regimes, taking into account the different levels at which the organisation of work is negotiated and regulated. In a context in which employee representation was not universal and where working parents did not have a strong collective voice, voluntary regulation of family-friendly arrangements through autonomous collective bargaining was not extensive. In the UK, low levels of unionisation, and low levels of trade union recognition combined with decentralised collective bargaining practice gave unilateral management decisions on the introduction of family-friendly working time arrangements the greatest relative weight. But even in Germany where collective bargaining practice was highly centralized, covering three quarters of employees, coverage of collective bargaining was not universal. Although employee representatives in the German system of employment relations had better structural conditions to negotiate family-friendly working time conditions, this potential was not used (Klenner 2005). Family-friendly working time flexibility was not a priority on bargaining agendas. Only a comparatively low number of workplaces had introduced family-friendly provisions on the basis of collective agreements. In the absence of state regulation and collective bargaining, the voluntary provision by employers was shown to vary by industrial sectors, organisational size and exposure to work-family pressures, the gender composition of the workforce, and management awareness and attitudes (Dex and Smith 2002; Krell and Ortlieb 2003). Working parents employed in male-dominated workplaces and sectors, in small establishments with line managers and top management who are unaware or insensitive to work-family pressures were less likely to work for an employer offering family-friendly working time arrangements than other working parents. Access to family-friendly working time arrangements within workplaces where these are formally offered is further hampered by restrictions on eligibility within the workforce on the basis of individual characteristics and discretionary management practices, unsupportive workplace cultures and opportunity costs in terms of promotions and lost earnings (Bailyn 2002; Böhm et al. 2002; Budd and Mumford 2003).

Drawing together the main findings of the chapter, the access problematic in Germany and the United Kingdom can be summarised as follows: in the absence of universal state regulation, the provision of family-friendly working time arrangements to working parents is subject to collective agreements between trade unions and employers and their representatives, the voluntary introduction by employers at the level of the firm and individual negotiations between parents and their managers. Neither collective bargaining nor voluntary employer provision had yielded widespread access to family-friendly working time arrangements in the late 1990s. Provision varied between and within workplaces creating structural access inequalities between working parents. Access inequalities were further associated with individual characteristics such as education and employment status and gender. Reconciliation policies by both governments reinforced the male breadwinner arrangement through the lack of support of dual-earner arrangements and no explicit government strategy to improve access to family-friendly employment practices was pursued.

This approach changed under the incoming centre-left governments who explicitly supported female employment and saw the facilitation of the simultaneous reconciliation of work and family responsibilities in a dual-earner model as a societal rather than private responsibility to be shared by parents, employers and the state. Within this changed approach to work-family reconciliation more widely, both New Labour and the 'Red-Green' Government started to explicitly address the access problematic explored in this chapter through government interventions in the employment relationship. The review of policy legacies inherited by the incoming governments revealed different starting points for policy development: while New Labour's policy strategy built on a liberal legacy of non-regulation and minimal state intervention in support of working mothers, which assumed the male breadwinner family arrangement, the German legacy was one of explicit resource allocation in favour of the male breadwinner/female carer family arrangement through long parental leave entitlements and tax and benefit incentives. Further policy differences were identified with regard to working time regulation with a non-regulative policy approach in the UK compared to statutory regulation of minimum and maximum working hours, rest periods and annual leave in Germany.

Chapters Four and Five trace the development of family-friendly working time policy on the basis of different policy legacies in the two countries, placing attempts to

address the problematic discussed in this chapter within the wider development of reconciliation packages of family leave, childcare policies, and working time policies. In order to explore how and to what extent the New Labour and 'Red-Green' governments addressed the access problematic of increasing provision on the one hand, and matching the flexibility offered with employee needs on the other hand, a comparative analytical framework is developed in the next chapter. It enables the comparative analysis of policy strategies in terms of instrument choice and design and cross-national variation along a number of dimensions of employee empowerment.

3. A framework for comparative analysis

The aim of this chapter is to develop an analytical framework for cross-national, comparative policy analysis to address the research question of the thesis: what policy strategies did the British and German governments pursue to improve access to family-friendly working time arrangements, in what ways did they differ, and why? To address this research question, the policy strategies pursued by the two governments were analysed in terms of instrument choice and design: which policy instruments they chose to increase access, and how these were designed.

The key challenge in the development of this comparative analytical framework was to identify a dimension of comparison which links the three components of the research puzzle as well as capturing the implications for gender and employment relations. In order to compare the policy output both over time and cross-nationally in a purposeful way, it was necessary to develop an indicator that allows ‘measurement’ of the degree to which policy output addresses access constraints to family-friendly working time arrangements. In this chapter, I propose that the concept of employee ‘empowerment’ meets this requirement. The concept of ‘empowerment’ encapsulates state-individual and employee-employer relations in that it considers the degree to which government policy empowers individuals with care responsibilities to negotiate the working time arrangements they need within the context of *asymmetrical power relations* between employees and employers. The assumption here is that the more working parents are ‘empowered’ to negotiate the working time arrangements they need, the more likely it is that they will gain access to the type of working time flexibility they require. It is important to distinguish between employer and employee-oriented working time flexibility. The availability of flexible working time arrangements in workplaces does not necessarily mean that flexibility is oriented at employee needs (Rubery et al. 1998; Everingham 2002). An employee-focused perspective gives consideration to the diversity of individual time needs and access constraints.

I consider the concept of empowerment useful in three respects: firstly, it is a good indicator of family-friendliness as it focuses on the ability of individuals to flexibly adjust work and family responsibilities *in line with their individual time needs*, rather than evaluating family-friendliness by the mere presence of flexible working time

arrangements irrespective of whether these are oriented at employee needs or not. The working time needs of working parents vary depending on the age of the child and the particular needs for care. For example, time needs are different depending on whether the care is for infants, school age children, or disabled children. Not all family-friendly working time arrangements offered by employers necessarily meet the time needs of working parents. A defining criterion of the family-friendliness of a policy strategy is therefore the empowerment of working parents to obtain a certain degree of control over working time flexibility, which allows the adjustment of work schedules to individual needs.

Secondly, the concept of empowerment provides an important conceptual tool for the analysis of policy choice and design. In the literature, systematic analysis of instrument choices usually begins with an attempt to identify a single or limited number of dimensions along which categories of policy instruments are said to vary (see for example Linder and Peters 1989; Howlett 2000). A systematic comparison of policy measures against criteria of empowerment allows one to critically explore the *empowering potential* of a given policy package. In practice, a highly empowering policy design might not lead to the increase in access that is intended by policy makers. A policy package with a low empowering potential, which is not designed to empower working parents to negotiate the time flexibility that they need, is even less likely to have a strong impact on access outcomes. An assessment of the empowering potential of the German and British policy strategies was pursued to address the question to what extent they were designed to empower working mothers and fathers.

Thirdly, I have chosen to analyse policy choice and design from an ‘empowerment’ perspective because I expect there to be a connection between the empowering potential of certain instruments and instrument attributes and actor interests, which in turn helps one to understand the *politics* of instrument choice and design. The concept of empowerment draws the link between certain types of instruments and their attributes and interest politics in this particular field, as government intervention in the realm of working time organisation touches upon the core of power relations between employers and employees in the employment relationship. Thus, an empowerment perspective allows one to address both questions on the degree of family-friendliness of a given policy strategy, as well as questions relating to the policy process of choosing certain policy instruments and attributes in design over others.

The chapter is structured into two parts. The first part develops the comparative framework used to analyse policy strategies to improve access to family-friendly working time arrangements from a cross-national perspective. Policy strategies are compared in terms of instrument selection and design. First, drawing on the instrument choice literature, three broad instrument categories of ‘regulation’, ‘economic means’, and ‘information’ instruments (Vedung 2003), and their respective ‘empowering potential’, are distinguished to allow systematic comparison of instrument choice across countries. Then, five criteria to assess the degree of empowerment of a given policy measure are constructed for the systematic comparison of family-friendliness at the level of policy design. The second part of the chapter turns to the politics of instrument choice and design and the question of how differences in policy approaches between countries can be explained. Drawing on the policy making literature, policy choices are conceptualised as being shaped by the ideas and interests of actors who operate and interact with the nationally specific institutional configurations and policy contexts.

I. A framework for the comparison of policy choice and design

This section sets out the methodological approach chosen for the comparative policy analysis. The comparison of policy developments between 1997 and 2005 proceeded through two steps: first, the selection of policy instruments was explored, addressing the question of what policy strategies were pursued to increase access and in what way instrument choice has varied over time and across countries. This then lead to the second step of analysing and comparing the specific design of policy instruments to address the question of how empowering they were designed to be.

1. The government’s ‘tool kit’: instrument choice

The first step in the comparison scrutinises the selection of policy instruments to systematically compare policy strategies in the two countries. Policy instruments are the empirically observable output of a government’s policy strategy¹⁴. In creating new policy, policy makers select among different ‘means’ (Woodside 1998) or ‘techniques’

¹⁴ Non-intervention is also a policy choice (Anderson 1977). The discussion of government choices between policy instruments presupposes that a decision in favour of intervention was made (Vedung 2003).

(Schneider and Ingram 1990) available to them to attempt to achieve a policy goal. These means or techniques are commonly referred to as ‘policy instruments’. Within political science, the study of policy instruments has been advanced as a method of analysing policy processes that focuses on policy instruments, their (perceived) attributes, and the rationale for their selection (Howlett 2004). There is a long tradition in policy analysis to classify different instrument types according to shared characteristics or principles (for example Anderson 1977; Bardach 1977; Doern and Phidd 1983; McDonnell and Elmore 1987; Schneider and Ingram 1990). The most commonly used classification of policy instruments distinguishes between different types of instruments on the basis of the governing *resources* they employ (Hood 1983; de Bruijn and Hufen 1998).

A prevalent resource-based classification scheme is Vedung’s Carrots, Sticks and Sermons classification that proposes that instruments fall into one of three mutually exclusive categories: ‘Regulations’ (Sticks), ‘Economic means’ (Carrots) or ‘Information’ (Sermons)¹⁵ (Vedung 2003). Vedung differentiates as follows:

As to the relationship between governor and governee, the typology takes three basic possibilities into consideration. In the regulatory case, the governee is obligated to do what the governor tells her to do. In the second instance, the governee is not obligated to perform an action but the governor may make action easier or more difficult by adduction or deprivation of material resources. Thirdly, the relationship may be persuasive, to wit, involving only the communication of claims and reasons but neither material resources nor obligatory directives. These three relationships are the defining properties of the classes of regulatory, economic, and informative policy instruments (Vedung 2003 p.31)

In the following, I shall briefly review his framework and propose a number of amendments.

Regulation

In Vedung’s terms, ‘regulations are measures undertaken by governmental units to influence people by means of formulated rules and directives, which mandate receivers to act in accordance with what is ordered in these rules and directives’ (Vedung 2003 p.31). It is important to note that Vedung’s use of the term differs from the common

¹⁵ These three categories are derived from Etzioni’s three-fold classification of power distinguishing between coercive, remunerative, and normative power, where power is defined as ‘an actor’s ability to induce or influence another actor to carry out his directives or any other norms he supports’ (Etzioni 1975 p.5 ff)

use of ‘regulation’ in the literature as an all embracing category of political control¹⁶. Vedung considers regulation as ‘just one of a wider variety of tools that governments have at their disposal to exert power over the actions of their citizens’ (Vedung 2003 p.32).

While Vedung rightly notes that regulations are not always associated with threats of negative sanctions, he stipulates that the defining property of regulation is ‘that the relationship is authoritative, meaning that the controlled persons or groups are obligated to act in the way stated by the controllers’ (p.31). Viewed from an empowerment perspective, this definition of authority is limiting as it omits the use of government authority to empower as well as to obligate. Through the use of law, regulation can be used to allocate rights as well as obligations. In the context of employment relations, the rights of some (working parents) are associated with the obligations of others (employers). Extending Vedung’s definition of government authority to encompass empowering as well as controlling, the complexity of ‘governor-governee’ relations can be better captured.

Economic means

‘Economic policy instruments involve either the handing out or the taking away of material resources, be they in cash or in kind. [They] make it cheaper or more expensive in terms of money, time, effort, or other valuables to pursue certain actions but in contrast to regulations, governees are not obligated to take certain actions’ (Vedung 2003 p.32). This leeway to choose not to take certain actions makes economic instruments ‘principally different from regulation’ (Ibid.). While economic instruments may provide subsidies for the purchase of childcare, they do not entitle parents to a childcare place. Similarly while cash benefits might be paid to full-time parents as a compensation for lost earnings, it is different from entitling them to family leave or working time reduction by law. Vedung’s category of economic instruments includes monetary as well as non-monetary material resources, thus including for example the provision of childcare services as well as cash benefits towards their costs.

¹⁶ For example Meier: ‘Regulation is any attempt by the government to control the behavior of citizens, corporations or sub-governments. In a sense, regulation is nothing more than the government’s effort to limit the choices available to individuals within society’ (Meier 1985 p.1).

Information

Information, ‘also referred to as “moral suasion”, or exhortation, covers attempts at influencing people through the transfer of knowledge, the communication of reasoned argument, and persuasion’ (Vedung 2003 p.33). Vedung uses the information category as:

a catch-all term for all information campaigns; for the diffusion of printed materials like brochures, pamphlets, booklets, folders, fliers, bulletins, handbills, and posters; for advertising, labelling, audits, inspections, demonstration programs, custom-made personal advice, training programmes, and educational efforts; and for other forms of amassing, packaging, and diffusion of knowledge and recommendations (Ibid.).

The absence of obligation (entitlement) and handing out or taking away of material resources distinguishes ‘information’ from the previous two categories. Vedung’s classification scheme is particularly useful for the study of family-friendly working time policy as it explicitly includes information as a separate category of policy instruments. The attempt to influence the behaviour of employers through information and persuasion to provide family-friendly working time arrangements in the absence of regulation and economic incentives is an important component of both the German and British policy strategies (DfEE 2000a; BMFSFJ and Bertelsmann Stiftung 2003). Figure 3 provides examples of regulation, economic means and information-based policy measures.

Figure 3: Policy examples by type of instrument category

POLICY INSTRUMENT TYPE	POLICY EXAMPLES
Regulation	Working Time Regulations Employment rights to family-friendly working time patterns
Economic incentives	Tax concessions for the provision of family-friendly working time arrangements Financial transfers compensating the loss in earnings
Information	Information campaigns on the benefits of family-friendly working time arrangements

The basis of division: degree of authoritative force / empowerment

In line with much of the literature on policy instruments, the ‘Carrots, Sticks and Sermons’ scheme is organised around the theme of coerciveness (Anderson 1977; Doern and Phidd 1983; Linder and Peters 1989). Vedung sees the basis of division between the different categories of instruments in the ‘authoritative force involved in the governance efforts’ (Vedung 2003 p.34). By authoritative force he means ‘the degree of power which the government is prepared to use in order to achieve compliance’ (Ibid. p. 34). On this basis of division, ‘regulation is more constraining for addressees than economic means, and the latter are more constraining than information’ (Ibid. p. 35).

Vedung’s conceptualisation of the degree of authoritative force involved in the governing relationship can usefully be drawn upon to conceptualise the differences in the ‘*empowering potential*’ of different instrument categories among which governments can choose in the development of family-friendly working time policy (see Figure 4). Regulations can provide statutory entitlements to access family-friendly working time arrangements and obligate employers by law to provide them or to accommodate employee rights. Therefore they have a greater ‘empowering potential’ than attempts to encourage family-friendliness through the provision of economic incentives such as tax concessions or through information, research and guidance. This does not mean that regulations are necessarily backed by negative sanctions in the case

of non-compliance, but they *can* be, contrary to an information campaign. *The selection of policy instruments therefore provides an indication on whether or not governments are prepared to intervene in the given power balance between employers and working parents.* The choice of statutory regulation indicates the willingness to back up the interests of working parents with state power, whereas information instruments leave the power balance between employers and employees relatively unchallenged. The introduction of family-friendly working time arrangements is left to the good will of employers.

Figure 4: The empowering potential of the governing effort by instrument types

HIGH	→	LOW
Regulation	Economic means	Information

In other words, employment rights can be backed up by sanctions and therefore be more coercive than an information programme, which tries to persuade rather than coerce. This does not necessarily mean that an information programme is not empowering: by informing working parents about different working time arrangements that could help them ease work family reconciliation pressures, and by providing guidance on how to negotiate their case, such programmes can empower through capacity building. This form of empowerment, however, is generally perceived as less threatening by employers and therefore employers can be assumed to be more supportive of information programmes than employment rights.

Policy packages

Policy instruments to address a particular policy problem tend to come in packages rather than in isolation (Bemelmans-Videc and Vedung 2003). The empowering potential of policy strategies is stronger if policy instruments are combined than if they are employed in isolation. This can be illustrated with the well-researched example of family leave policies: the allocation of cash benefits (economic means) to working mothers in the form of Statutory Maternity Pay makes ‘time to care’ more affordable, empowering them to take up an entitlement to maternity leave (regulation). This in

turn represents a greater shift in the power balance between the working mother and her employer as the choice of taking leave from employment is more 'real' when it is financially affordable (Beckmann 2001b). If the mother then chooses to allocate time to care by taking the leave, this in turn forces the employer to adjust the work organisation to her choice. From the employers' perspective, family-friendly working time policy which uses economic means to substantiate formal rights represents a greater shift in the power balance than entitlements to family-friendly working time arrangements alone as it empowers working parents to act on their rights. Applying the example to fathers in the form of paternity pay and paternity leave, the provision of paternity pay enables fathers to afford time to care which has an equality promoting effect on gender relations by enabling a more equal time allocation to care. It further impacts on employment relations in that employers are faced with *both* men and women being able to afford 'time to care', representing an even greater potential impact on the power balance as it enables more employees to afford time to care. The packaging of policy instruments can strengthen the empowering potential of a policy strategy.

Broad instrument categories provide some indication of the empowering potential of a chosen policy strategy based on the degree of authoritative force governments are prepared to involve, and resources they are willing to invest. However, limiting the analysis to the question of instrument choice would fail to capture potential variations within instrument categories created through instrument *design*. Kenneth Woodside has drawn attention to the need to 'recognize that each policy instrument itself can be used in a wide range of ways that involve different degrees of coercion' (Woodside 1986 p.788). He emphasised that each instrument can be 'structured, disaggregated and moulded to fit political circumstances' (Ibid.), making it necessary to pay careful attention to the specific form an instrument takes, rather than just resorting to broad classification by types of instrument. In a later contribution he distinguished between two levels of choice to introduce a sharper focus on the politics of instrument choice. The examination of the process of instrument choice from this perspective involves, at the first level, the choice of one instrument over another, and at the second level the choice of appropriate characteristics of the instrument that has been chosen (Woodside 1998). I refer to this second level of choice as the level of instrument design. A policy

strategy can be more or less empowering depending on first, which policy instruments are chosen and second, how each instrument is designed.

2. The devil lies in the detail: comparing policy design

The task of this section is to operationalise the concept of empowerment for the comparative analysis of policy design. As an indicator of family-friendliness, the concept of ‘empowerment’ needs to be defined in a way that is applicable to the context of family-friendly working time policy. This involves defining the degree of empowerment of working parents in terms of a number of ‘measurable’ criteria against which policy measures can be analysed and compared. These criteria must be at once relevant for individual access and applicable to aggregate policy measures. To enable the systematic comparison of policy over time and across countries, it is necessary that the criteria of ‘empowerment’ can travel across different types of policy instruments. Based on insights regarding access constraints gained from the different literatures on working time flexibility, management and organisational research, employment relations and gender regimes discussed in Chapters One and Two, I derived five indicators to operationalise the concept of ‘empowerment’. These five Empowerment Criteria explore who benefits (*breadth of coverage*), whether policies address working parents directly or via intermediary actors (*precision of targeting*), the degree to which working parents have control over the type of flexibility of their working time arrangements (*scope of employee control over working time flexibility*), whether employee preferences can be enforced in the face of employer opposition (*enforceability*), and finally, whether policies address the opportunity costs attached to flexible working time arrangements, such as detrimental treatment or financial loss (*opportunity costs*). These will be briefly discussed in turn.

1. Breadth of coverage

The review of the literature in Chapter Two highlighted the strong variation in access both across and within workplaces (Dex and Smith 2002; Phillips et al. 2002; Budd and Mumford 2003; Krell and Ortlieb 2003). Government policy can redress access inequalities arising through voluntary provision and collective bargaining by universally targeting policies at those in need. An indicator measuring the ‘breadth of coverage’ is needed to capture the degree to which government policy aims to redress access inequalities or reinforces them. Selectively targeted policy measures, for

example, only cover a subgroup of the population of working parents, excluding others. Selectivity criteria include targeting by individual attributes such as care status, gender, or employment status, or by employer attributes such as employer size or industrial sector. Breadth of coverage can be measured along a continuum of highly selective to universal coverage, where a highly selective approach is associated with a low degree of empowerment, and a universal approach is associated with a high degree of empowerment. The more working parents are covered by a policy, the more 'empowering' it is.

2. Precision of targeting

Given the multi-level structure of working time negotiation involving a broad range of actors with influence on working time organisation (Anxo and O'Reilly 2000), the second criterion for the measurement of empowerment is the precision of targeting. Here I distinguish between direct and indirect targeting of policy measures. Policy measures that are directly targeted at working parents are seen as most empowering, and measures that are indirectly targeted at them via their representatives or via employers, or employer representatives, are progressively less empowering. Indirectly targeted policies are less empowering because they are channelled through intermediary actors who may or may not act in the interest of working parents (Berg et al. 2004; Pärnänen et al. 2005). Therefore, indirect policy measures have less potential to impact on their intended beneficiaries in the intended way than policy measures that are directly targeted at them. Directly targeted policy measures are therefore rated highly empowering, whereas policy measures directed at employer representatives represent a comparatively low degree of empowerment.

3. Scope of employee control over working time flexibility

The third criterion is the scope of employee control over working time flexibility, and the extent to which policies allow working parents to adjust their working time patterns to their individual time needs. Feminists for a long time have advocated a reduction in normal working hours as a gender equitable working time scenario which allows a more equal sharing of care work between men and women and gender equity in the labour market (Rubery et al. 1998; Mutari and Figart 2001). Although part-time work provides time to care, feminist research emphasises the associated risks. Part-time work is often associated with a reduction in labour standards (Rubery 1998) and can

imply lower hourly wages compared to full-time employment, and reduced benefits and pension outcomes (Ginn and Arber 1998). Further, a reduction of working hours can be problematic when it is exchanged for greater employer flexibility in scheduling (Gornick and Heron 2006). A consideration of employee control is crucial to avoid confusing employee-oriented flexible working opportunities with imposed flexibility by firms (Bettio et al. 1996). Everingham warns that a focus on working time reduction is too limited by arguing that:

It is not just the hours worked that are the issue, but the control that workers have over their working hours [...] the call for shorter working hours for all does not *necessarily* address this issue of flexibility – and the need for greater worker control over the hours that *are* worked (Everingham 2002 p. 345).

As the care responsibilities and reconciliation arrangements of working parents are diverse and variable over time, ‘one-size-fits-all’ policies do not necessarily meet individual time needs. Access to part-time employment, when what is needed is a variable distribution of full-time working hours over the working week, is therefore not empowering. Therefore, policies enabling variation in both length and distribution of working hours are rated more empowering than policies that are limited in the scope of time flexibility they allow.

In addition to the flexibility in terms of length and distribution of hours worked, flexibility in ‘procedural’ matters such as the frequency with which employees can make requests and whether arrangements are permanent or can be reversed are considered, taking account of the changing nature of time needs across the care cycle. Empowerment is measured by the degree of employee-oriented flexibility: the more it enables working parents to adjust work and care responsibilities according to individual need, the more empowering the policy is.

4. Enforceability

The fourth criterion is the degree of enforceability of policy measures. If working time regulations or employment rights entitle working parents to certain types of working time flexibility but non-compliance by employers is not sanctioned, then the degree of enforceability is low. This corresponds to a low degree of empowerment as *actual* access is jeopardized although it is *formally* improved. A growing body of organisational literature points to discrepancies between policy and practice at the level of the firm, where workplace culture and management practice can undermine access

to formally provided policies (for example Højgaard 1998; Burke 2002). While government policy cannot ensure compliance in implementation, safeguards can be built into policy design. This criterion considers how easy it is for employers to ignore or refuse requests for family-friendly working time arrangements.

The degree of enforceability also allows a distinction between different types of policy instruments and their ‘empowering potential’. While statutory regulations can be backed up by sanctions for non-compliance, this is not the case with information campaigns and best practice dissemination. The anticipated fear of employment tribunals and costly compensation payments can be a strong motivation for employers to comply with policy requirements. This can considerably strengthen the negotiation position of working parents wanting to change their working time arrangements.

5. Opportunity costs

The fifth criterion of empowerment refers to the opportunity costs associated with family-friendly working time arrangements. The higher the opportunity costs attached to family-friendly working time arrangements, the lower the degree of empowerment. High opportunity costs in terms of risk of job loss (Lewis and Cooper 1999), career impediments (Bailyn 2002), and financial loss (Vaskovics and Rost 1999; Beckmann 2001b; Yeandle et al. 2002), are major deterrents to take-up, even if working time flexibility is greatly needed. Actual or perceived opportunity costs that act as a barrier to take-up are extremely difficult to measure. I shall define policy measures aimed at reducing the opportunity costs borne by working parents making use of family-friendly working time arrangements as empowering. An example of such policy would be the protection of working parents from dismissal, or disadvantaged treatment compared to workers working standard hours. Other examples include policies attempting to reduce the financial loss incurred through care related working time reduction by financial state transfers. The absence of such opportunity cost reducing policy measures will be rated as a low degree of empowerment.

The degree to which a certain policy measure can be said to be ‘empowering’ to working parents can be assessed with regard to how it ‘scores’ on the five defining criteria: coverage, targeting, the scope of employee control over working time flexibility, enforceability, and opportunity costs. Figure 3 provides an overview of variation.

Figure 3: Criteria of Empowerment

	CRITERIA OF EMPOWERMENT	POLICY DESIGN	DEGREE OF EMPOWERMENT
1	Breadth of coverage	Universal / highly selective	High/low
2	Precision of targeting	Direct / indirect	High/low
3	Scope of employee control over working time flexibility	Broad choice of time variations / limited time variation	High/low
4	Enforceability	Backed by sanctions / voluntary	High/low
5	Opportunity costs	Policies tackling disadvantage and, or, financial loss relative to standard hours / no policy intervention	High/low

Summing up, each category of policy instruments (information, economic means, and regulation) has through their different characteristics varying potential to empower working parents. Given the particular significance of affordability in the context of the work/family interface, it is important to consider the combination of instruments in determining the degree of empowerment, as a formal right (regulation) which is not backed up financially (economic means) might entitle parents to reduce their working hours without significantly improving access if they cannot afford to do so due to the financial loss associated. Further, each policy instrument can be designed to be more or less empowering depending on the choices that are made with regard to its attributes as illustrated in Figure 3.

The comparative empowerment framework provides a tool to systematically compare the German and British policy strategies in terms of instrument choice and design. It further allows to identify the empowering potential of the types of policy instruments and their attributes that were chosen by the respective governments, and to identify cross-national differences between them. However, the framework tells us little about why certain choices are made, and why policy strategies might vary over time and between countries. These questions are addressed in the remainder of the chapter, which turns to the *politics* of instrument choice and design.

II. Analysing variation in instrument choice and design

Family-friendly working time policy strategies in Germany and the UK were analysed over the time period of approximately one decade. In this time, New Labour (1997-2005) and the 'Red-Green' Coalition governments (1998-2005) progressively developed their policy responses to the problem of insufficient and unequally distributed access to family-friendly working time arrangements. While the policy goal of improving access was the same in both countries, the approaches of the two governments differed over the time period considered and compared to each other. In order to understand both changing policy choices over time and cross-national variation, one must contextualise the process of instrument choice and design both within time and within its nationally specific context (Pierson 2000b). Policy choices are influenced by many factors. To reduce complexity and to make policy explanation possible and manageable, scholars have to make choices as to which factors to emphasise and which ones to ignore in the analysis. These choices are made explicit by the theoretical framework applied (Nagel 1999). The perspective adopted here is that policy strategies are developed by actors who have different interests and ideas and operate within different institutional settings and policy contexts (Howlett and Ramesh 2003).

Policy instruments are employed as means to reach policy goals (Woodside 1998). Different policy goals can provide explanations for variation in policy choice and design. At the specific policy level, both governments were pursuing the same goal, namely to increase access to family-friendly working time arrangements to enable parents to combine paid work and family care. However, this specific policy goal is embedded within a wider policy agenda in which it serves other, overarching, policy goals. Family-friendly working time arrangements are instrumental in the reconciliation of work and family care, which in turn is instrumental in attaining other policy goals such as poverty prevention, labour market inclusion, child welfare, and equal opportunities between men and women (OECD 2002). In other words, although both countries wanted the same thing at the specific policy level, they may have wanted it for different reasons. Depending on government priorities, family-friendly working time policy, for example, could be either biased towards increasing the employability of parents (time to work), or towards enabling workers to spend more time with their children (time to care). The selection of policy instruments must

therefore be contextualised within the wider policy agenda of a given government at a particular point in time, as the government's overarching priorities can provide explanations for the choice of certain policy instruments over others, and their design.

Due to the instrumentality of work-family reconciliation to a wide array of policy objectives, actors across policy fields are interested in its promotion. The policy process involves a number of policy actors operating in different government institutions where they plan and develop policy reforms under different policy agendas. Indeed, the development of family-friendly working time policy was in both countries organisationally fragmented, spanning across different policy fields for which different government departments were responsible. In the UK, responsibility for the development of family-friendly working time policy was primarily shared between the Department for Education and Employment (DfEE) and the Department of Trade and Industry (DTI)¹⁷. In Germany, responsibility was shared between the Federal Ministry for Labour and Social Affairs (BMAS) and the Federal Ministry for the Family, Senior Citizens, Women and Youth (BMFSFJ). Under the roof of employment policy, industrial relations, family policy, equal opportunities or poverty prevention, policy measures with implications for access to family-friendly working time arrangements might be developed as a by-product of wider reforms. As different departments have different institutionalised policy priorities and ways of doing policy, instrument selection and design can vary as a result (Linder and Peters 1989).

The institutional set up within which actors influence policy choice and design is different for regulatory and information based instruments. Institutions are here defined, following Hall, as the 'formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals' (Hall 1986). A new law, for example, undergoes a policy formulation and decision making process, which differs fundamentally from the development of an information campaign. While the policy process for the passing of laws undergoes a formal decision making procedure, where the passing of laws depends on majority voting, information campaigns are developed and managed under the discretion of government ministers and civil servants in the state executive. Here, policy decisions are not directly subject

¹⁷ Departments changed over the period of consideration and since: In the UK, the Department for Education and Employment was changed to the Department for Education and Skills (DfES) in 2001. The Department of Trade and Industry was changed to the Department for Business, Enterprise and Regulatory Reform (BERR) in 2007.

to parliamentary majorities. Institutions ‘provide incentives, opportunities and constraints’ for actors to influence policy choice and design by structuring the relative influence of different actors on decision-making (Immergut 1992 p.32).

New policy decisions are made against the backdrop of the ‘policy inheritance’ resulting from previous years, or decades, of past policy choices which represent ‘a vast deadweight of accumulated practices and ways of thinking’ (Hecló 1974 p.46). Past policy experiences influence the approach of policy makers, who follow established ways of doing, or react against them when these are perceived to create policy failure. In the first case, the literature speaks of ‘path dependence’, in other words of continuity along a chosen policy path where preceding steps in a particular direction induce further movement in the same direction (Pierson 2000a). The conception that once a particular policy path has been taken, the return to policy alternatives comes at relatively higher costs than continuing along the chosen path, has been more amenable to explain continuity in policy approaches than change (Levi 1997). Where past policy choices are seen to have failed to achieve their intended outcomes, dissatisfaction can provoke policy change (Palier 2005). Policy change can occur through a process of ‘learning’ from past experience and new knowledge (Hecló 1974; Hall 1993; Sabatier and Jenkins-Smith 1993). In both Germany and the UK, the dissatisfaction with low provision levels and access inequalities in the absence of state intervention prompted governments to decide to address this problem through government policy (Home Office 1998; BMFSFJ 1999). As previous governments had not proactively attempted to address access constraints, no previous knowledge was however available on the effectiveness of regulation, financial support, or persuasion strategies (see Chapter Two). Despite the absence of a *statutory past* in family-friendly working time regulation, policy developments in Britain and Germany did not develop on a clean sheet.

Within the wider realm of working time policy, employment relations, and work-family reconciliation, the policy legacies inherited from the Conservative/Liberal governments of the 1980s and 1990s differed widely (Chapter Two). The British policy inheritance was a very low level of employment regulations and no explicit reconciliation policy. The German inheritance on the other hand was a policy mix, which provided strong incentives for mothers to exit employment. The policy framework in place in the 1990s differed. Policy makers in the two countries reacted to

different policy legacies and ways of dealing with work-family reconciliation and working time regulation. Nationally specific institutional configurations, policy legacies and policy agendas influence the formulation of policy strategies. Different starting points, different policy traditions and ways of doing, and different institutional constellations within which actors operate and different policy goals to which work-family reconciliation is instrumental represent important possible determinants of variation across countries and over time. In order to understand the rationale for instrument selection and design and variation in the empowering potential of policy strategies, one must further consider the actors involved in the policy process, their ideas and interests, and interactions between them (Smith 1993; Sabatier 1999). Two explanatory propositions that are derived from the policy making literature are explored in the following discussion: firstly, that policy makers are more likely to choose instruments and instrument attributes that are in line with their own interests and ideas (Surel 2000); and secondly, that policy makers are more likely to accommodate interest group demands if they are in a relationship of inter-dependence, for example when policy makers need the cooperation of interest groups for policy implementation (Kooiman 1993; Rhodes 1996; Kooiman 2000). Let us consider these two propositions in turn.

1) Policy makers are more likely to opt for policy instruments which are congruent with their wider normative and cognitive frames

In recent decades, an increasing number of scholars have developed theoretical frameworks asking how ideas, principles, values and beliefs influence and constrain the behaviour of policy makers and the dynamics of the policy-making process (Braun and Busch 1999; Surel 2000; Capano 2003). A number of concepts have been developed to grasp the cognitive and normative dimensions of policy making, namely *frames* (Schön and Rein 1994), *belief systems* (Sabatier and Jenkins-Smith 1993), *référentiels* (Jobert and Muller 1987) or *paradigms* (Hall 1993). Yves Surel has brought together these different concepts under the general expression of ‘normative and cognitive frames’ referring to ‘coherent systems of normative and cognitive elements which define in a given field, ‘world views’, mechanisms of identity formation, principles of action, as well as methodological prescriptions and practices for actors subscribing to the same frame’ (Surel 2000 496).

Analytically, the central elements of cognitive and normative frames can be located on a hierarchical scale descending from the general to the specific. Surel categorised these as ‘metaphysical principles’, ‘specific principles’, ‘forms of action’, and ‘instruments’ (Surel 2000 p.496). On the most general level are values and metaphysical principles, sometimes referred to as a ‘world view’. Sabatier calls this level the *deep core*. It includes ‘basic ontological and normative beliefs, such as the relative valuation of individual freedom versus social equality, which operates across all policy domains’ (Sabatier 1998 p.103). An example, drawn from Peter Hall’s research, would be neo-liberal principles guiding policy decision across different policy fields (Hall 1993). Embedded within these general norms, values and beliefs are more ‘specific principles’ relevant to a specific policy field, which Sabatier calls the *policy core*. These define ‘legitimate strategies with respect to objectives more or less specifically prescribed by general principles’ (Surel 2000 p.498). From the general and policy-specific cognitive and normative frames are then derived ‘practical considerations of the most appropriate methods and means to achieve the defined values and objectives’ (Ibid.), which draws the link from the ‘mental maps’ constructed by cognitive and normative frames to the delimitation of instrument choices to implement a particular policy strategy. Finally, the last level is concerned with the specification of instruments. The normative and cognitive frame ‘delimits the scope of necessary and potential instruments and the relative importance of each of them’ (Surel 2000 p.499). Thus, policy preferences regarding certain categories of instrument and their attributes at the specific policy level are framed by the wider cognitive and normative orientations of policy makers.

Adopting this insight to the development of family-friendly working time policy strategies, it is necessary to explore the wider ideational context within which decisions on policy instruments are embedded. What is seen to be the appropriate role of the state in the governance of employment relations? And under which conditions can state intervention be justified? Is the negotiation of working time perceived to be the strict right and responsibility of management and labour, or is state regulation justified by the aim of redressing market inequalities? How is the value of time sovereignty conceptualised, as a social good or right, or as a benefit subordinate to business prerogatives? Is the care of children understood foremost as a parental

responsibility or as a social responsibility to be met through the provision of public services (Folbre 1994; Gornick and Meyers 2003)?

An ideational approach suggests that policy makers are more likely to opt for policy instruments which are congruent with their wider normative and cognitive frames. For example, if policy makers subscribe to a neo-liberal view of state-economy relations, this mind-set is likely to rule out policy instruments which involve regulatory interventions in the employment relationship. Within the German and British context of the late 1990s, parties of the political left came to power, which are generally considered more willing to redress market-created inequalities than parties of the political right (Huber and Stephens 2000). Indeed both New Labour and the ‘Red-Green’ Government intended to provide government support to working parents whose time needs were insufficiently catered for in the labour market. Their normative and cognitive frames were conducive to government interventions in the employment relationship in principle. A favourable general disposition towards the *employee-empowerment* interests of trade unions, family and equality groups could be expected in terms of the ideas of political parties. However, it is important not to treat political parties or indeed government as a Black Box. Ideas of individual policy makers, mediated by the organisational priorities of the government departments or parliamentary committees they operate in, and the particular political pressures they are exposed to, can vary by policy issues within as well as across political parties. In this respect it is useful to think of actors as belonging to one of several advocacy coalitions within a policy subsystem as Sabatier and Jenkins-Smith’s propose in their Advocacy Coalition Model (Sabatier and Jenkins-Smith 1993).

Sabatier and Jenkins-Smith propose to take policy field specific ‘policy subsystems’ as the unit of analysis, which comprise ‘actors from a variety of public and private organisations who are actively concerned with a policy problem or issue’ (Sabatier and Jenkins-Smith 1993 p.17). This large number of actors involved in a given policy subsystem over a period of time is aggregated into smaller categories of two to four ‘advocacy coalitions’, which are:

people from a variety of positions (elected and agency officials, interest group leaders, researchers, etc.) who share a particular belief system – that is, a set of basic values, causal assumptions, and problem perceptions – and who show a nontrivial degree of coordinated activity over time (Sabatier and Jenkins-Smith 1993 p.25).

Within the policy subsystem concerned with the family-friendly organisation of working time, government actors as well as societal actors can be conceptualised either as *Employee-Empowerment* advocates favouring policy interventions that empower employees, or as *Managerial Freedom* advocates pushing for solutions which leave the balance of power between employers and employees unchallenged. This conceptualisation moves beyond the structural divisions of government institutions, interest groups, and political parties but instead focuses on the structuring effect of ideas and interests, here divided around the concept of employee empowerment and the associated policy instruments and instrument attributes.

Interest groups try to influence policy outcomes in the interest of their members (Wilson 1990). I define interest groups, following Wilson, as ‘organisations, separate from government, though often in close partnership with government, which attempt to influence public policy’ (Wilson 1990 p.1). Family-friendly working time policy touches upon the interests of highly organised and long established interests groups in both Germany and the UK, including business and labour organisations. It is also of interest to family and equality groups in both countries as the access problematic is highly relevant to their constituencies. ‘Empowering’ policy measures have the potential to shift the balance of power between employers and employees in favour of the latter. As interest groups such as employer organisations, trade unions and family groups generally advocate policy choices that maximise the benefits to their constituents¹⁸, one would expect policy choices that are *perceived* by interest groups to effect a redistribution of power to employees to be advocated by trade unions, family and equality groups (see for example TUC 2001), whereas one would expect employers and their organisations to advocate measures that are not perceived to redistribute control over working hours to working parents, in order to protect employer control over working time organisation (CBI 2003).

Assuming that interest groups advocate policy choices that maximise the benefits for their constituents, inferences can be made from particular instrument types and their attributes to the policy preferences¹⁹ held by different interest groups²⁰. Taking the

¹⁸ The underlying assumption here is that control over working hours is a benefit to both employers and employees.

¹⁹ By policy preferences I understand the manifest expression of what actors say they want.

example of employment rights, employer representatives can be expected to oppose, and employee representatives to favour the choice of employment rights over information campaigns, where employment rights are perceived to be more empowering to employees than information campaigns. Once the decision to introduce legislation is made, however, employers are expected to bargain for a low degree of empowerment at the level of instrument design, whereas employee representatives are expected to advocate a high degree of employee empowerment (see for example Work and Parents Taskforce 2001). Taking the example of 'breadth of coverage' as an instrument attribute of employment rights, highly selective eligibility criteria have the effect of keeping the number of employees entitled to make claims to a minimum, whereas universal entitlements cover a large amount of employees, potentially affecting a larger number of workplaces in a more substantial way. One may therefore expect that employers will be in favour of highly selective coverage whereas employees and their representatives will advocate universal entitlements. While it is relatively straightforward to empirically identify which advocacy groups different interest groups fall into by analysing their expressed policy preferences, a more challenging question is how interest groups influence instrument selection and design by policy makers (Smith 1993). By policy makers I refer to those actors at the level of national government who make decisions about the selection and design of policy instruments.

Variations in the empowering potential of policy strategies can be in part attributed to variable opportunities of these interest groups to influence policy decisions in line with their policy preferences. In the literature, the degree to which societal interests shape policy decisions is contested. Whereas pluralist, corporatist and Marxist approaches attribute a great deal of influence to societal groups, statist scholars highlight the autonomy and governing capacity of government actors in the policy process. Statist scholars argue that in understanding policy, it is important to recognize that state actors have interests and the potential to fulfil these interests (Nordlinger 1981; Skocpol 1985; Wilson 1990; Smith 1993). Yet, high costs may be incurred by making policy decisions that go against the interests of societal groups. Smith argues that states have an interest in developing integrated relationships with groups as a means of increasing

²⁰ Although individual actors are not assumed to act rationally, an organisational rationality is assumed in the lobbying and bargaining process over policy formulation, in which each interest group tries to maximise the benefits for their members.

infrastructural power and that these relationships affect policy making (Smith 1993 p.75). Hence, one may expect that:

2) Policy makers are more likely to accommodate interest group demands if they are in a relationship of inter-dependence.

In family-friendly working time policy, as in any policy area, policy makers do not operate in isolation from ‘society’. In many cases, interactions with interest groups and other experts in the policy field are actively sought to gain knowledge and better understanding of the issues at stake (Wilson 1990; Sabatier and Jenkins-Smith 1993). Consultation and exchange of ideas with stakeholders further increases the acceptance and legitimacy of policy strategies as policy makers are seen to take societal interests into account (Smith 1993). In many cases, interest groups are not only valuable sources of information but also important mediators between government and the target groups a policy strategy is directed at (Wilson 1990). Interest groups have better access to the groups targeted by policy strategies: employers, works councils, trade unions and working parents.

Government actors are reliant on the cooperation of interest groups if access to family-friendly working time arrangements is to be increased, especially on a voluntary basis. At the same time, interest groups are interested in cooperating with government as this provides them with access to policy makers and opportunities to influence the policy strategies pursued. Policy makers who try to persuade employers to introduce family-friendly working time policies have an interest in not antagonising them in order to maximise the chances of policy success (Hood 1983). This makes the policy option of a non-threatening, information-based policy strategy more attractive. Christopher Hood observed that when policy makers want voluntary compliance from target groups they tend to use information, whereas when they want to redistribute resources they will use regulation (Hood 1983).

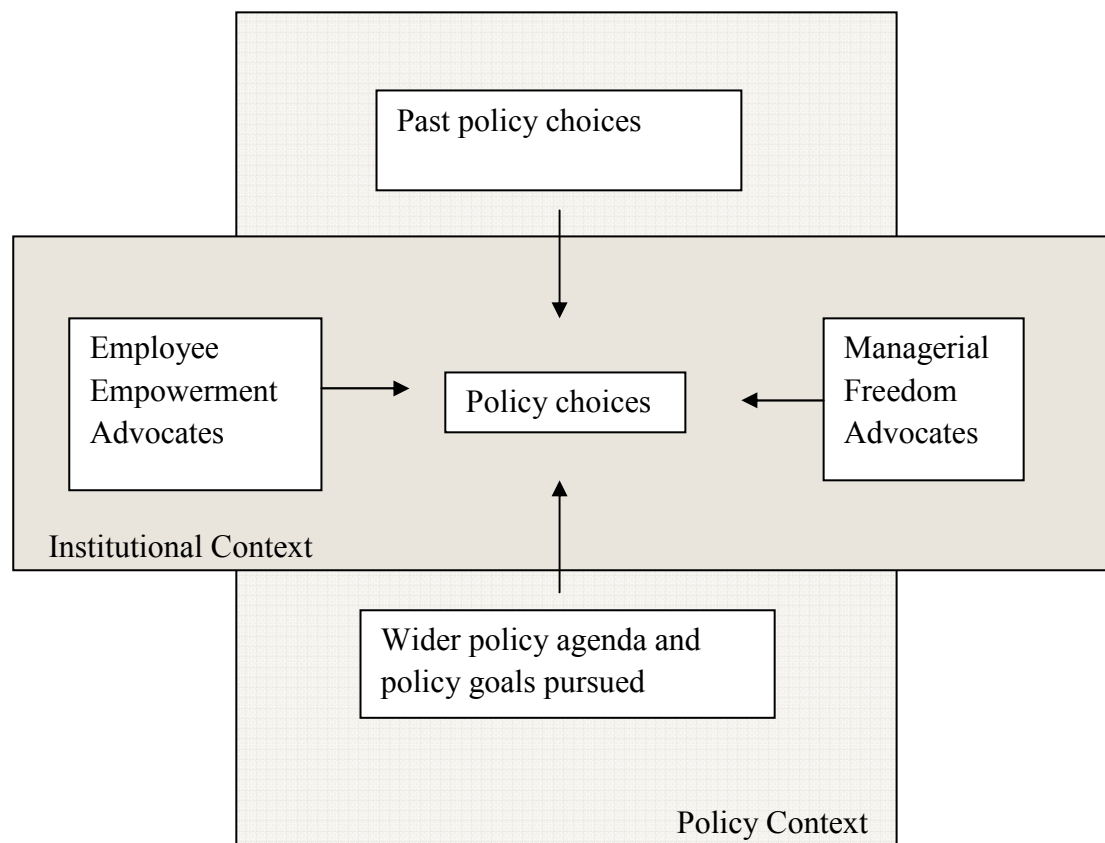
Useful insights into the nature of government-interest group relations are provided by the governance literature, which broadens the focus of analysis beyond government actors, and emphasises that policy decisions are also shaped by the interactions between government and societal actors (Kooiman 2003; Van Kersbergen and Van Waarden 2004). Moving beyond the traditional focus on regulatory ‘command and control’ policy instruments, which are described as the quintessence of government

(Pierre and Peters 2000; Richards and Smith 2002; Jordan et al. 2005), the governance perspective considers ‘governance mechanisms which do not rest on recourse to authority and sanctions of government’ (Stoker 1998), including ‘negotiation, accommodation, concertation, cooperation, and alliance formation’ (Van Kersbergen and Van Waarden 2004). This widened focus is particularly useful for the analysis of family-friendly working time policy which encompasses both authoritative and cooperative instrument choices, including alliance formation (see Chapter Seven). The understanding of governance as a *process* in which multiple actors are involved has drawn attention to different governing styles or *relationships* between governing actors. Group and network approaches for instance emphasise the inter-dependence of actors and the influence of network characteristics on instrument choice (Rhodes 1996; Rhodes 1997; John 1999). Bressers and O’Toole argue that the more an instrument’s attributes help to maintain the existing features of a network, the more likely it is to be selected during the policy formation process (Bressers and O’Toole 1998 p.220).

Within a governance perspective, different instrument categories can be linked to different governing styles. The choice of regulatory ‘command-and-control’ instruments can be associated with a hierarchical, top-down, governing style, in which government actors take an authoritative role, willing to use sanctions in case of non-compliance and tolerating conflict between themselves and interest groups. In contrast, information-based, non-coercive, instruments are used in a horizontal governing style in which government seeks cooperation with stakeholders and pursues a consensus-seeking approach, avoiding conflict as far as possible. Due to the limited governing capacity of the state to increase access to family-friendly working time arrangements directly, there is a high degree of reliance on the cooperation and compliance of actors who control the negotiation of working time flexibility. The governing style adopted also reflects political considerations (Woodside 1998). In highly politicised policy areas such as employment relations, policy makers try and reduce conflict to minimize political costs (in terms of party competition and electoral loss). Stakeholder acceptance of policy strategies not only furthers compliance but also political legitimacy as the state is not seen to be acting against the interests of society (Hood 1983; Wilson 1990). The nature of government-interest group relations can explain the choice of certain governing styles and associated instrument choice and design.

Interdependence and consensus-seeking rule out certain policy choices and promotes others.

Over-time changes in the 'empowering potential' of policy strategies as well as cross-national variation can be explained with reference to the ideas and interests of actors involved in the policy process, and the nature of interactions between them. The empowering potential associated with policy instruments and attributes can help understand the politics of choice. Policy makers mediate between conflicting societal interests which either favour or oppose empowering interventions. Yet policy makers are not neutral but share the wider normative and cognitive frames with societal actors, with whom they interact (Surel 2000). Two propositions derived from the literature guide the analysis of policy choices: first, policy makers are assumed to be more likely to opt for policy instruments which are congruent with their wider normative and cognitive frames, and second, policy makers are assumed to be more likely to accommodate interest group demands if they are in a relationship of interdependence. While policy choices are driven by the ideas and interests of actors, they are mediated by first, the policy context within which choices are made, which consists of both the policy legacies on which new policy builds and the policy goals which it serves, and second, the institutional context within which actors operate and which shapes the opportunities of different actors to influence policy. There is considerable overlap in the literature between the policy context and institutional context as past policy choices lead to the creation of institutions within which actors operate (for example Streeck and Thelen 2005). My understanding of policy context, for the purpose of this study, is confined to policy legacies and policy goals within the policy fields relevant to and affected by family-friendly working time policy, rather than referring to government policy in general. The institutional context refers more closely to the organisational structures within which actors operate, such as government departments, parliamentary committees, political parties, advisory groups, and interest groups, which shape their interests in the policy output as well as the procedures through which they interact with each other (Figure 5).

Figure 5: Factors influencing policy choice and design

Conclusions

This chapter discussed the method of comparison and the explanatory approach used for analysing instrument choice and design to address the two research questions of the thesis. In order to systematically explore the policy strategies of the German and British governments to improve access to family-friendly working time arrangements and to identify variations in the degree to which they were designed to empower working mothers and fathers, an *empowerment perspective* was applied to the analysis of family-friendly working time policy, which conceptualises employee empowerment as the defining characteristic of family-friendliness.

A two step approach was followed in the systematic comparison of policy strategies, summarised in Figure 6. In a first step, policy choices between different categories of instruments were distinguished to enable cross-national comparison in a systematic way. I applied a resource-based approach drawn from the instrument choice literature, applying Vedung's 'Carrots, Sticks and Sermons' framework to family-friendly working time policy (Vedung 2003). While Vedung distinguishes instrument

categories by the degree of authoritative force employed in the governing efforts, instrument categories were here distinguished by their empowering potential to working parents. In a second step, following Woodside's call to recognize that each policy instrument can be used in a variety of ways, the instrument *attributes* were scrutinised to explore the degree to which the design 'structured, disaggregated and moulded' the empowerment potential of instruments to fit political circumstances (Woodside 1986). In order to systematically compare variations in the empowering potential of policy instruments, five indicators were defined to address the access problematic identified in Chapter Two.

Figure 6: Summary of the comparative framework

STEP 1 Policy choice

↓ Instrument categories: Regulation / Economic means / Information

STEP 2 Policy Design

Empowerment Criteria: Breadth of coverage / Precision of targeting /
Scope of employee control over working time flexibility /
Enforceability / Opportunity costs

The second part of the chapter developed the theoretical framework used to analyse why policy approaches analysed differed between the two countries. The framework merged insights from interest and ideas based approaches, the interaction-oriented governance literature and historical institutionalism taking account of the role of institutional settings and past policy choices. Given the different policy legacies identified in Chapter Two, which implied different starting points for both countries in the development of family-friendly working time policy and the instrumentality of work-family reconciliation to a variety of policy goals, the policy context within which policy choices are made is given particular attention in cross-national comparison. Structuring actor preferences in terms of advocacy of either *employee empowerment* or *managerial freedom*, the relative influence of conflicting interest group demands on policy choices is conceptualised in terms of congruence of ideas and interests between policy makers and interest groups trying to influence them, and in terms of interdependencies between these actors. In this particular policy field, where government capacity to steer working time negotiations is limited due to the institutionally

protected autonomy of management and labour to negotiate the terms of the employment relationship (Chapter Two), the success of policy strategies relies on cooperative relations, which in turn can strengthen the influence of interest groups on policy formation and design.

These analytical perspectives are applied to the detailed exploration of the development of family-friendly working time policy in Germany and the UK in the remainder of the thesis. The next chapters present a comprehensive overview of policy development over time, placing relevant policy developments in the areas of working time, employment relations, and care, in the wider historical context of the policy legacy inherited from previous governments, as well as the wider policy agendas and work-family reconciliation policy packages of which they are part. The approach of single-country, chronological narratives allows to identify over-time trends in the policy trajectories and to explore the processes of agenda setting and instrument selection in a way that is sensitive to the temporal uniqueness of these developments, following the advice of historical institutionalists that it matters when things happen, and not just what (Pierson 2000b). The details of instrument design, and the exploration of factors explaining variation in instrument design between the two countries will be returned to in Chapters Six and Seven, providing in-depth comparative case studies of regulatory and information based instruments. These are analysed separately due to the very different policy processes and institutional configurations shaping government-interest group interactions in each instrument category. The insights from all four chapters will be drawn together in Chapter Eight, which provides an overall assessment of the degree of family-friendliness of the British and German policy approaches since the late 1990s, and the main reasons for variation between them.

4. Family-friendly working time policy in the United Kingdom

The aim of this chapter is to provide a comprehensive account of the British policy approach to family-friendly working time policy pursued by the New Labour government between 1997 and 2005. It provides a chronological account of the policy choices made to improve access to family-friendly working time arrangements, and locates these within the wider policy agendas of which they were part. In particular, family-friendly working time policy is contextualised within the wider reconciliation policy packages developed by New Labour, as the scope and implications of policy developments in this area can only be fully grasped if the policy mix of time, money and service resources is taken into consideration.

Government policy plays a role in mediating the reconciliation choices regarding the allocation of time to family care and to paid employment that are negotiated between men and women at the ‘kitchen table’ as well as at the workplace. Genuine choice regarding how much time to dedicate to care and to gainful employment is only possible if backed up by financial and care resources to maintain the financial security and emotional and physical well-being of family members. Government can contribute to the resource mix available to families through financial transfers (*money*) and the public provision of care services (*services*). Genuine choice over working time patterns also requires a certain degree of employee control over the length and distribution of time spent at work. Although working time negotiations are predominantly subject to individual and collective bargaining and employer decisions, government can influence the degree of individual ‘time autonomy’ through substantive and procedural interventions that shift the power balance in employment relations in general, and control over working hours in particular, in the employee’s favour. Employment rights to family leave or care related working time reductions and other flexible working patterns empower employees to negotiate the amount of time given to care provision with their employers (*time*). The policy orientation between ‘time to care’ and ‘time to work’ is a continuous theme throughout the chapter.

The chapter begins with a chronologically structured discussion of family-friendly working time policy within the wider context of reconciliation policy, working time and employment relations policies. This policy discussion is structured in two parts, each covering one term in office, and places family-friendly working time policy

within reconciliation policies over this time period to explore the reconciliation choices encouraged by the wider resource mix. Part III of the chapter then focuses on the selection of policy instruments over time, between three broad categories of policy instruments classified by Vedung (2003) as ‘regulations’, ‘economic means’ and ‘information’, which imply varying degrees of empowering potential to working parents (Chapter Three). The analysis provides explanations for the policy strategy pursued, scrutinising the role of policy preferences, overarching policy goals, government-interest group relations and the inherited policy legacy. The analysis closes in an evaluation of the empowering potential of the British policy strategy between 1997 and 2005.

I. 1997 to 2001 – New Labour’s first term in office

Following a landslide victory gaining 66 per cent of seats in the House of Commons in May 1997, New Labour, led by Tony Blair, succeeded the incumbent Conservative Party in government. The Labour Party had approached the 1997 general election with the explicit intention to help parents balance work and family life (New Labour 1997). Once in power, the Prime Minister set up a Ministerial Group of the Family, chaired by Home Secretary Jack Straw, to develop a coherent government strategy on how the support and help available to families could be increased (Home Office 1998). A number of consultative documents published in the course of 1998 outlined New Labour’s policy agenda (Cm 3959 1998; Cm 3968 1998). In the consultation document *Supporting Families*, published in November 1998 (Home Office 1998), the Government laid out the general strategy on family policy developed by the Ministerial Group, including its strategy to promote a more family-friendly organisation of working time. This was to be achieved through a dual strategy of firstly, setting minimum standards in legislation and, secondly, encouraging firms to provide beyond the statutory minimum of family-friendly employment rights (Home Office 1998 p. 54).

The Government’s approach to minimum standards in legislation was laid out in the White Paper *Fairness at Work*, published in May 1998, which outlined a statutory framework of basic family-friendly employment rights (Cm 3968 1998). These included the protection from excessive working hours and entitlements to minimum

rest and vacation periods, the expansion of maternity leave, the introduction of parental leave and time off for family emergencies, and the protection of part-time workers from discrimination (Cm 3968 1998). This early policy agenda of family-friendly employment rights was prompted almost entirely by the European Directives on Working Time (93/104/EC), Parental Leave (96/34/EC) and Part-Time Work (98/23/EC). With its opt-out from the European Social Chapter in June 1997, the UK Government had agreed to implement the European Council Directives on Parental Leave and Part-time Work which had been passed in 1996 and 1997. The Working Time Directive, which the Major Government had successfully blocked until losing its case before the European Court of Justice in 1996 was also due for implementation when New Labour took office (see Chapter Two). With regard to the encouragement of voluntary provision beyond these minimum statutory requirements, an awareness and promotional campaign was envisaged. It was to make better information, advice and guidance on family-friendly working practices available, to promote greater recognition of a good record on family-friendly employment and to provide advice on good practice, case studies and approaches to problem solving (Home Office 1998).

The development and implementation of the Government's family-friendly agenda was split across different government departments. The Department of Trade and Industry (DTI) was in charge of developing family-friendly employment rights. In addition to the implementation of European Council Directives, the DTI undertook a revision of existing maternity rights with the aim of simplifying the complex regulations. Ordinary Maternity Leave was increased from 14 to 18 weeks in line with Maternity Pay and the qualifying period for unpaid Additional Maternity Leave was reduced from two years to one through the *Maternity and Parental Leave etc. Regulations 1999* (SI 1999/3312). The Inland Revenue administered the new Working Families Tax Credit. Finally, the Department of Health was in charge of developing a National Strategy for Carers, which the Prime Minister had announced in June 1998. Non-legislative measures to promote family-friendly employment practices at the workplace were being planned at the Department for Education and Employment (DfEE) within the wider context of the development of a National Childcare Strategy.

The National Childcare Strategy pursued two aims: firstly, to achieve better outcomes for children in terms of child development and early years' education through good quality care, and secondly, to increase the employability of parents by increasing

access to, and affordability of, childcare services. The main instrument to help families with the cost of externalising childcare was the introduction of a new ‘Childcare Tax Credit’ for working families which replaced the Family Credit in 1999 as part of the new Working Families Tax Credit (Strickland 1998). Up to £70 for one child, and £105 for two or more children, were to be provided towards the purchase of approved childcare services. Finally, access to childcare places was to be improved through encouraging the creation of new out-of-school childcare places and providing better information to parents about local childcare providers. Free, part-time, early years education places were guaranteed for every four-year-old from September 1998.

Although the main emphasis of the Childcare Strategy was on childcare services, the importance of time for parental care was also acknowledged. The framework document *Meeting the Childcare Challenge*, which was published for public consultation in May 1998, stated that:

children have a right to the support of both parents - in emotional as well as material terms. Neither mothers, nor fathers, should have to sacrifice their parenting role for the sake of their employability (Cm 3959 1998 p. 49).

Employers were attributed an important role in enabling parents to spend time with their children by offering family-friendly employment options. One objective of the Childcare Strategy was therefore the development of effective ways of promoting best practice among employers.

The Work-Life Balance Campaign

The role of employers in providing parents with ‘time to care’ was addressed through a promotional campaign that was developed within the wider context of the National Childcare Strategy at the DfEE. The aim of the so-called Work-Life Balance Campaign, which was launched by the Prime Minister in March 2000, was to ‘bring about a better balance between work and other aspects of life, to the benefit of business, the economy, parents and carers, and society’ (DfEE 2000a). The campaign rested on three pillars: the strategic cooperation with a group of ‘best practice’ employers (*Employers for Work-Life Balance*) to disseminate information and guidance to other employers, the provision of hands-on advice on the implementation of family-friendly measures through free consultancy services, funded via a Work-Life balance Challenge Fund (Nelson et al. 2004), and thirdly, widespread publicity to raise

awareness levels among the general public on flexible working options and the benefits of a better ‘work-life balance’ (Int. UK 02, 21/09/2005)²¹. The Work-Life Balance Campaign incorporated two separate work/family agendas. It encouraged change in attitudes and the workplace culture in support of working parents on the one hand, but equally for carers of adults (HC Deb 09 March 2000 vol 345 c231WH). The problem of reconciling employment with care for elderly, ill or disabled relatives had been addressed by the Department of Health in a National Strategy for Carers (Lloyd 2000). The document *Caring about Carers* (DoH1999) published in February 1999, had dedicated a chapter to the needs of carers in employment, with reference to the role that flexible employment policies and support services could play in meeting the flexibility needs of working parents. While the policy approach to family-friendly working time arrangements pursued by the DfEE was explicitly non-threatening to employers relying on information and consultancy services, a regulatory approach to the provision of family leave, prompted by European Directives, was developed at the DTI within the wider context of the *Employment Relations Act 1999*.

Family-friendly employment rights

In the White Paper *Fairness at Work* New Labour outlined proposals for collective trade union and individual employment legislation, with which they intended to create ‘an industrial relations settlement’ between management and labour (Cm 3968 1998 p.2). This included for instance the reintroduction of a statutory procedure for union recognition, which had been abolished under the Conservative Government. This new legislation provides that, where a union claim for recognition for collective bargaining purposes cannot be resolved bilaterally with the employer concerned, the union may refer the matter to the Central Arbitration Committee (CAC) for determination (Hall 2000). Before then, union recognition by employers was voluntary, without administrative or judicial route for unions to secure recognition (Goodman et al. 1998). The Employment Relations Bill further included a number of ‘time to care’ provisions in the form of parental leave, leave for urgent family reasons and maternity leave entitlements. Against the historical backdrop of minimal employment regulation under the Conservative governments of the 1980s and 1990s, regulative interventions envisaged by the incoming Labour Government received strong employer opposition.

²¹ The list of interviews is included in Appendix A.

Ruth Lea, Head of the Policy Unit at the Institute of Directors, saw the Government's work-life balance agenda as a main source of 're-regulation of the British labour market' (Lea 2001). New Labour stressed that even after the reforms proposed, Britain would have 'the most lightly regulated labour market of any leading economy in the world'. With their *Fairness at Work* agenda, they sought a compromise between 'the absence of minimum standards of protection at the workplace and a return to the laws of the past' (Cm 3968 1998 p.2). While not wanting to return to the days of 'strikes without ballots and mass picketing' Tony Blair clearly stated that it was not right 'to deny British citizens basic canons of fairness [...] that are a matter of course elsewhere' (Ibid.).

A strategy of minimal statutory regulation was in line with New Labour's revised approach to industrial relations, which the Party had outlined in its party manifesto: to create a floor of 'basic minimum rights for the individual at the workplace, where [the] aim is partnership not conflict between employers and employees' (New Labour 1997). This strategy shaped New Labour's approach to the organisation of working time, which did not differ significantly from the Conservative rationale that employers and employees should negotiate the organisation of working time, and that it was not a role for government to intervene through regulations. This attitude becomes apparent when exploring the policy avenues for a family-friendly working time organisation for which opportunities were created, but not followed through.

The European Framework Agreements on Parental Leave and on Part-time Work both provided opportunities for the introduction of legislation to facilitate a more flexible family-friendly organisation of working time. In the event of their implementation, however, New Labour did not seize these regulatory opportunities. The Parental Leave Directive (96/34/EC), for instance, made provisions for employees to take parental leave on a part-time basis (Clause 3 of the Framework Agreement). While the Employment Relations Act 1999 allowed for regulations to give employees the right to take their parental leave on a part-time basis (New section 78 (3) of the 1996 Act) the Maternity and Parental Leave etc. Regulations 1999 did not make use of this provision (Lourie 2000). The statutory default scheme, which applies to employees not covered by collective or workforce agreements relating to parental leave, only permits leave to be taken in blocks of full weeks up to a maximum of four weeks a year (SI 1999/3312). The Parental Leave Directive was implemented as a minimal fall back

scheme, which applies where more generous and more flexible leave arrangements voluntarily agreed between management and labour are not in place.

Another example illustrating New Labour's reluctance to legislate to facilitate family-friendly working time arrangements is the implementation of the European Directive on Part-time Work. While the main emphasis of the Directive was on the prevention of discrimination against part-time workers, Clause 5 of the European Framework Agreement intended employers to consider requests to switch from full-time to part-time work and vice versa²². Again, the Employment Relations Act 1999 made provisions for the Secretary of State to implement Clause 5 of the directive by issuing Codes of Practice (Section 20 (b) and (c)). In the policy making process, however, the initial plan to issue a Code of Practice on an employee-oriented flexible organisation of working time was abandoned. This decision was justified by Alan Johnson on the basis that change was best achieved in a 'spirit of consensus' with employers, and this was more easily achieved with guidance than with a code of practice (Education and Employment Committee Reply to Q 16). Describing codes of practice as 'beloved by lawyers' and 'big slabs of print which lead to a confrontational situation in workplaces'(Education and Employment Committee Reply to Q 16), he explained the Government's strategy as follows:

We are looking for a system where we can actually go out rather evangelically and say 'Here are the benefits of part-time work'. Not to force people out of a code of practice, to sit down and look throughout their company and say: 'I have to do this because it is in the code of practice, look at these jobs I can make part-time' but to say 'Here, there is something in this for you' and to go out and sell the idea. We do think this is the right approach (Education and Employment Committee Reply to Q 17).

This approach of 'selling' the case for part-time working was then ostensibly pursued with the Work-Life Balance Campaign.

A third example of minimal regulatory intervention in the realm of working time organisation is the implementation of the European Working Time Directive through the Working Time Regulations 1998. For the first time, UK workers gained statutory rights to four weeks of paid holiday, minimum daily and weekly rest periods at and

²² Clause 5 (3) states that as far as possible, employers should give consideration to (a) requests by workers to transfer from full-time to part-time work that becomes available in the establishment and (b) requests by workers to transfer from part-time to full-time work or to increase their working hours should the opportunity arise.

from work, and they could no longer be required to work for more than 48 hours a week (averaged over 17 weeks) (93/104/EC). The regulations did however allow workers to voluntarily 'opt-out' from the 48 hours limit and agree to work longer (Statutory Instrument 1998 No. 1833). While this arguably protected individual choice regarding the number of hours worked, it demonstrates that New Labour did not seize the opportunity provided by the European Council to fight the long hours working culture by regulatory means.

The Work and Parents Review 2000: to legislate or not to legislate?

Following the first wave of reforms which had brought only minor revisions to existing maternity rights and the introduction of unpaid parental leave and time off in family emergencies through the Employment Relations Act 1999, the DTI launched a large scale review of maternity and parental rights in June 2000. The aim of the review, which was co-ordinated by a Ministerial Group chaired by Stephen Byers, then Secretary of State for Trade and Industry, was to consider 'the steps needed to make sure that parents have choices to help them balance the needs of their work and their children so that they may contribute fully to the competitiveness and productivity of the modern economy' (HC Deb 22 June 2000 v 352 c 237 W). Against this backdrop, one of the paths of enquiry was to take account of the impact on competitiveness and productivity 'of returning to work part-time, from home or on flexible hours' (HC Deb 22 June 2000 v 352 c 237 W). Between June and December 2000, the review team consulted widely with stakeholders and undertook fact-finding visits to the USA, Sweden and the Netherlands leading to the publication of a Green Paper, *Work and Parents: Competitiveness and Choice*, in December 2000 (Cm 5005 2000). This explored a wide range of policy options including extending maternity leave to one year; shifting the payment of Statutory Maternity Pay from employers to the government; introducing paid paternity and adoption leave; introducing payment for parental leave; and introducing a right to return to work on reduced hours after maternity leave.

The publication of the Green Paper marked a turning point in New Labour's approach to flexible working. For the first time since coming to power, the policy option of introducing a statutory right for reduced working hours was openly discussed. Three policy options presented in chapter four of the Green paper revolved around the

provision of a limited right to work reduced hours for parents, either during the period of maternity leave (for either mother or father) or for both parents after the end of the maternity leave period (Cm 5005 2000 para. 4.16-4.20). In 1999, the Education and Employment Committee had recommended that:

the Government should introduce legislation guaranteeing women the right to return to work after maternity leave on a part-time basis, while retaining their right to transfer to full-time work, unless the employer is able to demonstrate that it would be to the detriment of the operation of the employer's business (Education and Employment Committee 1999).

This recommendation had been made in the context of the imminent implementation of the European Part-time Work Directive which had led to the Committee's enquiry into the situation of part-time workers. At that time, the Government had argued against the introduction of a statutory right on the basis that it would be going beyond the scope of the Directive (Education and Employment Committee 2000c Reply to Q 19). A year later, a weakened proposal had found its way onto the family-friendly agenda. Employers' needs were also taken into account. Different options for a 'harm test' were discussed to allow employers to refuse requests for reduced hours working to prevent harm to the business. The Green Paper also discussed alternatives to legislation, such as spreading good practice through incentives, information, support services and an accreditation scheme to reward best practice (Cm 5005 2000). Stakeholders were consulted on whether flexible working was an area best left to best practice, or whether the Government should legislate (DTI 2001e). The consultation was met with considerable public interest.

Overall, over 600 formal responses were received by the end of the consultation period in March 2001, in addition to meetings with almost 300 employers, working parents, and representatives of employer associations, trade unions and family organisations face to face (DTI 2001d). Flexible working emerged as a key, yet highly controversial issue. Reactions to the proposal to introduce a parental right to reduced hours after maternity leave were polarised (Work and Parents Taskforce 2001). Employers and their representatives opposed it, while parents and their representatives welcomed the introduction of legislation. The Institute of Directors (IoD) reported that its members were 'overwhelmingly opposed' to the proposal in the Green Paper that both parents should have the right to work reduced hours after maternity leave, arguing that 'the hours of work should be left to employers and employees to determine, not the

Government by means of legislation' (Wilson and Harris 2001 p. 23). Opposition to legislation was based on the concern that 'if enacted, this measure could cause serious organisational difficulties for businesses and increase their costs' (Wilson and Harris 2001 p. 23). Strong opposition was also voiced by the Confederation of British Industry (CBI) whose members were 'united in opposing any regulations which would result in a significant amount of red tape, the likelihood of a further increase in the number of employment tribunal cases or that would damage operational effectiveness or competitiveness'(CBI 2001 p.3). This applied especially to proposals for a 'right to work reduced hours' as these were perceived to 'be unworkable and damaging to competitiveness' (Ibid.). The Institute of Management encouraged the Government to 'proceed with its best practice options in the area of flexible working rather than pursue a rigid and prescriptive legislative approach' arguing that this would be the better way to close the gap between provision and demand in this area (Institute of Management 2001 p.9).

Parent and equality organisations did not share this view. Parents at Work, for example, wrote to the Government: 'Although best practice and guidelines can play an important role, we believe that legislation must underpin any best practice promotion. Incentives only work in times, areas and sectors where there is full employment'. They further warned that 'any economic downturn will have a detrimental effect on employees' access to flexible working practices' and that 'lower paid and lower skilled employees find it more difficult to obtain even small changes to their hours, because of their lack of negotiating power'. It is for these employees, they argued, that legislation was essential (Parents at Work 2001). The Citizens Advice Bureau (CAB) showed equal pessimism arguing 'that a 'best practice' approach will simply not tackle the fundamental problem of widespread and persistent noncompliance by employers' (CAB 2001 ch. 5.5), a view also shared by the Mothers' Union whose concern was that best practice promotion only encourages those employers who are already convinced of the value of flexible and/or family-friendly working (Mothers' Union 2001). The Equal Opportunities Commission (EOC) saw 'a strong argument for intervention at government level - through legislation - to speed the pace of change and provide consistency across the economy as a whole'. This view was based on the concern that the 'current approach of depending upon the voluntary initiatives of individual companies and organisations will not break down labour market rigidity' (EOC 2001

para 68). Trade Unions also welcomed the proposal of legislation. The TUC recommended 'a basic legal framework encouraging employers and parents to agree requests for reduced hours or flexible working. However, where agreement or a negotiated solution [was] not possible, both mothers and fathers should also have the right to have requests for reduced hours or flexible working granted unless employers can justify refusals on objective grounds' (TUC 2001). Employee and parent representatives saw regulatory intervention by the Government justified on the basis that incentives for voluntary change were not strong enough to ensure equitable, widespread access to flexibility. Employers however opposed such proposals both in principle and in the light of anticipated costs and restrictions to business.

The review ended shortly before the general election 2001. The family-friendly agenda was a prominent topic during New Labour's electoral campaign, targeting especially female voters. Announcements of policy reforms in less controversial areas followed in stages. The Budget published in March 2001 announced measures involving financial state support: an increase in the flat rate of Statutory Maternity Pay (SMP) and Maternity Allowance from £62.20 to £75 a week from April 2002 and to £100 a week from April 2003. Maternity Pay was to increase from 18 weeks to 26 weeks in April 2003, involving an extension of the Ordinary Maternity Leave period from 18 to 26 weeks. The Government further announced the introduction of two weeks paid paternity leave and paid adoption leave, paid at the same flat rate of £100 per week as Maternity Pay (HM Treasury 2001 Ch. 5). In April 2001 Stephen Byers announced revisions to the parental leave scheme, notably an extension from 13 to 18 week for parents of disabled children as well as an extension of parental leave to children born before December 1999 when the entitlement was introduced (who were under five years old on 15 December 1999). The family-friendly working time agenda was revealed last and remained somewhat unclear prior to the general election in June 2001. In the election manifesto, specific reference was made to the mothers' wish to reduce their hours when returning to work but no concrete policy intentions were announced at this point except that Government would 'work with business and employees to combine flexible working with the needs of business' (New Labour 2001a). Only shortly before the election, Stephen Byers announced that the Government would 'provide a right for parents to request to work flexible hours when their child is young' (New Labour 2001b). This was to represent a significant shift in

the nature of state intervention from the promotion of best practice and voluntary change to regulatory intervention in the organisation of working time. While the family-friendly policy agenda in the late 1990s had been strongly shaped by European directives and an extended policy review and agenda setting phase rather than wide-reaching policy reforms, New Labour approached their second term in office with a comprehensive agenda of policies to support working parents.

II. 2001 to 2005 – New Labour’s second term in office

A few months into the second term in office, Patricia Hewitt, then Secretary of State at the DTI, confirmed that the Government was to introduce a ‘light touch legislative approach’ on flexible working and that a taskforce was appointed to design a right for parents of young children ‘to make a request to work flexible hours and to have this request considered seriously by the employer’ (HC Deb 28 June 2001 vol 370 c 149 W). This was a turning point in New Labour’s policy approach to flexible working, as the line from information to regulation was crossed.

The right to request flexible working

Flexible working had come to dominate discussions during the review, and the demand from parents had emerged very clearly, highlighting the need for, as well as legitimating, government action in this area (Cm 5005 2000). Nevertheless, the careful balance of interests remained a priority for policy makers. The polarised stakeholder positions on the issue of legislative intervention in the area of flexible working, which had clearly emerged in the course of consultations, presented the Government with a particular challenge of reconciling opposing stakeholder demands (Education and Employment Committee 2000b). The Department of Trade and Industry appointed a taskforce to ‘look at how to meet parents’ desire for more flexible work patterns in a way which is compatible with business efficiency’ (HC Deb 28 June 2001 vol 370 c 149 W).

The strategy of delegating the design process of this new and controversial law to stakeholder groups was a strategy to raise acceptance for the law by constructing a consensus with the main stakeholder groups, notably the CBI, TUC, EOC, Parents at Work and employers. This approach of dealing with controversial policy issues had

been successfully tested in the case of the National Minimum Wage during their first term in office. In 1997, the Government had appointed the Low Pay Commission, whose members were drawn from employer, employee and academic background, to reach consensus on the level of National Minimum Wage (Cm 3976 1998). The Low Pay Commission provided a template for the Work and Parents Taskforce that was to work under the same leadership of Sir Professor George Bain. As one of the taskforce members commented: 'what they tried to do was to replicate the social partnership of the Low Pay Commission, both to deal with the technical issues but also to give them political cover' (Int. UK 07, 15/12/2005).

The Work and Parents Taskforce (WPT), composed of representatives from businesses, trade unions and family and equality organisations, was charged with the negotiation of the detail of the new legislation. The taskforce met over a five month period, consulted with parents and employers, commissioned relevant research, and negotiated a consensus on the key aspects of instrument design (Work and Parents Taskforce 2001). Their recommendations, published in November 2001, were accepted by the Government (DTI 2001e) and incorporated into the Employment Bill at Committee Stage. The new legislation was passed without major modifications on the basis that 'the right to request flexible working and the duty on employers to consider requests seriously' would be reviewed after three years (SC Deb (9 Del Leg) 5 December 2002 c017). The *Flexible Working Regulations 2002* came into force in April 2003 (SI 2002 No. 3207; SI 2002 No. 3236). They provided parents of children under six, or disabled children under eighteen, with a statutory right to request flexible working patterns and to have their requests considered seriously by their employer. The 'right to request' was 'light touch' in that parents whose requests were refused could not challenge the business reasons of the refusal before employment tribunals. This 'toothless right for a narrowly defined group' was introduced to obtain employer acceptance with the option to subsequently build upon it after a period of settling in and adjustment of cultural attitudes (Kilpatrick and Freedland 2004 p.342). Although the nature of state intervention had changed in form from information to regulation, its spirit of promoting best practice and voluntary change rather than regulating the organisation of working time was continued.

‘Time to care’ through paid family leave

In parallel to facilitating the simultaneous combination of employment and care responsibilities through flexible working patterns through the ‘right to request’, New Labour also extended the periods of paid family leave available for parents of young children, facilitating ‘time to care’. The period of paid Maternity Leave was increased from 18 to 26 weeks and was extended to adoptive parents. Statutory Maternity Pay and Maternity Allowance were increased from £63.30 to £100 in 2003. An additional 26 weeks of unpaid maternity leave brought up the total period of protected leave from employment for mothers to one year (HM Treasury 2003). Fathers were entitled to two weeks Statutory Paternity Pay from April 2003 at a flat rate of £100 per week. The proposal of entitling mothers to return part-time after the birth of their child, which had been consulted on during the Work and Parents Review, had not been implemented. Rather an increasingly long period of full-time leave was encouraged for mothers (as it was paid) but not for fathers, whose entitlement to paid leave was only two weeks compared to 26 weeks for mothers. Policy developments enacted through the Employment Act 2002 clearly signalled a family-care orientation with regard to the care of infants for the first year in which mothers were encouraged to act as main carers while the caring role of fathers was only hesitantly encouraged (Kilkey 2006).

‘Time to work’ through the externalisation of care

With regard to older children, however, government policy increasingly invested in the externalisation of care to provide parents with ‘time to work’. As a result of the Inter-Departmental Childcare Review, which had recommended further investments in childcare to advance the Government’s lone parent employment and child poverty objectives (DfES et al. 2002), government funding was increased by £1.5 billion by 2005/6 in the 2002 Spending Review (HM Treasury 2002; House of Commons Work and Pensions Committee 2003). In 2004, the Government laid out their strategy for childcare for the next ten years, and their vision ‘to ensure that every child gets the best start in life and to give parents more choice about how to balance work and family life’ (HM Treasury 2004b p.1).

The Ten Year Strategy addressed the reconciliation needs of working parents more explicitly than in 1998, and more emphasis was placed on the role of childcare services

as ‘time providers’ for working parents. Child care objectives announced in 2004 included the gradual extension of the entitlement of free early years’ education for three and four year olds from 33 to 38 weeks per year by 2006, and from 12.5 to 15 hours per week by 2010 with the longer term goal to extending this to 20 hours per week. In order to increase parental flexibility, the entitlement to free early-years education, which was generally split into five 2.5 hours sessions per week was to be offered more flexibly over three days a week to suit parental time needs. The strategy document also explicitly mentioned the intention to better integrate early education within high-quality, affordable day care between 8 am and 6 pm all year around (HM Treasury et al. 2004). For older children, access to school based after-school care for the five to eleven-year-olds was to be provided by 2010, again on a full-time, all year around basis and by 2010 all secondary schools were to open from 8 am to 6 pm offering after school and holiday activities (HM Treasury 2004b para 5.22 and 5.23).

The underlying intention of New Labour's childcare policy was to provide working parents with a more genuine choice to work on a full-time basis. However, the Government only committed to make out-of-school childcare places available to children aged three to fourteen on a full-time basis leaving the responsibility for the care of under three-year-olds to parents to organise (HM Treasury 2004b para 5.19). Support for the care of young children was provided through the tax and benefit system. General financial support through Child Benefit and targeted financial support with the costs of childcare through the tax system was increased in order to improve affordability, irrespective of the child’s age. From April 2005 the limits of the childcare element of the Working Tax Credit available to parents working at least 16 hours per week increased to £300 a week (£175 for one child) and from April 2006 the maximum proportion of costs that can be claimed increased from 70 per cent to 80 per cent (HM Treasury 2004c para 5.21). While the Government’s ‘time to work’ strategy was backed up by significant funds to improve affordability of care externalisation and a dual-earner model, no such transfers were introduced to back up gender equitable reconciliation choices corresponding to the dual-earner/dual-carer model. Furthermore, New Labour continued on its course of best practice promotion and minimal regulative direction with regard to the family-friendly organisation of working time. Two examples illustrate this: the approach to long hours and the review of the Flexible Working Regulations.

Family-friendly working time and the issue of long hours

The problem of long working hours returned to public debate in early 2004, incited by a European Commission consultation on the Working Time Directive. A review of the individual 'opt-out' from the 48 hours limit to average weekly working time was required by the Council Directive 93/104/EC. Stakeholder positions on the future of the individual opt-out in the UK were polarised. The TUC urged the Government to end it, claiming that many employers coerced workers to sign the agreement, many of whom were not aware of their legal rights (TUC 2002; BMRB Social Research 2004). In anticipation of the European review of the opt-out, the TUC had launched the *It's about Time* campaign in 2003 to 'put long hours and work/life balance at the top of the workplace agenda' (Arrowsmith 2003). The CBI, on the other hand, urged the Government to protect the right of UK employees to work more than 48 hours a week if they choose to (Hall 2003). They published a report arguing that retention of the opt-out was a matter of freedom of choice and a vital part of companies' strategies for competitiveness (CBI 2003). The Government's position on this point was favourable to business interests. Employment Relation Minister Gerry Sutcliffe confirmed that the Government was committed to retaining the opt-out in order to protect employee choice and workplace flexibility (DTI 2004c). In a Communication in January 2004, the European Commission voiced doubt that the UK's application of the 'individual opt-out' was ensuring the spirit and terms of the Directive and that real guarantees for free consent of workers to opt out from the working time ceiling were provided. An end of the opt-out was considered (COM (2003) 843 final). The Commission further proposed 'that the revision of the Working Time Directive could be exploited in such a way as to encourage the Member States to take steps to improve the compatibility of work and family life' (COM (2003) 843 final p. 21). In its reply to the Commission, the UK Government maintained its support for the retention of the individual opt-out and stated that it saw the Working Time Directive as an 'inappropriate vehicle for dealing with work/family balance issues' and that it rather saw 'scope for a deepening of exchanges of best practice between Member States within the peer review process' (House of Lords European Union Committee 2004; UK Government 2004 para 1). In the consultation document *Working Time – Widening the Debate*, the DTI framed the individual 'opt-out' in terms of individual choice, which in turn was framed as family-friendly, as the following quote illustrates:

for parents, one may decide temporarily to work longer to maintain the family income when the other decides to withdraw from the labour market or work reduced hours in order to spend time caring for their children. The choice that the opt out offers, i.e. the right for the individual to choose whether to work over the 48-hour week limit or not, fits into the wider framework of choice that the Government is promoting through policies on flexible working and work life balance (DTI 2004g para. 2.1).

While some, notably the trade unions, saw the defence of the ‘opt-out’ as inherently inconsistent with any serious attempt to improve work-life balance, the rhetoric of individual choice was used to glue together the apparent cracks caused by these tensions within ‘family-friendly’ and ‘working time’ strategies. The Government’s reluctance to restrict flexibility by regulating the organisation of working time continued to be apparent in the debate on the Flexible Working Regulations.

Extending a ‘toothless right’

Encouraged by the overall success of the ‘right to request’, the Government soon considered extending the law to parents of older children and to carers of sick and disabled relatives (DTI 2005a). Following the application of the Flexible Working Regulations in April 2003, the DTI and several stakeholder organisations had undertaken research to monitor and evaluate the working of the legislation (e.g. CIPD 2003; Palmer 2004; The Maternity Alliance 2004). Overall, implementation had gone smoothly with few complaints from employers. DTI research found that the majority (86 per cent) of requests made within the first year of the entitlement had been accepted, either in full or in part (Palmer 2004). In February 2005, the DTI published the consultation document *Work and Families: Choice and Flexibility* to consult with stakeholders on the case for an extension of the right to request.

The ‘light touch principle’ of the right to request represented a key point of division in the policy debate among interest groups. Family and employee representatives showed disappointment that the Government only considered the case for an extension of the ‘right to request’ to other groups of employees rather than consulting the public about the structure of the right (Working Families 2005 p.ii). Working Families emphasised the need for a strengthened right with particular reference to fathers, whose requests were more often rejected than those of mothers. They argued that the ‘legislation should be strengthened to include a requirement on the employer to show real justification for a decision to turn down a request, and for an Employment Tribunal to

be able to examine the business reasons given' (Working Families 2005 p.ii). Unions also argued strongly in favour of a strengthened right, reasserting, as they had done in 2000, 'that parents should have the right itself, rather than the right to request' (TUC 2005). Conceding that the new legislation might have assisted in creating a general climate supportive of flexible working, they were concerned that it did not provide a right for employees to challenge unfair refusals (TUC 2005). Employers, on the other hand, welcomed the commitment not to change the structure of the right (e.g. CBI 2005; FSB 2005).

In its reply to the public consultation, the Government stated that it no longer intended to review the principles of the law, as it had previously committed to in reply to the Taskforce report (DTI 2001e) and in Parliament (SC Deb (9 Del Leg) 5 December 2002 c017). Instead it explained 'that extending the scope rather than undertaking a review of the principles of the law offers a better outcome for both employers and employees' (DTI 2005b para 5.8). The Government decided to extend the right to request flexible working to carers of adults from April 2007, but not to parents of older children. Although many employee and family organisations as well as some employer representatives had advocated to extend the 'right to request' to all employees with caring responsibilities (see for example Working Families 2005) or even to all employees (see for example CIPD 2005a; EOC 2005), the Government was 'not persuaded to take a blanket approach to the right to request flexible working and extend its scope to all employees' (DTI 2005b para 5.28), preferring to target statutory support to those most in need and encouraging more generous provision on a voluntary basis.

The policy developments during New Labour's second turn in office implemented many of the policy objectives planned during the early years in office. While much of the policy effort in the late 1990s was directed at preparing fertile ground by building consensus on the desirability of such resources and envisaging growth from a very low basis of childcare services, financial support and employment rights, the emphasis from 2000 onwards was on integrating the resources directed at working parents within a 'home grown' policy agenda. Family-friendly working time policy developed as part of the wider policy package of policies aimed at an employment-oriented organisation of care. In terms of instrument choice, the focus of family-friendly working time policy throughout the second term in office had been on the development and introduction of

statutory regulation in the area of flexible working. The Work-Life Balance Campaign, which had moved to the DTI following re-election in 2001, continued to disseminate information and guidance alongside these developments and was phased out in 2005. The partnership with Employers for Work-Life-Balance, which originally had been planned to last one year continued until 2003, when the employer group disbanded and handed over their web portal to the Work Foundation (Ellwood 2003)(Int. UK 14, 02/02/2006). The Challenge Fund, co-funded by the European Social Fund, ran for five application rounds until 2004 providing consultancy services to 448 employers, covering 1.2 million employees (Interview Civil Servant, DTI, 25th July 2005). Having won the general elections in May 2005 for a third term in office, the third wave of family-friendly reforms entered the parliamentary process in October 2005 with the Work and Families Bill. The Work and Families Act, passed in June 2006, extended the right to request flexible working patterns to carers of adults.

Having traced the development of family-friendly working time policy over time, and within the wider work-family reconciliation context, the following discussion will explore the way family-friendly working time policy is ‘nested’ within the wider resource mix of reconciliation policies introduced by New Labour.

‘Time to care’ versus ‘time to work’: variation over the care cycle

The resource infrastructure of ‘time’, ‘money’ and ‘services’ built by New Labour between 1997 and 2005 was consolidated over time to facilitate the employment of individuals with care responsibilities. The reallocation of time from employment to family care (‘time to care’) was facilitated through the introduction and expansion of family leave entitlements, notably through an increase in Maternity Leave to a total of one year, its extension to adoptive parents and the introduction of Paternity Leave as well as Parental Leave entitlements. Paid Maternity Leave enabled mothers to stay at home with their baby during the first six months. Fathers were entitled to two weeks of Statutory Paternity Pay. Access to family leave was strongly gender biased, reinforcing the male breadwinner/female carer family arrangement during the first year of parenthood.

New Labour’s reconciliation policy emphasis on providing ‘time to care’ for mothers during the child’s first year of life was in part motivated by a concern for child well-

being and child development, 'to ensure that every child gets the best start in life' (HM Treasury 2004b p.1). A strong emphasis was placed on child development (HM Treasury 2004b Appendix A). Although an important objective of the Childcare Strategy was to enable parental employment through better access to and affordability of services, the 2004 Strategy emphasised the importance of 'consistent one to one care' in the first year of a child's life when rapid developments take place. The benefits were highlighted with reference to research on child development (see for example NICHD Early Child Care Research Network 2002; Gregg et al. 2003) and maternal health (Chatterji and Markowitz 2004). Long, paid Maternity Leave was considered an appropriate instrument to enable consistent maternal care during the first year of a child's life. The long term goal was to increase the period of paid Maternity Leave from six months in 2004 to nine months in 2007 and twelve months by the end of the following term in office with the option of transferring some of this paid leave to the child's father (HM Treasury 2004b). While the policy orientation emphasised 'time to care' for young children, it emphasised 'time to work' policies for parents of older children.

Parental employment was seen as a key instrument in fighting child poverty. The strategy document gave particular emphasis to the detrimental effects of poverty on child development, constructing a link between parental employment as a means of poverty reduction and positive child development outcomes. In the Childcare Review in 2002, and the new strategy of 2004, the issue of parental employability through childcare services was more strongly emphasised than in the original framework document in 1998, highlighting the instrumental function of childcare services in improving parental employability and reducing child poverty (DfES et al. 2002; HM Treasury et al. 2004). The emphasis was timely in the context of the parallel Child Poverty Review, which was conducted in 2003 to assess progress towards the Government's pledge of eradicating child poverty by 2020 (HM Treasury 2004a). Childcare provision was also a fundamental condition to reaching the Governments' employment target of 70 per cent for lone parents by 2010. Against the backdrop of these overarching policy goals, a dual-earner model was encouraged, placing no emphasis on the equal sharing of work and care between men and women. Gender neutral 'time to care' entitlements, notably parental leave and working time reduction under the Flexible Working Regulations, were, in contrast to Maternity Leave, not

paid. While formally gender neutral, these ‘time to care’ entitlements were not affordable for workers with breadwinning responsibilities, as they were not financially backed up.

The policy emphasis was on economic incentives to encourage the externalisation of childcare, through the Childcare Tax Credit, and funding of childcare services. The financial incentive structure coupled with the growing emphasis of childcare services as ‘time providers’ reflects the strong employment orientation of New Labour’s overall approach to welfare, or, to borrow Fiona Williams’s terms, New Labour’s ‘ethic of paid work’ (Williams 2001). It included the increase of financial transfers that were conditional upon employment participation, notably the Working Families Tax Credit. The externalisation of childcare to enable parents to dedicate time to employment was financially supported through in-work tax credits towards childcare costs, while issues of accessibility and quality of the care infrastructure were addressed through the National Childcare Strategy, which aimed to make high quality childcare services accessible to everyone needing them.

The policy package of resources was designed to facilitate different reconciliation choices across the childcare cycle: moving from a facilitation of family care during the first year of the child’s life to facilitating parental employment when the child is older (especially from age three). While leave policies were strongly gender-biased, encouraging maternal rather than paternal care (Lewis and Campbell 2007), family-friendly working time policy was presented as gender neutral, formally enabling fathers to take a greater share in family care. According to the Second Flexible Working Survey in 2004, 16 per cent of men compared to 39 per cent of women had requested to work part-time (Holt and Grainger 2005 Chart 5). Within the wider reconciliation policy package, family-friendly working time policy had the function of smoothing the transitions between childcare services, family care and parental employment rather than substantively promoting parental reallocation of time from employment to family care. Without being financially backed up, family-friendly working time policy has only limited capacity in enabling ‘genuine’ choice to dedicate more time to family care. In combination with increasingly employment-oriented, wrap-around childcare services, family-friendly working time policy measures are instrumental in strengthening parental attachment to the labour market. Due to the lack

of financial backing, they serve a dual-earner/externalised care model rather than a dual-earner/dual carer model.

Having contextualised the development of family-friendly working time policy within the wider policy context, the remainder of the chapter focuses more narrowly on the policy strategies pursued by New Labour to improve access to family-friendly working time arrangements, focusing on the choices made between the encouragement of best practice and the regulation of working time. Summing up family-friendly working time policy between 1997 and 2005, the key reforms constituting the British strategy to improve access to family-friendly working time arrangements were the Work-Life Balance Campaign between 2000 and 2005 and the Flexible Working Regulations 2002. Indirect interventions with possible implications for access included the trade union recognition procedure introduced through the Employment Relations Act 1999 improving employee access to workplace representation. The Working Time Regulations 1998 improved employee protection against family-unfriendly working time patterns such as excessively long working hours and insufficient rest periods, but the possible opt-out weakened this protective effect. Further, the Working Time Regulations did not contain provisions improving access to family-friendly working time arrangements. The Part-time Workers Regulations, while not promoting the provision of part-time work, addressed the opportunity costs of part-time working by outlawing discrimination on the basis of part-time work (SI 2000 No. 1551). Figure 7 summarises the policy reforms between 1997 and 2005 at a glance.

Figure 7: Family-friendly working time policy in the UK, 1997-2005

POLICY INSTRUMENT TYPE	POLICY REFORMS
Regulation	Flexible Working Regulations 2002
	Part-time Workers (Prevention of Less Favourable Treatment) Regulations
	Flexible Working Regulations 2002
Economic incentives	/
Information	Guidance on Part-time Work
	Work-Life Balance Campaign

Part III of the chapter analyses the policy choices characterising the British strategy to increase access to family-friendly working time arrangements. It analyses over time changes in policy choice, seeks explanations for instrument selection, and discusses the implications for the power balance between employers and employees.

III. Policy choices over time: from best practice promotion to the regulation of best practice

In this section, the policy instrument selection between information, economic incentives and regulation based instruments is analysed over time, exploring the role of ideas and interests of actors, the nature of the relationship over time, the overarching policy goals to which family-friendly working time policy is instrumental and the role of past policy choices on policy choice.

In several respects, the change in Government in 1997 represents a critical variable for the analysis of family-friendly working time policy in the British context. The Conservative Party's approach to the family in general, and the 'problem' of reconciling work and family life in particular, was led by the perception that how parents decide to combine work and family responsibilities was a private decision and not an area for government intervention (Lewis 2003). One might interpret this stance within the wider context of the neo-liberal paradigm which led Conservative government policy throughout the 1980s and 1990s: if parents wanted to work and use childcare services, it was the market, not the state that would be best apt to provide them (Esping-Andersen 1999). Flexible working patterns to accommodate care responsibilities should be voluntarily negotiated between employers and employees and not statutorily regulated by government. An 'interventionist' family-friendly policy stood in conflict with the dominant neo-liberal policy paradigm of deregulation and the ideal of the free market.

The change in government allowed for new ideas regarding the appropriate role for state intervention to shape the policy agenda. The Labour Party did consider the reconciliation of work and family responsibilities an issue for government policy, that it is a societal rather than private affair, which it was time to explicitly address (HC Deb 9 July 1996 vol 281 c 238). Arguably, policy developments since 1997 indicate that 'the nature of the gendered division of work and care at the household level is still

treated as a matter of private decision-making' as there has been no pro-active policy approach to increasing the male share in time dedicated to family work (Lewis and Campbell 2007 p.7). Overall, the policy initiatives leaned towards enabling a redistribution of time from family care to employment by addressing various barriers to labour market participation of individuals with caring responsibilities. Tony Blair's overarching orientation to welfare reform ran under the credo that all should be given the opportunity to participate in employment, and contribute their skills and productivity to the economy (Lister 1998). Economic independence through employment constituted a central policy goal in the Government's social inclusion strategy (Levitas 1998). Within this wider policy frame guiding New Labour's approach to welfare, help with reconciling employment and family responsibilities was in part motivated by the goal of preventing social exclusion caused by the reduced ability or inability of care givers to participate in employment (Bonoli 2005). New Labour saw successful work-family reconciliation as instrumental to its key policy objectives of poverty prevention and social inclusion (Home Office 1998).

Continuity on the path of voluntary best practice promotion

In their choice of policy instruments, New Labour's policy approach initially continued on the Conservative path of best practice promotion by taking an information-based rather than regulatory form. The Conservative Government had pursued a largely non-interventionist approach, limiting its activities to the publication of information brochures in the early to mid-1990s (Employment Committee 1995). New Labour's information-based quest significantly increased the intensity of information provision. A wider array of measures were grouped under its Work-Life Balance Campaign, which ran over a five year period from March 2000 to March 2005, and firmly established the concept of work-life balance and its benefits to employees and businesses in the media and public discourse. Despite significantly greater policy effort in this area, New Labour equally steered clear from regulatory intervention where it was not required by European Directives or already in place, as in the case of maternity leave. There are several possible explanations for this path-dependent policy development during New Labour's first years in office.

Against the backdrop of the non-interventionist Conservative policy legacy, an explicit family-friendly working time policy had to be developed from scratch. While New

Labour had come to power with a clear strategy to expand childcare provision, a family-friendly employment agenda had not been formulated during opposition years (New Labour 1997). New Labour underwent an extensive information searching and agenda setting phase during the first years in government in which they consulted widely with experts and stakeholders. In the absence of a pre-formulated policy agenda and in the light of later regulatory intervention, it is plausible to suggest that in the late 1990s the Conservative path of best practice promotion was continued out of a lack of a regulatory reform proposal on the table rather than out of the same ideational commitment to statutory non-intervention. New Labour's willingness to re-regulate the labour market was evidenced through the signing of the European Social Chapter and the Employment Relations Act 1999.

The emphasis on best practice promotion during the early years can also be interpreted as an attempt to contain the regulatory 'shock' to business initiated by the European policy agenda. The first wave of regulatory reforms promoting 'family-friendly' employment was almost entirely led by external policy requirements (Dean 2002). The UK, following the signing of the European Social Chapter in 1997, had to 'catch up' on a number of EC Directives, notably on Working Time²³, Parental Leave and Part-Time Work. These policies required statutory reforms as implementation through collective agreements was not practicable in the UK industrial relations context. Although the Government pursued a strategy of minimal implementation, reforms were perceived as a wave of regulatory 'red tape' by the employer community and fiercely contested (Lea 2003). The opportunity to introduce statutory regulations on family-friendly working hours offered by both the Parental Leave and Part-time Work Directives were not seized to keep the organisational burden and costs to employers minimal. The impetus of European policy requirements was however to stimulate policy debates and enquiries and to anchor the issues of the long hours working culture, part-time working and family leave on the agenda during these formative, agenda setting years (e.g. Social Security Select Committee 1999; Education and Employment Committee). Leading on from shock containment, let us more broadly consider the nature of government-business relations under New Labour.

²³ Which was not part of the social chapter, but implementation had been delayed by the Conservative government.

The cautious, non-regulatory emphasis on best practice promotion can be interpreted as a strategy of conflict avoidance and trust building. The incoming Labour Government faced the pressure of proving to a suspicious business community that New Labour was indeed more business-friendly than old Labour had been. A central component of this endeavour was the commitment to reducing regulatory burden, especially for small businesses (Conway 2001). The Government attempted to carefully mediate between the different stakeholder groups. On the one hand, expectations for change from women and trade unions were high after 18 years of Conservative rule. On the other hand, New Labour, having undergone a redefinition of party ideas and policy objectives during opposition years, was anxious to demonstrate to the suspicious business community that they were not heavily biased towards union interests. They wanted to signal that they could be trusted to promote economic growth and competitiveness and not to work against business (Bara and Budge 2001; Blair et al. 2001). It was thus crucial to strike the right balance between polarised interests. This tension, one may argue, had the implication that Government wanted to demonstrate that it listened to both sides and wanted to find out what support was needed. It pursued a strategy of consensus building through the practice of wide consultation with stakeholders, both privately to formulate policy options, and publicly to legitimise them. Stakeholders were actively involved in the policy making process through participation in a number of advisory groups, notably the Work and Parents Taskforce. This approach enabled the Government to reduce opposition and tension which would have been likely had the stakeholders' views not been taken into account. Wherever possible, conflict potentials were avoided as exemplified by the implementation of Clause 5 of the Part-time Work Directive in which best practice guidance was preferred over a Code of Practice.

Regulating 'best practice'

Against the backdrop of New Labour's reluctance to go beyond information-based interventions in the realm of family-friendly working time organisation, the decision to introduce legislation represents a surprising shift in direction. How can the shift in the choice of policy instruments from information to regulation be explained? Firstly, it is important to keep in mind that the right to request is not an absolute right but a way of more effectively encouraging the dialogue between employees and employers. The

Flexible Working Regulations are a procedural intervention aimed at regulating best practice in working time negotiation rather than substantively providing working time flexibility itself. The use of legislation rather than merely best practice guidance gave the issue more visibility, maximizing the outreach of information about flexible working to employers who generally pay more attention to changes in the law than to guidance and information published on government websites. The right to request was kept 'light touch' so as to reduce employer resistance from the outset but the decision to legislate meant that flexible working was discussed on a wide and visible platform.

Secondly, considering the timing of the reform proposals, electoral considerations seem to have played an important role in the decision to legislate. This impression is reinforced by the fact that the decision to introduce an employee right to flexible working was announced strategically just days before the general election in June 2001 (New Labour 2001b). The extensive consultation period had highlighted a high level of demand for flexible working hours among parents and carers (Cm 5005 2000). Trade unions, family and equality organisations demanded a statutory right to flexible working. Government was under increasing pressure to act. The Employment Relations Act 1999 had gone some way in accommodating trade union demands but arguably had not provided much for the substantial segment of female New Labour voters. The pronounced family-friendly agenda for the second term in office was serving this constituency. After four years in power, New Labour had gained confidence in government and had established a business-friendly reputation. A record of economic growth and low unemployment might have encouraged a bolder move in family-friendly policy. This move was facilitated by the fact that two years after the Employment Relations Act, there was 'regulatory space' for new employment reforms. The central policy challenge for New Labour was to bridge conflicting interests; to create a supportive policy framework while keeping regulatory burdens for businesses low. The result was a 'toothless' right to request (Kilpatrick and Freedland 2004), which in its regulatory form of an employment right signalled to parents and carers that Government was acting in their interest, but in its substance did not harm business interests.

Thirdly, the need for tangible policy outcomes was another driver behind the choice of legislation. Best practice promotion alone was not a sufficiently strong instrument to ensure widespread and needs-oriented access to family-friendly working time

arrangements as voluntary employer policies were unevenly spread across industries and workplaces (Hogarth et al. 2001). In order to ensure equitable access for those who need it, a statutory framework was needed to underpin voluntary initiative (Cm 3968 1998; Cm 5005 2000). The choice of a legislative approach was very much conceptualised as a way of speeding up the process of best practice as voluntary change occurs too slowly. Working families needed support in juggling the time demands of work and care quickly if they were to meet the Governments' employment and poverty targets. New Labour had set itself concrete deadlines of enabling 70 per cent of lone mothers into employment by 2010, by which time they also wanted to have halved the occurrence of child poverty. To both policy goals, the ability to combine care with employment was essential. The central importance of employment in New Labour's general policy agenda increased both the need for family-oriented working time flexibility, and its instrumentality to reaching policy targets.

Over time there was a clear trend in family-friendly working time policy from best practice promotion through information and guidance to employers, to best practice promotion through procedural regulation of working time negotiations between working parents and their employers. The silent phasing out of the Work-Life Balance Campaign in 2005 prompts the interpretation that with regulation on flexible working now being in place, the promotion of voluntary change through information and guidance was no longer needed. If this interpretation is correct, the impression is reinforced that information based instruments merely served to prepare the ground for later statutory regulation with its independent function becoming obsolete once a stronger instrument was put in place. This confirms earlier findings in the instrument choice literature that governments start with least intrusive (coercive) instruments moving progressively towards more intrusive ones (Anderson 1977; Doern and Phidd 1983).

The absence of economic incentives

When considering the nature of state intervention over time, bearing in mind Vedung's classification of 'information', 'economic means' and 'regulation' instruments, one notices the absence of direct economic incentives for flexible working on the policy agenda between 1997 and 2005. In terms of incentives encouraging employers to adopt family-friendly working time policies, the business benefits in terms of improved

recruitment and retention rates and reduced absenteeism were highlighted (DTI 2001a). Free consultancy aiding the introduction of work-life balance measures was provided through the Work-Life Balance Challenge Fund (Nelson et al. 2004). However, the option of encouraging best practice through state-provided benefits such as tax concessions compensating some of the additional costs associated with work reorganisation was not part of the policy agenda (it was however, with regard to employer-provided childcare services). With regard to financial incentives for take-up, forms of wage compensation to make working time reductions financially ‘affordable’ were not addressed in the policy debate on flexible working in the way it had been done in the case of unpaid Parental Leave (Social Security Select Committee 1999). Arguably, the lack of economic instruments merely reflects that family-friendly working time policy is still a ‘young’ policy field which has moved at the level of instrument choice from information to regulation with further policy consolidation yet to be awaited through the use of more resource-intensive economic incentives (Hood 1983). Until this stage of policy consolidation is reached, working parents face considerable economic loss by re-allocating time from employment to family care.

The compensation of earnings lost through the reallocation of working time either in part or in full represent a significant investment of state resources and there are several factors acting as obstacles to such a policy approach. Most obviously there are budgetary constraints. Family-friendly employment policies in contrast effectively delegate the responsibility of time provision and its associated costs to employers, while incurring relatively insignificant immediate costs to the public purse. At the same time, the decision not to substantiate ‘time to care’ policies through financial transfers can be interpreted as a ‘business-friendly’ policy strategy. By entitling working parents to time off work without designing the policy in a way that makes it ‘affordable’, up-take can reasonably be expected to be low and thereby limiting its impact on employers and minimizing the requirement, and associated costs, of work re-organization. This was the case with the introduction of *unpaid* Parental Leave and arguably served as a rationale for not applying the same principles of Maternity Pay to Paternity Pay, as it can be anticipated that few fathers will take-up paternity leave at no, or low levels, of wage compensation. The same problematic applies in a somewhat weaker form to the case of working time reduction (where the financial loss is not as high as in the case of full-time leave). Statutory entitlements without economic

substantiation can be regarded as an ‘empty-shell’ policy: increasing reconciliation choices in ‘form’ but not in ‘substance’.

Another important factor to consider in searching explanations for the absence of economic incentives for the re-allocation of time from employment to care in the context of family-friendly working time policy is the role of ‘competing’ policy instruments. In British policy development there was a clear prioritisation of incentives to externalise care through the purchase of childcare services providing parents with ‘time to work’. The investment in a child care service infrastructure has a number of ‘competitive advantages’ over family-friendly working time policy. In combination with education, it serves New Labour’s policy goal of social investment in children (Lister 2006), whereas less influence can be exerted on the quality of parental care and education. As ‘time (to work) providers’ childcare services effectively serve the policy objective of integration of parents (mothers) and carers in the labour market. Last but not least, public investment in the childcare infrastructure is supported by employers, who benefit from increased labour (time) supply, whereas intrusive advances in family-friendly working time policy are vehemently opposed. In Bonoli’s terms, there is a ‘convergence in interests’ between working women and employers on the issue of publicly supplied childcare services (Bonoli 2005 p.443), whereas in the case of control over working time organisation, there are divergent interests between employees and employers. In brief, the ‘returns on investment’ in childcare services appear more promising than investments in ‘time to care’, which families provide anyway (Ungerson 1997).

Summing up, the shift from information to regulation represents a strengthening in the empowering potential of the Government’s policy strategy over time. Applying Vedung’s framework and its adaptation to family-friendly working time policy developed in Chapter Three to the British case in Figure 8 illustrates this shift.

Figure 8: The 'empowering potential' of the British policy strategy over time

Low	→	High
Work-life balance Campaign		Flexible Working Regulations

Due to the light touch nature of the flexible working regulations, which are not backed up by heavy sanctions in case of non-compliance, nor with economic transfers to working parents making ‘time to care’ more affordable, the introduction of legislation did however not imply a strong shift in the power balance between employers and employees.

Conclusions

Starting from a modest level of best practice promotion in the early to mid-1990s, family-friendly working time policy has significantly ‘taken off’ following the change in government in 1997. Following a period of agenda setting and fact-finding, the British policy approach to family-friendly working time policy was characterised first by intensification and diversification of the information-based tool kit bundled under New Labour’s high-profile Work-Life Balance Campaign and second, during New Labour’s second term in office, the introduction of a statutory right to request flexible working patterns. State intervention remained path-dependant in the use of information-based policy instruments, which aimed to steer change in working practice through information and guidance but avoided regulatory intervention in the employment relationship. The introduction of the Flexible Working Regulations in 2002 marked a significant transition from information-based to regulatory intervention. However, the new ‘right to request’ was a procedural rather than substantive intervention aimed at spreading good practice in the negotiation of employee requests rather than augmenting the degree of control working parents have over their working time. Therefore, although New Labour changed the tool kit, they continued along the path of best practice promotion rather than redressing the power balance between employers and employees by regulatory means, which is a point that will be elaborated further in Chapter Six.

Family-friendly working time policy did not employ economic incentives to promote provision and use of family-friendly working time patterns. Unless ‘time’ resources such as entitlements to leave or working time reduction are backed up by financial resources, there is no ‘genuine’ choice to reallocate time from work to family care, especially not for fathers who assume the main breadwinning responsibility in the majority of families. The policy trajectory of the development of family-friendly

working time policy in the UK between 1997 and 2005 has revealed that the debate on appropriate instrument choice has been between encouraging change through information (voluntary change) or regulation (obligated change). The focus of attention was on employers and their role in advancing change at the workplace. Policies to smoothen the loss of income incurred through a care-related working time reduction and thus supporting the choice of reallocating time from work to family care were absent from the family-friendly working time agenda. This stands in contrast to maternity and paternity leave, which are paid, providing incentives (for mothers) for a temporary *full-time* exit from work after the child is born. Family-friendly working time policy, albeit being addressed at both men and women, did little to address the strong gender polarisation of working time characteristics of the British working time regime. A more gender equitable allocation of time was not pursued (Campbell 2006; Lewis and Campbell 2007).

Placing the development of family-friendly working time policy within the wider policy agenda, the analysis revealed that reconciliation policies under New Labour were designed to serve an employment-oriented policy agenda, moving from the assumption of a male breadwinner to an adult worker model (Lewis 2002). The provision of 'time to work' through the development of a comprehensive childcare infrastructure backed up by financial support was prioritised over the 'time to care' function of family-friendly working time policy. 'Time to care' was selectively promoted through family leave entitlements, which were designed on a full-time basis, implying a temporary absence from work, which did not serve to promote the simultaneous reconciliation of work and family care. Policy interventions directly aimed at improving access to family-friendly working time arrangements were primarily information based and not backed up by financial resources. The business-oriented protection of managerial freedom in the name of economic competitiveness and productivity were prioritised over family-oriented, employee-empowering flexibility, which was indicated by the absence of protective and 'control'-redistributing interventions, as the defence of the 'individual' opt-out from the weekly 48 hour limit illustrates (DTI 2004g).

Comparing policy development under New Labour with the policy approach of the Conservative/Liberal governments preceding them, a pattern of path dependence in the policy orientation to family-friendly working time policy in the UK was observed,

despite change at the level of policy instruments. Although the intensity, visibility and outreach of information-based instruments were innovatively expanded, they remained within the voluntary realm. The introduction of legislation was employed to achieve the same policy goal: spread best practice to achieve cultural change and thereby a more family-friendly working time organisation. New Labour's ideas regarding the role of the state in regulating employment relations, notably ensuring fairness for all through a minimum floor of statutory employment rights while keeping the regulatory burden to businesses low as laid out in the White Papers *Fairness at Work* and *Modernising Government*, are clearly reflected in their adopted policy approach to family-friendly working time policy (Cm 3968 1998; Cm 4310 1999). Although the overall policy direction, if viewed narrowly, has been path dependent, with a cautious approach to encouraging employer provision, family-friendly working time policy was part of a package of more far reaching policy reforms to support work-family reconciliation which stand in stronger contrast to the non-interventionist Conservative approach. These however were designed in an employer-friendly way, so as to avoid organisational burdens, which had the implication that 'time to care' was primarily provided through temporary employment exit, making a profound, employee-oriented reorganisation of working time to accommodate care-related working time reductions unnecessary. Chapter Five now discusses the German case and concludes in a comparison of the two policy approaches.

5. Family-friendly working time policy in Germany

Compared to the British case, where family-friendly working time policy was developed against a policy legacy of non-interventionism in the organisation of working time and minimal family-oriented government support, German policy reforms built on a legacy of statutorily regulated employment relations and expanding resource allocation to families (Meyer 2003; Bleses and Seeleib-Kaiser 2004). This chapter analyses the development of family-friendly working time policy in Germany under the Social Democrat led ‘Red-Green’ Coalition Government with Bündnis 90/Die Grünen (hereafter referred to as the Green Party), which took office in September 1998. During their two terms in office (1998–2002 and 2002–2005) the ‘Red-Green’ Government undertook far-reaching measures relating to the reconciliation of work and family life and access to family-friendly working time arrangements.

Compared with the British case in Chapter Four, a number of key differences between the approaches emerge. In addition to the different policy legacies against which family-friendly working time policy developed in the two countries, the analysis reveals different overarching policy goals in which work-family reconciliation is instrumental. While social inclusion through employment and the reduction of child poverty were of key concern to New Labour, employment creation through voluntary working time reduction and gender equality were central policy goals during the ‘Red-Green’ Government’s early years in office. Following a reconceptualisation of family policy by the Social Democrats (SPD), pronatalist policy motivations in response to demographic change and the goal of a ‘sustainable family policy’ increasingly shifted the policy focus from equal opportunities in employment and a regulatory role of the state to redress market inequalities, to improving the childcare infrastructure, with significant implications for family-friendly working time policy during their second term in office.

This chapter is structured in three parts. Parts I and II provide a chronological analysis of family-friendly working time policy across policy fields, structured by legislative period from 1998 to 2002, and from 2002 to 2005. The relative ‘fit’ of family-friendly working time policy within the wider ‘time to care’ and ‘time to work’ orientations of reconciliation policies is explored. Part III then pulls the relevant findings together to

explore the policy choice between regulation, economic means and information-based instruments over the time period considered, seeking plausible explanations for changes in instrument selection over time. This is then followed by a discussion of the empowering potential of family-friendly working time policy, applying Vedung's framework and its modified version as developed in Chapter Three to the German case. The chapter closes by highlighting the similarities and difference between the German and British policy trajectories.

I. 1998 to 2002 – the ‘Red-Green’ Coalition’s first term in office

Working time was a prominent topic on the policy agenda agreed by the coalition partners in October 1998. It featured in labour market policy, family policy and women's policy. In the field of family policy, the coalition parties agreed on the introduction of a statutory entitlement for parents to reduce their working hours during parental leave. Under the heading *A new departure in women's policy*, the Government announced that it intended to make equal opportunities for women and men a large social reform project. An action programme with the title *Woman and Work* was to include an effective equal opportunities law with binding regulations that would also cover the private sector, improve flexible working times and create better conditions for part-time work. However, in the realm of labour market policy, the Government put trust in social dialogue and employment impulses through negotiated agreements. To fight unemployment, for instance, the Government intended to cooperate with businesses and trade unions in a tripartite *Alliance for Jobs, Training and Competitiveness* to agree on a 'flexible and employment-creating organisation of working time', including part-time work, partial retirement, an employment-creating reduction in overtime, and work-family compatibility' (Koalitionsvereinbarung 1998). In the following, the different policy fields in the context of which family-friendly working time policy was developed are discussed in turn, starting with the Alliance for Jobs.

The Alliance for Jobs, Training and Competitiveness

Working time policy in the late 1990s was considered a relevant instrument for job maintenance and employment creation. The ‘Red-Green’ Coalition Government wanted to tackle the problem of mass unemployment jointly with the trade unions and

business associations, building on a previous attempt to collaborate which had failed under the Kohl Government in 1996 (Hassel 2001). The new tripartite Alliance for Jobs, Training and Competitiveness was formed in December 1998 (Schulten 1998). One of twelve goals jointly agreed by the alliance partners was to promote employment by distributing work through flexible working time arrangements, notably through a reduction in overtime, the use of working time accounts, and the promotion of part-time work. In July 1999, the two central associations of the collective bargaining parties, the Confederation of German Trade Unions (DGB) and Confederation of German Employers' Associations (BDA) issued a joint declaration on working time. It set out the principles for the future development of collective bargaining, which contained plans for 'a differentiated and flexible working time policy and a different distribution of work', through 'an employment-creating reduction of overtime', the use of working time 'corridors' and annualised working time arrangements yearly and/or life-long working time accounts. This included the creation of more part-time work and the development of new models to make such work more attractive, such as partial retirement for older workers (Schulten 1999b).

Overall, this working time agenda, while promoting flexibility, was not family oriented. The role of working time reduction and flexibility in the reconciliation of paid work with family responsibilities did not play a role in the tripartite dialogue on working time policy (Klenner 2001). Observers attributed the omission of family-oriented working time flexibility to the lack of representation of women and equality groups in the Alliance, who could have pushed the issue on the agenda (Klenner 2001; Lang 2001; Vogelheim 2001). Klaus Lang, IG Metall representative on the Alliance's steering group, commented that the interests of women were neglected, which he attributed to the unwillingness of societal actors to facilitate and increase female employment, and to promote their training and career progression opportunities in times of high unemployment (Lang 2001 295). In the late 1990s, the 'Red-Green' Coalition had put trust in the social partners to voluntarily advance an employment-oriented organisation of working time. Acknowledging the lack of substantial progress through voluntary negotiation, the Government provided impetus for change through regulatory intervention.

The Part-time Work and Fixed-term Contracts Act

The proposal to promote part-time employment through a statutory entitlement to a reduction in working hours was advanced in the Part-time Work and Fixed-term Contracts Bill in October 2000. With the policy goal of an employment-promoting reorganisation of working time remaining the same, there was a shift from relying on voluntary tripartite negotiation to statutory state intervention. The change was prompted by the fact that existing regulations through the Employment Creation Act (*Beschäftigungsförderungsgesetz*) on fixed-term contracts, which had been introduced in 1985, were about to expire in December 2000 and needed to be renewed (BT-Drs. 14/4374 p.1). Secondly, Germany needed to implement the EU Directives on Part-time Work, for which the implementation deadline had already passed in January 2000 and on Fixed-term Work, which was due to be implemented in national law by July 2001 (97/81/EC; 1999/70/EC). The decision to promote flexible employment through fixed term contracts and the introduction of a statutory right to working time reduction in the same reform project was an attempt to balance employer and employee interests. The aim was to increase stakeholder acceptance of the reforms by catering for both sides (Int. DE 13, 19/09/2006). While these external requirements partly explain the *timing* of the shift to regulation, Social Democratic policy preferences provide an explanation for the change in instrument choice. The shift to regulation represents a change in the role of the state away from moderating social partner negotiations horizontally in favour of the hierarchical ‘top-down’ approach of statutory regulation.

The idea of promoting part-time employment by way of a statutory entitlement had been part of Social Democratic reform proposals to fight unemployment for a number of years. In the mid-nineties, for example, the SPD had brought in a motion calling upon Government to reform employment law to eliminate existing barriers to part-time employment and to introduce a statutory entitlement to a reduction in working time with the right to return to full-time employment (BT-Drs. 13/7522; BT-Pl. 13/178). A general working time reduction that contributed towards full employment and to more time sovereignty of employees - enabling them to reconcile work and family life in a gender-equitable way - was a proclaimed goal of the Social Democratic Party as stated in their party policy statement (SPD 1998b). Clause five of the European Directive on Part-time Work then provided an opportunity for the Social Democrats to introduce a universal statutory entitlement to a reduction in working time within the context of this

reform. The facilitation of work-family reconciliation for employees with caring responsibilities was a supportive argument for the introduction of the entitlement, but the primary policy goal was employment creation. Working time reduction by those employees in employment was considered to ‘liberate’ work which could then be redistributed to the workless (BT-Drs. 14/4374 p.11). At the first hearing of the Bill on Part-time Work and Fixed-term Contracts (TzBftrG) in Parliament in October 2000, Walter Riester, Minister for Labour and Social Affairs, said: ‘around 3 million employees want to work part-time and wish to reduce their working hours. Here lies an unused employment potential’ (BT-Pl. 14/127 p.12243 (C)). It was assumed that there was substantive latent demand for part-time work, based on data by the Institute for Labour Market and Employment Research (IAB), which had stated that almost a third of full-time employees would prefer a reduction in working hours, taking into account lower earnings (Holst and Schupp 1998). By encouraging employees to act upon their working time preferences through a legal entitlement, the Government hoped to tap into this unused potential of work redistribution.

While the promotion of part-time employment and a flexible organisation of working time was generally welcome, there was no cross-party consensus on how to implement this. The proposal of introducing a statutory right to a reduction in working time was fiercely contested by the Liberals (FDP), who believed it would hinder rather than promote part-time employment by increasing bureaucratic hurdles (BT-Drs. 14/4625 p.20). The Christian Democrats (CDU) did not object to legislation in principle. However, they asserted that the introduction of a statutory right to part-time work was only justified on the grounds of caring responsibilities or health impediments, and demanded that entitlement should be restricted to parents of children under 12, carers of adults, and employees with health problems that prevent full-time employment (BT-Drs. 14/4526). They opposed an unconditional right to working time reduction (BT-Drs. 14/4625 p.19). The introduction of an employee’s right to reduce their working hours was fiercely contested on the part of employers and their organisations, who argued that such a right compromised the freedom to manage and would have negative long term effects on the labour market (Ausschussdrucksache 14/965 2000). The strain on small and medium-sized enterprises incurred through the administrative burden associated with part-time work was also stressed (Fuchs 2004).

Despite fierce oppositions from employer groups, the reform was passed. It introduced a limited statutory right for employees to reduce their working hours if no business reasons opposed such request. Although the right was subject to a strong business defence, it was an important development for working parents in that entitlement was universal to all employees regardless of care status.

While work-family reconciliation had not found consideration in the tripartite dialogue in the Alliance for Jobs, it played a role in the Part-time Work and Fixed-term Contracts Act (TzBfG). However, it can be argued that the time needs of working parents were utilised as part of the Government's employment-creating objectives, as the rationale underlying the reform was that new employment could be created on the basis of a partial exit of workers (mothers) with caring responsibilities. In 2001, 86.4 per cent of part-time workers were women, of which 62 per cent worked part-time for personal or family-related reasons. In comparison, only 5.2 per cent of men worked part-time (Viethen and Scheddler 2002 p.6).

Parental Leave Reform

In parallel with the policy developments on working time at the Federal Ministry of Labour and Social Affairs (BMAS), family-friendly working time policy was developed separately at the Federal Ministry for the Family, Senior Citizens, Women and Youth (BMFSFJ), where it was addressed at once in several reform projects. In contrast to policy developments at the BMAS, all policy reforms developed by the BMFSFJ had a strong gender equality rationale. The most significant reform project in terms of family-friendly working time was the parental leave reform. Both coalition partners perceived existing regulations as problematic in equality terms as they cemented the traditional division of labour within the family (only 1.5 per cent of leave takers were fathers) and promoted a long exit of women from the labour market. In their election manifesto, the Green Party had proposed a statutory right to a childcare-related reduction in weekly working time (Bündnis 90/Die Grünen 1998 p.75). The Social Democrats had wanted to introduce a flexible time account allowing both parents to work part-time and to share the care for the child more equally (SPD 1998a p.28). Both ideas were included in the coalition agreement (Koalitionsvereinbarung 1998).

The idea of a right to reduced working hours had been on the party policy agendas for years. A decade earlier, in March 1988, the working group on gender equality of the Social Democratic Party had already published a statement in which they made 12 demands for the societal recognition of family work. One of them addressed the need to consider family care as the shared responsibility of men and women. To achieve this, parents should receive a temporary right to a reduction in working hours and a right to return to full-time hours after the end of the period of active caring (SPD Bundestagsfraktion 1988). The Green Party, too, had called for a statutory right to reduced hours of work for parents of children under 12 in a motion on parental leave and childcare-related working time reduction back in 1990 (BT-Drs. 11/8423). Following the general elections in 1998 and the subsequent change in government, the opportunity for reform presented itself.

The aim of the Bill for the Third Reform of the Child Raising Benefit Act, which was introduced to parliament in April 2000 (a few months before the Part-time Work and Fixed-term Contracts Bill) was to increase parental choice about how to balance paid work with their childcare responsibilities. It also intended to encourage more fathers to take a share in childcare by working part-time (BT-Drs. 14/3118). Four key elements were introduced to make the existing regulations more flexible. Firstly, the leave entitlement of 36 months was individualised, allowing both parents to take parental leave at the same time, rather than in turns as was previously the case. Secondly, the threshold of weekly working hours was increased from 19 to 30 hours per week, enabling higher earnings through part-time hours. Thirdly, the third year of the leave entitlement could be taken between the third and eighth birthday of the child. Finally, parents received a statutory right to reduce their working hours, in their job, to between 15 and 30 hours while on parental leave. This was the most controversial element of the reform. It was welcome by family and equality advocates, and strongly opposed by employer groups in the public hearing on the proposed law (AFSFJ Protokoll 14/38).

The parental leave reform included economic incentives for an early return to work through a new financial ‘budget option’. Parents shortening their parental leave were entitled to 420 Euros per month for up to one year, rather than up to 307 Euros per month over a two year period (BMFSFJ 2002). Although the budget option was designed to attract greater paternal involvement in family care while encouraging a stronger maternal attachment to the workplace (Leitner 2003a), it must be noted that

even the increased budget option was still very low, making it unlikely to provide a significant financial incentive for fathers to allocate time from paid employment to childcare (Beckmann 2001b). Overall, the Child Raising Benefit has continually decreased in its real value since its introduction in 1986: a trend which was not offset by the 'Red-Green' Government (Gerlach 2004a). While in 1986 83.6 per cent of families qualified for the full benefit of 600 DM during the means-tested part of the benefit after six months, this proportion had fallen to 48 per cent by 1997. The 2000 reform slightly increased the income ceilings of the means-test which brought the proportion of eligible parents to 55 per cent (Dienel 2002 p.109). The level of the actual Child Raising Benefit was however not increased, and remained at the same level as at its introduction in 1986 (600 DM/Euros 307). As it was not indexed to prices, it has approximately halved in value (Dienel 2002 p.109). While the 'choice' of a more egalitarian time allocation between the parents was enhanced through the flexible regulation of working time reduction, time-frame, and the allowed frequency of taking turns, this 'choice' was not backed up by adequate financial compensation (Koch 2000 p.596). Research has repeatedly pointed out that financial considerations represent the most significant barrier to fathers taking parental leave (Vaskovics and Rost 1999; Beckmann 2001b; European Opinion Research Group 2004). The new regulations only led to a small increase in fathers' take-up, from around 1.5 per cent to around 5 per cent in 2004 (BMFSFJ 2004). The statutory entitlement to working time reduction is insufficient to redress the gender imbalance in time allocation, as it does not sufficiently address the financial implications of working time reduction. Although a working time reduction sufficiently small to contain the financial penalty was enabled by the new time threshold of 30 hours, the use of this option is not possible unless backed up by adequate childcare services for the under-three-year-olds, which was a policy area that was not addressed during the 'Red-Green' Government's first years in office.

Instead, the BMFSFJ chose to address the high gender bias in uptake through an information and persuasion campaign addressed at fathers, which was launched in March 2001 shortly after the parental leave reform had come into effect. With the slogan *More Freedom for Fathers*, it encouraged men to take up their new entitlement (BMFSFJ 2001b). The campaign, which ran for one year, was targeted specifically at fathers and young men with the aim to 'publicise the new freedoms afforded by the

Child Raising Benefit Act and to encourage greater participation of fathers in family work' (BMFSFJ 2001a p.31). The underlying idea was that a change in mentality and working cultures was to be brought about by fathers going part-time during parental leave, to which they were now entitled by law. Government conceptualised their role as contributing to this change by providing the statutory framework and by encouraging men, through information instruments, to overcome traditional gender role patterns. The reform of the parental leave scheme illustrates a strategy of stimulating change in workplace culture and working practice through an employee-initiated process of change by providing working parents with increased negotiation power through statutory regulation. The reform of the Works Constitutions Act to which we now turn, indirectly strengthened employee negotiations by empowering works councils to negotiate access to family-friendly working time arrangements on their behalf.

The reform of the Works Constitutions Act

The reform of the Works Constitutions Act 1972 (BetrVG) in 2001 included a number of amendments that strengthened the negotiation position of works councils with regard to family-friendly arrangements. The reform in general aimed to modernise the system of co-determination at the workplace in adaptation to changing workplaces and new forms of employment (BT-Drs. 14/5741). Such a modernisation had been a central demand of trade unions over the years (BT-Drs. 14/5741 p.23) and both coalition parties had unsuccessfully introduced reform proposals during their opposition years (BT-Drs. 10/3666; BT-Drs. 11/2995; BT-Drs. 11/4525). Important amendments were made to further women's representation, both quantitatively in numbers represented in works councils, and qualitatively with regard to the themes to be raised by works councils with the employer. The problem of female underrepresentation in works councils was addressed by a quota stipulating that women should be at least proportionately represented in works councils (Klenner and Lindecke 2003). This was to ensure adequate representation of typically female concerns such as part-time working and work-family reconciliation measures. Furthermore, the promotion of the compatibility between family life and employment was explicitly added to the list of issues that works councils are entitled to raise with employers, who in turn have the duty to discuss them with works councils (§80 (1) 2b BetrVG)(BT-

Drs. 14/5741). Thus, family-friendly working time arrangements were clearly established as an issue for workplace negotiations on behalf of working parents (Döge and Behnke 2006). A special Works and Staff Council Survey by the Institute of Economic and Social Research (WSI) on equal opportunities and family-friendliness in 2003 found that in 27 per cent of the surveyed workplaces, work-family compatibility had been discussed, and in most cases these discussions had been initiated by the works council (Klenner 2004b). In the following, we now turn to the Government's employer-oriented reform endeavours, which addressed the issue of family-friendly working within the wider policy frame of equal opportunities for women and men in employment.

Family-friendly working time in the context of equal opportunities

The objective to increase access to family-friendly working time arrangements was part of the equal opportunities agenda pursued under the programme *Woman and Work* at the BMFSFJ, which was agreed in Cabinet in the summer of 1999 (BMFSFJ 1999). The first reform project under this agenda was the amendment of the Women's Promotion Act for the Public Sector and the Federal Courts 1994 (FFG). When the Bill had been discussed in Parliament in 1993 both the SPD and the Green Party had criticised the lack of binding regulations and the exclusion of private sector employees, meaning that only 3.3 per cent of women in employment were covered by the provisions. Christina Schenk, speaking for the Green Party at the first reading of the Bill noted that:

with regard to the instruments with which equality in opportunities is supposed to be accomplished, there is little point in going into a detailed criticism of the Government's Bill. The basic thought that equal opportunities can be enforced by 'should' and 'could' postulations, without coercion, control and without sanctions, is either worldly innocent or an expression of the fact that equal opportunities of women and men are not such a high priority after all (BT-Pl. 12/179 p. 15443 (D); author's translation).

She announced that the Green party was to draft an alternative Bill soon.

The SPD had already done so (BT-Drs. 12/5717). Their proposed equal opportunities law was to cover both public and private sector employees and contained binding regulations. The improved compatibility of work and family care was an explicit aim.

The SPD's motion was rejected by Parliament, and the Law for the Enforcement of Equal Rights for Women and Men (2. GleichBG) came into force in 1994.

Against this background, the Coalition's agreement to amend the Equal Rights Act to make it more effective and to advance equal opportunities in the private sector through appropriate regulations was a consistent continuation of their policy preferences while in opposition. The 'Red-Green' Government amended the Equal Rights Act for the Public Sector in 2001. The reform was broadly supported by Parliament and justified by the findings of 4th Report on the Advancement of Women in the Public Sector, which had revealed the weak impact of the law between 1994 and 1998 (BT-Drs. 14/5003). The amendments to the Bill postulated the provision of family-friendly working time arrangements, part-time work and family-related leave unless compelling reasons opposed it, thus tightening the rather vague wording of previous regulations. The advancement of equal opportunities in the private sector proved more of a challenge.

In the action programme *Woman and Work* the Government announced their intention to advance equal opportunities in the private sector. Once the programme was agreed in Cabinet in June 1999, Women Minister Christine Bergmann started to consult on the framework and structure of a possible law with a group of experts composed of members of the governing parties; representatives of employee and employer organisations and legal experts; and held a number of public discussions to which interest groups were invited. In September 2000, Christine Bergmann presented a framework for an equal opportunities law for the private sector which proposed a two-step process (Pfarr 2001). In a first step, businesses would develop and implement equal opportunities and work-family reconciliation measures in cooperation with trade unions or works-councils. As long as minimum legal standards²⁴ were met, businesses were free to implement measures in line with their specific business context. Only where businesses failed to develop and implement equal opportunities measures voluntarily within a two or three year period would statutory regulations on the implementation of equal opportunities measures apply. Examples of work-family

²⁴ The legal minimum standards were to cover targets on increasing the proportion of women in areas where they are underrepresented; gender mainstreaming; equal pay; the analysis of equal opportunities and the definition of targets; contact persons for women, and the prevention of sexual harassment at the workplace. In addition, businesses were to choose, subject to business size, among a variety of measures in the fields of 'equal opportunities of women and men' and 'reconciliation of work and family' (Pfarr 2001)

reconciliation measures to be implemented by employers included family-oriented working time arrangements such as flexible working hours, part-time work and telework; the provision or funding of childcare; as well as the provision of training during periods of family-related leave. This proposal intended to increase access by obliging employers to provide family-friendly working time arrangements.

Bergmann's legislative proposals were met with fierce resistance from the employer and industry organisations (BDA 2000a), who were not willing to negotiate the introduction of legislation and rejected the proposed framework (DGB 2001; Pfarr 2001). The most controversial aspect of the framework were the proposed sanctions in case of non-compliance. These included the tying of public investments to the advancement of equal opportunities and the right for associations to litigate on behalf of their members. In a position statement, the president of the Confederation of German Employers' Associations (BDA), Dieter Hundt, stressed the willingness of German industry to achieve improvements in the area of equal opportunities, but by way of 'voluntariness and sense of proportion'. 'An equal opportunities policy with a crowbar', he argued, 'is a comparatively unserviceable instrument' (BDA 2000a, author's translation). The relations between the BMFSFJ leadership and the employer and business associations were hostile at this point. The debate on equal opportunities was polarised around the fact that the Government was planning to legislate: the actual content of the proposed legislation was secondary in the debate. In spite of employer opposition, Bergmann commissioned a group of legal experts to draft a Bill on the basis of the framework. It was completed and presented to the Chancellor's office in early 2001 (Pfarr 2001), but was rejected by the Chancellor before it could reach Cabinet. Gerhard Schröder was not willing to push through any further legislation against the will of employers, following fierce resistance against the Works Constitution Act reform earlier in the same year. The Chancellor's backing away from a legislative approach became clear when he invited the presidents of the central employer and industry associations, Dieter Hundt of the Confederation of German Employers' Associations (BDA) and Michael Rogowski of the Federation of German Industries (BDI), for top level talks on March 27th, a meeting which was also attended by Economy Minister Müller and Women Minister Bergmann. The aim of the talks, according to a government spokesperson, was to examine 'doable and desirable

solutions' (Maschler 2001). It was also announced to the press that the Government did not intend to burden employers unnecessarily by bureaucratic regulations (Ibid.).

In early April, Schröder indicated that he had allowed a further three years, in which employers would have the opportunity to implement equal opportunities measures voluntarily. Only if this voluntary route failed was the state to intervene through binding regulations. Schröder described his approach as 'bargaining in the shadow of the law', which was rooted in the belief that not all societal problems require a legislative response: as a step towards more civil society and away from 'paternalistic and etatist thinking' (Schröder 2001). He argued that the approach to policy management, which he was taking with regard to the advancement of women, represented further steps towards a bargaining and consensus-based democracy, where the state defined the target and minimum standards, but their implementation was to be left to the involved actors. The u-turn in policy strategy on equal opportunities was completed on July 2nd, when a voluntary agreement between the Government and the central industry associations was concluded, in which the central industry associations agreed to recommend company-based measures for the improvement of equal opportunities for women and men, including family-friendly working time arrangements (Bundesregierung 2001b). Progress was to be monitored by a high-level group composed in equal parts of Government and business representatives and evaluated after two years. With the Voluntary Agreement on the Promotion of Equal Opportunities for Women and Men in the Private Sector, the legislative drive that had dominated working time policy in the Government's first term in office came to an end. By the end of 2001, all legislative reforms with an effect on working time flexibility were passed.

During the election campaign for the upcoming general election in October 2002, family policy progressed to become one of the leading campaign issues for the social democrats (Mackroth and Ristau 2002). The key electoral promise for the following term was to substantively invest in the expansion of day care services with four billion Euros of federal funds (SPD 2002). The move of family policy to the centre stage of the (election) agenda was driven by both electoral and demographic rationales. The SPD leadership found that while the family was of utmost importance to voters, it had not been given the same central importance in politics (Mackroth and Ristau 2002; Ristau 2002). A 'modern' family policy and its association with the Social Democrats

(standing in contrast with the traditional male breadwinner family model promoted by the Christian Democrats) was perceived to have vote winning potential (Int. De 14, 28/09/2006). The second driver was demographic change, particularly the problem of falling birth rates, which was associated with negative economic implications in the long run (Rürup and Gruescu 2003). The ageing of society jeopardized the sustainability of the generational contract in Germany's insurance-based social security system. By addressing the fertility problem, family policy had a role to play in ensuring sustainability and economic growth and competitiveness (Rürup and Gruescu 2003). In the run-up to the general election in October 2002, a shift in policy orientation from the provision of 'time to care' through employment rights to the provision of 'time to work' through a comprehensive childcare infrastructure took shape. This development had profound implications for the development of family-friendly working time policy.

II. 2002 to 2005 - the 'Red-Green' Coalition's second term in office

A central policy objective for the second term in office was to create a 'sustainable' family policy (*Nachhaltige Familienpolitik*) (Ristau 2005). To be sustainable, family policy had to meet the economic and societal challenge presented by demographic change by attaining two goals: sufficient children would have to be born to counteract the ageing of society; and an increase in female labour market participation was needed to counteract anticipated staff shortages (Rürup and Gruescu 2003 9). Causal relations were constructed between the lack in childcare services and low female labour market participation and Germany's low birth rates (BT-Pl. 15/5 p.274-75). With reference to the experience of other European countries, notably France and the Scandinavian countries, where high levels of female labour market participation went alongside higher birth rates, it was argued that a comprehensive childcare infrastructure enabled women to combine employment with parenthood, and that one of the reasons for Germany's growing childlessness was that women had to decide between having a career and having a family. The lack of a comprehensive childcare infrastructure contributed to the trend that especially well-qualified women, who faced high opportunity costs from leaving employment, increasingly remained childless (Rürup and Gruescu 2003). According to Micro Census Data of the year 2000, 44.3 per

cent of women between 35 and 39 years of age who held a postgraduate degree²⁵ were still childless (BMFSFJ 2003b). The ability to reconcile work and family responsibilities was defined as a central indicator of ‘sustainable family policy’, and childcare services were seen as key to achieving this goal²⁶ (Ristau 2005).

This shift in policy emphasis towards service provision was rooted in a process of redefinition of the SPD’s concept of family policy (Mackroth and Ristau 2002). An internal working group (*‘Forum Familie’*) chaired by Renate Schmidt (Schmidt 2001) had developed a new party approach to family policy since 1999. At the Party Congress in November 2001, Schmidt emphasised the emancipation of family policy from the party’s gender equality agenda, which had been dominant in the late 1990s (SPD 2001)²⁷. The new family concept rested on three pillars: first, improving the ‘harmony’ between work and family life; second, improving the quality of family life (for example by improving the immediate environment in which families live - housing, public transport, playgrounds - and increasing their participation in social and political life); and third, creating a socially just and transparent system of financial transfers (*Familienleistungsausgleich*). The framework for the harmonisation of family and working life consisted of ‘concerted action in economy and society’, through a societal alliance for the *‘Future of the Family’*, in which all societal actors were to be responsible for the creation of a family and child friendly society (SPD 2001 p.308) (Schmidt 2002). Following re-election in 2002, Chancellor Schröder asked Renate Schmidt to succeed Christine Bergmann as Federal Minister for the Family, Senior Citizens, Women and Youth. Under the leadership of Renate Schmidt, the new approach to family policy was translated into the new family policy agenda on ‘the Future of the Family’ (Int. DE 09, 12/07/2006).

The new approach represented an important shift from a state-centrist conceptualisation of family policy to a ‘societal’ conceptualisation. With regard to the harmonisation of work and family life, this reconceptualisation implied a division of

²⁵ Postgraduate degree translated from the German ‘Hochschul/Promotionsabschluss’, women living without children in their household.

²⁶ In the government’s national strategy on sustainability the measurable indicator for progress in tackling demographic change was defined in terms of full-time day care provision, which should reach a coverage rate of 30 per cent by 2010 for all children under the age of 12 (Bundesregierung 2001a p.124).

²⁷ ‘Family Policy is not the appendix of equal opportunities policy and equal opportunities policy is not the appendix of family policy. Both are discrete, important fields’. Speech by Renate Schmidt at the Party Congress in Nürnberg, 21. November 2001 (SPD 2001).

responsibilities between state and societal actors in which the role for government was to improve the national infrastructure for families, with a particular emphasis on the expansion and affordability of care services (SPD 2001). This development had an important implication for family-friendly working time policy: its development and implementation was largely delegated to employers. Whereas government intervention in the late 1990s had focused on regulating the negotiation of family-friendly working time arrangements through the introduction of employment rights and by strengthening the negotiation position of works councils: from 2001 onwards, government intervention in the realm of working time shifted to the use of information-based instruments with the aim of encouraging voluntary change. Although ‘time to care’ was recognised as a key variable to work-family reconciliation, the Government envisaged no further legislative reforms in this area. Change at the workplace was to be incited through cooperation with employers and by persuading them of the economic relevance of family-friendly working time arrangements. The key element of the new societal approach was the creation of an Alliance for the Family.

The Alliance for the Family

With the *Alliance for the Family*, the Government implemented the idea of a division of labour between societal partners in creating a more family-friendly society. The stated aim was to change culture ‘through stalwart arguments and the distribution of examples of best practice, but also by initiating concrete change in businesses and local authorities’ (BMFSFJ and Bertelsmann Stiftung 2003). The strategy pursued by the BMFSFJ was to win influential partners in the ‘world of work’ as well as in local government, who were well placed to influence and promote change within their respective spheres of influence. They were drawn from the central business and employer associations, the trade union movement, the media, academia, and local government. They were all invited by the Minister to participate in the Alliance for the Family, and agreed to promote a better reconciliation of work and family within their respective spheres of influence (Int. DE 09, 12/07/2006). In the summer of 2003, Renate Schmidt jointly launched the initiative with Liz Mohn from the Bertelsmann Foundation (BMFSFJ and Bertelsmann Stiftung 2003). The Alliance for the Family consisted of a high-profile impulse group (Appendix F), providing ideas and publicity

at the national level; and local alliances that were to improve family-friendliness in concrete projects at the local level (Schmidt and Mohn 2004).

The initiative of Local Alliances for the Family was formally launched in January 2004, together with President Braun of the DIHK (BMFSFJ 2006d). In the context of limited government influence over outcomes at the local level within the federal structure of Germany, the policy strategy was to steer the process of alliance creation at the local level from a distance, by providing consultancy support with the setting up and management of such local alliances. Between December 2003 and October 2005, 217 alliances were set up with a total of 412 locations receiving consultancy support²⁸.

Under the new ministerial leadership, there was no longer the political will to return to the option of statutory regulation in the realm of family-friendly working time arrangements, which did not 'fit' with the new policy strategy of voluntary co-operation. The unpopular policy topic of equal opportunities had been pushed aside by the growing emphasis on the 'economic charm of the family' (Schmidt 2004a). This became especially evident when the first evaluation of the success of the voluntary agreement on equal opportunities for men and women in the private sector was due. In 2003, the promised efforts were reviewed with regard to implementation of the agreement and its effects at the company level, and the results were presented in December 2003, known as the 'Assessment 2003' (BMFSFJ 2003a; Funk 2004). The authors of the report were satisfied by the developments and saw no need for the introduction of legislation. They even went as far as to conclude that: 'the Government and industry agree with regard to the Assessment 2003 that statutory provisions and regulations in this area would change little in terms of workplace reality and would even have counterproductive effects' [author's translation] (BMFSFJ 2003a pp.38-39). By the end of 2003 it had become clear that the role for government was no longer perceived to be one of redressing injustices and rigidities at the workplace. Within the new division of labour, government attention was instead focussed on improving the service infrastructure to enable parents to better combine employment with parenthood.

²⁸ The Alliance for the Family initiative was continued under the new Government that took office in October 2005. In November 2007, the number of local alliances had increased to 450 with a total of 650 locations receiving consultancy support (www.lokale-buendnisse-fuer-familie.de).

‘Time to work’ through the Day Care Expansion Act

The Government set itself the target to double day care and childminding places by the summer of 2006, and to reach West European standards (both quantitatively and qualitatively) of childcare provision by 2010 (Bundesregierung 2003; BT-Drs. 15/3676). Impetus for these quantitative targets was given by the childcare targets set at the Barcelona Council of 2002, which were a 90 per cent childcare coverage rate for three to school age and 33 per cent for the under three-year-olds. These targets were considered necessary to realise the female employment rate target of 60 per cent by 2010 that was agreed at the Lisbon European Council in March 2000. Although the Child and Youth Support Act 1990 (KJHG) had already postulated the needs-oriented provision of public care services, these regulations had not achieved the desired outcome.

The level of service provision was especially low for the under three-year-olds, which had not been covered by the statutory right to a childcare place that had been introduced for children from the age of three to school age by the Pregnancy and Family Support Act 1996. In December 2002, there were only 85 places in day nurseries per 1000 children under the age of three in Germany compared to 790 places in kindergartens for children aged three to under seven. Nursery provision levels in the West German Länder were significantly lower, with only 27 places in day nurseries per 1000 children compared to 370 places in the East German Länder (Statistisches Bundesamt 2004). The Government intended to address these gaps in the care service infrastructure through the Day Care Expansion Act (TAG), which was passed in December 2004 and came into force in January 2005. The reform addressed the provision problem by setting concrete minimum provision targets, notably to provide day care places for all children under three whose parents are in education or employment, or whose care needs would not otherwise be satisfactorily met (§24 (3) KJHG). These day care places were to be provided either by day nurseries or by child minders. The reform further regulated quality standards for early education and care (BMFSFJ 2004c).

The function of day care services as time providers for working parents gained increasing importance in the childcare debate, supported by arguments on the supportive role of day care in cognitive development and educational achievements

raised by Germany's poor ranking in the OECD's international PISA study, which assessed the educational achievement amongst fifteen-year-olds (OECD 2001c; Clasen 2005). Short opening hours and unreliable school hours had for a long time been criticised as barriers to women's employment and career advancement (Scheiwe 2000). The introduction of a statutory right to day care for three-year-olds in 1996 had led to the increase in provision, albeit only on a part-time basis of four hours a day, which made even part-time employment difficult (BMFSFJ 2006b). Increasingly policy recommendations stressed the importance of full-day and flexible care service provision to facilitate female labour market participation. Rürup and Gruescu for instance recommend day care opening hours from 7 am to 7 pm on a general basis, while stressing the importance of both quality (BMFSFJ 2003c) and affordability of such services (Rürup and Gruescu 2003 p.58). In this respect, the day care reform not only emphasised that day care places should be provided at least in sufficient number to cover working parents, but also that they should be oriented at their time needs, either through the provision of full-day places at day nurseries or supplementary care by childminders (§24 (1-3) KJHG). The regulation of public service provision was complemented by the encouragement of employer-based childcare provision through the Alliance for the Family (BMFSFJ 2004b). The Government further committed four billion Euros between 2003 and 2007 to the expansion of full-day schools through the investment programme *Future of Education and Care* which had benefited around 5000 schools across Germany by 2005 (BT-Drs. 16/1360 p.XXVII). Full-day child care services aim to enable strongly employment oriented women to reconcile their career aspirations with parenthood in an attempt to address the high levels of childlessness among the highly qualified women.

Efforts to regulate for a better childcare infrastructure were complemented by financial assistance with the cost of externalised childcare through the introduction of a child care tax allowance in 2002. It was provided to all working parents of children under 14 irrespective of their income as long as childcare costs exceed 1,548 Euros per year to qualify for the 1,500 Euro allowance (BMFSFJ 2005c p. 20). This allowance was paid in addition to a universal tax credit for childcare or education (Betreuung und Erziehung oder Ausbildung) of a flat rate of 2,160 Euros per year (BMFSFJ 2005c p.11) which was paid to all parents irrespective of whether care was provided

within the family or purchased on the market and set a signal of support to parents choosing a dual-earner reconciliation arrangement.

Overall, under the roof of the Alliance for the Family, the state's contribution to a more family-friendly society was the improvement of the service infrastructure of childcare and full-day schooling: moving away from the traditional approach of high financial transfers, which were no longer seen as an effective instrument to improve the compatibility of employment and family care (Schmidt 2002). The contribution by businesses, on the other hand, was to be the long term incorporation of family-friendliness in company cultures and management philosophy, and appropriate measures in the organisation of working time and personnel and organisational development. Works councils and trade unions were encouraged to initiate workplace-based projects promoting culture change (BMFSFJ and Bertelsmann Stiftung 2003; BMFSFJ 2005a).

Reform proposals for the next legislative period that were highlighted during the electoral campaign in 2005 included the target of a statutory right to childcare for two-year-old children by 2010, and reductions in the costs of day care with the aim of providing free day care services for parents. Furthermore, the SPD planned to replace the means tested child raising benefits with an earnings related benefit (*Elterngeld*), mirroring the Scandinavian example of paid parental leave to provide greater financial compensation of lost earnings (SPD 2005). Proposals for an earnings related payment during parental leave had been proposed by Rürup's economic expertise in 2003, as well as the 7th Family Report and the Child and Youth report in 2005. In line with the wage compensation of two thirds of previous earnings paid by unemployment insurance, this transfer could, in particular, help fathers to take a more active part in childcare with reduced breadwinning pressure (BT-Pl.15/186). The general election in October 2005 however marked the end of the 'Red-Green' Coalition's time in government. The majority of the votes were gained by the Christian Democrats (CDU) who formed a coalition government with the Social Democrats. The BMFSFJ leadership was handed over to the CDU. The new Family Minister, Ursula von der Leyen, however, continued the policy course initiated by Renate Schmidt in 2002, notably by introducing the earnings-related *Elterngeld* in 2007.

Having traced the development of family-friendly working time policy over time, and having set it within the wider work-family reconciliation context, the following discussion will explore the way in which family-friendly working time policy is 'nested' within the wider resource mix of reconciliation policies introduced by the 'Red-Green' Coalition Government.

From 'time to care' to 'time to work': towards a facilitation of dual-earner/dual-carer arrangements

The policy approach of the 'Red-Green' Coalition Government to reconciliation policies differed with regard to the (West German) Conservative/Liberal governments' approaches during the 1980s and 1990s in terms of policy orientation, in that the aim to facilitate women's labour market participation and attachment was explicitly pursued (BMFSFJ 1999). In the 1980s and 1990s, the German policy approach was oriented towards family care on the basis of a male breadwinner family model (Annesley 2003). Long, unpaid parental leave and the absence of comprehensive childcare provision in West Germany encouraged parental care by one parent while the other parent was expected to earn the living wage for the family. A statutory right to childcare and education was granted from age three. However, both kindergartens and schools largely operated on part-time hours. Derived benefits for family carers through the insurance and taxation system provided financial incentives for the male breadwinner arrangements (Sainsbury 1994b; Dingeldey 2000).

With the parental leave reform in 2000, the 'Red-Green' Government aimed to address barriers to female labour market participation. They provided incentives to break the pattern of extended labour market exits by mothers: firstly, through the entitlement to take parental leave on a part-time rather than full-time basis; and secondly, through the introduction of a budget option for the Child Raising Benefit, providing a financial incentive for a shorter leave period. The parental leave reform aimed to provide parents with greater choice in the allocation of time between employment and family care. Due to the lack of external childcare services, this choice was however dependent on familial time negotiations and did not address the opportunity costs of lost earnings and career opportunities which one of the parents or both would have to accept. Mothers' labour market attachment/earlier re-entry was made dependent on the father's willingness to take a greater share in family care, thereby liberating time for

maternal employment. The policy strategy that was pursued to encourage fathers was an information campaign aiming to change attitudes. Research exploring the low uptake of fathers has however identified that the major deterrent from fathers taking parental leave is financial loss, rather than unwillingness (Beckmann 2001b). Despite this, the Child Raising Benefit was not increased at that time. Although the parental leave reform signals a move away from the male breadwinner/female carer model by removing regulatory barriers to the equal access to 'time to care' for both parents, neither sufficient public funds nor the availability of childcare services for the under three-year-olds facilitated the choice of a dual-carer reconciliation arrangement.

It was not until 2002 that government policy actively promoted the externalisation of care for the under-three-year-olds through the Day Care Expansion Act, as well as providing financial support towards the costs of external childcare through tax reform. Until then, family-provided care was encouraged through the long parental leave entitlement. Walter Korpi (2000), in his categorisation of 'general family support' and 'dual-earner support', classifies childcare for three to six-year-olds in the first and childcare for the under-threes in the second category. According to this classification, recent German childcare reforms, which have been improving the time-providing function of the childcare infrastructure, start to enable dual-earner arrangements and to facilitate the dual-carer arrangements that were envisaged by the parental leave reform.

However, the focus on childcare provision since 2002 and the delegation of the responsibility for the supply of family-friendly working time arrangements to employers highlights the choice of 'employer-friendly' reconciliation policies over conflict-ridden interferences in the organisation of working time. In the context of the Alliance for the Family, regulatory state interventions to improve access were abandoned and governing resources directed towards consensual policy choices. This confirms Bressers' and O'Toole's argument that policies maintaining existing network characteristics are preferred in the policy selection process (Bressers and O'Toole 1998).

Having contextualised the development of family-friendly working time policy within the wider policy context, the following section focuses more narrowly on the policy strategies pursued by the 'Red-Green' Government to improve access to family-friendly working time arrangements. It focuses on the choices made between the

encouragement of best practice and the regulation of working time. Summing up family-friendly working time policy between 1998 and 2005, a number of key reforms advanced the family-friendly working time agenda at the turn of the century. These are summarised in Figure 9.

Figure 9: Family-friendly working time policy in Germany, 1998-2005

POLICY INSTRUMENT TYPE	POLICY REFORMS
Regulation	Reform of the Federal Child Raising Benefit Act (2000) Part-time Employment and Fixed-term Contracts Act (2000) Equal rights Act for the Public Sector (2001) Works Constitutions Act (2001)
Economic incentives	Child Raising Benefit (2000)
Information	Voluntary Agreement for the Promotion of Equal Opportunities for Women and Men in the Private Sector (2001) Fathers Campaign (2001) Alliance for the Family (2003)

With the introduction of two statutory rights to working time reduction, the strengthening of family-friendly provisions for public service employees and the right of works councils to co-determine the introduction of family-friendly measures with employers, employees were given statutory support in negotiating family-friendly working time arrangements. The change of leadership at the BMFSFJ following the general elections in 2002 advanced a reconceptualised policy agenda in which an emphasis on childcare provision took precedence over family-friendly working time. Family-friendly working was henceforth promoted through the Alliance for the Family which encouraged employers to introduce family-friendly working time arrangements voluntarily. Having provided a chronological account of policy developments within their wider policy context across different policy fields, the third part of the chapter focuses on the policy choices in the development of the German family-friendly working time policy strategy over time and their implications the power balance between employers and employees.

III. Policy choices over time: via regulation back to information

Through a series of regulatory interventions in the employment relationship around the turn of the century, the ‘Red-Green’ Government intended to enable working parents

to exert greater individual and collective control over the organisation of working hours. After this short and intensive regulatory spell, there was a policy u-turn to information-based policy interventions from 2001 onwards, in which government interventions focused on encouraging voluntary, employer-initiated provision of family-friendly working time arrangements. State-employer relations shifted from an authoritative top-down relationship, with government attempting to steer employer action by statute, to a more horizontal, cooperative relationship where a change in employer behaviour was sought through persuasion and voluntary commitment rather than statute. Until the late 1990s, family-friendly working time arrangements had only been state regulated for public sector employees but not for the private sector²⁹, where provision depended on collective agreements and management decisions unsolicited by government prescription. Following the election of the 'Red-Green' Government, there was a distinctive shift from a de-regulating policy approach to labour law that had been pursued by the Conservative/Liberal governments in the 1980s and 1990s to 're-regulation' in line with their traditional policy goal of redressing the work relationship in the favour of the employee (Rose 2003 p. 121).

In this section, the reasons for these shifts in policy choices are explored. It begins by addressing the regulatory 'turn' at the end of the 20th century and examining the question of why the 'Red-Green' Government chose to regulate the organisation of working time reduction by statute, before considering the return to the promotion of voluntary change. The section closes with a consideration of the implications of policy choices made for the power balance between employers and employees.

The regulatory drive during the first years in office

An important factor influencing the introduction of statutory regulation of family-friendly working time arrangements was that a regulatory framework was already in place through the Works Constitutions Act (since 1972), the Child Raising Benefit Act (since 1986) and the Women's Promotion Act for the Public Sector and the Federal Courts (since 1994). Amendments of existing regulatory interventions are easier to 'push through' than introducing legislation from scratch, especially when the reforms are perceived as an improvement to the existing rules in place (Hecló 1974). The failed

²⁹ The Employment Promotion Act 1985 had introduced the principle of equal treatment of part-time and full-time employees.

equal opportunities law for the private sector in turn illustrates that the lack of previous legislation in the private sector, however weakly formulated, increased the hurdle to its introduction. Although both coalition partners had agreed to it in their Coalition Agreement, the strong mobilisation of employers and business organisations against the law, combined with the relatively low priority of equal opportunities in the hierarchy of policy goals, led to it being ‘sacrificed’ as a concession to employers (Alemann and Sielschott 2007). Following a large number of legislative reforms the Chancellor wanted to impose no additional regulatory burdens on businesses.

The situation was somewhat different in the case of the Part-time Employment and Fixed-term Contracts Act (TzBfG). Although existing regulations of fixed-term work had to be renewed and the European Council Directives on Fixed-term Contracts and on Part-time Work needed to be implemented, this does not explain the introduction of the statutory right to request a reduction in working time. The regulations on fixed term contracts could have simply been renewed rather than creating a new legislation incorporating part-time employment (Int. DE 13, 19/09/2006). Clause five of the Part-time Work Directive did not require implementation by legislation. In this case, the choice of statutory regulation is better explained by the long-standing social democratic policy preference, evidenced by earlier parliamentary motions during opposition years, for a statutory entitlement to working time reduction. All reform projects undertaken between 1998 and 2001 were attempts to redress earlier policy reforms in line with ‘Red-Green’ policy preferences, having in each case unsuccessfully attempted to shape policy development through their own reform proposals during opposition years.

There were no significant institutional constraints preventing the choice for regulation. Rather, such a choice was facilitated by the obligation to implement European directives in national law. Thanks to a majority in Parliament, it was possible to pass working time regulation against the votes of the Conservative/Liberal opposition. In this policy field, the *Bundesrat* is not a significant ‘veto player’ as it does not have the institutional power to block reforms relating to labour law (Tsebelis 2002). As there are no direct costs to the public purse associated with working time regulations, there was no opposition from the Treasury (Rose 2003 p.122). In the late 1990s, the policy-agenda of the ‘Red-Green’ Government was favourable to union demands. A large proportion of social democratic delegates were union members, which might have

played a role in supporting controversial reforms through Parliament against considerable employer opposition, having made certain concessions at the level of policy design. These will be discussed in detail in Chapter Six in relation to the statutory entitlements to working time reduction. The ‘regulatory spell’ in working time policy ended in 2001, with the Chancellor’s blocking of the equal opportunities law for the private sector in line with the business and employer lobby. Institutional constraints cannot explain the reluctance to regulate from 2001 onwards. Changing policy ideas and government-employer relations are more likely to provide answers for the second shift in policy approach: the ‘u-turn’ to information-based interventions from 2001 onwards.

No less than a u-turn: the return to best practice

With the move from the first to the second term in office, there was a shift in the overarching policy goals in which work-family reconciliation was instrumental. Policy objectives shifted from furthering equal opportunities and women’s advancement in employment, which had been a core social democratic demand, towards a pronatalist policy orientation aiming to address demographic change, notably by encouraging more women to have children. It was reflected by a reframing of work-family reconciliation from ‘gender equality’ to the ‘family’, which was initiated through an internal re-definition of the social democratic position on family policy, led by Renate Schmidt and translated into government policy when she took office as Family Minister following the general election in 2002 (Ristau 2005). Staff turnover and an organisational reshuffle at the ministerial level created opportunities for these new policy ideas and priorities to change the policy agenda, both in 1998 with the incoming SPD leadership under Christine Bergmann and then again in 2002. Renate Schmidt, who had been in charge of developing a new social democratic approach to family policy since the late 1990s, took over from Christine Bergmann, whose political priorities of advancing equal opportunities against employer opposition were no longer supported by the (male) decision makers in the Social Democratic Party. Under the leadership of Christine Bergmann, the reconciliation problem and working time flexibility had formed part of the Government’s equal opportunities agenda. From 2002 onwards, it was dealt with under the roof of family policy, and moved

organisationally from the gender equality division to the family division (Int. De 12, 02/08/2006).

It is difficult to state with certainty that the shift in policy discourse from social justice (financial redistribution to families and gender equity) to economic argumentation (demographic change and economic competitiveness) of family policy reflects a change in policy goal. It may instead reflect a strategic change in governing *method* in order to obtain a wide societal consensus base for policy development. Although Germany was arguably undergoing a paradigm shift in family policy (most clearly announced by the SPD leadership itself, see Ristau 2005) what has been happening since 2002 (and especially since the time frame considered here) is a *substantiation* of the reconciliation choices envisaged by Christine Bergmann. Notably, the policy changes implemented and planned by Renate Schmidt (which were since followed through by her Conservative successor Ursula von der Leyen) improved the childcare infrastructure, providing ‘time to work’, and a better financial compensation of lost earnings, while allocating time from employment to family care (implemented through the *Elterngeld* reform in 2007). The ‘backing up’ of formal statutory working time entitlements through substantive cash and service provision serves gender equality objectives by ‘liberating’ time for female employment while making men’s greater share in family care more ‘affordable’. In contrast to labour law, both service expansion and cash transfers involve significant public financial commitment, which necessitates the support of all political parties at both the federal and Länder level (as the consent of the *Bundesrat* is here required). Building a cross-party policy consensus was therefore an important condition for obtaining a political majority in support of reforms.

Two policy ideas dominated the new approach to work-family reconciliation in general, and affected family-friendly working time policy in particular: the need for a better (service) infrastructure; and the preference for a ‘societal’ rather than ‘state-centrist’ intervention to create a more family-friendly society. While the policy approach hitherto had had ambitions to directly regulate the employment relationship and facilitate a family-friendly organisation of working time by means of legislative intervention, this was no longer the approach pursued under the leadership of Renate Schmidt. The responsibility for a family-friendly ‘world of work’ was delegated to employers and employee representatives: in other words, family-friendly working time

policy was effectively ‘de-governmentalized’ (Wolf 2006). From 2001 onwards, when the Government agreed on the voluntary promotion of equal opportunities for women and men in the private sector - distancing itself from its regulatory intentions - the BMFSFJ retained merely an informing, motivating and co-ordinating, but non-regulating, role (see also Klammer and Letablier 2007 p.688). A small amount of pressure was exerted by the agreed bi-annual assessment of the voluntary initiatives on equal opportunities, which provided impulses for sustained business-led activities in this area (Int. De 10, 12/07/06). The emphasis of state policy shifted from regulation of the employment relationship to the regulation of the care service infrastructure, while responsibility for ‘time’ policies was delegated to the central organisations of business and industry and to ‘employers’ in general.

‘Time’ policies, such as family leave or flexible working time, touch upon the core of employment relations, and thereby power relations, and bear high conflict potential with employers. Schmidt’s ‘societal’ approach relied on cooperation and consensual relations with employers. This might explain the Government’s reluctance since 2003 to reconsider the case for legislation on equal opportunities and family-friendly working options in the workplace. Having ‘learnt’ about the high conflict potential associated with legislative endeavours in the context of the planned equal opportunities law, the option of legislation was ruled out, so as not to jeopardize the spirit of partnership that had been created in (and was fundamental to) the Alliance for the Family. Relations with employers and business organisations were managed horizontally rather than vertically, which required the choice of information-based rather than regulatory instruments.

In family-friendly working time policy, the ‘Red-Green’ Coalition Government underwent a clear shift in the choice of policy instruments from a marked legislative approach in their first term of office to a preference for voluntary measures in their second term. Three possible explanations for this shift come to mind. One assumes a problem-oriented choice in the sense that information and persuasion instruments were seen as the logical next step, aimed to *complement* the statutory regulations already in place by promoting culture and attitude change. The second explanation would be that the Government ‘gave in’ to powerful employer interests. This appears to have been at least partly the case in the context of the equal opportunities law for the private sector, where legislation had clearly been planned. Determined employer opposition and

internal party conflict cumulating in the Chancellor's veto prevented the passing of the law (Alemann and Sielschott 2007). While this might in part explain the dropping of the equal opportunities law it does not plausibly explain the shift in policy orientation leading to the set up of the Alliance for the Family initiative. Here, it seems to be the case that the Government strategically *turned adversaries into allies* in the quest for pushing family policy from the margins to the core of socio-political debate and attention.

The three explanations are not mutually exclusive. There might have been a process of policy learning within the Government, which had, at first, pursued the same policy line as they had pursued during their opposition years, and then, when confronted with the pragmatic problems of government (including a powerful employer lobby), they realized that 'equal opportunities can only be realised in cooperation with business, not against it' (BT-Pl. 14/176). This realisation might have led to a recalibration of problem formulation and solution finding: in order to improve the conditions for successful work-family reconciliation, employers need to be supportive. In this interpretation, it is not a question of passing a law but of maximising compliance, which might be better achieved by persuasion than coercion. From 2003, the win-win situation of family-oriented policy was moved to the centre stage of political discourse. The opportunity to return to the initial legislative agenda, which presented itself with the *Assessment 2003*, was not seized. The lack of political will to legislate was more than obvious. Instead, the approach of dialogue and voluntary cooperation was extended from the equal opportunities realm to the family policy domain through the set up of the Alliance for the Family. As a matter of fact, the economically grounded, 'sustainable family policy' agenda, of which work-family reconciliation objectives are a key component, have pushed the equal opportunities 'social justice' oriented agenda, which dominated the policy agenda in the first years in office, to the background. The policy choices made by the 'Red-Green' Coalition Government over time have implications in terms of the empowering potential of the policy strategy pursued.

The shift in family-friendly working time policy from regulation to information based instruments represents a weakening in the empowering potential of the Government's policy strategy over time. While the employment rights introduced in 2000 signalled the Government's willingness to employ authoritative force to increase access to family-friendly working time arrangements, the failed equal opportunities law for the

private sector, and the strictly voluntary and consensus-based societal approach since 2002, have lacked intention of shifting the power balance in the employee's favour. Applying Vedung's framework and its adaptation to family-friendly working time policy developed in Chapter Three to the German case in Figure 10 illustrates this shift.

Figure 10: The 'empowering potential' of the German policy strategy over time

High	→	Low
Reform of the Federal Child Raising Benefit Act Part-time Employment and Fixed-term Contracts Act		Fathers Campaign Voluntary Agreement for the Promotion of Equal Opportunities for Women and Men in the Private Sector Alliance for the Family

Although the introduction of employment rights shift the power balance in the employee's favour, the lack of financial compensation of the earnings lost through a reduction in working time in the case of the TzBfG, and the low level of the Child Raising Benefit imply only a moderate empowering potential.

Conclusions

This chapter presented a chronological account of the development of family-friendly working time policy across policy fields and within the wider context of reconciliation policies, analysing policy choices between regulation, economic incentives, and information-based instruments over time. German family-friendly working time policy strategy underwent two distinct shifts in policy choice over the time period examined. The 'regulatory spell' of the turn of century was quickly followed by a return to information-based instruments. During the first term in office, working parents received a limited statutory entitlement to reduce their working hours, encouraging them to allocate some time from employment to family care. Works councils were entitled by law to address the issue of family-friendly working time arrangements with employers on their behalf, and the system of co-determination was adjusted to encourage and facilitate the representation of working parents on works councils, opening avenues for the representation of their needs and interests. Equal opportunities

legislation for the public sector strengthened existing provisions to facilitate family-friendly working time arrangements, and to protect working parents from disadvantage on these grounds. Similar regulations of the employment relationship were planned and developed for the private sector, but vetoed by the Chancellor in reaction to fierce employer opposition before reaching the parliamentary process. Instead, employer organisations agreed to promote family-friendly working time arrangements voluntarily among their members. Complementing, and in the latter case substituting, legislative reforms, with awareness raising and the encouragement of best practice represents the second pillar of family-friendly working time policy in Germany, which was coordinated under the roof of the Alliance for the Family from 2003 onwards. Economic incentives for the supply of family-friendly working time arrangements were not provided. Employee-directed compensation of the financial losses associated with reduced working hours was minimal during the 'Red-Green' era through the introduction of a budget option for the Child Raising Benefit, but an earnings-related *Elterngeld* was planned by Renate Schmidt and later implemented under the Conservative-led Black-Red Coalition Government taking over in 2005.

The shift in policy instruments over time is associated with changing governing styles. Following an authoritative approach to increasing access to family-friendly working time arrangements through regulatory intervention in the employment relationship - with the objective to redress labour market inequalities - in the era of Christine Bergmann, a societal rather than state-centrist governance approach was emphasised by Renate Schmidt who succeeded Bergmann after the general elections in 2002. The cooperation with employer groups and other societal actors played an important role in policy development in the non-legislative realm notably in the context of the Alliance for the Family since 2003.

Comparing policy developments since 1998 with the conservative/liberal approach in the 1990s, the approach to family-friendly working time policy clearly changed in terms of instrument choice. Although the promotion of family-oriented working patterns - especially part-time employment - had been promoted by the previous governments, policy measures had remained in the voluntary information realm and intervention through statutory regulation had been firmly opposed. This changed in 1998 when employee-oriented working time reforms moved onto the regulatory agenda with the incoming centre-left Government. Although policy intervention

returned to an information-based approach in 2001, it differed markedly from information campaigns in the 1990s. The promotion of family-friendliness through the Alliance for the Family had gained a much higher profile, political visibility and business support. While family-friendly policies had been framed by equal opportunities objectives up until 2002, business support was sought and gained through an economic argumentation highlighting the long term economic need for a sustainable family policy and family-supportive work organisation (Rürup and Gruescu 2005). The development of family-friendly working time policy under the 'Red-Green' Government was part of a wider reform package aimed at enabling women's employment and a more equal sharing of care between men and women.

Reconciliation policies under the Conservative/Liberal governments of the 1980s and 1990s had encouraged male breadwinner-female carer arrangements. Policy reforms set signals encouraging a more equal sharing of paid work and family care, notably through improving flexibility during parental leave. However, the lack of policies improving the affordability of 'time to care' and the lack of childcare services for the under-threes contributed to only a moderate increase in the share of men taking parental leave (BMFSFJ 2004a). This insufficient integration of reconciliation resources meant that the empowering potential of family-friendly working time policy choices was only moderate, as regulation was not adequately backed up with economic means making 'time to care' more affordable for both men and women. Nevertheless, the introduction of employment rights to reduced working and the reform of the works council powers represent a notable shift in the power balance between employers and employees in favour of the latter.

British and German policy strategies compared

Having explored policy strategies in both the United Kingdom and Germany, it is now possible to draw out the key similarities and differences from a cross-national perspective. With regard to instrument choice between legislative interventions, economic means and the promotion of voluntary provision through information and persuasion techniques, the British and German approaches were similar at the level of instrument choice. Both governments introduced statutory regulations for the first time in this policy field, placing their approach in contrast to the information-based, low profile, interventions of the Conservative/Liberal governments on the 1980s and

1990s. Both governments introduced high profile information campaigns and sought cooperative relations with business representatives to promote a more family-friendly organisation of working time. Furthermore, it is noteworthy that neither government employed economic incentives to encourage the provision of family-friendly working time arrangements.

The chronological analysis of the policy trajectories in the two countries revealed opposite trajectories in instrument choice. While the British policy development progressively built up from best practice promotion to statutory regulation between 1997 and 2005, the German policy development moved from the introduction of statutory reforms during the first years in office to best practice promotion from 2001 onwards via a radical shift in policy approach. While the governing style of the British Government was from the outset non-confrontational and consensus-seeking, the German approach was authoritative during the first years in office, straining government-business relations through a number of interventions in the employment relationship, peaking in the conflict around the equal opportunities legislation for the private sector. Following the change in leadership at the BMFSFJ in 2002, the German approach to government-interest group relations became strongly oriented towards consensual cooperation with societal actors and business in particular. While the British approach served to incrementally prepare the ground for increasingly empowering policy interventions, the German approach of extremes led to a policy approach that ruled out further regulation.

With regard to the integration of family-friendly working time policy within the wider context of reconciliation policies, in both countries a relative subordination of family-friendly working time policy to childcare service provision was apparent. A growing emphasis on childcare services as time providers, enabling carers to work, was noticeable in both countries from 2002 onwards with stronger incentives for the dual-earner/externalised care model in the UK than in Germany where greater emphasis was placed on increasing the share of men in family care, encouraging dual-earner/dual-carer arrangements. Both the United Kingdom and Germany pursued a mixed targeting strategy. Policy interventions targeted directly at working parents included the introduction of limited employment rights to request flexible working patterns. Information and persuasion campaigns promoting best practice were primarily directed at employers.

This chapter explored the question of what policy strategies the British and German governments pursued to improve access to family-friendly working time arrangements, and how they differed at the first level of policy choice: the selection among alternative policy instruments. Chapters Six and Seven provide in-depth comparative case studies of policy measures within the same instrument type, employment regulation and information campaigns, to identify cross-national variation at the second level of policy choice: between more or less empowering instrument attributes. Chapter Six provides the first comparative case study of the British right to request flexible working provided through the Flexible Working Regulations 2002 and the German rights to reduced working hours provided through the reform of the Federal Child Raising Benefit Act and the Part-time Employment and Fixed-term Contracts Act.

6. Employment rights in comparative perspective

In both Germany and the United Kingdom, the introduction of employment rights to improve access to flexible working time arrangements constituted a core element of the respective family-friendly working time policy packages, and was certainly the most controversially debated reform in this policy field passed under the centre-left governments around the turn of the century. Having situated the choice in favour of legislation within the wider temporal and policy context in Chapters Four and Five, this chapter turns to focus on the similarities and differences in the *design* of these employment rights. While both governments chose the same instrument type, *regulation*, significant variation is found at the level of instrument design. In the following, I will compare the British ‘right to request flexible working - and to have the request seriously considered by the employer’ passed under the Employment Act and the Flexible Working Regulations in 2002 (hereafter referred to as Right to Request) with the German rights to reduced working hours. These were passed as §15 of the Federal Child Raising Benefit Act (hereafter referred to as §15 BErzGG), and §8 of the Part-time Employment and Fixed-term Contracts Act (hereafter referred to as §8 TzBfG) in 2000. The two legislative reforms in Germany both introduced a limited right to reduced hours working for employees during the ‘Red-Green’ Coalition’s first term in office. They served different policy agendas and were formulated in different government departments. The Federal Child Raising Benefit Act was formulated at the Federal Ministry for the Family, Senior Citizens, Women and Youth (BMFSFJ), and the Part-time Employment and Fixed-term Contracts Act was developed at the Federal Ministry for Labour and Social Affairs (BMAS). The Flexible Working Regulations in the UK were developed at the Department of Trade and Industry (DTI) during New Labour’s second term in office.

The analysis presented in this chapter is based on a combination of documentary research and complementary interviews with civil servants and stakeholders in both countries. As confidentiality was assured to interviewees, the insights obtained in interviews were mainly used for the triangulation of information obtained from other sources. In order to grasp the policy preferences of different actors close scrutiny was given to the written statements and oral evidence by stakeholders in the context of public consultations and public hearings. Policy programmes, election manifestoes,

parliamentary debates and proposals for amendments provided insights into the different policy preferences of political parties and government departments. Draft Bills and regulations, consultations and explanatory notes allowed me to trace the design process from the drafting stage, over consultation to the final letter of the law. In the UK case, interviews with members of the Work and Parents Taskforce and the taskforce report to Government provided valuable insights into the stakeholder negotiations over the details of the right to request.

The chapter pursues two aims. First, it offers an in-depth analysis of the *empowering potential* of these employment rights in each country, structuring the comparison according to the five Empowerment Criteria developed in Chapter Three. These are the breadth of coverage, the precision of targeting, the scope of employee control over working time flexibility, the enforceability of employee preferences and the reduction of opportunity costs. Focusing on just one instrument type the process of policy design and cross-national variation in instrument attributes can be systematically compared. The second aim of the chapter is to explore the reasons for cross-national variation in instrument design. Close attention is paid to the policy preferences of interest groups and policy makers, and the opportunities of different actors to influence policy design. Of particular interest in this context is the set up of a Work and Parents Taskforce involving interest groups in the process of policy design in the UK. Further, the influence of the policy context of existing labour law and European regulations, but also of the different policy goals that are addressed in the two countries explain cross-national variations in policy design.

The chapter is structured into two parts. The first part is dedicated to the detailed comparison of policy design in relation to the five Empowerment Criteria. Each subsection will discuss the provisions made and scrutinise their implications for the relative empowerment of working parents in comparative perspective. For each instrument attribute, the different policy preferences of political actors and interest groups are considered, and the process leading to the final policy choices is traced. The first part concludes in a comparative assessment of how the employment rights ‘score’ in terms of empowerment. Despite considerable variation along the different Empowerment Criteria, the two countries’ approaches balance out overall, which is due to a number of trade-offs between instrument attributes. The reasons for cross-

national variation in empowerment trade-offs are explored in the second part of the chapter.

I. Policy Design

As often observed, the devil lies in the detail. This section will compare three employment rights that were all designed to facilitate the negotiation of flexible working time arrangements. Employee rights are substantiated by employer obligations, and the degree to which the power balance in the employment relationship between employee and employer is shifted by policy interventions is to a considerable extent determined by the details of policy design. The underlying assumption on which the choice to organise the comparison around power relations is based is the belief that power relations form the core of stakeholder mobilisation and represent an important issue for policy makers faced with conflicting interests. The empowerment framework pursues the dual aim of, firstly, facilitating a meaningful comparison highlighting the implications of policy design for the power balance between employers and employees and teasing out cross-national differences in this regard and secondly, of pinning down the core issues around which actor preferences diverge. The analysis traces in favour of which advocacy side, employee empowerment or managerial freedom, policy choices were made. In the following, variations in the detail of policy design along the five Empowerment Criteria are discussed in turn.

1. Breadth of coverage

The criterion *breadth of coverage* addresses the question of who has access to the provisions of a given policy. Eligibility can be selective in terms of a person's care and employment status, but can also depend on the characteristics of the employer they work for. The wider the coverage of a given policy, the more empowering the policy is to working parents as an aggregate group, simply because more people have access. Eligibility criteria in employment rights are clearly defined, which facilitates the comparison of regulatory instruments. Figure 11 provides the main differences in coverage at a glance.

Figure 11: Breadth of Coverage

	Germany		UK
	BErzGG	TzBfG	Right to Request
Care Status	Responsibility as a parent for a child under the age of 3	No conditionality on care status	Responsibility as a parent for a child under 6 (under 18, if child is disabled)
Employment Status	Employee	Employee	Employee
Qualifying Period	Six months	Six months	Six months
Employer size	Over 15 employees (excluding trainees)	Over 15 employees (excluding trainees)	No small business exemption
Employer sector	All sectors	All sectors	Agency workers and armed forces excluded

The Flexible Working Regulations 2002 cover employees who have worked for their employers for at least 26 weeks and have parental responsibility³⁰ for a child under the age of six, or a disabled child under the age of eighteen. In Germany, the entitlement is not conditional upon care status. Parents who are not covered by the BErzGG are covered by the TzBfG. However, both entitlements are conditional upon employee status and a qualification period of continuous employment with the employer for at least six months, and they exclude employees working for small employers up to 15 employees as these are exempt from the regulations. In sum, cross-national variation is most pronounced with regard to coverage by care status, which is selective in the UK but universal in Germany. Different approaches were taken with regard to the treatment of small employers, who are exempt from the

³⁰ A 'parent' is here defined as 'mother, father, adopter, guardian or foster parent of the child or married to or the partner of the child's mother, father, adopter, guardian or foster parent' and 'has, or expects to have responsibility for the upbringing of the child' (SI 2002 No. 3236 Section 3 (1) (a-c)). This broad definition of 'parent' followed the recommendation of the taskforce to include 'anyone who has responsibility as a parent of an eligible child'.

regulation in Germany but not in the UK. In the following, these differences in policy design will be explored in more depth.

In the UK, the Work and Parents Taskforce was instructed by the Government that the Right to Request should only apply to parents of 'young children', excluding from the outset parents of older children, care-givers who do not have responsibility as a parent, and carers of ill, disabled or elderly persons (HC Deb 28 June 2001 vol 370 c 149 W). The precise cut off point was a difficult point for negotiation as demand for flexible working was considerable from parents with children of all ages. Employers preferred a low cut off age whereas employee and parent representatives preferred including school aged children (Work and Parents Taskforce 2001). Despite large support from both parents and employers for the cut off point at a later stage in the child's life, the taskforce nevertheless recommended the cut off point to be at the child's sixth birthday in order not to jeopardise employer acceptance of the duty to consider, which was expected to be less likely at a higher cut off point (Work and Parents Taskforce 2001). An exception was made for parents of disabled children in recognition of the greater challenges they face. In line with the parental leave regulations, the cut off age was here set to be 18.

The narrow eligibility definition was subject to criticism by both advocates and opponents of the right to request during the discussions of the Employment Bill at Committee Stage and in Parliament. Advocates, such as Vincent Cable, Liberal Democrat MP for Twickenham, questioned the limited application to parents of young children in the light of evidence that flexibility was needed by all parents and by carers of adults (SC Deb 5 December 2002 c010). Opponents of the right, such as Mr Hammond, Conservative MP for Runnymede and Weybridge, accused the Government of preferential treatment of one group of employees over another, thus causing those employees without entitlement to bear the burden of unpopular shifts and additional work load (SC Deb (F) 24 January 2002 c603). He further deplored that the privileged status of a selected group puts employers in the difficult situation of having to turn down requests by very deserving groups such as carers of adults because parents of young children enjoy privileged access under the new law (HC Deb 12 February 2002 vol 380 c100; SC Deb (F) 24 January 2002 c604). There was concern that the privileged treatment of parents of young children might cause

resentment among other employees (HC Deb 27 November 2001 vol 380 c877). Alan Johnson, at the time Minister for Employment and the Regions at the DTI, defended the Employment Bill in the parliamentary process. He justified the selective approach taken by the Government indicating a duty of care towards small employers. Universal access to the right to request was ruled out on the basis that ‘such a right would be unmanageable for businesses and place a huge burden on smaller employers’ (SC Deb 5 December 2002 c004). Although the needs of working carers of adults were emphasised during the eligibility discussions and recognised by Alan Johnson, he maintained that the aim to support working carers ‘should be achieved by the spread of best practice’ (SC Deb 5 December 2002 c018). Legislative intervention to the benefit of parents of small and disabled children, on the other hand, was seen as necessary and legitimate, ‘so that an entire generation does not miss out while we wait for best practice to spread’ (SC Deb 5 December 2002 c018). The hierarchy of needs apparent in this argumentation attributes priority to young children over other groups of care-receivers.

In Germany, the right to reduced working hours under §15 BErzGG applies only to employees who have responsibility as a parent for a child under the age of three³¹ and are eligible for parental leave. The limitation of eligibility to parents of young children in this context was predefined by existing law. The entitlement was introduced in the context of the reform of the Federal Child Raising Benefit Act. In contrast, the right to request under §8 TzBfG is not dependent upon care status. This gave rise to political controversy in the parliamentary process. While the Liberal Democrats (FDP) in opposition outright opposed the introduction of a statutory right in principle, the Christian Democrats (CDU) argued for a limitation in entitlement to those employees with care responsibilities. In the first discussion of the Bill in the Bundesrat, the Land Bayern proposed an amendment to §8, supported by the Land Hessen (both CDU governed) to limit the entitlement to employees with caring responsibilities for children under the age of ten or adult relatives, in line with the age limit set by the public sector collective agreement (BR-Drs. 591/2/00). This proposal did not however find a majority in the Bundesrat³². The reasoning for a

³¹ The third year of the leave can, if the employer agrees, be deferred to a later point as long as the child is under the age of eight.

³² Following the failure in Bundesrat, the CDU filed an alternative proposal in the Bundestag, proposing a limitation of the part time work entitlement to parents of children under 12, carers of

limitation of eligibility on the basis of care status was that the right to reduce one's working hours was considered an extensive intervention in the freedom and principles of contract which should have an appropriate socio-political justification, such as care responsibility for a child or a relative. The right to reduce contractual working hours at will was not considered to constitute an appropriate balance of interests between employers and employees (BR-Drs. 591/2/00). The Social Democrats and the Green Party justified the universal approach on the basis of risk diversification. Olaf Scholz of the Social Democrats argued in the second and third reading of the Bill that limiting the right to certain groups of employees (working carers) would reduce their (de facto women's) opportunities in the labour market, as employers might be hesitant to employ them out of fear that they would demand to work part-time (BT-Pl. 14/133 pp.12874-75). The universal approach also has its roots in the employment creating purpose of the reform which aims to facilitate voluntary part-time employment with the effect of redistributing the liberated work volume to the unemployed. Limiting coverage to working carers in this case would run counter to the objective of employment creation, which requires a maximum of employees voluntarily reducing their working hours (BT-Drs. 14/4374 p.11). Therefore employees were entitled irrespective of the reason for their wish to reduce their working hours.

An important difference in policy design relates to the treatment of small employers. In the UK, the approach of selective targeting should be seen in the light of the emphasis on the needs of small employers that guided the taskforce negotiations. Government instructions were to consider whether 'they should be subject to special conditions' (Work and Parents Taskforce 2001) but the option for a small employer exemption or different treatment was ruled out at an early stage of the taskforce negotiations. One member of the taskforce commented that 'everybody on the taskforce actually wanted to have a single system' (Int. UK 07, 15/12/2005). An important institutional template for this decision was provided by the Sex Discrimination Act 1975 (SDA), under which there is no small business exemption. Hence, as the taskforce noted in their report: 'to say to small businesses that they are

disabled relatives, and employees with a disability who are unable to work full time (BT-Drs. 14/4526). This proposal did not however impact on the passing of the law as it was not scheduled for discussion in parliament until June 2002 (BT-Drs. 14/9414; BT-Pl. 14/243) by which time the TzBfG had come into force.

exempt from considering all requests, when established sex discrimination law means this will not always be the case, would lead to confusion' (Work and Parents Taskforce 2001 p.22).

In Germany, by contrast, a 'small business clause' was introduced in the course of the negotiations on the BErzGG, and then adopted in the draft Bill for the TzBfG a few months later (BT-Drs. 14/4374 pp.17-18). The exemption of small businesses was a concession to employers and fiercely debated during the drafting process (Bothfeld 2005). Within Government, the preference of the Family Minister was not to introduce a small business exemption at all, whereas the Economy Minister backed the demand of the German Confederation of Skilled Crafts to exempt employers with less than 50 employees (Bothfeld 2005 p.255). In the ministerial draft first circulated to stakeholders for consultation, the small business exemption was set at the level of five employees in line with other employment legislation in place, such as the Works Constitution Act and job protection legislation (KSchG). In the draft Bill presented to Parliament, however, the cut off level was raised to 15 employees. This higher cut off line excluded 87 per cent of work places from the regulations, employing 25 per cent of employees (BT-Drs. 14/3553 p.21). The cut off line of 15 employees was a negotiated compromise as the chair of the SPD working group on the Family, Senior Citizens, Women and Youth, Hildegard Wester, explained in the second reading of the Bill (BT-Pl. 14/115 p.10955). In the public hearing of stakeholder groups this amendment had been fiercely critiqued by family organisations and trade unions. The Confederation of German Trade Unions (DGB), for instance, stated in their written submission to the committee:

It is not comprehensible [...] why a large group of employees is from the outset automatically excluded from the legal entitlement to reduce their working hours [...]. A cut off line of 15 employees appears arbitrarily chosen and is from our perspective in no way necessary as it is reasonable to expect businesses with five employees to assert urgent business reasons when there really are problems (DGB 2000, author's translation).

While it was not possible for opponents of the small business exemption to negotiate a lower cut off line, a compromise was achieved by modifying the calculation base of 15 employees. At Committee Stage it was decided to calculate the cut off line on the basis of a simple headcount (excluding trainees) rather than counting part-time employees on a *pro rata* basis as previously stated (BT-Drs. 14/3808 pp.14, 28; BT-

Pl. 14/115 p.10947). A further compromise was the agreement to review the effect of the law after three years, leaving the option for later revision (BT-Pl. 14/115 p.10955). In sum, the two laws have a complementary effect for working parents. For the first three years after a child's birth parents are covered by BErzGG, and afterwards by the TzBfG, which covers all employees irrespective of care status. Working parents employed in small firms with up to 15 employees find themselves excluded from all entitlements.

Both the British and German employment rights make entitlement conditional upon employee status and a qualification period of six months in line with other employment rights. In the UK, the terms of conditionality on employment status were also subject to taskforce negotiation. Employee representatives preferred to broaden access to workers in line with the Sex Discrimination Act and the Part-time Workers Regulations, which both apply to all workers, including agency workers and casual staff, who do not have a specific employment contract (Work and Parents Taskforce 2001 p.17). Employers preferred the narrower definition of employees on the basis that agency workers and casual staff are often explicitly hired to meet the short term needs of the business in which business-oriented working patterns are key (Work and Parents Taskforce 2001 p.18). The wider definition of worker raised a number of practical complications which the taskforce did not have time to resolve and therefore decided to limit eligibility to employees with the recommendation to Government to consider widening the scope if considered relevant (Work and Parents Taskforce 2001 p.18). Agency workers were subsequently explicitly excluded by the Employment Act. There was similar disagreement between stakeholders on the subject of qualification periods with employers pointing to other family-friendly employment rights that were subject to qualification periods (for example six months for Maternity and Paternity Leave and one year for Parental leave) while employee representatives referred to the Sex Discrimination Act which was not. Out of concern for small employers, agreement was finally found over a six month qualification period, in line with the Maternity and Paternity Leave Regulations (Work and Parents Taskforce 2001 pp. 18-19).

In terms of breadth of coverage the German employment rights fare more strongly in terms of the degree of empowerment than the British right to request as they do not

distinguish by care status. Those working parents not covered by the BErzGG are covered by the TzBfG which does not select by care status. However, about a quarter of all German employees are excluded through the small business exemption. This creates inequity of access as entitlement to flexible working patterns varies across employers and is not oriented at employee needs. In Britain, a choice was made between groups of carers in favour of the one which was deemed to be most in need, parents of young and disabled children. Access by those in need was ensured by avoiding a small business exemption so that parents are entitled irrespective of employer size³³. An access restriction applying to both countries is conditionality to employee status and a qualification period of six months, excluding workers in atypical employment relations.

2. Precision of targeting

The criterion *precision of targeting* refers to the question of whether a policy is directly targeted at working parents or only indirectly targeted at them, for example via employers, or intermediary actors such as employee representatives. A directly targeted policy is more likely to reach those intended to benefit from it than a policy that relies on intermediary actors for delivery. Employment rights are an example of regulation that is directly targeted at the individual and all three policy measures under scrutiny here share this characteristic. The rights accorded to employees are matched by a duty on employers to accommodate them. Employee representatives at the workplace level were only given a marginal role in the process of working time negotiation regulated by the laws.

In the UK, the role of trade union representatives in relation to the right to request is restricted to the role of companion for the employee when discussing a request with the employer. The taskforce recommended to allow parents to take a ‘fellow employee, friend or appropriate, recognised trade union representative to accompany them’ (Work and Parents Taskforce 2001 p.28). The right to be accompanied was passed under Section 80 G (2) (k) Employment Act, conferring powers on the Secretary of State to specify the characteristics of eligible companions. DTI consultations found that employee representatives advocated a consistent approach

³³ Following the recent Work and Families Act 2006, coverage was extended to carers of adults.

with the statutory right to be accompanied at disciplinary and grievance hearings provided for in the Employment Relations Act 1999, which entitles employees to be accompanied by fellow workers or union officials. Employers and their representatives, on the other hand, preferred a restriction to fellow workers from the same workplace, excluding external trade union representatives. They justified their position with the concern that ‘the presence of a representative, like a full-time official of a union, from outside the work place is likely to be perceived as being more formal and will work against fostering an open discussion’ (DTI 2002a p.19). Public consultations on the draft regulations confirmed this division in stakeholder positions (DTI 2002b). The DTI finally went with the employer preference by limiting the definition to ‘workers employed by the same employer as the employee’ (Statutory Instrument 2002 No. 3207), excluding external union representatives in the final regulations. This amendment reduced the possible sources of expertise and support available to the employee in negotiating their case with the employer.

In the German case, works councils were not given a support role in negotiating working time reduction with the employer. There is no workplace appeal procedure or conflict resolution included in the design in which mediation via the works council could have come to play as is the case in other laws, such as the Working Time Act. The Works Constitution Act (§87 (1) 5 BetrVG) for example gives the works council a right of co-determination in relation to annual leave when no consensual agreement can be found between the employer and the employee). The lack of works council involvement did not incite much stakeholder debate however. In the public consultations, only the Trade, Banks and Insurances Union raised this issue and recommended that the involvement of works councils would provide a workplace based and timely conflict resolution mechanism that might help to avoid the use of employment tribunals (HBV 2000 p.48).

In the context of the TzBfG, the promotion of part-time employment goes beyond the individual right of employees to claim a reduction in working hours to include a number of additional measures which are targeted at employers. Employers for instance have the duty to advertise new jobs as part-time jobs if they are suitable, and to inform employee representatives about part-time positions in the company to create greater transparency about part-time employment (§7 TzBfG). Furthermore

the law regulates minimum working time standards for work on demand and job sharing (§12 and 13 TzBfG). Collective bargaining parties are targeted by the TzBfG as collective agreements may be concluded to agree on the business grounds on the basis of which applications for reduced workings can be refused (§8(4) TzBfG). Furthermore, other aspects covered by the TzBfG, such as job sharing and work-on-demand, can be regulated by collective agreements as long as they regulate to the advantage of the employee. Collective agreements are bound by the non-discrimination principle according to which part-time employees should not be treated less favourably than comparable full-time employees.

Overall, entitlements in all three policy measures are directly targeted at employees and their employers. Intermediary actors such as trade union representatives or works councils are given only marginal roles in the process of working time negotiation. Rather, employees are intended (and directly empowered) to initiate the dialogue for change with their employer, and to request the flexible working time pattern that suit their individual needs. Employers in turn have an obligation to accommodate such individual requests if it is possible on business grounds to do so. In terms of the precision of targeting, all three instruments score highly in terms of empowerment.

3. The scope of employee control over working time flexibility

The *scope of employee control over working time flexibility* refers both to substantive and procedural aspects. In substantive terms, the scope of working time flexibility that is covered by the policy refers to variation in the length and distribution of working time, and the location of work. In procedural terms, employee control over working time is delineated by the type of statutory entitlement (a right to request or a right to have), notification periods and the frequency at which requests for flexible working arrangements can be made. Figure 12 provides a quick overview of the provisions made and cross-national differences between them.

Figure 12: Scope of employee control over working time flexibility

	Germany		UK
	BErzGG	TzBfG	Right to Request
Length of working time	Reduction to between 15-30 hours per week	No limitation to the scope of working time reduction	No limitation to the scope of working time reduction
Distribution of working hours	At employer's discretion	Yes, unless business reasons oppose claim	No, but a request can be made regarding the times at which to work
Control over location of work	No	No	A request can be made
Employee “right” to flexible working?	Yes, unless urgent business reasons oppose claim	Yes, unless business reasons oppose claim	No
Notification Period before starting date	8 weeks (6 weeks when change in working hours directly after birth or the end of maternity leave)	3 months	It can take 14 weeks or longer, if parents appeal employer decision.
Mobility	Working time reduction limited to period of parental leave, afterwards right to return to previous working hours	Working time reduction permanent; Preferential treatment for full-time vacancies if desired.	Contract variation permanent No statutory support for return to full-time
Frequency of request	Twice within the 36 months of parental leave	Once every 24 months	Once every 12 months

In terms of the scope of flexible working time arrangements covered by the right to request, the Employment Act 2002 uses a wide definition covering ‘the number of hours worked, the times of work (distribution of hours), and the location of work’ (Section 80 F (1) a). The wide scope was based on the finding that had emerged during the Work and Parents Review that part-time work was not necessarily what parents wanted (Work and Parents Taskforce 2001 p.1). Parents received a right *to request*, not a right *to have*. It is a right to have one’s flexibility request seriously considered by the employer, which was intended by Government to speed up best practice. Employee control over their working pattern is thus conditional upon the good will of employers and operational feasibility, as requests can be opposed on business grounds. This means that employers remain in control over working time as long as they provide business reasons for declining a flexibility request.

Employees can indicate their preferred date for the new working arrangement to start but approval is subject to employer consent. The negotiation procedure allows employers up to 14 weeks until a decision on the request is finalised, including the appeal period. Employee control over working time flexibility is further limited by the fact that their negotiated flexibility represents a permanent contract variation. It is not possible to return to one’s previous working pattern once care responsibilities change. When a request for contract variation is agreed to, the change is permanent, and an employee has to wait for 12 months before making a new request for contract variation. In sum, while the scope of flexible working arrangements covered by the policy is wide, the type of entitlement does not shift much control to the employee. They can request, not claim, flexibility to suit their needs. Employers remain largely in control over working time organisation.

In Germany, in comparison, both regulations entitle employees to reduce their working hours, and to indicate their preference regarding the distribution of the reduced number of working hours. The BErzGG specifies a working hour volume of between 15 and 30 hours per week, for at least three consecutive months, to which employees may reduce their working time while on parental leave (§15 (7) 3). The minimum working hour limit of 15 hours per week is set to avoid employees falling below the social insurance threshold (§8 SGB IV). The upper limit of 30 hours relates to the policy objective of providing parents with time to care for their

children. The increase from the previously 19 hours to 30 hours was criticised by some family organisations, which feared that the original purpose of parental leave, to dedicate time to parental care, was counteracted by such a long working hour threshold (Deutscher Familienverband 2000). Government justified the decision by emphasising parental sharing of the care work: ‘the care of the child is not thereby threatened as both parents can take parental leave at the same time’ (BT-Drs. 14/3118 p.11)³⁴. The condition that the period of reduced hours working is at least three consecutive months long was drafted following the Austrian parental leave reform that came into force in 2000 (BT-Drs. 14/3118 p.21). These restrictions on the control over working time organisation were introduced to facilitate the organisation of work for employers. No limitation as to the scope of working time reduction is specified by the TzBfG. Policy makers deliberately maximised employee flexibility with regard to the length and distribution of working hours. Against the background of the employment creating policy objective motivating the law, policy makers were eager not to discourage the voluntary reduction in working hours by imposing flexibility restrictions. The Bill stated:

the law foregoes imposing a blanket weekly working time reduction that contradicts the wishes of employees and thus counteracts the employment-creating effect of part time employment (BT-Drs. 14/4374 pp.16-17).

Regarding the distribution of working hours, employees under § 8 TzBfG are entitled to indicate the desired distribution of working time as well as the extent of the reduction, and employers are required to accommodate the employee's wishes regarding working time distribution unless business reasons oppose them. The employee's control over the distribution of working hours is however weakened again by the employer's right to change the distribution of working hours unilaterally at a month's notice, when business interests outweigh employee interests (§8 (5) TzBfG). The BErzGG encourages employees and employers to agree on the extent of the working time reduction and the distribution of working hours without specifying an employee right to a particular distribution of working hours.

The entitlement to reduced working hours is limited in time under §15 BErzGG as it is tied to the parental leave entitlement of a maximum of 36 months. Periods of

³⁴ Some actors considered 30 hours too close to full-time employment and therefore at cross-purposes with the original principle of the parental leave act. It was opposed by the Land Bayern in BR (BR-PL. 751 Anlage 4; Deutscher Familienverband 2000).

reduced working have to be at least three months at a time, and two applications may be made during the 36 month period. An additional option is to postpone 12 months of the leave to a later point in the child's life up to the age of eight, for example to cover the first year in school. This additional flexibility however depends on the good will of the employer. At the end of the parental leave period, parents have the right to return to their previous working hours (§15 (5) BErzGG). Under § 8 TzBfG, by contrast, the change to contractual working hours is permanent and employees have to wait for at least two years before making a new application for working time reduction. While there is no statutory right to return to full-time hours, employers have the duty to treat part-time employees who indicate a preference to increase their working hours preferentially when full-time vacancies become available, unless urgent business reasons or the working time preferences of other employees oppose this (§9 TzBfG). Overall, the TzBfG offers greater flexibility for employees with regard to the length and distribution of hours worked. This greater scope for flexibility, however, can be more easily opposed by the employer on 'business grounds'. The BErzGG on the other hand restricts the scope of employee flexibility but makes it more difficult for employers to refuse, as 'urgent business grounds' must apply.

In comparison, the Right to Request has the widest scope of flexibility as it includes variation in length and distribution of working hours and the location of work. Both employment rights in Germany are biased towards working time reduction, with some scope for the distribution of working time but not with regard to the place of work. In this respect, the British law gives employees the greatest scope of substantive flexibility. In terms of procedural flexibility, parents on parental leave in Germany fare better: they have the shorter notification periods, can change their working time arrangement twice during their parental leave status and importantly have a right to return to full-time hours after the end of their parental leave status, which increases the mobility between full and part-time employment. In the other two cases, contract variation is permanent with no obligation on the employer to accept a return to full-time hours, although employers have to inform part-time employees of full-time vacancies when these become available under TzBfG. British employees have no support by the law to return to full time hours if they wish so. Under §8 TzBfG, employees have to wait for two years to make another demand for

working time reduction, which makes it difficult to react to sudden changes in one's care responsibilities. In the UK, this period is only 12 months, which however also does not facilitate flexible adjustments to changing care responsibilities. Overall, there is a trade off between the scope of flexibility and the degree of procedural control. While employees in Germany have a greater degree of control over a more limited scope of flexibility, in Britain the opposite is the case. A wider scope of flexible arrangements is covered but employees have to rely on the good will of their employers to accommodate their working time requests as they only have a right to request, not a right to have. The next section turns to consider the employer defence against the working time requests of their employees, considering differences in the enforceability of the three employment rights.

4. Enforceability

The *degree of enforceability* refers to how easy it is for employers to ignore or refuse employee requests for flexible working, how non-compliance is sanctioned, and to what degree employees are empowered to challenge employer refusals of their requests. Cross-national differences are shown at a glance in Figure 13.

Figure 13: Enforceability

	Germany		UK
	BErzGG	TzBfG	Right to Request
Grounds for refusal	Urgent business reasons	Business reasons	Business reasons
Legal consequence of failure to reach internal agreement	Employee can take case before an employment tribunal for resolution	Employee can take case before an employment tribunal for resolution	Internal appeal procedure. If case was not given serious consideration, employee can complain to employment tribunal
Appeal procedure	No	No	Yes
Tribunal powers	To examine the business reasons provided by the employer and to order contract variation if refusal not found to be justified; no remedy is awarded	To examine the business reasons provided by the employer and to order contract variation if refusal not found to be justified; no remedy is awarded	To examine disputed facts; to order case to be reconsidered; to order compensation of up to eight weeks pay to be paid; No power to challenge business reasons given by employer

In the UK, employers can refuse an application for flexible working if they find it to be in conflict with business needs. Based on their consultations with employers, the taskforce provided concrete examples of acceptable business grounds, which were set in law in Section 80G (1) b as follows: (i) burden of additional costs, (ii) detrimental effect on ability to meet customer demand, (iii) inability to re-organise work among existing staff, (iv) inability to recruit additional staff, (v) detrimental impact on quality, (vi) detrimental impact on performance, (vii) insufficiency of work during the periods the employee proposes to work, and (viii) planned structural changes. Employers wanting to refuse a request must explain the business reasons in writing to the employee, after having given *serious consideration* to the request

made. The duty to ‘seriously consider’ involves a face-to-face meeting with the employee within 28 days of receiving the request to discuss the request and consider alternatives if necessary. In the case of refusal, employees are given the possibility to appeal a negative decision within two weeks. The internal appeal procedure was recommended by the taskforce following the Government’s encouragements to place emphasis on resolving requests within the business rather than through application to employment tribunals. The aim of the internal appeal procedure is to encourage both parties to resolve a disputed request at the workplace. This failing, the use of mediators, such as the binding arbitration scheme offered by the Advisory Conciliation and Arbitration Service (ACAS) was encouraged, leaving the resolution of disputes before employment tribunals as a last resort.

The involvement and power of employment tribunals was subject to fierce negotiations between taskforce members as stakeholders held very strong views on the question of the appropriate test of the business reasons for declining requests:

The key issue was whether this was a right to have with a very limited defence or whether it was a right to request balanced out by a business case and it almost broke down on that because the unions, the Equal Opportunities Commission, family groups, were insistent until the twelfth hour that employment tribunals would have the right to overrule an employer on whether the request had been met or denied (Int. UK 07, 15/12/2005).

Employee representatives, equality and family groups advocated the objective justification test used in the Sex Discrimination Act according to which business reasons have to be demonstrated as justifiable (Work and Parents Taskforce 2001 p.31). The objective justification test was seen as a safeguard to ensure that employers would give serious consideration to employee requests and give employees the power to challenge negative decisions. As one taskforce member explained when interviewed:

If there were the possibility at the end of the day that employees could go to a tribunal and demand that the employer objectively justifies what they are saying, then the employer wouldn’t make the refusal in the first place. So it’s not that we want to make it easier for them to go to court to get their rights, it’s just it’s better to have your rights established because that will determine the employer’s behaviour (Int. UK 05, 13/12/2005)

Employers strongly opposed tribunal powers to question the employer’s actual reasoning for declining a request. This was an aspect of the new right that employers

and their representatives were not willing to negotiate, and in which regard they were backed by the Government, who had, from the outset, emphasised the ‘light-touch’ nature of the legislative approach. In the bargaining process, advocates of legislation in the taskforce had a weaker bargaining position as they more strongly depended on a consensus than employers, who were prepared not to sign the consensus report if it came to it. When asked whether not arriving at a consensus report was considered an option, one taskforce member reflected:

It might have been, but then we wouldn’t have had anything. Obviously that was considered. The basic problem was that we wanted some legislation and the employers didn’t particularly. So when you were trying to get a consensus that put us in a rather weak position (Int. UK 12, 31/01/2006).

The recommendations of the taskforce reflect this uneven power balance. One interviewee stated:

No, there wasn’t a balance. All along the work was heavily weighted towards employers’ interests and that was very, very clear but that was just in the wider deregulatory context and it became increasingly obvious throughout the organisation, both when we were in meetings and outside, that we were on the back foot and that the employers were always going to get a better outcome than we were (Int. UK 05, 13//12/2005).

The outcome of the negotiations was that while employment tribunals can be called upon, which was a concession by employers, whose preference had been to handle requests at the workplace, the scope for the tribunal case is lower than employee, equality, and family representatives had bargained for: the employers’ business reasons for refusing a request cannot be challenged by tribunals.

Employers do not have to prove at any instance that the business reasons justifying their refusal actually do apply. This also means that employees do not have a statutory right to have their requests granted where business grounds allow it, as refusals on business grounds cannot be challenged. Rather, the employee’s right relates to the employer’s duty to ‘seriously consider’ the request brought before them. If an employer breaches the procedure laid out in the Flexible Working Regulations, or bases a rejection on incorrect facts, the employee can take the case before an employment tribunal. In this case, the employer needs to demonstrate to have gone through the procedure of face-to-face meetings and written communications. The employment tribunal has the power to verify whether the

employer has followed the correct procedures and to examine any disputed facts. They may send the case back to the business for reconsideration and order compensation where appropriate. Tribunals do not have the power to question the business reasons given by the employer or to order an employer to implement a flexible working arrangement (DTI 2002a).

The level of compensation that an employment tribunal can order in the case of non-compliance by an employer was subject to regulation by the Secretary of State who consulted with stakeholders on the issue. A high level of compensation is generally thought to be a more effective incentive for employers to comply than a low level. Unsurprisingly, employers advocated a low maximum compensation level ranging from four to thirteen weeks and most employee representatives argued for the permitted maximum remedy to be set at a much higher level of 52 weeks pay in order to be ‘meaningful to all potential breaches of the right’ (DTI 2002a pp.11-12). The DTI decided ‘to set the maximum amount of compensation at eight weeks’ pay’ staying closely with employer preferences (DTI n bbbbv2002b p.4). Failure to allow the employee to be accompanied at the meeting to discuss the application or appeal was treated separately with an employment tribunal able to make an award of up to two weeks pay, consistent with the remedy set out in Section 11 of the Employment Relations Act 1999.

When the regulations were discussed in the 9th Standing Committee on Delegated Legislation, the DTI’s decision was critically received by Mr Lloyd, Labour MP for Manchester, Central, who noted:

The gap between employers’ organisations which asked for a maximum award of four week’s pay, and the TUC which recommended a maximum award of 52 weeks’ pay, is not a matter of detail – it is a gaping chasm. Even with tongue in cheek, I would not talk about splitting the difference between four week’s pay and 52 weeks pay and concluding that eight weeks’ pay is the right amount [...]. We are discussing employers who are in breach of the spirit of the regulations [...], for that reason, I am troubled by the level of the penalty (SC Deb 5 December 2002 cc011-012).

Alan Johnson (DTI) replied to his concern:

A completely new and fairly radical right is being proposed and people have to get used to it. One must not start by saying to the employer that there is a draconian punishment waiting down the road, but the employer must know

that it is serious. Two thousand pounds is serious, particularly to small businesses. We need to treat this matter differently from the way in which we would deal with unfair dismissal cases or other cases that go to tribunals (Sc Deb 5 December 2002 c019).

Emphasis was to be laid on constructive and consensual dialogue and to avoid a connotation of conflict and hostile employment relations. Again, the Government priority was not to antagonise employers.

In Germany, both laws strongly encourage the employer and employee to discuss applications and come to a consensual agreement about the desired working time reduction (BT-Drs. 14/3118 p.20). A significant difference therefore exists between the two laws with regard to what happens when such a consensual agreement is not found. Under §15 BErzGG, employees have the right to take their claim before an employment tribunal, whereas §8 TzBfG stipulates that in the case that no agreement is found between employer and employee, and the employer fails to refuse the request in writing one month before the desired starting date, the arrangement (working time reduction and distribution) requested by the employee comes into force on the desired date *as if* agreement was reached. The ‘fictional agreement clause’ is used to promote the internal agreement between employer and employee (Kohte 2004). As failure to communicate leads to an automatic right for the employee, employers are encouraged to give requests their serious and speedy attention. If employers refuse the request, employees also can challenge their decision before an employment tribunal.

In Germany, employers can also refuse employee requests for working time reduction and distribution, if business reasons oppose it. The grounds on which a claim to reduced working hours can be refused by the employer differ between the two laws. Employers may only refuse an employee's claim to working time reduction under §15 (7) 4 BErzGG if ‘*urgent*’ business reasons oppose it. The use of the term ‘*urgent*’ was adopted from §7 (2) 1 BUrlG, whereby an employee’s annual leave can only be interrupted on the basis of urgent business reasons (BT-Drs. 14/3118). The ministerial draft of §8 TzBfG also stipulated ‘urgent business reasons’, but this was subsequently weakened to ‘business reasons’ as a concession to employers before the Bill was presented to Parliament. Business reasons, on the grounds of which employers can refuse requests, are for example ‘when reduction of working hours

would significantly affect work organisation, work process, safety issues and incur disproportionate costs' (§8 (4) TzBfG). No examples of urgent business reasons were provided in §15 BErzGG. It is easier for employers to reject applications under §8 TzBfG than it is under §15 BErzGG. The difference between the two regulations has been justified by some commentators with reference to German basic law, which stipulates the special protection of the family (Kohte 2004 p.120, 25). An alternative interpretation, which emerged from discussions with the civil servants interviewed, is that employer lobbying in the case of parental leave reform was less insistent than in the later universal right to part-time work. The basis on which a claim to reduced working hours can be refused by the employer was the most controversial issue in the design process. Employer organisations and the Liberal Democrats fiercely opposed the statutory right to working time reduction (Ausschussprotokoll 14/63; BT-Drs. 14/4625 p.20). Trade unions and family organisations critiqued the weakening of the entitlement under §8 TzBfG (Ausschussprotokoll 14/63).

In contrast to the UK regulations, the business defence used by employers to decline requests can be challenged before employment tribunals. If cases are brought before an employment tribunal for resolution, employers have to demonstrate and prove that the (urgent) business reasons opposing the request objectively apply. Employer organisations critiqued the legal uncertainty associated with the business defence accorded to employers. The German Confederation of Skilled Crafts (ZDH) for instance wrote to the Labour and Social Order Committee (*Ausschuss für Arbeit und Sozialordnung*) with reference to the BErzGG:

This legal uncertainty and the imminent conflict before an employment tribunal in which the burden of demonstration and proof lies with the employer, reduce the possibility of employers of using their right to refuse requests when urgent business reasons oppose them (ZDH 2000, author's translation).

In their opposition to the statutory right, employer organisations emphasised the conflict of the statutory right to part time work with constitutionally protected rights of employers. In their written submission to the Committee on the Family, Senior Citizens, Women and Youth, the Confederation of German Employers' Associations (BDA) argued that:

such an obligation to contract is in breach with the constitutionally protected contractual and occupational freedom as well as the freedom of managerial decisions. It stands in blatant cross-purposes with the necessary flexibility and liberalisation of employment law (BDA 2000b, author's translation).

Following the concessions made during the design process, employers have a stronger business defence under the TzBfG than under the BErzGG, however in both cases, they must be prepared to demonstrate and prove their business reasons for refusal before an employment tribunal. Neither law has integrated an internal appeal procedure, which indicates that workplace resolution of conflict was not a priority, even though the desirability of consensual agreement on working patterns was emphasised in principle (BT-Drs. 14/3553; BT-Drs. 14/4374).

There are interesting differences in the way in which the regulations are designed to ensure that cases are given serious consideration. The British regulations lay out set procedures of face to face meetings and written explanations that employers have to follow. Compliance is encouraged through the possibility of a financial penalty of a maximum of eight weeks' pay, ordered by employment tribunals if they do not. A more compelling feature is used in the German TzBfG. Here, a '*fictional agreement clause*' was introduced, according to which the employee's request automatically comes into force if the employer ignores the application or fails to refuse it within the given time period. This is a strong incentive to give the request consideration. The British regulations place more emphasis on workplace resolution of requests by providing an internal appeal procedure which is not included in the German case. Given that most employees do not want to take their case to an employment tribunal, this provides an important alternative option of challenging refusals which German employees do not have.

Out of the three laws, §15 BErzGG is least easy to refuse on the grounds of '*urgent business reasons*'. This is followed by §8 TzBfG and finally by the Right to Request. In the latter two, employers can refuse requests with reference to business reasons. The key difference between the two countries is that British employers have a stronger business defence against the working time demands of their employees than German employers. While the acceptable business grounds on which refusals can be made are similar, the crucial difference is that German employers face the possibility of having to objectively justify their case, whereas the reasons of British employers

cannot be challenged by employment tribunals. This means that it is easier (without legal consequence) for British employers to refuse cases than for their German counterparts. Critics in the UK have stressed that it is easy to come up with a business explanation if employees do not have the power to challenge them. The Union of Shop, Distributive and Allied Workers commented:

In our experience the criteria for assessing requests is not rigorous enough and requests to work flexibly are being lazily refused. It is not enough to simply state the needs of the business. There should be clear criteria against which requests can be measured and refusals challenged (USDAW 2005 p.13).

Overall, the German employment rights have a higher degree of empowerment in the measure of enforceability than the British Right to Request. The next section considers how opportunity costs for employees were dealt with.

5. Opportunity costs

Working time flexibility often comes at a price which, if esteemed to high, can act as a deterrent for working parents to request family-friendly working time arrangements. Such *opportunity costs* can be financial, in the form of lost earnings associated with a reduction in working hours. Another important opportunity cost, which research has shown to play a significant role in people's attitude towards flexible working is a fear of career penalties associated with the lower time and flexibility commitment shown to the employer (Kodz et al. 2002). State policy can attempt to reduce these opportunity costs to make family-friendly working a more affordable and attractive option for working parents and to protect them from discrimination and less favourable treatment by their employers on the grounds of their working time patterns. This section considers the regulatory precautions taken by the two governments. Figure 14 provides a quick overview of the provisions made.

Figure 14: Opportunity Costs

	Germany		UK
	BERzGG	TzBfG	Right to Request
Protection from detrimental treatment	No	Yes	Yes
Protection from (unfair) dismissal	Yes	Yes	Yes
Financial compensation of lost earnings related to a reduction in working hours	Child Raising Benefit.	/	/

British law protects employees from detrimental treatment and unfair dismissal on the grounds of making a request for flexible working, and making use of their associated right of appealing, or bringing procedures against their employer if their case was refused or not seriously considered (Sections 47D and 104C Employment Act 2002). The Flexible Working Regulations complement the protections laid out in the act by further protecting the employee from detriment and unfair dismissal on the grounds of making use of the right to be accompanied to meetings by a fellow worker. The law further protects the fellow worker accompanying the employee to the meetings from detriment and unfair dismissal. The protection from detriment and unfair dismissal mirrors the Part-time Workers (Prevention of less Favourable Treatment) Regulations 2000, which implemented the European Directive on Part-time Work.

Safeguards to reduce the opportunity costs of part-time employment were introduced in German legislation through the prohibition of discrimination and detrimental treatment related to working part-time. The principle of non-discrimination against part-time employees, which constitutes a key element of the European Directive on Part-Time Work (Clause 4, 97/81/EC), was implemented through §4 (1). In its content it covered provisions already made by §2 (1) 1 Employment Promotion Act, which it replaced (BT-Drs. 14/4374 p.15). It states that:

a part-time employee must not be treated in a less favourable manner than a comparable full-time employee because of working part time unless different treatment is justified on objective grounds. A part time employee is to be paid

at least on a pro rata basis relating to the working time of a comparable full-time worker (author's translation).

The TzBfG further stipulates that that employees must not be subjected to any detriment on the ground of making use of their rights provide by the legislation (§5 TzBfG).

Career related opportunity costs related to part-time employment, such as the general lack of acceptance of working time reduction in management positions were addressed by clause §6 TzBfG according to which the employer has to provide access to part time employment to employees in management positions. Employers have further to ensure access to training for part-time employees unless 'urgent business reasons' or the training preferences of other full-time or part-time employees oppose this (§10 TzBfG). Employees are protected from dismissal on the ground of refusing to transfer from full-time to part-time hours or vice versa at the will of the employer (§11 TzBfG). Finally, to counteract the common fear of 'dead-end' part-time employment, the German Government made provisions for part-time employees who have indicated to their employers that they wish to increase their working hours to be informed of, and preferentially considered for, available full-time vacancies in the company if they have equal aptitude and no urgent business reasons or working time preferences of other part-time or full-time employees oppose it (§9 TzBfG). The Government justified this measure of reducing career obstacles with the purpose of 'increasing the acceptance and attractiveness of part time employment' (BT-Drs. 14/4374 p.12). The parental leave regulations, by contrast, do not include provisions against discrimination or detrimental treatment. However, employees eligible for parental leave are protected against dismissal throughout the period of their parental leave status³⁵ (§18 BErzGG) and have the right to return to their previous working hours once their parental leave period has come to an end (§15(5) BErzGG).

The loss in earnings is an important opportunity cost associated with care related working time reduction. This was partly addressed by the Child Raising Benefit to which parents are eligible under the BErzGG, but not under the TzBfG. The Child

³⁵ Protection against dismissal starts eight weeks prior to the start of the parental leave period, to ensure protection as soon as the employer is notified of the employee's intention to make use of their parental leave entitlement (including working time reduction instead of full time leave), given the employee does not notify the employer prior to the eight week cut-off point.

Raising Benefit of up to 300 Euros per month for a maximum of 24 months (or 450 Euros for a maximum of 12 months), however, is means-tested and paid per child rather than being an individual benefit. With low family income thresholds, a majority of parents were not eligible to the full benefit (Gerlach 2004a). No compensation for lost earnings is paid to employees reducing their working time under the TzBfG.

In terms of opportunity costs incurred by employees, the law in both countries includes protecting clauses referring to detriment and unfair dismissal. Following the implementation of the European Part time work directive, the state counteracts less favourable payment of part-time workers. However, the *pro rata* payment principle does not offset the loss in earnings that working parents experience when they reduce their working hours in order to meet their care responsibilities. With the exception of the Child Raising Benefit in Germany, which provides some recognition of the costs of caring, neither government compensated carers for the care related working time reduction³⁶. Financial transfers are limited in the UK to full time maternity and paternity leave, but not for part-time leave from work beyond the first year of the child's life. The Child Raising Benefit in Germany is a flat rate allowance paid to the family up to a certain income ceiling and as long as part-time employment does not exceed 30 hours per week.

The empowering potential of employment rights

To close the comparative discussion of policy design, Figure 15 provides a summary how the three employment rights 'score' comparatively in terms of the five Empowerment Criteria. The comparative consideration of Empowerment Criteria raises a number of problems for the judgment of which aspects should be weighted as more important for empowerment than others. For instance, is it more problematic to exclude working parents on the basis of their care status or because they work for a small employer? What affects the scope of employee control over working time flexibility more: substantive or procedural constraints? To avoid normative judgment, no weighting was attempted. The scores of 'low', 'moderate', and 'high'

³⁶ The *Elterngeld* reform in Germany in 2006 has since introduced an earnings-related benefit of up to 14 months per child.

empowerment were distributed on the basis of how each measure performs *in relation to* the other two measures.

Figure 15: The empowering potential of employment rights

		Germany		UK
Empowerment Criteria		BErzGG	TzBfG	Right to Request
1. Breadth of Coverage				
Care Status	Characteristics of Care Receiver	Low	High	Moderate
Employment Status	Employee/Worker	Moderate	Moderate	Moderate
	Qualification Period	Moderate	Moderate	Moderate
Employer	Size	Low	Low	High
	Sector	High	High	Moderate
2. Precision of Targeting				
	Targeting	High	High	High
3. Employee Control over Working Time				
Substantive	Length of working time	Moderate	High	High
	Distribution of working time	Low	Moderate	High
	Location of work	/	/	High
Procedural	Type of entitlement	High	Moderate	Low
	Frequency of requests	Moderate	Low	High
	Notification period	High	Moderate	Moderate
	Mobility	High	Moderate	Low
4. Enforceability				
	Grounds for Refusal	High	Moderate	Moderate
	Consequence of Refusal	High	High	Moderate
	Appeal procedure	/	/	High
	Tribunal Powers	High	High	Low
5. Opportunity Costs				
	Protection from Detriment	/	High	High
	Protection from unfair dismissal	Moderate	Moderate	Moderate
	Financial compensation	Moderate	/	/

Although the three employment rights vary considerably along the different Empowerment Criteria, the overall empowering potential is ‘balanced out’ by a

number of *trade-offs* in policy design (Figure 16). Two empowerment trade-offs are particularly pronounced. The first relates to the breadth of coverage. British selectivity by care status stands in contrast to non-selectivity in the German legislation. The empowering potential of inclusiveness on the basis of care status is in Germany weakened by the introduction of a small business exemption that excludes employees working for small employers from the entitlement. In the UK, the empowering potential of applying the Right to Request to employers of all sizes is weakened by eligibility restrictions by care status, as only parents of young children are covered.

The second trade-off exists between the scope of employee control over working time flexibility on the one hand, and the strength of the employer defence on the other hand. The British regulations endorse a wide definition of flexible working including length, distribution of working time and the location of work. In contrast, both German rights revolve around the reduction of working hours. In the UK, this wider scope of substantive flexibility is offset by a lower degree of procedural power attributed to employees and a strong employer defence. British employers merely have a procedural duty of giving serious consideration to an employee's request; employees do not have a statutory claim to a change in working patterns. Further, employers are not required to objectively justify the business reasons they may provide against the working time wishes of the employee before employment tribunals. In contrast, German tribunals can order an employer to accommodate employee requests if their business defence is found to be invalid. While refusals must be based on business grounds in both cases these can be challenged by employment tribunals in Germany, but not in the UK.

Figure 16: Inversed Empowerment Trade-offs

1. Inclusion on the basis of employee characteristics versus employer characteristics		
	Employee Characteristics	Employer Characteristics
United Kingdom	Lower	Higher
Germany	Higher	Lower
2. Substantive flexibility versus procedural control and enforceability		
	Substantive Flexibility	Procedural control and enforceability
United Kingdom	Higher	Lower
Germany	Lower	Higher

The remainder of the chapter is dedicated to exploring the reasons for these inversed trade-offs in cross-national comparison.

II. Explaining variations in policy design

The empowerment trade-offs identified through the comparison of policy design reflect a compromise between employer and employee interests. Advances to the advantage of working parents in one area of policy design are met by protections of employer interests in another area. In the following, the reasons for each trade-off are discussed in turn exploring the interaction between the policy goals of policy makers and interest group preferences, and the influence of past policy choices on policy design.

Trade-off 1: Inclusion on the basis of employee characteristics versus employer characteristics

Cross-national variation in the breadth of coverage by employee characteristics can be partly explained by the different overarching policy goals that were served by the reforms. A central aim of the German TzBfG, which was developed by the

Department for Labour and Social Affairs, was employment maintenance and job creation through the redistribution of work through working time reduction. While the temporal needs of working parents were clearly instrumentalised, it was not in the interest of policy makers to limit eligibility on the basis of care status as the policy goal was best served if a maximum of employees made use of the new right. The European Part-time Work Directive, which gave significant impulse for the introduction of the TzBfG, further did not select by care status but encouraged the general promotion of part-time employment.

The situation in the UK was different as the Right to Request was developed as a policy measure specifically to support working parents in reconciling work and family responsibilities. The decision to legislate on flexible working was very much framed by the Work and Parents Agenda at the Department of Trade and Industry (Cm 5005 2000). Against the policy legacy of non-intervention in this policy area, the selective approach targeting government support at those considered most in need was in line with New Labour's commitment to 'better regulation', targeting policy carefully to keep regulatory burdens low. A universal entitlement was perceived to 'be unmanageable for businesses and place a huge burden on smaller employers' (SC Deb 5 December 2002 c004). Narrow eligibility criteria served to keep the impact of the legislation on employers low, improving employer acceptance of government intervention in this area (Doern and Phidd 1983). This created the option of expanding the scope later through incremental reforms (as was indeed the case when the expansion of the Right to Request was extended to carers through the Work and Families Act 2006). Interest group acceptance and legitimation of government intervention was further sought by delegating the precise definition of 'young children' to the Work and Parents Taskforce. To a certain degree, then, the limitation of eligibility to parents of children under six was a result of interest group bargaining and within the parameters defined by policy makers, advocates of employee empowerment (trade unions, family and equality groups) managed to negotiate a cut-off age considerably higher than that preferred by employers. Respectively high or low coverage by employee status was balanced out by the treatment of small businesses.

The duty of care towards small employers was differently addressed by the two governments. In the British approach, the needs of small business were emphasised from the outset, leading to an approach to policy design which was guided by the principle of ‘thinking small first’, again in line with New Labour’s commitment to ‘better regulation’ to avoid unnecessary regulatory burden for businesses and targeting policies at those who need them. This approach fits within the liberal and business friendly cognitive frame favouring a limited regulatory role of the state that was endorsed by the Department of Trade and Industry. The terms of reference for the taskforce were therefore to design ‘light touch’ legislation with small employers in mind and to consider the case of treating small employers differently. A small business exemption was not of great concern to employers in the UK where attention was focused on a strong employer defence for all employers. A unified approach was further prompted by the desire to keep the Flexible Working Regulations in line with existing law to avoid confusion about the status of small employers. The Sex Discrimination Act did for example not have a small employer exemption. As the burden to employers was kept low from the outset, there was no perceived need to treat small employers differently.

In Germany, a small business exemption was considered appropriate in principle given similar provisions in existing employment law, which exempted very small employers with up to five employees (BetrVG, KSchG). As in the British case, existing law provided a template for policy design. However, the cut-off line was subsequently raised following a process of employer bargaining. The ministry in charge of the parental leave reform was the Federal Ministry for Family, Senior Citizen, Women and Youth (BMFSFJ) whose stakeholder constituency was a different one. In the BMFSFJ the ‘duty of care’ was more strongly oriented towards parents. The defence of employer rights came from the Federal Ministry for the Economy, leading to conflict between Family Minister Christine Bergmann and the Economy Minister Werner Müller, who backed business demands for a small business exemption up to a threshold of 50 employees. A compromise of 15 was negotiated (BT-Pl. 14/115 p.10955). Here, different policy priorities and actor allegiances between different government departments and interest groups influenced the treatment of small employers in policy design.

Trade-off 2: Substantive flexibility versus procedural control and enforceability

As with employee coverage, variations in the scope of substantive flexibility can also be attributed to different overarching policy goals. In Germany, the right to working time reduction in the context of the BErzGG was intended to make the existing parental leave entitlement more flexible by enabling parents to remain partially attached to employment while providing care for their children. Within the context of parental leave reform, the purpose of the law was primarily to enable parents to allocate time to care for their child. The aim of the TzBfG, which implemented the European Council Directive on Part-time Work was to ‘distribute the existing volume of work to more people through the individual reduction of working time in the form of part time employment’ (BT-Drs. 14/4374 p.11). Working time reduction, rather than other forms of flexibility, was therefore instrumental to the policy goals in both cases. The policy context in the UK was different. Although the Government initially considered the introduction of a right to part-time employment after maternity leave, a large scale review of parents’ needs through the Work and Parents Review found that part-time work was not necessarily what parents wanted (Cm 5005 2000). The Government’s aim was to facilitate work-family reconciliation in order to enable parents to return to, or remain in, the labour market, and therefore the goal of maximal parental flexibility to do so was driving policy design.

The wide scope of substantive flexibility provided to parents in the UK was carefully balanced with employer interests in that the actual entitlement was not a ‘right to have’ but to have one’s request seriously considered by the employer. An absolute right was considered ‘a step too far’ by employers and this option, which had been considered in the Work and Parents Green Paper consultation, was dismissed by policy makers out of consideration for employer concerns (Work and Parents Taskforce 2001 para 1.1). The chosen approach stayed in line with New Labour’s policy emphasis on best practice promotion and concern not to ‘undermine best practice or stifle innovation’ through regulation (Cm 5005 2000 para 1.18).

In Germany, employees received greater procedural control as their entitlement was a ‘right to have’ unless business reasons oppose it. The redistribution of control over working time to employees was congruent with the goals of policy makers and facilitated by existing law. In the case of the BErzGG, employees already enjoyed a

statutory right to full-time parental leave. The right to part-time leave represented an amendment to the statutory right to full-time leave which was an already strong intervention in the employment relationship for a selected group of employees. The dual goal of enhancing mothers' attachment to employment (counteracting the effects of long parental leave) and encouraging fathers to take a greater share in parental care both necessitated a strengthening of parental negotiation positions with their employers. Policy makers at the BMFSFJ advocated employee-empowerment in the interest of their constituents: families, women and children. In the case of the TzBfG a strong negotiation position of employees was favourable to the policy goal of work redistribution, which necessitated a maximum number of employees willing to reduce their working hours to be able to do so. Employee-empowerment was here instrumental in employment creation and therefore supported by policy makers at the BMAS.

With regard to the enforceability of employee requests, British employer representatives managed to negotiate a stronger defence of managerial freedom than German employers. Policy makers at the DTI had a greater institutional affinity with employer interests than policy makers in the respective government departments in Germany. The DTI's departmental policy priorities of economic competitiveness and growth were congruent with the advocacy of managerial freedom. The DTI further provided employers with the opportunity to directly shape policy design through the Work and Parents Taskforce. While the choice for legislation had been a concession to employee and family groups, who had lobbied for its introduction, the design criteria set by the terms of reference to the taskforce were from the outset oriented towards the needs of employers, particularly small employers (Appendix E). The bias towards employer interests in the design of the law is also apparent in the set up of the taskforce on which more employers were represented (see Appendix E for full membership of the taskforce). In the Work and Parents Taskforce, the necessity of producing a consensus report enabled employers to remain firm on their priorities of a strong business defence and minimal tribunal involvement. Compared to the *Employee Empowerment* advocates, employers had less to lose if no consensus was found which gave them a stronger negotiation position. Employers were further backed by the Government's terms of reference, which emphasised a 'light touch' and thereby business-friendly legislative approach on flexible working.

In Germany, interest groups were not as closely involved in the design process. Nevertheless, employers were able to obtain a strengthened business defence in the context of the TzBfG where the grounds for refusal were changed from ‘urgent business reasons’, as implemented in BErzGG, to ‘business reasons’ in favour of employers. In comparison to the parental leave reform, the TzBfG received much greater attention by employers and their organisations. They exerted more pressure on Government, via the Economy Ministry (which was more amenable to their interests than the BMFSFJ) than in the case of the selective entitlement under BErzGG. This might have been in part because a higher impact of legislation on managerial freedom was feared due to universal rather than selective coverage, but also because the TzBfG reform had a higher political profile and more significant relevance to the employment relationship, covering both part-time employment and fixed term employment contracts.

Overall, the case study of variation in policy design in the context of employment rights has pointed to the influence of departmental policy priorities on the normative and cognitive frames of policy makers (Linder and Peters 1989). The DTI, which was in charge of formulating the Right to Request in the UK, was more strongly oriented towards furthering economic competitiveness and growth than the BMFSFJ in Germany, where policy priorities were more congruent with the needs and interests of families, women and children. In the case of the BMAS, the policy goal of employment creation and protection was congruent with employee empowerment due to the chosen approach of addressing labour market objectives through the promotion of voluntary part-time employment. Different policy contexts influenced choices on the breadth of coverage and substantive flexibility accorded to parents. Variation in the strength of the business defence that protects managerial freedom can be attributed to a more business-friendly orientation of policy makers at the DTI steering interest group negotiations within the Work and Parents Taskforce towards employer-friendly outcomes and to the stronger bargaining position of *Managerial Freedom* advocates within the taskforce.

Conclusions

Although both governments chose to introduce employment rights to support working parents in their negotiation of working time flexibility, they made very different decisions with regard to policy design. This chapter was dedicated to a detailed analysis of cross-national variations in instrument design using the examples of individual employment rights to flexible working time arrangements in Germany and the UK. Using the five Empowerment Criteria as a framework for systematic comparison, a fair degree of variation across the different criteria emerged from the analysis. Overall, however, instrument designs fared similar in terms of empowerment. This was due to two trade-offs. In Germany, a stronger element of employee control over working time arrangements, and the ability to challenge employer refusals at employment tribunals was traded off against a lower substantive scope of flexible working time arrangements and a small business exemption excluding a large number of employees from entitlement all together. In the UK, the opposite was the case. Employees have greater choice over working time patterns suiting their individual needs but are dependent on employer good will to have their requests accepted, as they cannot challenge the business case for refusal. The emphasis of government intervention in the German case was to provide employees with a statutory claim to working time reduction, which was subsequently weakened through a number of concessions to employers. In the UK, on the other hand, the emphasis was on giving statutory encouragement to best practice. Rather than providing an automatic right, the Government's approach from the outset was to 'encourage both parties to think creatively about flexible solutions' (SC Deb 5 December 2002 c004) through dialogue and 'serious consideration' without taking a threatening attitude towards employers. The British employment right provides working parents with more *choice* which is arguably not backed up by the power to substantiate this choice. In Germany on the other hand, working time flexibility is limited to working time reduction which might not cover the actual flexibility needs of working parents. While they have a stronger negotiation position to claim reduced working hours than their British counterparts, this type of flexibility incurs non-compensated financial loss and a stronger career penalty than other forms of working time flexibility.

Variation in policy design could be explained with reference to the different policy contexts within which the employment laws were formulated, both with regard to existing legal frameworks of past policy choices within which the new regulations were integrated as well as the different policy goals which were being addressed by policy makers in the two countries. Overall, the greater employer-friendliness of the design of the Right to Request appears to be more a result of the business-friendly disposition of policy makers than of employer bargaining as the DTI set tight parameters for negotiations by the taskforce. The different policy priorities of the government departments within which policy was designed might provide a partial explanation for the different ideas and interests of policy makers, which in the UK showed greater affinity with the managerial freedom advocacy than with employee empowerment, whereas in Germany, the opposite was the case.

Taking a closer look at variation within the same category of instruments has highlighted the need to consider policy choices at the level of instrument design, not only between different types of policy instruments (Woodside 1986). The choice of a potentially empowering instrument such as regulation does not per se mean that it will be designed to empower. With this in mind, we now turn to the second case-study which will examine two non-legislative, information-based policy measures: the British Work-Life Balance Campaign and the German Alliance for the Family.

7. Information campaigns in comparative perspective

Information based policy instruments differ from regulation in an important regard: they do not rely on coercion, or state authority, in their attempt to steer behaviour. Rather, they aim to incite the desired behaviour change through information and persuasion techniques, the dissemination of knowledge and know-how, convincing argumentation, moral suasion, and benchmarking. According to Vedung, ‘information’ based instruments include any form of ‘amassing, packaging, and diffusion of knowledge and recommendations’ (Vedung 2003 p.33). This chapter is dedicated to the in-depth exploration of the use of information-based instruments in Germany and the UK, focusing on two case studies drawn from the wider context of family-friendly working time policy: the Work-Life Balance Campaign in the UK and the Alliance for the Family in Germany. Focusing on two policy initiatives that fall within the same category of policy instruments allows one to consider in more detail cross-national variation in policy design. These two campaigns were chosen for in-depth comparison as they both aimed to encourage the voluntary provision of family-friendly working time arrangements. The Work-Life Balance Campaign ran over a five year period from 2000 to 2005. The Alliance for the Family was set up in early 2003 and was continued under the new Christian Democratic leadership of the Federal Ministry for Family Affairs following the general election in 2005. In line with the time frame of this thesis, the discussion of the Alliance for the Family will focus on the time span 2003 to 2005 while the ‘Red-Green’ Coalition was in power.

The development of information campaigns differs from legislation in that decisions regarding the details of policy design are made by ministers and civil servants at the level of government departments, rather than undergoing parliamentary scrutiny, debate and voting. The institutional context within which policies are designed differs significantly between instrument categories with implications for data availability. While the development of a piece of legislation is formally documented through the publication of draft Bills, consultation documents, consultation responses and minutes of committee meetings and parliamentary debates, the design process of information campaigns is not formally documented. Internal documentation is not made available to researchers, and access to civil servants for interview is notoriously difficult. The description and analysis of the two information campaigns presented in this chapter

has relied on a mix of documentary research and interviews with civil servants and stakeholders. Government publications documenting the policy agenda and policy measures undertaken by government provided some indication with regard to objectives pursued and content of the campaigns, but the reliance on interviews with civil servants was comparatively stronger than in Chapter Six. However, as confidentiality was assured to interviewees, the insights obtained in interviews were mainly used for the triangulation of information obtained from other sources. A comprehensive review of the campaigns' information and communication materials, guidance and consultancy, and knowledge production was undertaken. Speeches by ministers, which are archived on government websites and publicly available, provided a valuable information source on government discourse complementing the analysis of printed government publications and interviews.

This chapter pursues two aims: the first aim is to provide a detailed, comparative analysis of how British and German policy makers endeavoured to encourage voluntary change at the workplace level through encouragement and persuasion rather than statutory regulation. As in the previous chapter, the two information campaigns are systematically compared along the five Empowerment Criteria developed in Chapter Three to scrutinise the implications of policy design for the power balance between employers and employees. The second aim of the chapter is to provide explanations for cross-national variation in policy design by placing choices within the context of past policy choices, the wider policy agendas that are being served by the two campaigns, as well as the ideas and interests of actors, their interactions and inter-dependent relationships within nationally specific institutional settings. The chapter is structured in two parts. Part I systematically compares the policy design in terms of the breadth of coverage, the precision of targeting, the scope of employee control over flexibility, the enforceability of employee preferences and opportunity costs, closing with a comparative assessment of the empowering potential of the two campaigns and a summary of the main similarities and differences between the two approaches. Part II will then explore the reasons for variation between the two campaigns.

I. Policy Design

A few words should be said about the use of the comparative framework across instrument categories. Information based instruments ‘fit’ the five criteria of employee empowerment differently than regulatory instruments. In Chapter Six, two employment rights were compared which both directly targeted employees. In other words, the impulse for change at the workplace is given by the employee, communicating her or his request for flexible working time arrangements to the employer. The two information campaigns chosen for comparison in this chapter in contrast are mainly directed at employers. Here the impulse for change is to come from the employer, accommodating the time needs of their employees. While government intervention in the first case intended to support employees in negotiating the working time arrangements they individually need, in this second case it was intended to address the access problem of insufficient and unequally spread provision across workplaces. The impact in terms of empowerment of employees will necessarily differ as the comparative framework is employee-oriented. A policy measure directed at employers will necessarily score lower in terms of employee empowerment than a policy measure that is directly targeted at employees. Both governments chose to target their information campaigns at employers rather than employees. Let us now explore the different dimensions of policy design at the example of information campaigns.

1. Breadth of coverage

The breadth of coverage of an information campaign on flexible working time arrangements addresses the question of who is intended to benefit, in other words of how selectively the beneficiaries are delineated. To whose benefit was flexible working promoted in these information campaigns? In contrast to statutory regulation, where eligibility criteria are rigorously defined, coverage in information based instruments is less clearly delineated. Comparing the two campaigns, different approaches to coverage were pursued: while the British campaign explicitly covers ‘everyone’ irrespective of care responsibilities, the German campaign centres around the family and the need to make work and family life more compatible to encourage more employees to have children. Both campaigns emphasised the benefits to employers and society more generally by stressing the win-win effect of good practice

in work-life balance and family-friendliness. Not only parents and carers, but society, the economy and businesses were said to benefit (DfEE 2000a p.3; Prognos AG 2005).

The British Work-Life Balance Campaign grew out of the Government's National Childcare Strategy in which family-friendly employment was identified as an important condition to make family life and employment more compatible (Cm 3959 1998). Despite being rooted within the Government's Work and Parents Agenda, the Work-Life Balance Campaign addressed 'everyone'. The impulse for the inclusive, universal approach came from employers rather than Government, which is apparent in the choice of terminology. Employers for Work-Life Balance, whose partnership was sought by policy makers, insisted on the use of the term 'work-life balance' in the campaign rather than 'family-friendly' (Int. UK 06, 14/12/2005). The term family-friendly was felt to be too strongly associated with mothers and children. One employer explained:

The language around work-life balance was very specifically chosen to be inclusive, to take the agenda beyond just family. The best practice that we had in our own organizations was that it wasn't just about people with families, it was about everyone (Int. UK 16, 04/10/2006).

Margaret Hodge, then Parliamentary Under-Secretary of State for Education and Employment and in charge of developing the campaign, preferred to call it the family-friendly campaign. However, as terminology turned out to be a make or break issue for the cooperation with the employer group it was finally agreed to and the campaign was called the Work-Life Balance Campaign (Int. UK 02, 21/09/2005; Int. UK 06, 14/12/2005).

The different preferences regarding the terminology to be used can be understood against the backdrop of different underlying justice principles. The Government's perspective was based on an understanding of a hierarchy of needs according to which those in need of flexibility to meet their care responsibilities are considered more deserving of government support than those who want time off to play golf or attend a flower arranging course. The campaign was initiated to support parents in combining employment and family life. Employers on the other hand were primarily concerned with the justice principles prevalent within their organisations, in which the preferential treatment of some groups of employees over others on the basis of need, rather than merit, could be perceived as unfair and lead to tensions. A key motive for

an inclusive approach was to avoid ‘work-family backlash’, that is resentment among colleagues about parents being entitled to family-friendly working practices when they are not (see for example Young 1999). Overall, the business-case for flexibility, rather than individual need, was considered the key determining factor for provision (Int. UK 16, 04/10/2006).

Although it was not the initial objective of the campaign to take a wide coverage, a more inclusive approach was recognised to serve the flexibility needs of other government policy constituents, notably carers, disabled employees, and jobseekers, who were not currently in employment due to their care responsibility or own disability (DfEE 2000a p.4). In her address to the House of Commons on 9th March 2000, when the campaign was launched, Margaret Hodge, explained that the term ‘work-life’ was to replace the term ‘family-friendly’, which was too strongly associated with women and young children. Instead, the Government aimed to ‘respond to the needs of carers, as well as parents, and everyone who wants a life’ – a broad objective better captured by the term work-life balance (HC Deb 09 March 2000 vol 345 c236WH).

In Germany, the political discourse very much emphasised the need for family-friendliness. The policy objective of the Federal Minister for Family Affairs, Renate Schmidt, was to move ‘*the family*’ to the centre of societal and political debates. Family policy from 2002 onwards was driven by clearly pronounced pronatalist arguments. A key line of argumentation was that a more family-friendly environment, both at work and outside work, is needed to encourage more people to become parents. A central aim of the Alliance for the Family was to promote culture change to facilitate the reconciliation of work and family life (BMFSFJ and Bertelsmann Stiftung 2003 p.5). While the emphasis in policy discourse was laid on the ‘family’, not parents in particular, parents were clearly the main beneficiaries of the measures promoted in the information and guidance materials (see Prognos AG 2003; BMFSFJ 2004d).

In comparison, the Work-Life Balance Campaign has a wider breadth of coverage than the Alliance for the Family by explicitly targeting ‘everyone’ and not reducing the work-life balance debate to family responsibilities. Along this dimension the British campaign is more empowering.

2. Precision of targeting

The question of how precisely a policy is targeted investigates whether beneficiaries are directly addressed by a policy measure or whether these are indirectly targeted via intermediary actors, such as employers or interest groups. Both campaigns were primarily directed at employers rather than employees with the aim to address the problem of insufficient family-friendly working time practice. The purpose of the respective campaigns was to motivate employers to accommodate the working time needs and preferences of their employees. A central strategy common to both approaches was the strategic alliance formation with intermediary actors to help communicate and spread the message to employers. However, the choice of alliance partners differed significantly between the two countries. The British Government sought to cooperate with organisations that were already offering work-life balance policies to accommodate the time needs of their employees, and were leading by good example. While a broad range of work-life balance experts were invited to advise the Minister on work-life balance, the Ministerial Advisory Committee had a consultative function but not the explicit purpose of communicating best practice beyond government. The Alliance for the Family encompassed a wide range of actors who committed to promote family-friendliness within their spheres of influence. German policy makers approached central employer and business organisations and trade unions as well as individual employers to join the Alliance. It also included foundations and academics. In the following, both approaches are analysed in turn.

The Work-Life Balance Campaign in the UK was mainly targeted at employers ‘with the aim of raising awareness of the benefits of work-life balance and spread good practice in this area’ (Johnson 2001). In the first phase of the campaign, government publications and publicity were also directed at the general public and addressed employees directly, providing advice about how to request flexible working patterns. One of the first government publications under the campaign, the *Essential guide to work-life balance* published in 2001 was specifically targeted at employees and at people who were not currently in work but interested in entering or re-entering the labour market (DTI 2001c). A website on work-life balance was created by the DfEE providing information, advice and guidance for employers, employees and jobseekers (DfEE 2000a p. 29). Most of the information, advice and guidance materials published

as part of the campaign targeted employers, disseminating best practice case studies and providing advice to employers on how to set up policies and working practices which enable their employees to achieve a better work-life balance (DfEE 2000c). The guide for employers *The Business-case. Your Business can't afford to miss it* provided information about the benefits of work-life balance and the costs of ignoring it through a number of case studies (DTI 2001a). Although the guide for employees was reprinted in 2002, no further materials providing information and advice for employees were produced under the Work-Life Balance Campaign. This was in part due to the growing focus on the development of the Right to Request from 2001 onwards, which was supported through information materials on how to make a request under the employment right from 2003 onwards (DTI 2004e). Another explanation is the relocation of the campaign from the Department for Education and Employment (DfEE), where the Work-Life Balance Campaign was initially developed within the context of the childcare strategy and with the needs of parents and children in mind, to the Department of Trade and Industry (DTI), which placed a stronger focus on productivity and competitiveness. The incorporation of the campaign into the DTI's wider policy agenda may have contributed to a stronger employer orientation.

In effect, when the campaign moved to the DTI after the general elections in 2001 there was a shift in emphasis of government communication as work-life balance was incorporated into the DTI's theme of *Achieving best practice in your business*³⁷ (Int. UK 09, 11/01/2006). Information materials published by the DTI were henceforth framed more explicitly as support tools to increase business performance and were targeted at employers (DTI 2004a; 2004b). A few information materials were targeted at specific industrial sectors, such as the hospitality industry (DTI 2001b; 2002d), the construction industry (DTI) and the IT sector (DTI 2004f; 2004d).

The move to DTI also had the effect of conceptualising work-life balance more strongly in terms of employment relations, which, as a policy field, was also under the responsibility of the DTI (Int. UK 01, 25/07/2005). While trade unions were represented on the Advisory Committee and provided expertise and case studies for the

³⁷ In DTI publications, 'Achieving best practice in your business' was described as a 'key theme within DTI's approach to business support, providing ideas and insights into how to improve performance across your business. By showing what works in other businesses, we can help you see which approaches can help you, and support you in implementation' (DTI 2004b).

campaign at the DfEE, they were not explicitly targeted with information, advice and guidance as to their role of negotiators of flexible working or support providers to employees. At the DTI, trade unions were more explicitly incorporated, albeit to a far lesser extent than employers. In April 2002, Alan Johnson gave recognition to the contribution of the TUC by speaking at the launch of the TUC's Changing Times Website and training courses on work-life balance (Johnson 2002). In 2004, the case study report on *Flexible Working* in 2004 stated that it that was directed at:

All employers who want to retain and recruit quality staff and employer and employee representatives, including trade unions, who advise employers willing to look past the traditional way of doing things in order to maximise the potential of their businesses (DTI 2004b).

Furthermore, the DTI initiated a partnership project with the CBI and the TUC on long working hours leading to the jointly published report *Managing Change* in 2005 presenting nine 'top tips' on introducing change as well as case studies (DTI et al. 2005).

Not all government communications were directly targeted at employees and employers. Intermediary actors played an important role in the Work-Life Balance Campaign, both in an advisory and consultative function to Government in the policy formulation process, and as promoters of work-life balance to the employer community in policy implementation. A number of employer organisations, trade unions and family groups were represented on the Ministerial Advisory Committee whose role was to advise Government (see Appendix D for full membership). Through the committee, policy makers were informed about ongoing projects, which were in turn promoted and publicised through government publications (see for example DfEE 2000a). The Government and TSB Lloyds co-sponsored the *Employer of the Year Award* by the family group Parents at Work. The *Caring about Carers* award was developed in cooperation with the three leading carers' charities (Carers National Association, Princess Royal Trust for Carers and Crossroads Caring for Carers) to give recognition to employers who deal sensitively with the needs of carers (DfEE 2000a pp. 27-28).

When the campaign was set up by the DfEE, cooperation with individual employers rather than their representative organisation was sought by policy makers as they formed an alliance with the employer group Employers for Work-Life Balance. As

‘best practice’ employers they could convincingly communicate the benefits of work-life balance practices, which they were experiencing in their organisations, share their experiences and lead by example. Employers for Work-Life Balance represented an important communication channel to employers. The strategic cooperation with businesses provided the DfEE not only with direct access to best practice case studies and business insight, but importantly with a credible communicator of the business-case message: employers themselves. This clearly emerged from the interviews:

The credibility is usually employer to employer. That is not to say that Government don't have credibility but government use government language, government report on and measure the things that are important to Government. Business talks in business language. Business readily understands each other... Business leaders will respect the voices of successful business leaders. And that is what we had in the alliance (Int. UK 16, 04/10/2006).

I also think the relationship between Government and employers, and having Government and employers saying the same thing, and agreeing and standing on the same platform, jointly, and saying this is a good idea, that is quite powerful (Int. UK 02, 21/09/2005).

Employers for Work-Life Balance committed to promoting work-life balance by disseminating best-practice case studies and guidance on how to implement work-life policies. Concrete activities announced in *Changing Patterns* included publishing case studies to show the positive effect of work-life policies on their organisations, setting up a website and helpline for employers, run practical seminars across the country and develop a voluntary standard on work-life balance. Between July and November 2000, Employers for Work-Life Balance hosted eight practical regional seminars which were presented by the family organisation Parents at Work (DfEE 2000b).

Government, in their function of a public sector employer, supported the campaign by leading by good example. The *Changing Patterns* document stated: ‘one of the most effective levers for promoting cultural change is for the Government to lead by example as a provider of services’ (DfEE 2000a p.31). From April 2000 good practice on work-life balance was included in diversity action plans of all government departments and the improvement of work-life balance was included in the Modernising Government Agenda (DfEE 2000a). A Cross-Departmental Ministerial Group, chaired by Baroness Jay, was put in place to look at work-life balance in the public sector (health and local government sectors in a first step) and make recommendations. One outcome was the NHS Improved Working Lives Campaign

which encouraged NHS employers to introduce more flexible and family-friendly employment practices for all staff. Let us now turn to consider the German targeting approach.

In the German approach to alliance formation the underlying motives and the form of cooperation differed from the British case. Chapter Five showed that a key motive for establishment of an Alliance with societal partners was the shift from a state-centrist conceptualisation of family policy to a societal conceptualisation, which implied a division of labour between state and societal actors in the provision of money, time and services. The provision of ‘time’ fell under the responsibility of employers as the following quote by Family Minister Renate Schmidt illustrates:

If we want that more children are again born in Germany, we need a family-friendly corporate policy. No parent, no lone mother, envisage to bring their child to a nursery straight after birth and pick it up at age 18 from a full-day school, equipped with the previously agreed attributes. Children need time with their parents and parents want to spend time with their children. Time is the magic word for a successful family life. Here, we call upon companies to develop an innovative working culture, which is also in their very own business interest (Schmidt 2004b, author’s translation).

Against the backdrop of the conceptualisation of the workplace as the primary arena for time provision, the Government primarily targeted employers and their organisations, as well as trade unions, to participate in the Alliance for the Family. By mobilising the social partners, the campaign specifically addressed actors *who were not* traditionally associated with family policy. The key family organisations, for instance, were not asked to be part of the Alliance as they already maintained close working ties with the BMFSFJ and were not a strategic lever for change at the workplace level (Int. DE 14 28/09/2006). The BMFSFJ strategically sought to mobilise the social partners as intermediary actors who were well placed to reach out to individual employers and trade unions. In contrast to the British alliance with Employers for Work-Life Balance, the German approach was to gain the support of the influential central employer and business organisations and trade unions in order to move family policy from the margins to the centre of socio-political debate. An important ideational and financial partner was found in the Bertelsmann Foundation. Family Minister Renate Schmidt and Liz Mohn, vice-chair of the Bertelsmann Foundation, jointly launched the Alliance for the Family in 2003. In cooperation with

the Ministry, the Bertelsmann Foundation initiated the project *Balance von Familie und Arbeitswelt*, which produced a number of publications and an internet portal providing advice for small and medium-sized businesses to become more family-friendly (www.mittelstand-und-familie.de).

Intermediary actors were mobilised at the national as well as the local level. At the national level, a high-profile 'impulse group' was set up with the presidents of the central employer and trade union organisations, the Bertelsmann Foundation, academics and employers with the task to publicise family-friendliness within their respective spheres of influence and provide the campaign with a high profile, attract media interest, and public attention (Schmidt and Mohn 2004). 'The implementation of more family-friendliness', as Renate Schmidt stated in a speech at a management seminar in Munich in March 2004, 'must primarily occur in a decentralised way' (Schmidt 2004b). Therefore, she launched, together with the president of the German Association of Chambers of Commerce, Ludwig Georg Braun, the initiative 'Local Alliances for the Family' in January 2004.

The aim of the Local Alliances for the Family initiative was broadly 'to improve the concrete living conditions of families' (Schmidt and Mohn 2004 p. 179) by strengthening family-friendly structures at the local level with the help of all societal and political groups, and to connect and expand existing initiatives (BMFSFJ 2006d). It aimed to support communes, companies, churches, associations, organisations, trade unions, chambers of commerce, charities, families and other local actors in their cooperation through local alliances, according to the principle that 'unusual partnerships enable unusual solutions' (BMFSFJ 2006c). A separate board of trustees was set up to support the initiative, including both national and local actors. The Local Alliances for the Family initiative is an example of very indirect targeting. The Government acted as facilitator on the formation of new alliances by providing help with their set up through the provision of free information, advice and support through a service point. Further, it facilitated networking between the local alliances, creating a platform for contact and the exchange of ideas and mutual learning. While help on organisation and procedural aspects was provided, the Government did not give any direction on the actual content or objectives of the projects initiated by local alliances.

In Germany, family-friendly working was more strongly conceptualised as an employment relations issue in which the role of employee representatives was more explicitly addressed than in the UK. Firstly, the presidents of the German Trade Union Association (DGB), Michael Sommer, and of the Mining, Chemical and Energy Industrial Union (IG BCE), Hubertus Schmoldt, were asked to participate in the Alliance. In 2005 two publications were produced, one overview of good practice in collective agreements and works agreements (Flüter-Hoffmann 2005) and one guidebook were targeted at employee representatives (BMFSFJ 2005a). Individual employees, however, were not directly targeted by Alliance publications.

Both the British and German governments strategically used alliances with employers to promote flexible working time arrangements, frame the benefits of family-friendly working in business language and maximise employer attention through the use of credible transportation channels. A key difference between the two approaches, however, was that the UK Government formed an alliance with best practice employers rather than their interest organisations, whereas in Germany the Alliance for the Family specifically targeted the central business and employer organisations and trade unions. Different types of actors were targeted for cooperation, based on different underlying motivations. While British policy makers sought to promote best practice with the help of a group of employers leading by example, the German alliance with societal partners was driven by the motivation to gain broad societal support for families, which was reflected by the choice of influential alliance partners in the business world and civil society who were not traditionally associated with family policy. These partners were persuaded to cooperate with reference to the long-term economic and social implications of demographic change caused by falling birth rates within the family-unsupportive environment of German society in general and workplaces in particular.

Although both governments cooperated with a wide array of societal actors including charities, academics, interest organisations, academics, employers and local government, they instrumentalised these cooperative relationships in different ways. In the British context, the DfEE united expertise on work-life balance in a Ministerial Advisory Committee with the main purpose of information exchange. In Germany however, actors were expected to commit to promoting family-friendly working within

their respective spheres of influence. While the DfEE brought together actors on the basis that they were already promoting work-life balance, German policy makers deliberately targeted influential actors who had not previously been known as active promoters of the family-friendly cause and it was part of the policy strategy to win them as new powerful allies (Int. DE 09 12/07/2006; Int. DE14 28/09/2006). Overall, both campaigns focused on employers and included employee representatives more marginally. They were more explicitly included in the German campaign than in the British one. The British campaign did address employees directly in the early years of the campaign, but less so after the campaign moved to the DTI. In Germany, employees were only indirectly targeted via their representative organisations. With the main focus on employers and their representatives in both campaigns, the precision of targeting is low in both countries, implying a low degree of empowerment for employees. The next section addresses the degree of employee control over working time flexibility.

3. The scope of employee control over working time flexibility

The degree of employee control over working time flexibility is a central question regarding the balance of power between employees and their employers. Information-based instruments can empower employees through the transfer of information, know-how and skills. Knowledge about the different forms of family-friendly working time arrangements, their benefits and practical knowledge on how work patterns can be redesigned to accommodate the time needs of both employees and businesses are an important advantage for employees wanting to negotiate a change in working patterns with their employer. Similarly, an 'enlightened' employer with the knowledge and know-how of family-friendly working might be more likely to agree to such changes, to be able to accommodate them, or even to offer them without being prompted by employee demand. In as far as information instruments can 'empower' employees they do so through the provision of knowledge, advice and guidance rather than entitlements in law. They can inform about the different forms of flexibility and their advantages, and provide know-how regarding their negotiation and implementation.

The range of tools that were employed by both German and British policy makers to inform and advise spans across information brochures, publicity through the media,

conferences and seminars, websites, guidebooks, help lines, and consultancy services. These tools aimed to address one or more of the three barriers to provision discussed in Chapter Two: information was provided to increase *awareness* of work-life balance and family-friendly working practices, to increase the *willingness* of employers to introduce them by publicising the benefits and spreading examples of good practice, and finally to increase the *ability* of employers to introduce such measures by providing relevant know-how and support. Neither campaign can be said to have explicitly addressed the cognitive barriers to family-friendly working that exist on the employee side. Media coverage contributed to increase public visibility of the issue and to raise awareness of work-life balance and family-friendly employment measures among employees as well as employers. No explicit guidance, however, was provided regarding the negotiation of flexible working patterns with the employer, with the notable exception of one employee guide printed in the early years of the Work-Life Balance Campaign (DTI 2001c). The majority of information, guidance and know-how were targeted at employers.

An interesting similarity between the two campaigns is the apparent underlying assumption that employers' behaviour, rather than that of employees, has to change. The fact that employees want to work more flexibly seemed a given, supported by according survey data on working time preferences (see Chapter Two). This assumption contributed to the problem definition driving the information campaigns that there was a general employee need for flexible working arrangements. Similarly, there was an understanding by policy makers in both countries that there was insufficient provision by employers. Both campaigns therefore targeted employers rather than employees in an attempt to motivate them to provide. Low and female-biased take up of flexible working patterns and its causes, on the other hand, were only marginally addressed (Palmer 2004). There appeared to be the latent assumption that once employee-oriented flexibility is offered, employees will gladly take up such arrangements helping them to balance their work with family and private life. In line with this targeting bias, policy tools to increase the awareness, willingness and ability to introduce flexible working time arrangements were developed to address employer ignorance, unwillingness and lacking know-how rather than employee's lack of knowledge, fear of career penalty, and lack of confidence in negotiating time needs

with the employer. In the following, two initiatives providing employers with hands-on support with the implementation of flexible working options are compared.

In the UK, free and customised advice to employers willing to introduce work-life balance practices in their organisations was provided through the Work-life Balance Challenge Fund. Employers from the private, public and voluntary sectors in England and Scotland³⁸ were invited to apply for funds to support the design and implementation of work-life balance projects (DfEE 2001; DTI 2002c; 2003). 448 successful applications resulted from five applications rounds between 2000 and 2004. Challenge fund projects ran over 12 months. The successful applicants received customised advice from consultants³⁹ to help them develop and implement work-life balance policies and practices through customised projects. From 2002 onwards, special solution toolkits which were developed on the basis of knowledge gained during the first three rounds of the Challenge Fund were offered to employers. They included a work-life balance pack for HR specialists, a diagnostic and implementation toolkit, policy development and implementation guidelines, advice on developing management skills to promote work-life balance and to remove cultural blocks to change (for details on the Challenge Fund Process, see Nelson et al. 2004). All challenge fund projects were required to measure financial savings, reductions in absenteeism, staff retention levels and the take-up of work-life balance options by staff. This information was intended to generate concrete data on the business-case for work-life balance to be fed into case studies and to be disseminated to other employers through a government-run website and brochures (DTI 2004b; DTI 2004f; Nelson et al. 2004).

In Germany, hands-on advice for medium-sized employers was provided via an internet-based information portal (*Mittelstand und Familie*). Launched in June 2005, it was a joint initiative by the BMFSFJ and the Bertelsmann Foundation. It offers a 'virtual human resources department' to small and medium sized businesses, providing support and advice around questions of work-family reconciliation (<http://www.mittelstand-und-familie.de>). While it mainly addresses decision makers in medium sized businesses, it also provides information for employees and works

³⁸ A separate fund was set up by the National Assembly for Wales for projects in Wales (DfEE 2000a).

³⁹ In 2000, the DfEE outsourced the consultancy service to PricewaterhouseCoopers (Nelson et al. 2004 pp. 14-19)

councillors, and more generally to experts in the field. In particular, the service consists of three components: 'Solutions', 'Academy', and 'Infoline'. 'Solutions' describes possible solutions to work-family reconciliation problems in the areas of childcare and working time, tailored to the needs of small and medium-sized employers with step-by-step advice on implementation supported by working materials such as questionnaires and check lists. Support is organized around different themes such as pregnancy, parental leave or the care for dependent relatives. In the 'Academy' section, employers can access basic information on work and family, including articles, studies and book reviews. This is complemented by different materials for download, such as presentation slides, the latest research as well as the possibility of participating in telephone conferences with experts in the field. The 'Infoline' provides a free consultancy hotline for decision makers complementing the internet based service: employers have the possibility to directly speak with experts providing comprehensive advice and information.

Both the British and German campaigns placed emphasis on information, advice and guidance on increasing the provision of employee-oriented flexibility. These were however primarily provided for employers rather than employees, encouraging the *unilateral provision* of family-friendly working time options rather than joint negotiation of change. In contrast to the employment rights discussed in Chapter Six, where employees were encouraged to initiate change, the information campaigns focused on motivating and enabling employers to pursue good practice in work-life balance and family-friendliness. To the small extent that guidance was directed at employees, the British employee guide addressed individual employees and job seekers, whereas information materials in Germany were addressed to employee representatives illustrating good practice in collective agreements and works agreements.

If policy efforts to change the attitudes of employers are successful, then they benefit employees. Supportive employers and a family-friendly workplace culture may encourage more employees to request the working patterns that suit their individual circumstances, and to have these requests accepted. However, neither campaign placed emphasis on empowering employees through government-provided guidance and hands-on support on how to negotiate change with their employer. The information

campaigns therefore did not attempt to shift the power balance between employees and employers. Employers remain in control over flexibility and it is up to their good will to take employee needs into account. In terms of employee control over working time flexibility both campaigns therefore fare low. A similar situation evolves regarding the issue of enforceability of employee preferences.

4. Enforceability

Information based instruments cannot coerce, nor sanction to enforce, compliance with the policy intended behaviour. Rather, information instruments rely on persuasion techniques such as reasoned arguments and positive incentives to induce behaviour change voluntarily by changing attitudes towards family-friendly working arrangements. A key feature of information campaigns, and distinguishing aspect from regulatory instruments, is that they aim to incite voluntary behaviour change. There are a variety of methods of persuasion employed ranging from case studies, research findings, competitions, certificates and publicity. Having discussed the conditions of *awareness* and *ability* to provide in the previous section, this section considers how the two campaigns addressed the question of *willingness*.

A key strategy pursued by both governments was to demonstrate the *business-case* for work-life balance and family-friendly working patterns. Central to this approach was to frame work-life balance and family-friendliness in business terms, in a language that was relevant to employers, and to highlight the impact of employee-oriented flexibility on the bottom line. The key benefits which were highlighted were improved recruitment and retention rates, and reduced absenteeism. To demonstrate the business-case to employers, the UK relied primarily on business testimonials. These were case studies of companies that had positively experienced the introduction of work-life balance policies and reported the savings they made (Bevan et al. 1999; DTI 2001a; 2004f). The German approach was different. Although company case studies of good practice were also used, the key instrument 'proving' the business-case was government-commissioned research on the basis of ten medium-sized companies, in which the costs and benefits of family-friendly measures for parents of young children were modelled for the average medium-sized firm, and a 25 per cent positive return on investment was found (Prognos AG 2003).

The aim of the business-case argumentation was to appeal to the self-interest of employers. Both governments took care in framing family-friendliness not as an altruistic act towards employees in need but rather as an economically sensible investment in one's workforce. The win-win effect was underlined: not only employees benefit but the business, and society as a whole, can win. This is illustrated by the following quote taken from Margaret Hodge's speech in Parliament the day the campaign was launched: 'These policies are not about altruism, but about sheer common sense and business interest' (HC Deb 09 March 2000 vol 345 c236WH).

A notable difference between the British and German argumentation was that the British business-case argumentation focused on the micro-level, whereas the German argumentation emphasised the macro-level implications of family-friendliness. In the UK, the benefits for individual employers and their bottom line formed the core of the business-case argumentation, supported by individual business testimonials, stories of improvements in recruitment and retention rates, reduced absenteeism and improved staff morale. In Germany, the emphasis in the argumentation was on the macro-economic implications of demographic change, such as anticipated staff shortages, reduction in consumption, etc. The argument built was one that showed that negative economic implications of demographic trends could be counteracted by creating a more supportive environment for families (Bertram et al. 2005). Commissioned experts depicted that a more family-friendly society and world of work were necessary means to encourage more individuals to have children (Rürup and Gruescu 2003; Bertram et al. 2005). Research was further commissioned to calculate the micro- as well as macroeconomic positive economic and social returns on investments in family-friendly employment policies (Prognos AG 2003; 2005) and public childcare services (Spieß 2002). Research by well-established academics supported the German Government's message '*Familie bringt Gewinn*' meaning 'the family is profitable' - with the aim of establishing family policy on the economically-oriented agenda of employers and their organisations. The governmental persuasion strategy was to highlight the 'economic charm of the family' (Schmidt 2004c). Alliance partners played an important role in underlining the credibility of this message. Research and publications were jointly commissioned and published with Alliance partners and jointly presented to the press (BMFSFJ 2004d; DIHK et al. 2004). The fact that presidents of the central business organisations stood on the same platform as the

Family minister, promoting the same objective, sent out a powerful signal (Int. DE 09, 12/07/2006).

Another strategy used by both governments was the use of positive public relations incentives. One instrument used to attract attention and provide non-monetary incentives to employers were awards and certificates. Employer competitions and family-friendly certificates were at once visible benchmarks, publicity generating events and means for employers to gain a competitive edge. Work-life balance and family-friendliness were marketed as a business trademark offering a competitive advantage in the competition for skilled labour and customers. This public relations incentive was stimulated through employer competitions and certificates. The British Government co-sponsored the Parents at Work *Employers of the Year* award. In cooperation with Investors in People, a national benchmark for good practice in work-life balance was developed and launched as the Work Life Balance Model by Investors in People in 2003⁴⁰. In Germany, the BMFSFJ continued to run the employer competition for the most family-friendly employer, which had been first introduced in the early 1990s. Under Family Minister Renate Schmidt, the employer competition in 2005 ran under the theme *The Family: Factor of Success*, and attracted 366 applications from employers of all sizes and sectors (www.erfolgsfaktor-familie.de). The Alliance for the Family further promoted the *berufundfamilie* audit, which was developed in the late 1990s by the non-profit Hertie Foundation with the aim of promoting a family-conscious personnel policy in companies and institutions ([berufundfamilie gGmbH, www.beruf-und-familie.de](http://berufundfamilie.gmbh.de)). In 2004, the audit was revised to attract more companies to apply for the certificate. The central business organisations DIHK, BDA, ZDH and BDI were involved in the new coordination committee and from 2004, the Federal Ministers for Family Affairs and the Economy took over the joint patronage taking turns in hosting the award ceremonies.

The appeal to self-interest and competition was also used by German policy makers to persuade local actors to increase their commitment to family-friendliness. Advantages

⁴⁰ The Work-Life Balance Model formed part of the wider Investors in People Standard, which is a national quality standard which sets a level of good practice for improving an organisation's performance through its people. It provides a framework for improving organisational performance and competitiveness through a planned approach to setting and communicating business objectives and developing people to meet these objectives. It was first introduced in 1991 and is administered by Investors in People UK www.investorsinpeople.co.uk

for communes and regions were highlighted, notably that family-friendliness could counteract the out-migration of young employees which is a problem in many parts of East Germany. A family-friendly infrastructure was said to increase the attractiveness of a commune as a location for economic development (Beck 2004; BMFSFJ 2006a). Similar to the positive public relations effects for employers who strive to be ‘an employer of choice’, communes, towns, and Länder were incited to strive to be the most family-friendly. Peer pressure and benchmarking were promoted through the publication of the *Familienatlas*, published in January 2005, which mapped out the more and less family-friendly areas in the country (BMFSFJ 2005b; Schmidt 2005b). Within this spirit, the ‘Red-Green’ Government set itself the ambitious goal of establishing Germany as the most family-friendly country in Europe (Schmidt 2005a).

In the absence of the power to coerce compliance through law and impose sanctions for non-compliance, information based instruments have to rely on voluntary compliance. There are many similarities in the persuasion strategies pursued by the British and German governments, notably the construction of a business-case for work-life balance and family-friendly working and the promotion of benchmarking and peer-pressure through competitions and certificates that promise a competitive edge in public relations and positive publicity. The comparison revealed differences in the way the business-case was demonstrated. The UK relied primarily on best practice case studies and employer testimonials, while the German campaign referred to economic research which calculated a positive return on investments in family-friendly employment measures. Overall, the German approach emphasized the macro-economic and social benefits while in the British case the benefits to individual employers were highlighted. These efforts, whether appealing to self-interest or good will, remain fully dependent on the voluntary action of employers. Employees have no means of enforcing their working time preferences other than attempting to persuade their employers of the business-case themselves. Guidance on how to do this, as discussed in the previous section, was not directly provided to them by the two campaigns. In terms of enforceability, therefore, both campaigns fare low on the degree of empowerment. Let us now turn to consider how the opportunity costs attached to work-life balance and family-friendly working were addressed by the two campaigns.

5. Opportunity costs

Statutory regulation can rule out less favourable treatment and discrimination as a result of requesting flexible working hours (Chapter Six). Economic instruments can compensate the financial loss following a reduction in working hours (Bertram et al. 2005). Information-based instruments, in turn, can play an important role in tackling prejudice against family-friendly working arrangements, which can lead to less favourable treatment by employers, as well as reluctance by employees to work flexible hours. Examples of policy interventions aiming to reduce the opportunity costs of flexible working patterns in the context of information campaigns are attempts to change attitudes through persuasion and to increase the acceptability of work-life balance and family-friendly working patterns such as part-time employment (DfEE 2000a; BMFSFJ and Bertelsmann Stiftung 2003).

It can be argued that by promoting an inclusive approach to work-life balance, the British campaign worked towards diversifying the risk of disadvantage by mainstreaming family-friendly working, divorcing flexible working patterns from care status. If flexible working is available to anyone, it may progressively become disassociated from working parents, reducing the risk especially for women to experience discrimination in the workplace on the basis of their assumed or anticipated care responsibilities. Risk diversification with regard to gender role assumptions would however require a substantial amount of men to actually change their working patterns. Neither of the campaigns pro-actively encouraged men to take up flexible working options. In Germany, the relative absence of equal opportunities concern in the Alliance for the Family communications is all the more apparent when compared to the efforts to encourage fathers to work flexibly and share in parental care which were made under the leadership of Christine Bergmann between 1998 and 2002 through both an information campaign directed at fathers and an employer competition focusing on father-friendly policies in 2000. The discourse from 2002 onwards no longer expounds the problems of the gendered differences in the division of care.

The problem of women's relative discrimination on the basis of gender role assumptions contributes to the attitudinal barriers to flexible working. However, even if men and women made equal use of flexible working patterns, this does not per se reduce the opportunity costs associated with part-time employment versus full-time

employment in terms of financial remuneration and career progression. An important signal here is the attempt to divorce employee competence and commitment from working patterns, in other words to address the prejudice that part-time employees are less committed to their jobs (Harrington 1999). Another barrier is the prevailing attitude that management positions require very long hours and cannot be subject to job-sharing. Employees in management positions are often required to work very long hours, effectively barring them from accessing family-friendly working patterns (Chapter Two) and in turn barring employees working reduced hours from accessing these management positions. A core barrier to family-friendly working in positions of responsibility is the prevailing long hours working culture (Sheridan 2004; TUC and Working Families 2004).

The two campaigns addressed these problems only marginally. One of the principles of good practice in work-life balance that were defined in the discussion document *Changing Patterns*, for example, was to 'value employees for their contribution to the business, not their working pattern' (DfEE 2000a p.4). While the problem of Britain's long hours working culture was addressed in campaigns by trade unions, notably the TUC's *It's About Time* campaign, the British Government sent out conflicting signals in this respect by maintaining the opt-out from the 48 hours ceiling in the statutory working time regulations on the one hand, and promoting voluntary solutions on the other hand (DTI et al. 2005). In Germany, the issue of long hours working was not explicitly addressed in the policy debate. However, one of the guide books published by the BMFSFJ specifically addressed the question of family-friendly working in management positions (BMFSFJ 2004e). On the whole, neither campaign explicitly addressed the opportunity costs of flexible working for the employees as the emphasis was firstly on addressing the costs for employers and attempting to offset them by emphasising the benefits in the cost-benefit calculations in order to construct a business-case. For the sake of persuasiveness, the positive scenario of a win-win situation was painted, in which there was no place for a critical evaluation of possible negative side effects of employee-oriented flexible working.

The empowering potential of information campaigns

Overall, the British and German approaches shared many similarities in their use of information instruments to promote family-friendly working time arrangements. Both campaigns aimed for more widespread availability of family-friendly arrangements by motivating employers to provide. The strategy pursued in both cases was to convince employers of the business-case for work-life balance and family-friendly working, which was constructed as a 'win-win, or even 'win-win-win' scenario, in which not only employees, but employers and society as a whole would benefit. Both governments sought allies in the business community who could credibly communicate this message to employers. Similar was also the use of communication tools such as web information portals, information brochures, guidebooks and consultancy services as well as seminars and conferences. Information, advice, and know-how were targeted primarily at employers and only to a marginal degree at employees themselves or their representatives. Similar incentives for employers were provided through competitions and certificates promising a competitive edge and good public relations publicity. The impulse for provision was expected from the employer who was to be encouraged to voluntarily improve the work-life balance of employees, or in Germany, the family-friendliness of the work environment.

In spite of the many similarities, a number of cross-national differences in policy design were revealed in the policy discussion. For instance, the Work-Life Balance Campaign covered all employees, going explicitly beyond the family-friendly provisions which were the focus of the Alliance for the Family. The two approaches further differed in the choice of alliance partners. With Employers for Work-Life Balance, Margaret Hodge chose to cooperate with a group of best practice employers whereas the German Family Minister sought the cooperation of the central business and employer associations, trade unions and social foundations, and academics as well as individual employers. Both campaigns relied on the business-case for work-life balance and family-friendly working arrangements but chose different strategies of demonstrating it. In the British case, the business-case was communicated through employer testimonials and business-case studies, whereas the German approach relied on research findings calculating the return on investment in family-friendly measures. The British approach emphasised further the micro-economic benefits to the individual

employer whereas the emphasis in Germany was laid on the macro-economic benefits for the German economy overall. To the degree that information and know-how were addressed at employees, communication in Britain addressed employees directly whereas in Germany information was provided to works councils and trade unionists disseminating best practice in collective and works agreements.

In terms of their relative empowering potential, both information campaigns fared poorly when analysed against the five Empowerment Criteria. The low empowering potential was accentuated by the fact that both campaigns were indirectly targeted, targeting employers via intermediary actors. Intermediary actors have a dual role in the transportation of information: they can act as multipliers through which the targeting of communication becomes more efficient and spreads more widely. But they can also act as 'veto players' (Tsebelis 2002), blocking communication or reducing both outreach and visibility of information. Coverage and targeting are inter-dependent. Intermediary actors are more likely to act as multipliers, not veto-players, if their constituents are beneficiaries of a policy. Nevertheless, indirectly targeted information instruments are less likely to reach those intended to benefit from them than directly targeted ones. Imprecise targeting can affect coverage in so far that by relying on intermediary actors to channel information, government has less control over whether a policy measure reaches those intended. Thus, although the beneficiaries of the campaigns are widely defined, how many of them are likely to benefit from the campaigns is uncertain. This can undermine the principally empowering effect of a universal, inclusive approach of the British Work-Life Balance Campaign which promoted flexible working time arrangements for everyone, irrespective of care status. In this respect its empowering potential was higher than the German campaign, which framed flexibility more firmly by family-related time needs.

Due to the focus on voluntary provision by employers, the balance of control over working time flexibility was not intended to shift in the employees' favour. Employees continue to depend on the good will of their employers. Employees were only marginally provided with relevant information and know-how to assist them in negotiating change with their employer. The opportunity costs associated with flexible working patterns were not explicitly addressed as both campaigns focused on emphasising the benefits of flexible working. The main empowerment trade-off in both

campaigns is that while in principle flexibility is advocated widely for all working parents needing it parents are not empowered to negotiate their time needs with employers. The uncertain benefit of increased voluntary provision by persuaded employers, which might benefit some working parents, is very imprecisely targeted. The power balance between employees and employers is not shifted by government intervention.

Having explored cross-national similarities and variation at the level of policy design, the remainder of this chapter will consider why the design of the German and British campaigns differed in the ways identified.

II. Explaining variation in policy design

Both information campaigns aimed to facilitate the reconciliation of work and family responsibilities by promoting flexible working arrangements. The fact that the British campaign, which was originally planned as a family-friendly employment campaign (Home Office 1998), was eventually called the Work-Life Balance Campaign was due to the preference of Employers for Work-Life Balance, whose own business policy did not differentiate by care status (Int. UK 09, 11/01/2006; Int. UK 06, 14/12/2005; Int. UK 16, 04/10/2006). Whereas the UK Government's priority target group were individuals who needed help balancing work and care responsibilities (Home Office 1998), employers were motivated by the business-case for work-life balance, which was not restricted to work-family reconciliation (DfEE 2000a). Selective provision by care status could even cause resentment among employees without care responsibilities, leading to undesired tensions in the workforce (Int. UK 07, 15/12/2005). An inclusive policy accommodating the diverse reasons for which employees wish to work flexibly was what many of these best practice organisations were practicing (Int. UK 16, 04/10/2006). The question of terminology represented a key issue in the negotiations of the terms of cooperation between Government and the employer group. It is a clear example of policy makers accommodating interest group demands in a relationship of inter-dependence. In order not to jeopardize the alliance, policy makers gave in to employer preferences regarding coverage.

In Germany, coverage on the basis of care status was not a point of debate between the Government and interest groups. Rather, participation in the alliance was very much motivated by pronatalist objectives as family-friendliness was conceptualised as a solution to the demographic problem of falling birth rates and its anticipated economic implications. Due to the invoked socio-economic implications of demographic change, family-friendliness became an issue for the alliance partners, who were in the majority presidents of national interest groups rather than individual employers. They were concerned with macro-economic trends rather than workplace dynamics. In Germany, therefore, the campaign was framed by pronatalist concerns which focused coverage on the family, rather than 'everyone'. A central purpose of the alliance was to promote a climate in which the decision to have children would be encouraged by the knowledge that childcare and employment could be successfully combined (BMFSFJ

and Bertelsmann Stiftung 2003). Variation in coverage can be explained by the different policy preferences by the different interest groups with which the two governments co-operated. This leads to the question of what led to the different choices of alliance partners in the first place?

Why did German policy makers mobilise the social partners while British policy makers sought to cooperate with a group of individual organisations rather than their representative bodies? One possible explanation that immediately springs to mind is that this could be due to the different institutional set ups characterising the German and British employment relations systems (Chapter Two). In Germany, industrial relations are still more centralised than in the UK with employer organisations retaining a higher membership and a more influential position in collective bargaining than their British counterparts, who have gradually lost influence as collective bargaining is increasingly occurring in a decentralised way at the workplace level (Zagelmeyer 2004). Against this background, it appears plausible in the British context to target individual employers rather than employer organisations. Nevertheless, key employer and business organisations in the United Kingdom, such as the Confederation of British Industry or the Institute of Directors, represent influential voices on business matters which could have been powerful communication channels to promote work-life balance to the business community. They were not however mobilised to this purpose by policy makers. In the same vein, it was not an obvious choice to mobilise the central business organisations in Germany to promote family-friendliness as family matters were hitherto not an issue that employer and business organisations were concerned with. If anything, following the hostile exchange on equal opportunities in previous years, relations between the BMFSFJ and employer and business groups were at a low point and cooperation seemed unlikely (Int. DE 10, 12/07/2006). In this context, the Family Ministry's approach to mobilise the support of these actors was against the odds. The strategy pursued was to attempt to gain their support precisely because they were not supporting the cause so far (Int. DE14, 28/09/2006).

In neither Britain nor Germany did the government departments in charge of developing the campaigns have long-established, institutionalised working ties with industry which would make cooperation plausible. The Work-Life Balance Campaign

in the UK was originally rooted in the childcare section of the DfEE rather than in the DTI. In Germany, the Alliance for the Family was initiated by the BMFSFJ rather than the Federal Ministry of Labour or the Federal Ministry of the Economy, which entertained close working ties with industry. Given historical ties with interest groups, therefore, cooperation with employer and industry associations was not an obvious choice. In Germany, however, the approach to form tripartite alliances to address socio-economic problems jointly with the social partners was pursued in other policy fields, notably in employment and training, which provided an institutional template. The 'Red-Green' Government had placed high hopes in the Alliance for Jobs in the late 1990s to address unemployment and training issues with the social partners. Renate Schmidt initially wanted to promote family policy through the Alliance for Jobs but then, when this tripartite body failed, she went on to set up a separate body to specifically promote family-friendliness (see Chapter Five). The central business and employer organisations which represented an influential national voice with economic authority represented important actors whose cooperation was needed to gain the desired attention and for family policy to be understood as an issue of central socio-economic and political importance. The targeting of these organisational actors, then, can be interpreted as strategic alliance-seeking.

The UK's approach was to mobilise existing expertise, especially existing good practice, and to disseminate those examples to guide the way for other employers. Employer organisations who had to represent the diverse interests of their membership were not considered as apt for this purpose as best practice employers who were wholeheartedly promoting the benefits of work-life balance experienced in their organisations, unhampered by the need to balance between different membership views (Int. UK 16, 04/10/2006). A facilitating factor was that policy makers at the DfEE already had working ties with some of the employers who were to form Employers for Work-Life Balance. Organised in the group *Employers for Childcare*, they had lobbied the Government to provide public childcare services (Int. UK 16, 04/10/2006). Some of these organisations proactively approached policy makers on the issue of family-friendly employment as the Government announced that it would develop policy in this area (Int. UK 02, 21/09/2005). Cooperation was in the interest of both sides, as there was a relationship of inter-dependence between policy makers and employers. Employers had an interest to participate in the government campaign as it

allowed them to influence the direction government policy was taking. If employers were seen to promote change voluntarily, the introduction of regulation could maybe be prevented (Int. UK 02, 21/09/2005). Government in turn was interested in cooperating with employers as these contributed expertise, credibility and resources to the policy initiative (Int. UK 02, 21/09/2005; Int. UK 16, 04/10/2006).

Policy makers in the two countries sought different resources from their alliance partners. The British campaign, which focused on best practice promotion, sought to cooperate with best practice employers who would lead by example, and whose own experience with work-life balance policies could be used to provide guidance to other employers. Direct employer-to-employer communication was perceived to be a more credible source of advice than if it was coming from the Government (Int. UK 02, 21/09/2005; Int. UK 16, 04/10/2006). Employers for Work-Life Balance provided the case studies based on their own experience. The dissemination of 'best practice' was the core policy objective of the campaign of which the underlying rationale is to show what others have done well. The publication of case studies was in line with the principle of best practice dissemination. In contrast, the German approach followed the rationale of making the issue of family-friendliness important, pushing it onto the agenda and moving it from the margin of socio-political debate to its core (Int. DE 09, 12/07/2006). The resource which alliance partners could offer in the German context was their high societal profile, which would give a hitherto marginal policy issue a high socio-political and *economic* profile. The purpose of the high-profile impulse group of the Alliance for the Family was primarily promotional: to promote family-friendliness at the national level and to their respective memberships.

These different rationales are rooted in the relative functions of the two campaigns within the wider policy agendas. The Work-Life Balance Campaign emerged out of a subsection of the National Childcare Strategy which pointed to the role employers could play in facilitating work-family reconciliation. It was very much conceptualised as a policy tool that was complementing parallel policy developments, notably the expansion of childcare services and maternity rights with the clear purpose of promoting best practice in the workplace. The formation of the Alliance for the Family on the other hand stands for a profound reconceptualisation of family policy in Germany signalling a new policy approach under departmental leadership following

the general elections in 2002. Family policy was henceforth constructed as a 'hard' economic issue and the alliance with economic actors formed a central component of this new approach. Much of the discourse revolved around firmly establishing the economic argumentation in the discourse on family policy following the new credo: *Familie bringt Gewinn* (the family brings profit). Knowledge production therefore was intended to establish that investments in the family, notably in a comprehensive childcare infrastructure, would yield sound economic returns (Spieß 2002; Prognos AG 2003; Rürup and Gruescu 2003; Bertram et al. 2005; Prognos AG 2005). A key pillar on which the new approach rested was the objective to address the implications of demographic change through pronatalist efforts. The Alliance for the Family therefore had a stronger political dimension than the British campaign with the purpose of constructing family policy as economic policy of which family-friendly employment practices are one pillar complemented by childcare services and financial transfers. Let us now turn to differences in the way employee-oriented flexibility was promoted.

The emphasis of both campaigns was laid on attempting to persuade employers that family-friendliness or work-life balance was in their interest. An important cognitive influence on policy design was the underlying idea that business is not altruistic, and that in order to persuade an employer to be family-friendly one needs to speak business language, create a business-case. This approach is based on the rationalist assumption that employers are self-interested and that in order to maximise the likelihood of compliance, their self-interest rather than their corporate social responsibility needed to be appealed to. This is a perspective policy makers in both countries embraced. Variation in emphasis was that the British and German approaches placed different emphases regarding the benefits of work-life balance and family-friendly working practices. In Britain micro-economic benefits were emphasised whereas discourse in Germany focused heavily on the macro-economic benefits of family-friendliness. This difference can be well explained by considering the location of the respective campaigns within the wider policy context as well as the differences in government-interest group relations.

In the UK, the Work-Life Balance Campaign aimed to communicate the benefits of work-life balance to employers. To this purpose, the Government allied with a group of individual employers to share best practice. Both policy objective and available

resources revolve around the micro-economic benefits concerning the individual employer. There were disseminated through employer case studies and testimonials. In Germany, the strategy pursued by the BMFSFJ was to construct family-friendliness as an economic policy issue and to convince hitherto unconvinced economic actors, notably the presidents of the national employer and business organisations and trade unions that this was an issue relevant to them (Int. DE 09, 12/07/2006). The economic importance of family policy had to be both justified politically and to be persuasively communicated to alliance partners. The driving principle was to establish family-friendliness as a hard economic issue. Objective scientific research served this objective better than employer testimonials as policy makers aimed to scientifically back up the economic argumentation they constructed. Cost-benefit calculations were used (Prognos AG 2003) (BMFSFJ 2004d). The political rather than problem-oriented strategy explains the focus on aspects of socio-political and macro-economic relevance, notably the consequences of demographic change on the national social security systems, the labour market, national competitiveness and growth and with less argumentative emphasis on the micro-economic relevance for individual organisations (Prognos AG 2005; BMFSFJ 2006a).

Variation between the two campaigns is influenced by a confluence of factors. Two influences have emerged as particularly useful explanatory factors: the relative instrumental purpose of the campaigns within the two governments' wider policy agendas on the one hand, and the different constellations of alliances formed with societal actors, which led to different emphases in policy design. In contrast to regulation based instruments discussed in Chapter Six, in the case of information campaigns, employer groups did not object, in the British case even favour, a wide coverage as no enforceable obligations to employers are associated with information campaigns. The choice of instrument type here per definition safeguards managerial control as change is subject to voluntary action. The key trade-off between a wide breadth of coverage and employee control over working time flexibility can be associated with the limits of empowering potential associated with information based instruments.

Conclusions

In their attempt to stimulate the voluntary provision of employee-oriented flexible working time arrangements, both governments pursued a strategy of trying to convince employers that work-life balance, or family-friendliness, was in their very own business interest. The explanations of why this was so differed in detail, but in both cases constructed a positive business-case, a 'win-win' scenario. Both campaigns aimed to change employer attitudes and behaviour, which, as many scholars in the field argue is a key condition for change (Rapoport et al. 2002). Employee demand was assumed to be a given. This assumption led policy makers to gloss over the cognitive barriers to requesting and using flexible working time options (Kodz et al. 2002; Sheridan 2004). Opportunity costs to flexible working were neither acknowledged (everyone benefits!) nor for that matter addressed by the campaigns. If policy makers were aware of the opportunity costs and negative implications of family-friendly working patterns on equal opportunities between women and men (gender role differences remaining unchallenged) then these were omitted for the sake of constructing a 'feel good' message.

The power of information based instruments relies on the ability to appeal and persuade as policy makers cannot take recourse to state authority and sanctions to achieve behaviour change. In a non-authoritative governing approach, interest group cooperation has to be won voluntarily, consensus has to be sought. Thus, the nature of government-interest group relations determines which issues are taken up, and which ones are deliberately contained as they could threaten consensus and the willingness of employers to cooperate. Both governments sought the cooperation of businesses as their resources and direct communication channels to employers were instrumental in attaining the campaign's objectives. This created a dependence on alliance partners which provided these with considerable influence on policy design. This influence was not only expressed through successful bargaining (as illustrated by the terminology question in the British case) but from the outset shaped the overall orientation of policy design.

The choice of alliance partners was guided by the overarching policy goals pursued by policy makers in the first place and an important source of variation was that the two

campaigns had different instrumental functions in the wider policy context. The Work-Life Balance Campaign had the concrete purpose of promoting best practice in the workplace, whereas the Alliance for the Family constituted a core element in the overall conception of family policy from 2002 onwards, which emphasised a societal division of labour moving away from a statist approach to family support. In comparison, thus, the Work-Life Balance Campaign had a relatively more limited purpose of implementing the policy goal of best practice promotion than the Alliance for the Family, which had the function of establishing a new economically oriented family policy agenda.

The comparison of the two in-depth case studies of regulatory instruments in Chapter Six and information-based instruments in this chapter has confirmed the argument made by theorists of instrument choice that different instrument categories have different characteristics, in this case ‘inherent’ empowerment potentials, which are determined by the government resources applied. For instance, regulation can provide sanctions to improve enforceability, whereas information instruments cannot enforce compliance but rely on the uncertain effects of persuasion (Vedung 2003). Regulation can be more precisely targeted at those intended to benefit from the policy than information-based instruments which are more diffused (government consultancy services cannot benefit every employer, employment regulations can). However, the in-depth exploration of both regulation and information-based instruments has shown most of all that *intra*-instrument variation in policy design can be as significant as *inter*-instrument variation (Woodside 1986).

Chapters Four and Five provided chronological accounts of the development of family-friendly working time policy in Germany and the UK placing the choice of policy instruments within the wider context of reconciliation policies and the government agendas these served. Chapters Six and Seven chose policy case-studies from regulation and information-based instruments for detailed comparison of policy design, highlighting similarities and differences in the national approaches and exploring the factors behind them. As we now turn to the concluding discussion, let us once again take a step back to holistically consider the British and German policy approaches.

8. Conclusions and implications for research and policy

This thesis explored the developing field of family-friendly working time policy in comparative perspective. It set out to answer the research question of what policy strategies the British and German governments pursued to improve access to family-friendly working time arrangements, in what ways these differed, and why. Formally strong male breadwinner regimes in which female employment was not actively encouraged or facilitated through government policy, Germany and the United Kingdom provided useful case studies to analyse the development of government strategies to improve access to family-friendly working time arrangements.

The first *exploratory* component of the research question investigated what policy strategies were developed in each country to improve access to family-friendly working time arrangements over time. Policy strategies were analysed in terms of the policy choices between best practice promotion, financial incentives, and statutory working time regulation. The analysis further contextualised the development of family-friendly working time policy within the wider work-family reconciliation agenda, exploring which work-family arrangements were facilitated by government policy. Given the contested nature of working time flexibility between the time needs of employers and working parents, the second *comparative* component of the research question focused on the extent to which the policy strategies were designed to empower working mothers and fathers to negotiate the time flexibility they need, and how they differed. Finally, the third *explanatory* component of the research question sought to find explanations for the identified differences between the British and German policy strategies.

This concluding discussion summarises the key findings in answer to the three components of the research question, reflects on the conceptual approach of the thesis, and discusses the implications for further research and policy.

Summary and key findings

(1) What policy strategies were pursued?

The German and British governments both pursued a dual strategy of best practice promotion and statutory regulation to improve access to family-friendly working time arrangements. Neither of the two governments however employed economic incentives to encourage the provision of family-friendly working time arrangements.

With the Work-Life Balance Campaign and the Alliance for the Family, both governments initiated high profile information campaigns involving a number of different non-legislative instruments aimed at raising awareness of the benefits of family-friendly flexible working arrangements, sensitise and persuade employers of their importance, and provide guidance on their implementation. Both governments further introduced individual legal rights to request flexible working time arrangements, and an obligation on employers to accommodate such requests if possible. By introducing statutory regulations in this policy field, they signalled their commitment to support working parents and placed their approach in contrast to the information based and low profile interventions of the Conservative/Liberal governments in the 1980s and 1990s.

The chronological analysis of the development of national policy strategies revealed opposite trajectories in instrument choice. While the British policy development gradually built up from best practice promotion to statutory regulation between 1997 and 2005, the German policy development moved from the introduction of statutory reforms during the first years in office to best practice promotion from 2001 onwards via a radical shift in policy approach. While the governing style of the British Government was from the outset non-confrontational and consensus-seeking, the German approach was authoritative during the first years in office. This governing style strained government-business relations through a number of interventions in the employment relationship, peaking in the conflict around the equal opportunities legislation for the private sector (Alemann and Sielschott 2007). Following the change in leadership at the BMFSFJ in 2002, the German approach to government-stakeholder relations became strongly oriented towards consensual cooperation with societal actors and with business leaders in particular.

Chapters Four and Five placed the development of family-friendly working time policy within the wider context of reconciliation policy reforms, including leave policies, childcare services, and financial support through the tax and benefit system to explore the policy orientations underlying the British and German approaches. If accessible to both parents, family-friendly working time arrangements can facilitate gender equitable dual-earner/dual-carer family arrangements if these are also supported by care services and financial support. In order to examine the potential implications of family-friendly working time policy for gender time relations, the wider reconciliation policy packages developed by New Labour and the 'Red-Green' Government were considered to address the following question.

What work-family arrangements were facilitated by family-friendly working time policy?

In both Germany and the United Kingdom, entitlements to flexible and reduced working hours were explicitly gender neutral and thus accessible by both mothers and fathers. However, the lack of financial compensation for a reduction in working hours implicitly reinforced the one-and-a-half-earner model prevalent among parents in both countries (Fagan et al. 2001). Although the opportunity costs associated with part-time employment were partially addressed by regulations against less favourable treatment of part-time workers, the financial loss associated with a reduction in working hours continues to represent a significant barrier to take-up, particularly by men, who still bear the primary breadwinning responsibility in the majority of German and British families (Vaskovics and Rost 1999).

Despite this general limitation, the German policy reforms were found more promoting of a gender equitable division of family care than British reforms. Departing from a policy legacy of long and inflexible family leave entitlements which parents could take in turns, the 2001 parental leave reform individualised the leave entitlement and enabled parents to simultaneously share family care by both reducing their working hours to between 15 and 30 hours (Bothfeld 2005). Although the parental leave reform signalled a move from the male breadwinner/family carer model by removing regulatory barriers to equal access to 'time to care' for both parents, dual-carer arrangements were not substantially encouraged as the Child Raising Benefit was paid per child rather than being an individual entitlement to the parent. The introduction of an earnings-related benefit to parents (*Elterngeld*) in Germany in 2007 marks an

important improvement in financial support, particularly as the benefit can be used to top-up part-time earnings. However, similar to the Child Raising Benefit which it has come to replace, the *Elterngeld* is only paid to one parent at a time, which provides an incentive for sequential rather than simultaneous sharing of childcare where both parents reduce their working hours at the same time (BMFSFJ 2007a).

British reconciliation policies, in contrast, were explicitly gender-biased. Although men received for the first time statutory entitlements to family leave through the introduction of 13 weeks unpaid parental leave and two weeks paid paternity leave (Kilkey 2006), the simultaneous extensions to Statutory Maternity Pay to a total of six months by 2004 revealed a strong gender bias in resource allocation (Lewis and Campbell 2007). As the British leave entitlements have to be taken on a full-time basis, policy incentives reinforce a strict gender division of labour within the first months of parenthood. The strong ‘time to care’ orientation during the child’s first year was justified with reference to child development research advocating the value of continuous care (DTI 2005a). For parents of older children, however, dual-earner/externalised care arrangements were facilitated through financial support towards the purchase of childcare but not for parental care in the home. Financial support backing up ‘time to care’ remains limited to full-time leave. The opportunity costs associated with working time reductions remain an important access barrier that has not been addressed.

When considering how family-friendly working time policy was nested within the wider reconciliation policy packages developed by the New Labour and ‘Red-Green’ governments since the late 1990s, the policy emphasis over time increasingly shifted towards improving the childcare infrastructure as a key instrument addressing employment barriers. While family-friendly working time arrangements and childcare provision are complementary resources for parental employment, comparatively more resources were allocated to the externalisation of childcare than to family-friendly working time policy. The improvement of the childcare infrastructure was advanced through the National Childcare Strategies 1998 and 2004 in the UK and the Day Care Expansion Act 2005 in Germany focusing on the provision of early education places for three and four-year-olds (Cm 3959 1998; HM Treasury et al. 2004). In Germany, where part-time provision was already statutorily regulated from age three, policy reforms under the ‘Red-Green’ Government focused on provision for the under three-

year-olds. Both governments increasingly emphasised the *time-providing function* of childcare providers by exploring avenues to extend opening hours and enable ‘wrap around care’ (HM Treasury et al. 2004). The externalisation of child care was backed up by financial transfers to subsidise the purchase of childcare services making ‘time to work’ more affordable through the introduction of targeted tax benefits and allowances to support parents with the costs of purchased childcare. This trend has continued since the 2005 elections. In Germany, financial support towards the purchase of childcare has increased significantly. The tax allowance to working parents towards the costs of purchased childcare was raised from 1,500 to 4,000 Euros p.a. in 2006 to cover up to two thirds of childcare costs for children under 15 (BMFSFJ 2007b). In the UK, the Child Care Act passed in 2006 started to implement the Ten Year Strategy.

(2) What were the differences in the empowering potential to working mothers and fathers?

At the level of policy choice, the British and German policy strategies were similarly empowering as both governments pursued a dual strategy of information campaigns and individual employment rights. Overall, the German policy package was more comprehensive than the British as it included measures to strengthen works councils in their negotiation of family-friendly policies with the employer. Further, the voluntary agreement with business and employer associations to promote equal opportunities for women and men in employment exerted additional pressure on employer organisations to promote family-friendly employment practices. The two in-depth case studies of individual employment rights and information campaigns in Chapters Six and Seven explored cross-national variation in the empowering potential of the British and German policy strategies at the level of policy design.

The introduction of employment rights represented an empowering shift from the information-based policy strategies pursued by the Conservative/Liberal governments in the early to mid-1990s, when family-friendly policies by employers were ideationally supported through brochures and conferences but not regulated. The detailed analysis found, however, that although at the level of instrument choice the introduction of legislation was empowering to employees, the empowering potential of the individual employment rights was weakened through a number of trade-offs

between employee and employer interests at the level of policy design. Advances to the advantage of working parents in one area of policy design were met by protections of managerial freedom in another area. Interestingly, the two most prominent empowerment trade-offs were found to be inversed in Germany and the United Kingdom.

The first trade-off related to the breadth of coverage (Empowerment Criterion 1). In Germany, the two employment rights under the BErzGG and the TzBfG jointly provided universal coverage on the basis of care status whereas the British Right to Request was limited to parents of children under the age of six. However, the stronger empowering potential of the German rights was weakened by the introduction of a small business exemption through which parents working for small employers with less than 16 employees were automatically excluded from the entitlement.

The second trade-off related to substantive flexibility versus procedural control (Empowerment Criterion 3) and enforceability of employee working time preferences (Empowerment Criterion 4). The wider scope of working time flexibility provided by the Right to Request was offset by a lower degree of procedural power attributed to employees. In other words, while there were no limits to the type of flexible working arrangements that could be requested, British employees had no statutory claim to obtaining these, leaving UK parents with a ‘toothless’ entitlement (Kilpatrick and Freedland 2004). In Germany, greater restrictions on managerial freedom were balanced out by the lower scope for flexibility offered to working parents as both employment rights were limited to working time reduction.

The comparative analysis of employment rights highlighted that regulation, which can significantly affect the power balance between employers and employees, does not necessarily fulfil this potential. In both cases, concessions were made to *Managerial Freedom* advocates at the level of policy design and these were particularly pronounced in the UK. In comparison to regulations, information campaigns from the outset have a lower potential to shift the power balance between employers and employees. In addition, both campaigns analysed in Chapter Seven were targeted predominantly at employers, leaving the benefit to working parents uncertain, particularly as provision remained subject to the good will of employers. They did not address the concern of access inequality through variable provision across workplaces.

The analysis of employer-directed information campaigns highlighted the low empowering potential of indirectly targeted information instruments when analysed in terms of the five Empowerment Criteria. Although coverage and the scope of flexibility were not treated selectively as in the case of employment rights, this potential advantage to employees was offset by the lack of employee control over working time flexibility. Provision of family-friendly working time flexibility was subject to employer agreement and could not be enforced. While overall provision might increase through higher awareness levels among employers and more favourable attitudes, it is unlikely that it will reach all who need it as the business-case for family-friendly working time arrangements varies by the level of organisational exposure and employee characteristics (see Chapter Two). Although the design of the Work-Life Balance Campaign and the Alliance for the Family was shown to differ significantly, both campaigns fared similarly poorly when compared in terms of employee empowerment. Placing information campaigns in comparison to employment rights highlighted the weaker empowering potential of information-based instruments compared to regulation on the one hand, but also showed that both campaigns were biased towards encouraging voluntary, unilateral provision by employers.

(3) Why did the British and German policy strategies differ?

The final research challenge was to find explanations for the variations in the British and German policy strategies. Actors involved in the policy making process were either favourable to increase employee empowerment or to protect managerial freedom. These different orientations towards policy choice and design were shaped by their wider 'normative and cognitive frames' (Surel 2000). These were influenced by the institutional setting within which actors operated, such as interest groups and government departments, and by the nationally specific policy context of past policy choices and overarching policy goals. Evidence was found in favour of the propositions advanced by ideational approaches to policy making that actors are more likely to select policy instruments and attributes which are congruent with their wider normative and cognitive frames (Surel 2000), and by interaction-oriented approaches that policy makers are more likely to take into account the policy preferences of interest groups when they are in an inter-dependent relationship with them (Rhodes 1997; Bressers and O'Toole 1998; Kooiman 2003).

The different policy contexts within which family-friendly working time policy strategies in Germany and the United Kingdom were embedded represented a valuable explanatory factor for differences in the policy trajectories over time and cross-national differences at the level of policy design. Both the different policy legacies inherited by the incoming governments and the different overarching policy goals they were pursuing helped to account for differences in the choices made. In the UK, the legacy of relative non-interventionism in the organisation of working time and parental reconciliation choices meant that New Labour had to gradually build up business acceptance of government intervention in support of working parents, moving gradually from less to more empowering policy interventions, very much in line with the observations by Doern and Phidd (1983) in the liberal Canadian context. In Germany, where past governments had already regulated employment relations, policy reforms came in the form of amendments to already existing regulations. Policy change resulted from dissatisfaction with previous policy choices (Palier 2005). At the level of policy design, existing regulations influenced choices as policy makers in both Germany and the United Kingdom attempted to integrate new regulations with existing law to avoid unnecessary complexity (see Chapter Six). In the case of the small business exemption, for example, past policy choices influenced policy design in opposite ways, leading to a small business exemption in Germany, and the decision against it in the UK (Work and Parents Taskforce 2001; Bothfeld 2005).

While both governments aimed to improve access to family-friendly working time arrangements in order to facilitate the reconciliation of work and family life, their motivations were guided by different *overarching policy goals*. In the UK, the ability to reconcile work and family life was considered instrumental in achieving economic independence and poverty prevention, particularly as New Labour committed to eliminating child poverty by 2020 (HM Treasury 2004a). Labour market inclusion of parents was a central policy goal within the wider welfare reform agenda (Home Office 1998). In Germany, by contrast, family-friendly working time policy was driven by three different policy goals: firstly, employment creation and protection through the redistribution of work; secondly, gender equality through the facilitation of maternal employment of men's greater share in parenting; and thirdly, encouragement of families to have more children by improving the compatibility of work and family life to address the problems associated with demographic change.

These different policy goals were associated with different emphases in policy orientation. In the UK, where labour market inclusion was of central importance, reconciliation policies were more strongly oriented towards enabling parents to work. The Right to Request accordingly provided a wide scope of flexible working arrangements to suit individual time needs. In Germany, in contrast, both goals of employment creation and gender equality through a greater share of fathers in family care were more strongly oriented towards providing 'time to care' through working time reduction. Although different policy goals were pursued by the two government departments in charge of the BERzGG and the TzBfG, both employment creation and gender equality goals were congruent with employee empowerment to reduce their working hours.

Family-friendly working time policy serves different overarching policy goals. Therefore its development was spread across different policy agendas and government departments. Actors working within government departments were influenced in their policy decisions by the respective institutionalised policy priorities. These influenced policy makers either in favour of employee empowerment or in favour of managerial freedom. Policy makers at the BMFSFJ in Germany, particularly under the leadership of Christine Bergmann (1998-2002), were more strongly in favour of employee empowerment as departmental policy priorities advocated the interests of families and women. The DTI's institutional commitment, in contrast, was to promote economic growth and competitiveness. It therefore placed greater emphasis on managerial freedom. Policy initiatives for working parents that were developed at the DTI were from the outset designed within the parameters of a business-friendly approach. When the Work-Life Balance Campaign transferred from the DfEE to the DTI in 2001, it became more strongly oriented towards employer interests. Managerial freedom in the German context tended to be advocated by the Economy Ministry leading to policy proposals being blocked or amended at a later stage of policy formation through processes of inter-departmental bargaining and negotiations (see Chapters Five and Six; Bothfeld 2005; Alemann and Sielschott 2007). The fact that family-friendly working time policy was developed within differently oriented government departments with regard to employee empowerment and managerial freedom in the two countries appears to have had an influence on policy choices.

Policy makers were expected to be more likely to choose instruments and instrument attributes which were congruent with their wider normative and cognitive frames (Sabatier and Jenkins-Smith 1993; Surel 2000). The analysis of party documents and parliamentary debates found the German Social Democrats to have a more favourable disposition towards government intervention in the labour market to redress market created inequalities by regulation than New Labour, who endorsed the neo-liberal advocacy of minimal and selectively targeted government intervention in the economy, protecting managerial freedom. These orientations were reflected in the way statutory regulation was introduced and designed as the German employment rights constrained managerial freedom more strongly than the Right to Request, which was explicitly designed to be 'light touch'.

A notable example how different actors with different ideas influenced policy choice and design was the radical shift in governing style following the change in leadership at the BMFSFJ, where Renate Schmidt initiated a radically different vision of family policy and the respective roles that government and societal actors should play in promoting family-friendliness. Family policy in general and reconciliation policy in particular, were conceptualised as a societal responsibility, placing more weight on the cooperation of societal actors in implementing government policy.

The establishment of the Alliance for the Family, which implemented this new approach, created a relationship of inter-dependence with stakeholders. The wish to cooperate with business and employer associations to promote more family-friendliness in the world of work influenced the shift from an authoritative, regulatory approach to a consensual governing style that was associated with a shift in instrument choice from regulation to voluntary cooperation and best-practice promotion. Another example for inter-dependent relations with stakeholders was the British Government's aim to work in partnership with Employers for Work-Life Balance. This provided opportunities for the employer group to shape policy design. Thus they were able to negotiate that the campaign should promote work-life balance rather than family-friendly employment, leading to a wider breadth of coverage.

In this respect, the influence of interest groups on policy making was analysed by exploring their opportunities to influence policy design. The success of family-friendly working time policy strongly depends on the cooperation of the actors who control the

negotiation of working time in the employment relations system. Due to the limited capacity of the state to steer the organisation of work in market-based economies, the desire to maximise compliance by employers was shown to have had a favourable influence on the choice of less empowering instruments and instrument attributes in both Germany and the UK.

Demographic change - to return to the opening paragraphs of the thesis – has created opportunities for both more gender equitable family time arrangements and increased working time sovereignty by contributing to push the reconciliation of work and family life onto political agendas. At first sight, family-friendly working time policy in both Germany and the UK represented a leap in employee empowerment compared to earlier policy approaches. Being addressed to both men and women, they seemed supportive of more gender equitable family arrangements. However, this thesis has shown that when analysed in detail, family-friendly working time policy was not as empowering as it first seemed as government policy strategies included a number of compromises between employee empowerment and managerial freedom, which potentially reinforce rather than redress market created access inequalities. Further, the high opportunity costs associated with working time reduction were not systematically addressed by government policy. The lack of adequate financial support, particularly in the UK, constrained the affordability of working time reduction to allocate time to care which did not challenge the established male breadwinner arrangements.

One may argue that family-friendly working time policy is still a ‘young’ policy field. In order to increase employer acceptance, policy makers may start by choosing less empowering instruments first moving gradually up the scale when policies do not engender the desired outcomes (Doern and Phidd 1983). In this case, it might only be a question of time until governments are prepared to subsidise the provision and use of family-friendly working time arrangements financially to improve access (Hood 1983). However, given the contested nature of working time flexibility and the strong conflict potential associated with government interventions in the organisation of work, it seems more probable that they will continue to channel government resources towards more consensual policy alternatives, such as childcare services, for which there is a broader societal consensus. While, as Bonoli has argued, there is a ‘convergence in interests’ between women and employers in support of improved public childcare provision (Bonoli 2005 p.443), interests are *diverging* between parents and employers

when it comes to control over working time. Where governments are seeking to reconcile employer and employee interests, childcare provision - not family-friendly working time regulation – provides a consensual policy solution to the problem of work-family reconciliation. Childcare provision being an ‘employer-friendly’ policy solution provides one possible explanation why policy makers may be more likely to allocate government resources to promote the externalisation of childcare, enabling parents to be flexibly available for work. Government promotion of dual-earner/externalised care arrangements is likely to incur less conflict with employers than the promotion of more gender equitable dual-earner/dual-carer arrangements.

Reflections on the comparative framework

This thesis has applied an empowerment perspective to the study of government interventions in the work/family interface. It took into account the triangle of state-individual, state-employer and employee-employer relations and has thereby helped to understand the interest politics at play, which were motivated by the implications of government policy for the power balance between employees and employers in the employment relationship.

Exploring these dynamics and implications across countries constituted a particular methodological and analytical challenge. In order to be able to systematically compare policy strategies both over time and across countries, the thesis benefited from the literature on policy instruments (Woodside 1986; Howlett and Ramesh 2003; Vedung 2003). The instrument choice approach as applied in this thesis breaks down policy strategies into different levels of choice between instruments and instrument attributes and provides distinct dimensions along which variation can be systematically identified. Five Empowerment Criteria were derived from the literature on working time flexibility and the key themes of concern that have been highlighted by it. They were grounded in the access problematic in order to be able to identify relevant variations along dimensions which are of immediate concern to the study of work-family reconciliation. By breaking down policy measures into smaller components, it was possible to capture complexity while enabling systematic comparisons. Thus it was possible to identify the nature of compromises that were struck between the needs

of parents and those of employers, and to reflect on the potential implications for the power balance between them.

The empowerment perspective has helped to better understand the link between the empowering potential of instrument attributes and the dynamics of the policy process through which certain instruments and instrument attributes are chosen over others. These insights informed the explanatory approach used to explain policy variation. The explanatory framework drew from the policy making literature to explore the influence of the ideas and interests of actors operating within nationally specific institutional settings and policy contexts. The framework merged insights from ideational approaches (Sabatier and Jenkins-Smith 1993; Surel 2000), the interaction-oriented governance literature and historical institutionalism emphasising the role of institutional settings and past policy choices (Immergut 1992; Pierson 2000b; Kooiman 2003). Given the different policy legacies identified in Chapter Two, which implied different starting points for policy development, and the instrumentality of work-family reconciliation to a variety of policy goals, the policy context within which policy choices were made was given particular attention in cross-national comparison.

Sabatier and Jenkins-Smith's (1993) concept of advocacy coalitions between actors sharing a particular belief system was useful to distinguish between *Employee-Empowerment* and *Managerial Freedom* advocates across political parties, government departments and interest groups. This conceptualisation was a helpful device to move beyond the structural divisions of government institutions, interest groups, and political parties but instead to focus on the structuring effect of the empowering potential associated with certain instruments and instrument attributes. Thus change in policy strategies over time could be explained in a context where variables such as political parties in power and government departments in charge of policy development were stable.

Compromises in the empowering potential were often the result of bargaining and negotiation between actors belonging to different advocacy groups. Particularly in non-regulatory policy the influence of societal actors on policy design through inter-dependent relations in government-interest group alliances was found. Insights from the interaction-oriented literature provided a useful complement to the ideational perspective as it drew attention to the nature of relationships between different

government and societal actors (Rhodes 1997; Bressers and O'Toole 1998; Kooiman 2003).

While the ideas and interests of actors were an important factor, the explanation of cross-national variation between the approaches was much facilitated by taking the nationally specific policy contexts into account within which policy makers operated. The historical institutionalist approach of placing policy developments within their temporal context, both in terms of the different policy legacies inherited by New Labour and the 'Red-Green' Coalition governments, and the sequential policy choices in their policy strategies, advanced understanding of how policy strategies were developed over time. This approach highlighted temporally important events such as general elections, which involved staff turnover and agenda changes, creating new opportunities for actors and ideas to shape policy strategies (Kingdon 1995; Sabatier 1998).

The empowerment perspective developed in this thesis contributes to the study of the work/family interface as it enables researchers to critically examine the empowerment trade-offs which are more or less implicit in government policy aimed at supporting working parents in the workplace. By being sensitive to the power relations between employees and employers and the polarised interests around the control over working time flexibility, the empowerment framework has helped to better understand bargaining dynamics and tensions between interest groups and policy makers in the policy process.

In both the British and German policy strategies these tensions produced only moderately empowering policy advances which stayed behind their potential due to the compromises that were made. While the scope of this thesis was limited to analysing government policies for working parents, the findings of the research have wider relevance for the study of temporal relations in employment and between the work and family spheres. The last section of this concluding discussion therefore raises a number of issues for further research and policy makers that have emerged from the research.

Implications for further research and policy

At least three possible directions for future research have emerged from the findings of this thesis. One research project would be to expand the focus from working parents to consider differences in government support for different groups of workers with care responsibilities. The empowerment framework developed in this thesis could be used for the systematic comparison of government support towards different groups of workers within the same country. Of particular interest would be a comparison between parents and carers of adults. In both Germany and the United Kingdom, government support is still biased towards supporting parents in reconciling care with employment. However, in the context of demographic change, rising pension ages and growing efforts to include older workers in the labour market, work-family reconciliation problems of those caring for the elderly are receiving increasing attention by policy makers as the recent extension of the Right to Request to carers of adults in the UK illustrates.

A second research direction is to address the question of outcomes. Having identified the nature of empowerment trade-offs between the British and German policy approaches, an important question that arises from the research is the relative impact of these trade-offs on working parents. For instance, are narrow eligibility criteria by employee status, as in the UK, or by employer size, as in Germany of more concern regarding parental access to family-friendly working time arrangements in the workplace?

A third research direction would be to apply the empowerment framework developed in this thesis to analyse government strategies in other countries, thus further increasing our understanding of how governments have been dealing with the challenge of mediating between the temporal needs of employers and families. Interesting further case studies would be the Netherlands and Sweden where statutory rights to flexible working have been implemented (Gornick and Meyers 2003; Fagan et al. 2006).

In both Germany and the United Kingdom recent research on the prevalence of flexible working time arrangements in workplaces indicates an increase in overall provision. However, variation across and within workplaces persists (Flüter-Hoffmann and Seyda

2006; Hayward et al. 2007; Hooker et al. 2007). While the overall increase in provision levels is to be welcome, attention must be focused upon how existing access inequalities might be further reduced to improve equality of access. In this respect, it is important to reflect on the danger that selective government policy can create inequities of access between different groups of employees (Fagan et al. 2006).

An important question which dominates policy debates on the family-friendly organisation of working time remains what policy strategy would be most promising to achieve widespread change in working practices. While employer-oriented information and persuasion campaigns in this research were categorised as less empowering than regulation, it must be stressed that this does not mean that they are not beneficial to working parents. Employer supportiveness, which is needed to foster constructive and consensual working time arrangements in the workplace, will more likely be gained through voluntary cooperation rather than coerced compliance. Many governments are reluctant to regulate the organisation of working time (OECD 2007). Even with non-binding, voluntary policy approaches, the empowering potential can be better exploited by targeting policy directly at employees, works councils and trade unions as well as employers. Attitudes on both sides need to change to facilitate more family-supportive workplace cultures (Fagan et al. 2006). One of the findings of the research was that government policy was biased towards encouraging employers to change. Government policy could more explicitly promote awareness of the benefits of family-friendly working time arrangements and provide guidance and support on how these can be effectively negotiated with employers.

The research has highlighted the importance of employer cooperation in this policy field and the dilemma of finding policy solutions which strike a balance between employee empowerment and managerial freedom. One concern that has been raised in this thesis is that the reliance on a win-win scenario of family-friendly working time arrangements which was depicted in both information campaigns bears the risk for policy makers of becoming trapped within a consensual policy style. This might lead to self-censorship of asking uncomfortable questions on how family-friendly flexible working arrangements offered by employers really are. Survey research commissioned to evaluate the spread of family-friendly working, such as the German industry-led family-friendly monitors (Flüter-Hoffmann and Solbrig 2003; Flüter-Hoffmann and Seyda 2006) may overestimate provision levels by counting flexible arrangements

which are not in practice oriented at employee needs. Critical evaluation of the degree of actual time sovereignty by employees is needed to be able to grasp what barriers to a more family-friendly working time organisation are remaining.

Neither Germany nor the UK made use of economic incentives to encourage the provision of family-friendly working time arrangements. Tax allowances for employers or public subsidies for the introduction of more employee-oriented working time arrangements may create a business-case for employers who fear the additional administrative costs associated with flexible working. Economic incentives could especially help small employers. Financial benefits alleviating the financial loss associated with care-related working time reductions could create financial incentives for men to share more equally in family care. The new *Elterngeld* in Germany represents a step in this direction. Similar reforms in the UK would encourage more gender equitable work-family arrangements.

In the light of recent policy developments which emphasise the expansion of childcare provision in view of creating the 'economy friendly family', as the Equal Opportunities Commission has commented (Equal Opportunities Commission 2005b), efforts to create a more 'family-friendly economy' must not be neglected to promote genuine choice in the allocation of time to earning and caring for both men and women.

Appendix A: List of Interviews

No.	Date of Interview	Place of Interview	Interview Method	Type of Actor
UK 01	25/07/2005	London	Telephone	Civil Servant
UK 02	21/09/2005	London	Face-to-Face	Civil Servant
UK 03	28/09/2005	London	Face-to-Face	Interest Group Representative
UK 04	23/11/2005	London	Telephone	Interest Group Representative
UK 05	13/12/2005	London	Face-to-Face	Interest Group Representative
UK 06	14/12/2005	London	Face-to-Face	Interest Group Representative
UK 07	15/12/2005	London	Face-to-Face	Interest Group Representative
UK 08	22/12/2005	London	Telephone	Interest Group Representative
UK 09	11/01/2006	London	Telephone	Interest Group Representative
UK10	23/01/2006	London	Telephone	Civil Servant
UK 11	27/01/2006	London	Telephone	Interest Group Representative
UK 12	31/01/2006	London	Face-to-Face	Interest Group Representative
UK 13	02/02/2006	London	Face-to-Face	Interest Group Representative
UK 14	02/02/2006	London	Face-to-Face	Interest Group Representative
UK 15	03/05/2006	Sheffield	Face-to-Face	Interest Group Representative
UK 16	04/10/2006	London	Face-to-Face	Interest Group Representative
DE 01	27/06/2006	Berlin	Face-to-Face	Interest Group Representative
DE 02	28/06/2006	Berlin	Face-to-Face	Interest Group Representative
DE 03	28/06/2006	Berlin	Face-to-Face	Member of Parliament
DE 04	28/06/2006	Berlin	Face-to-Face	Interest Group Representative
DE 05	29/06/2006	Berlin	Face-to-Face	Political Party Representative
DE 06	29/06/2006	Berlin	Face-to-Face	Interest Group Representative
DE 07	11/07/2006	Berlin	Face-to-Face	Interest Group Representative
DE 08	12/07/2006	Berlin	Face-to-Face	Civil Servant
DE 09	12/07/2006	Berlin	Face-to-Face	Civil Servant
DE 10	12/07/2006	Berlin	Face-to-Face	Interest Group Representative
DE 11	01/08/2006	Düsseldorf	Face-to-Face	Interest Group Representative
DE 12	02/08/2006	Bonn	Face-to-Face	Civil Servant
DE 13	19/09/2006	Bonn	Face-to-Face	Civil Servant
DE 14	28/09/2006	Berlin	Face-to-Face	Civil Servant
DE 15	28/09/2006	Berlin	Face-to-Face	Civil Servant
DE 16	30/10/2006	Berlin	Telephone	Member of Parliament

Appendix B: List of Informants

Name	Institution	Country
Katrin Bauer	B90/Die GRÜNEN	Germany
Anne Dohle	ZHD	Germany
Bernhard Franke	BMFSFJ	Germany
Beate Hesse	BMFSJF	Germany
Alexandra Hoffert	DIHK	Germany
Christel Humme	SPD	Germany
Maria Kathmann	DGB	Germany
Carlotta Köster-Brons	BDA	Germany
Ina Lenke	FDP	Germany
Heide Pfarr	WSI	Germany
Malte Ristau-Winkler	BMFSFJ	Germany
Jutta Struck	BMFSFJ	Germany
Rocco Thiede	Bertelsmann Foundation	Germany
Hans-Peter Viethen	BMAS	Germany
Clemens Volkwein	BDI	Germany
Thomas Wieseler	BMFSFJ	Germany
Stephen Alambritis	FSB	United Kingdom
Kay Carberry	TUC	United Kingdom
John Cridland	CBI	United Kingdom
Lucie Daniels	Parents at Work	United Kingdom
Mike Emmot	CIPD	United Kingdom
Alexandra Jones	The Work Foundation	United Kingdom
Sue Monk	Parents at Work	United Kingdom
Jo Morris	TUC	United Kingdom
Mary Pooley	DfEE	United Kingdom
Mark Pullen	DTI	United Kingdom
Rachel Roe	Working Families	United Kingdom
Mark Sayers	DTI	United Kingdom
Pam Walton	New Ways to Work	United Kingdom
Caroline Waters	Employers for Work-Life Balance	United Kingdom
Laura Williams	The Work Foundation	United Kingdom
Richard Wilson	Institute of Directors	United Kingdom

Appendix C: Employers for Work-Life Balance

FOUNDER ORGANISATIONS

ASDA Stores Limited
BBC
BMW Group
British Telecommunications plc
Classic Cleaners
Druid
Eli Lilley and Company Limited
Heygate and Sons
HSBC Bank plc
KPMG
Littlewoods Organisation plc
Lloyds TSB Group plc
Marks and Spencer plc
Nationwide Building Society
NatWest Group
Northern Foods plc
PricewaterhouseCoopers
Prudential plc
J Sainsbury plc
Shell Companies in the UK
Unilever plc
Xerox (UK) Limited

Source: Changing Patterns, DfEE 2000, Appendix A

Appendix D: Ministerial Advisory Committee on Work-Life Balance

Terms of Reference

To advise Ministers on how best to promote awareness and take-up of voluntary practices in employment in both the public and private sectors that:

- a. enable employees and potential employees to achieve what is for them individually a better balance between work and their other responsibilities and interests; and
- b. in all cases benefit the organisation for which they work, whether by helping it to become more productive and profitable or by enabling it to provide a better standard of service to its customers.

Membership

Stephen Alambritis, Head of Parliamentary Affairs, Federation of Small Businesses

Fiona Cannon, Head of Equal Opportunities, Lloyds TSB Group

Kay Carberry, Head of Equal Rights at the Trades Union Congress

Shirley Conran, Journalist, best-selling author and Chair of Mothers in Management

Pat Corcoran, Diversity Director, Business in the Community, and Operations Director for Opportunity Now

Joanna Foster, Chair, National Work-Life Forum, the BT Forum and the Lloyds TSB Foundation and Deputy Chair of Governors at Oxford Brookes University

Will Hutton, Chair, The Industrial Society

Sue Levett, Director, Family Friendly UK Ltd.

Mary MacLeod, Chief Executive, National Family and Parenting Institute

Jeremy Miller, Director of Marketing and Financial Affairs at the Engineering Employers' Federation

Richard Mills, Personnel Services Manager, Surrey County Council

Jill Mortimer, Equalities Issues Adviser, Employers' Organisation for Local Government

Surinder Sharma, Corporate Equal Opportunities Manager, Littlewoods

Pam Walton, Research and Policy Manager, New Ways to Work

Diana Whitworth, Chief Executive, Carers' National Association

Sheila Wild, Acting Head of Policy, Equal Opportunities Commission

Source: Changing Patterns, DfEE 2000, Appendix B

Appendix E: Work and Parents Taskforce

Terms of Reference

The taskforce will:

- building on best practice, design a light-touch legislative approach to giving parents of young children a right to make a request to work flexible hours and to have this request considered seriously by the employer;
- take fully into account the particular needs of small employers in designing such a solution, including whether they should be subject to special conditions;
- integrate existing best practice and the reasonable operational needs of the business;
- put the emphasis on resolving within the business rather than through applications to employment tribunals;
- consider whether other changes to the law are needed to remove any legal or institutional impediments to flexible working;
- consider what further support would help employers and employees to make and consider cases for flexible working; and
- consider whether extra help with the training and development of people working flexibly is needed.

Membership of the Work and Parents Taskforce

Professor Sir George Bain (Chairman), President and Vice-Chancellor, The Queen's University of Belfast

Fiona Cannon, Commissioner, Equal Opportunities Commission

Kay Carberry, Head of Equal Rights, Trades Union Congress

John Cridland, Deputy Director-General, Confederation of British Industry

Martyn Gayle, Managing Director, Martyn Gayle at Aveda

Michael Griffin, Director, Human Resources, Kings College Hospital Trust

Anne Minto OBE, Director, Human Resources, Smiths Group Plc

Sue Monk, Chief Executive, Parents at Work

Maureen Rooney OBE, General Council, Trades Union Congress

Simon Topman, Managing Director, J Hudson & Co (ACME Whistles) Ltd

Advisory Group of the Work and Parents Taskforce

Stephanie James, British Chambers of Commerce

Mike Emmot, Chartered Institute of Personnel and Development

Katja Klaason, Confederation of British Industry

Elaine Aarons, Employment Lawyers' Association

Helen Lindars, Equal Opportunities Commission

Stephen Alambritis, Federation of Small Businesses

Gail Cartmail, Manufacturing Science and Finance Union

Joanna Wade, Maternity Alliance

David Coulter, National Society for the Prevention of Cruelty to Children

Lucy Anderson, Trades Union Congress

Source: Work and Parents Taskforce Report 2001

Appendix F: Alliance for the Family

High Profile Impulse Group

Roland Berger, Roland Berger Strategy Consultants

Ludwig Georg Braun, DIHK

Dominique Döttling, Döttling & Partner Beratungsgesellschaft mbH

Peter Hartz, Volkswagen AG

Dieter Hundt, BDA

Christine Licci, Citibank Privatkunden AG

Jutta Limbach, Goethe-Institut

Siegmar Mosdorf, CNC AG

Hubertus Schmoldt, IG BCE

Michael Sommer, DGB

Warnfried Dettling, Publizist

Hans Bertram, HU Berlin

Cooperation Group

DGB

DIHK

BDI

BDA

ZDH

Bertelsmann Foundation

Bundesministerium für Wirtschaft und Arbeit

Bundesministerium für Familie, Senioren, Frauen und Jugend

Source: Schmidt 2004

Appendix G: Flexible Working Arrangements

Overtime	Time worked in addition to one's regular working hours.
Temporary reduced working hours	Where an employee has an agreement to cut their hours for a set period of time (for example for a month or six months) and then return to their original working hours. This is sometimes known as V-working.
Term-time working	Where an employee only works during school term working times.
Job sharing	This is a type of part-time working where a full-time job is divided, usually between two people. The job sharers work at different times, although there may be a changeover period. Sharers each have their own contract of employment and share the pay and benefits of a full-time job on a pro-rata basis
Part-time work	Contractually working fewer hours than the normal full-time hours.
Flexible start and finishing times	Where an employee can vary their start and finish times but have an agreement to work a set number of hours per week or per month.
Staggered working hours	Staggered work hours vary the arrival and departure times of groups of employees within a company before and after the typical 8 am to 5 pm schedule. The term 'staggered' indicates that employees arrive in different shifts at different times within a time period. Unlike flexible start and finishing times, employees in a staggered work schedule may have no ability to choose which shift they work on.
Time off in lieu	Days granted as leave in the place of extra payments for such things as overtime. Also known as TOIL
Compressed working week	This means working full-time hours over fewer days in the working week, for example 40 hours over four days or a nine-day fortnight.
Shift work	A period of work which is performed outside the normal spread of hours, particularly when a factory or business operates on a 24 hour basis.
Week-end working	Working on Saturdays and/or Sundays
Annualised hours	Where the number of hours an employee has to work is calculated over a full year: for example, instead of 40 hours a week, employees are contracted to work 1,900 hours per year (after allowing for leave and other entitlements)

Sources: Hooker et al 2008, p.vi; <http://www.redgoldfish.co.uk/glossary.asp>

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