

Consultation on the right to request time to train for employees in Scotland – Summary of responses to the Scottish Government

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Background

1. Consultation Process

1.1 The Department for Innovation, Universities and Skills ran a consultation between June and September 2008 on whether to introduce the right for employees in England to request time off to train. The Scottish Government ran its own consultation to gather views on whether this right should be extended to employees in Scotland. The consultation was launched by Fiona Hyslop, Cabinet Secretary for Education and Lifelong Learning on 28 September 2008 and closed on 31 October 2008. This paper summarises the 43 responses received in response to the consultation. The Welsh Assembly government also ran a similar consultation exercise to gather views on extending this right to employees in Wales.

1.2 The consultation document was made available on the Scottish Government website and approximately 90 interested organisations were notified about the consultation and encouraged to circulate it widely amongst their members. The organisations contacted included business representatives, Sector Skills Councils, the STUC and other training organisations.

Respondent Type

1.3 A total of 43 responses were received to the consultation and the organisational breakdown of the respondents is shown below:

| CATEGORY | NO OF RESPONSES |
|---|-----------------|
| Employer | 6 |
| Employer Organisation | 17 |
| Trade Unions | 8 |
| Individual | 0 |
| Other* <i>*includes NDPBs, Sector Skills Councils and those who did not specify a category</i> | 12 |

1.4 A full list of respondents can be found in **Annex 1**.

1.5 The Scottish Government would like to thank everyone who responded to the consultation. This report aims to reflect the views received during the consultation although it is not possible to describe in detail all the responses received.

1.6 A full copy of this report and the responses to the consultation are available online at www.scotland.gov.uk. If you have a query relating to the information in this document please contact Lynn Forsyth on 0141 242 0215 or by email via lynn.forsyth@scotland.gsi.gov.uk

1.7 A summary of the responses to the consultations in Scotland, England and Wales has been published by the Department of Innovation, Universities and Skills. The document summarises the key messages from each of the three consultations and explains how the UK Government, in agreement with the Scottish Government and the Welsh Assembly Government, plans to take forward the issues and proposals raised in the responses. Copies of this report are available on line at www.dius.gov.uk/consultations

EXECUTIVE SUMMARY

2. Key Messages from the Consultation

2.1 The overall response to the consultation was positive, with only three responses not being in favour of introducing the right to request time off to train for employees in Scotland. Many respondents felt that the introduction of this right would reinforce a culture whereby employees are encouraged to develop their skills, thereby increasing their contribution to the business. A number of respondents noted the importance of introducing this right across the UK, to ensure consistency and that employees in Scotland were not disadvantaged.

2.2 On the key question of whether the right to request time to train could help skills development in their organisation, 87% (20)¹ of respondents that answered this question agreed that it would.

2.3 85% (23) of respondents thought that the right to request time to train should cover any training that the individual and employer agree. The remaining 18% believed that only nationally recognised or accredited training should be covered.

2.4 The vast majority of respondents, 84%, agreed that all employers should be included within the proposed right - this was evenly split across all categories of respondents i.e. Employer, Employer Organisation, Trade Unions and Other(s). However, a number of respondents did note the potential impact on small businesses.

2.5 Respondents were asked if you are an employee and had a formal right to request time to train, would you be more likely to approach your employers about your training needs than you are now. The response was fairly evenly divided, although 63% that replied no to this question did so because their company already has systems and processes in place that encourage them to request training.

2.6 Respondents were also asked that if you are an employer and a statutory right to request time to train was introduced would this change your behaviour in terms of giving your staff time off to train. Of the ten respondents who answered this question only two answered 'yes'. However, all of those that responded negatively did so on the basis that their company already has systems and processes in place to encourage staff development.

2.7 The trade unions welcomed the consultation and the proposed right to request time off to train, although many commented they would have liked to see a statutory right to paid time off.

2.8 Although the majority of respondents were supportive of introducing the right to request time off to train, a number of issues were raised. 3 of the respondents were opposed to the introduction of the right to request to time off to train and felt that there were other, more effective ways to encourage employers to invest in training.

¹ Not all respondents answered all questions or completed the consultation questionnaire. The percentages given represent the percentages of those who responded to each question, e.g. 23 people responded - 20 positively (87%) and 3 negatively (13%).

3. Detailed Summary of Consultation Responses

Q1. Could a request for time to train help skills development in your organisation?

TABLE 1 There were 22 responses to this question.

| | Employer | Employer Organisation | Trade Union | Other | Total |
|------------|----------|-----------------------|-------------|-------|-----------|
| Yes | 5 | 10 | 1 | 4 | 20 |
| No | 1 | 0 | 0 | 2 | 3 |

3.1 87% (20) of respondents answered 'yes' to this question, with strong support from employers and employer organisation/representative bodies. Many of the employers noted that they already invested time and money in staff development recognising the importance of this to their business. They commented that the introduction of a formal right to request time off to train would help embed a culture where employees are encouraged to take ownership of their training and to develop their skills, thereby increasing their contribution to the business. This right would be likely to have a bigger impact on those employers that did not already have well established systems and processes to encourage employee development.

It is about driving cultural change by encouraging a dialogue between employer and employee about skills needs.
Skills for Justice

Q2. Do you think the right to request time to train should cover:

TABLE 2 There were 27 responses to this question.

| | Employer | Emp Org | Trade Union | Other | Total |
|---|----------|---------|-------------|-------|-----------|
| Any training that the individual and employee agree | 5 | 8 | 4 | 6 | 23 |
| Only training that is nationally recognised and accredited | 1 | 2 | 0 | 1 | 4 |

3.2 85% (23) of respondents felt that the right to request time off to train should cover any training agreed between the individual and the employer, provided that the training met the needs of both the individual and the business. Many respondents noted that restricting the training to only nationally recognised or accredited training would mean that employees would miss out on other training opportunities that have the potential to have a real impact on their productivity. It was also noted that in certain areas there may be no or limited recognised or accredited training. Several respondents also highlighted that it may be most appropriate to undertake 'on-the-job' training to acquire specific technical skills and that limiting the type of training would be unhelpful.

Q3. For which of the following reasons do you think an employer should be able to reject a request for time to train?

TABLE 3 There were 26 responses to this question.

| | Emp | Emp Org | Trade Union | Other | Total |
|---|-----|---------|-------------|-------|-----------|
| Relevance of training to business productivity and performance | 6 | 11 | | 6 | 23 |
| Suitable training is not available | 5 | 10 | | 3 | 18 |
| Burden of additional costs | 6 | 11 | | 6 | 23 |
| Detrimental effect on ability to meet customer demand | 5 | 11 | | 5 | 21 |
| Inability to reorganise work among existing staff | 5 | 11 | | 4 | 20 |
| Inability to recruit additional staff | 5 | 10 | | 3 | 18 |
| Detrimental impact on quality | 6 | 11 | | 4 | 21 |
| Detrimental impact on the performance | 6 | 11 | | 3 | 20 |
| Insufficiency of work during the period the employee proposes to work | 4 | 10 | | 3 | 17 |
| Planned structural changes | 5 | 9 | | 2 | 16 |
| None of the above | | | 3 | | 3 |

3.3 88% (23) of respondents believed that an employer should be able to reject a request for time off to train for one or more of the reasons above.

3.4 One of the most important issues here was the requirement for training to be relevant to the needs of the business as well as the individual. There needs to be a balance between these factors to ensure that employers give every consideration to requests for time off to train but the recognition that there would be some practical decisions to be made in terms of resources and the potential impact on the business. Several respondents noted that employers needed to consider the longer term benefits of the training and this should be offset against the short term inconvenience and costs.

We feel that it is reasonable to expect employers to allow employees to access relevant training. At the same time, we realise that employers need to strike a balance between supporting staff through training and meeting the business demands.
Scottish Funding Council

3.5 Four respondents raised concerns in particular areas where there were statutory responsibilities in relation to the care of young people or vulnerable adults. These statutory duties needed to be taken into account when employers were considering requests. Two respondents also noted that the context of the business would be a factor and that SMEs were much more likely to find it difficult to recruit additional staff or to reorganise the work among existing staff than large employers and this should be taken into account.

The FSB does not believe that any employer should be exempted from the right to request time off to train; however, there must be flexibility in the legislation to allow smaller companies with fewer than 50 employees to conduct training at a time and in a manor appropriate to their business.
Federation of Small Businesses

3.6 Employers and employer representatives felt that the reasons listed were all valid reasons for refusal although one respondent noted that the reasons were subjective and therefore open to wide interpretation. A number of trade unions felt that the reasons for refusal should be tightly prescribed to ensure that the reasons were not open to interpretation.

We believe that there is a risk that the 'get-out' clauses are so broad that it is difficult to see how an employer who is currently sceptical of the value of training would be willing to acceded to requests for Time to Train.
Investors in People

3.7 A number of respondents suggested alternative reasons for refusal; this included the CBI and a number of trade unions.

Q4. Are there any other reasons you think employers should be able to cite in rejecting a request for time to train?

TABLE 4 There were 24 responses to this question.

| | Employer | Employer Organisation | Trade Union | Other | Total |
|------------|----------|-----------------------|-------------|-------|-----------|
| Yes | 1 | 4 | 0 | 3 | 8 |
| No | 4 | 6 | 3 | 3 | 16 |

3.8 67% (16) of respondents felt that there should be no more additional reasons for employers to cite when refusing a request.

3.9 A number of reasons for refusal were cited. The ones that were most frequently mentioned are:

- Where the performance of the employee was causing concern;
- Where the employee was already well skilled and the employer was of the view that there were other areas of development with a higher priority; and
- Where an employee had intimated a desire to leave the company or where the training was clearly with a view to securing a post elsewhere.

3.10 Other reasons that were cited were:

- Where time off to train would have a negative impact on services to patients or vulnerable people;
- Where the training is not relevant to the employees current job description; and
- Where there are no financial resources.

3.11 There was a need for clear and consistent guidance for employers in relation to the reasons for refusing a request.

Q5. Are there any circumstances in which an employer should be able to withdraw their support for an individual's time to train where they had previously granted a request?

TABLE 5 There were 25 responses to this question

| | Employer | Employer Organisation | Trade Union | Other | Total |
|------------|----------|-----------------------|-------------|-------|-----------|
| Yes | 6 | 7 | 0 | 5 | 18 |
| No | 0 | 3 | 3 | 1 | 7 |

3.12 72% (18) of respondents agreed that there were circumstances where an employer could withdraw support although there were strong views on both sides. All of the employers who responded felt there were circumstances where they should be able to withdraw support. The trade unions that responded to this question felt that if the right to request time off to train was to have an impact there must be protection to prevent employers from withdrawing their support. One trade union commented that if circumstances changed then the onus was on the employer to make alternative arrangements to ensure the individual was still able to undertake the training.

3.13 Among those who supported the right to withdraw support the most commonly cited reasons were:

- Where circumstances changed either within the business or with the employee, particularly if one of the reasons for refusal came into play due to the change of circumstance;
- Where there were performance, capability or disciplinary issues developed with the employee; and
- Where the employee was not putting effort into the training or was failing to attend the training.

3.14 Other suggested reasons were:

- It becomes clear the training is being undertaken with a view to get a job outside of the company;
- It becomes clear that the skills acquired through the training are not needed within the company; and
- On review, the abilities of the employee are not suited to the demands of the training.

3.15 One respondent noted that support should be withdrawn in exceptional circumstances and, in line with the Flexible Working Hours scheme, it should be postponed for a specified time due to justified operational reasons. One respondent also noted that withdrawing support could cause the employee to lose money where they had paid upfront for the training, while another noted that there should be the right to appeal if support was withdrawn where they felt they were treated unfairly.

Q6. Do you think any employers should be exempted from the right to request time to train?

TABLE 6 There were 27 responses to this question.

| | Employer | Employer Organisation | Trade Union | Other | Total |
|------------|----------|-----------------------|-------------|-------|-----------|
| Yes | 1 | 1 | 0 | 3 | 5 |
| No | 5 | 10 | 4 | 3 | 22 |

3.16 The majority of respondents, 81% (22), thought that all employers should be covered by the right to request time off to train regulations; this included the majority of employers. The trade unions felt strongly that all employees should have access to this right and that there should be no exemption for smaller businesses as they noted that employees in these businesses were often those that received the least training.

USDAW is of the strong view that no employers, even small businesses, should be exempt. Employees at small companies quite often receive little or no training; therefore any exemptions for small companies would exclude many employees who need the new right most.

Union of Shop, Distributive and Allied Workers (USDAW)

Q7. If you answered yes to question 6, which employers do you think should be exempt?

3.17 19% (5) of respondents felt that there should be some exemptions for particular employers.

- Three respondents felt that employers with less than 25 employees should be exempt;
- One respondent felt that employers with less than 250 employees should be exempt; and
- One respondent noted that in the context of schools the exigencies of the service were paramount and the quality of education to children protected at all costs.

3.18 The Federation of Small Businesses in Scotland did not believe that any employer should be exempt but noted that there needed to be sufficient flexibility in the legislation to allow smaller businesses, with less than 50 employees, to conduct training at a time and in a manner appropriate to their business. Other respondents commented within their consultation responses that there were particular issues for SMEs. Additional funding or support may be needed to ensure that SMEs were not disadvantaged and clear, accessible information, advice and guidance would be need to be put in place before the right to request time off to train was introduced.

Better advice on available courses and development opportunities will be crucial to individuals understanding their options, and for employers to understand the implications of requests.

Skillfast-UK

Q8. If you are an employee and had a formal right to request time to train, would you be more likely approach your employer about your training needs than you are now?

TABLE 7 There were 14 responses to this question.

| | Employer | Employer Organisation | Trade Union | Other | Total |
|------------|----------|-----------------------|-------------|-------|----------|
| Yes | 2 | 2 | 2 | 0 | 6 |
| No | 3 | 4 | 0 | 1 | 8 |

3.19 The response to this question was fairly evenly split with 43% (6) answering that this right would encourage them to approach their employer. The STUC highlighted the recent survey carried out by TUC/Unionlearn which was published in September 2008. This revealed that 70% of people working in Scotland would like to see a new legal right to request paid time off for training and that over half of workers said they would wish to use this right. The trade unions noted that this right could lead to a culture change but also noted concerns in relation to employees who were dyslexic, had literacy needs or similar issues and the difficulties these employees would have in submitting their request in writing.

UCATT is concerned with the onerous amount of information that the employee is required to give regarding the training request. You could argue that it will be off-putting for many with literacy issues and those who may lack confidence in letter writing skills.
Union of Construction, Allied Trades and Technicians (UCATT)

3.20 Of the 57% (8) who answered 'no' the most commonly cited reason (5 responses) was that their employer already encourages staff to undertake training. Two employers commented that although this right would not impact on them it could encourage other employees to request time off to train in other businesses that did not have existing processes for employee training. One respondent noted the difficulties in communicating to smaller businesses, highlighting that many were not aware of the Flexible Working Hours arrangements and it was important to communicate this new right effectively. Another employer noted concern about formal regulations placing an additional financial burden on businesses; this could stifle training as due to increased demands for general ad hoc training instead of planned development in line with business needs.

Q9. If you are an employer and a statutory right to request time to train was introduced would this change your behaviour in terms of giving your staff time off to train?

TABLE 8 There were 20 responses to this question.

| | Employer | Employer Organisation | Trade Union | Other | Total |
|------------|----------|-----------------------|-------------|-------|-----------|
| Yes | 1 | 2 | 1 | 1 | 5 |
| No | 5 | 6 | 0 | 4 | 15 |

3.21 The majority of the respondents, 75% (15), believed that a statutory right to request time off to train would not change their behaviour in terms of giving staff time off to train. This was primarily because as employers they already encouraged staff to undertake training and that staff who wished to upskill were not normally prevented from doing so. One respondent noted that it reinforces what they already do, but adding greater publicity and weight to what they do could increase the uptake of development opportunities. It was also

noted that the new right would ensure all employers put procedures in place to deal with requests and that this could encourage more employers to view training positively.

3.22 The importance of guidance was also highlighted by one respondent, notably that it needs to be made clear that:

- It is a right to request time off to train; and
- There is no obligation on the employer to organise or pay for the training.

To keep the administrative aspect of the regulations to a minimum it would be helpful to have model forms.

Other Comments about the proposed right to request time off to train

3.23 A number of the organisations who participated in the consultation did so by way of an open response to the questions asked. The following is a summary of the main issues raised through these open responses.

3.24 Five key issues were identified:

- Legislation around the proposal and whether Time to Train should be compulsory
- Ability of employees to challenge employers decisions regarding Time to Train
- Funding for training
- Impact on smaller businesses
- Impact on volunteers

3.25 The trade union organisations suggested a number of different options to extend the proposal further, including statutory right to paid time off for time to train; five days paid educational leave; a reduction in the current period that someone is required to work before being entitled to request time to train, from 26 weeks to 13 weeks; and that more than one request per year should be permitted.

3.26 Other organisations suggested that implementing legislation to encourage training at work would be detrimental and counter-productive in fostering a culture of learning at work.

Legislation is not the answer; it is a weak and clumsy method to impose change through compliance.

Institute of Directors (IoD)

3.27 On the issue of whether or not Time to Train should be compulsory, views were mixed. As has been mentioned, the trade union organisations who participated were strongly in favour of extending the proposal to ensure that time off to train was compulsory, not solely the right to request.

3.28 On the other hand, a number of responses from organisations representing employers commented that while they supported the uniformity of the right of request, ultimately, businesses should have the final say on these requests.

It is absolutely imperative that employers retain their right to deny time off if it could be damaging to the business.

Scottish Grocers Federation (SGF)

3.29 Following this, another important issue raised was the right of the employee to challenge decisions made in regard to time to train by employers. A number of the trade union organisations were supportive of the right for an employee to challenge or appeal decisions taken, with others expressing concern regarding the reasons by which an employer could refuse a request.

3.30 Conversely, employer organisations were wary of such a mechanism being introduced on the grounds that such an action could lead to further disruption and additional costs for the employer. However, within this it was acknowledged that employers must provide valid reasons for refusal of a request.

As with the right to request flexible working, employers must be able to indicate why they have turned down a request without an employee having the legal recourse to challenge the reasons for refusal in an employment tribunal. Of course, reasons for refusing requests will be related to skills needs or the health of the business; crucially, any training request by employees, must have business relevance.

CBI

3.31 Funding for training was another significant issue raised via the open responses. A number of organisations suggested that support should be available for employees pursuing job-related training either directly from employers or from other funding streams such as Individual Learning Accounts.

3.32 Other organisations expressed concern that as the onus for the funding of training lies with the employee, the motivation and aspiration of employees to pursue training may be limited as a result.

3.33 One organisation suggested that further clarification on the funding aspect of the Time to Train initiative is required.

It is understood that there will be no compulsion on employers to pay for training. The Scottish Government's consultation paper states that those seeking training will have access to various funding streams dependent on the circumstances. This requires further clarification and quantification to incentivise the initiative for employers as well as employees.

Institute of Directors (IoD)

3.34 The impact that the proposal will have on small businesses was also raised, with many of the same themes emerging from those highlighted by the consultation questionnaire. While some organisations stated that they felt no businesses should be exempt from the initiative, those representing smaller organisations reiterated their desire for flexibility, suggesting that accommodating a legislative right on the part of the employer to offer time to train may not be practical in a number of cases.

Individual plans, where desirable, are not always practical in small organisations with high staff turnover or seasonal employment and these organisations would be expected to bear the greatest additional costs impacts which could threaten their viability let alone growth.

Institute of Directors

3.35 In addition, some of the organisations representing employers called for formal recognition of the existing internal training that already is being delivered in some businesses.

3.36 Lastly, the impact that the proposal will have on volunteers was another significant issue raised by the open responses. Volunteer Development Scotland noted a range of concerns, notably:

- That a balance needs to be struck between including volunteers in the right but ensuring employers are not dissuaded from recruiting volunteers on account of perceived additional time, costs and administration;
- Volunteers, by nature, should not be expected to pay for training and that the initiative should look at resources available to support volunteers under this proposal;
- There could be complications around volunteer status due to the current proposal position that links learners to contracts of employment; and
- That the qualifying period for a volunteer to request time to train should be 13 weeks continuous involvement with organisation/employer.

ANNEX A

List of Consultation Respondents

| | |
|---|--|
| Asset Skills | British Energy |
| CBI Scotland | City & Guilds |
| COSLA | Federation of Small Businesses |
| General Teaching Council for Scotland (Employer) | General Teaching Council for Scotland (Organisation) |
| Heating Ventilating Contractors Association | Heriot-Watt University |
| Highlands & Islands Enterprise | Investors in People Scotland |
| Institute of Directors | John Lewis plc |
| Lifelong Learning UK | National Union of Rail, Maritime & transport Workers |
| Optometryscotland | PCS Scotland |
| Perth & Kinross Council | School Leaders Scotland |
| Scottish Children's Reporter Administration | Scottish Council for Voluntary Organisations |
| Scottish Engineering | Scottish Food and Drink Federation |
| Scottish Funding Council | Scottish Grocers Federation |
| Scottish Retail Consortium | Scottish Resources Group Ltd |
| Scottish & Northern Ireland Plumbing Employer's Fed | SELECT |
| Semta | Skillfast UK |
| Skills for Justice | STUC |
| Summitskills Sector Skills Council | The Open University in Scotland |
| UCATT | UNISON |
| Unite the Union | University and College Union Scotland |
| USDAW | Volunteer Development Scotland |

ANNEX B

Consultation Respondents by Sector

| Respondent type | Number of responses received |
|---|-------------------------------------|
| Employer | 6 |
| Employer Organisation/Representative Body | 17 |
| Trade Union | 8 |
| Individual | 0 |
| Other | 12 |
| Total | 43 |