



**CabinetOffice**

# Consultation on reform to Trade Union facility time and facilities in the Civil Service

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# Trade union facility time

## Introduction

On 3 October 2011, the Minister for the Cabinet Office announced that the Government would be starting formal consultation on reforming facility time arrangements across the Civil Service. This consultation document marks the start of that process.

## What is facility time and what facilities are currently allowed?

Facility time is paid time off during working hours for trade union representatives to carry out trade union duties and time off for representatives and members to undertake trade union activities. The Government recognises that unions can play a constructive role in a modern workplace contributing to the effective and efficient operation of public services.

Many union representatives give their own time in addition to any facility time, to support their colleagues both individually and collectively through the industrial relations machinery. Where this operates well it serves the interest both of the union members and the employer well.

We are seeking to find a balance between supporting constructive engagement with employee representatives for the good of public services and providing better value for the taxpayer.

### 1. Duties

Facility time may include pre-approved paid time off to complete a range of trade union duties and relevant training as set out in legislation (see **Annex A**). Trade union duties are employee relations duties that are carried out by trade union representatives on behalf of their members. These duties are generally employee facing. Examples of duties in Civil Service departments and agencies include:

**General representative duties** such as preparation for and engaging in annual pay negotiations; discussing issues that affect members such as redundancies and policy changes; and representing a staff member at a disciplinary or grievance hearing.

**Learning representative duties** such as identifying and promoting learning opportunities, supporting members on learning programmes and working with other learning providers and sources of advice and support, for example, local further education colleges, charities.

**Health and safety representative duties** such as examining with employers the causes of accidents to reduce future risks and dangers, investigating complaints and making representation to the employer on behalf of staff.

## 2. Activities

Facility time may also include time off for representatives and members of a trade union to take part in union activities and activities where the employee is acting as a representative of the union. Activities are generally union facing. Employers are required by law (see **Annex A**) to allow **reasonable unpaid time-off** for activities. However, some employers across the Civil Service are currently providing **paid** time off.

Examples in the Civil Service would include paid time off for attending internal union meetings, elections to trade union branches and committees and attending TUC conferences.

## 3. Facilities

There is no statutory right for Civil Servants to be granted the use of facilities, except where those trade union representatives are engaged in matters relating to the Transfer of Undertakings (Protection of Employment) (TUPE). However ACAS guidance says that employers should where possible make available facilities necessary for representatives to perform their duties efficiently and effectively.

Examples of use of facilities in the Civil Service would include the use of telephones, photocopying and the use of office accommodation.

## **The consultation**

### **What are we consulting on?**

We are seeking to review and rebalance the amount of paid time off provided to undertake trade union duties, and to review the level, frequency and cost of providing paid time off for trade union activities. This consultation covers all types of trade union representatives but does not seek to change the statutory basis for these duties and activities. We also wish to review the use of facilities by trade union representatives e.g. telephones, photocopying and use of office accommodation, to ensure it is appropriate and represents value for money for the taxpayer.

We are not seeking to change the nature of the duties or activities that can be undertaken by trade union representatives. Likewise we recognise trade union safety representatives have separate legal rights to paid time off based on the necessity to undertake the functions associated with that role and the right to reasonable paid time off during working hours for trade union learning representatives to undertake a number of related duties where the union complies with certain legal requirements. However we believe that in future Departments will need to consider carefully their current arrangements for these representatives alongside other representatives ensuring that time off is reasonable, necessary, and appropriate for a modern workplace.

### **We are seeking views on four key areas:**

- 1) Reporting and benchmarking - developing a common system for reporting and monitoring Facility time across the Civil Service;
- 2) Ending or limiting the practice of 100% of Civil Service employees' time being spent on trade union duties and activities;
- 3) Reviewing arrangements for time off for trade union activities so that the default is that this time is unpaid; and
- 4) Reduction in overall facility time across the Civil Service, in particular through more rigorous individual management of facility time. Ensuring that the provision of the use of facilities is appropriate, and represents good value to the taxpayer.

### **Why are we consulting?**

There are at least 6,800 trade union representatives across the Civil Service. At a time when departmental budgets are under great pressure we need to ensure the current provisions for trade unions facility time represent the best value for money. With annual estimated expenditure of £36 million we need to ensure that these arrangements align with the significant Civil Service wide workforce and business restructuring.

Providing value for money is critical in all areas of business and this includes spending on facility time. We have to ensure that the time we pay for Civil Service trade union representatives to spend on their trade union duties and activities is appropriate, accountable and that the value is identifiable within a reformed and modernised Civil Service.

However it is not just the responsibility of the Civil Service to justify how taxpayers' money is best and most efficiently spent. It is important that trade unions are able to do the same and are able

to illustrate the same level of responsibility and care in how public money is used and spent and the value that they provide as a result.

There are differences in the provision of facility time across the Civil Service that may not be justified. We want to ensure a more consistent, open and transparent approach in future.

The formal consultation is between the Civil Service and its trade unions, and will run for 8 weeks from Friday 13 July to Friday 7 September. Civil servants have also been invited to comment if they wish to do so.

## What we are setting out to achieve?

### Proposal 1 – Reporting and Benchmarking

Effective reporting and monitoring of facility time already takes place in several departments. Where this is happening there are common themes:

- Line managers having responsibility for agreeing and approving the use of facility time and ensuring records are kept and the time monitored.
- Representatives having a mandatory requirement to complete a record of the facility time they take and to provide this to their line manager with non-compliance being a disciplinary offence.
- Regular and effective monitoring and sharing of the information between the representative, line manager, Department and Union branches.

#### **Departmental Good Practice Examples of facility time reporting methods:**

**Department A:** The line manager is responsible for agreeing and approving the use of facility time within the allocation made to the trade union representative. The line manager must ensure that time records are kept, as well as monitoring the amount of facility time taken and the activities it is taken for. The trade union representative will provide the line manager with the necessary information to monitor their facility time appropriately. This will then be passed onto the union branch. Monthly returns of facility time used, both of allocated and additional time, are made to Employee Relations by union branches. The return also includes H&S, Union Learning Representatives and training time taken.

**Department B:** Ongoing completion of a facility time form is a mandatory requirement i.e. as soon as time off has been taken. It should be readily available if required by a line manager or ER managers. Non compliance with this mandatory requirement may lead to disciplinary action being taken. Managers with direct responsibility for trade union representatives are responsible for checking the 'TU Rep Accreditation Notice and Record of Paid Time Off Taken' form on an ongoing basis to ensure compliance. Monitoring of time is also carried out on a monthly basis in a central point locally and reported to national management quarterly.

Using these themes as a starting point we envisage the use of a common system of reporting and benchmarking which will include the percentage of pay bill costs across the Civil Service. This will enable departments and trade unions to measure and rationalise the time and money they spend.

#### **We intend to introduce:**

- **a common reporting mechanism for departments, and the requirement for departments to publish details of facility time.**
- **a Civil Service benchmark on the proportion of pay bill spent on facility time**
- **benchmarking of the amount of time spent on specific duties, to make sure that the money spent on trade union duties is appropriate to the needs of the duty and to the organisation so as to ensure that this is best value for money. The various duties should be separated out for reporting purposes – e.g. individual representation, industrial relations and negotiations.**

**Q1. How should we establish this approach? Are there any other approaches that you can suggest?**

## **Proposal 2 - Limiting 100% facility time Representatives**

There are approximately 250 trade union representatives across the Civil Service who spend 100% of their time on trade union duties and activities. These individuals are employed by and paid for wholly by the Civil Service. There is generally no departmental limit on how long a trade union representative can spend in a 100% facility time post.

We believe for a trade union representative to function effectively and be able adequately to represent the views of employees, it is necessary for them to be actively involved in the work of their department or agency. Representatives currently in receipt of 100% facility time do not benefit from business skills that would be acquired from carrying out a Civil Service role. Equally, they are not delivering their primary function, that of an employee delivering a Civil Service job.

Departments have demonstrated that they can successfully operate with low numbers of 100% representatives. Best practice therefore shows that a sizeable number of 100% representatives are not necessary and that in some instances consideration is already being given to operating without, or at least with considerably fewer, 100% representatives.

**We would prefer that no employee spends less than 50% of their time delivering their Civil Service job.**

In seeking to limit the practice of 100% of Civil Service employees' time being spent on trade union duties and activities, employers need to be aware of and consider the possibility of employees with more than one trade union representative role. An employee may not be spending any of their time undertaking Civil Service work through a combination of general trade union duties and specific health and safety and/or learning representative roles. This employee effectively becomes a 100% representative. For those representatives with more than one role, they will need to prioritise accordingly rather than seek additional time.

**Q2. How can we best establish this practice? Are there any other approaches to address this issue that you can suggest?**

### **Proposal 3 - Reviewing Paid Time off for Activities**

The legal requirement for trade union activities is that an employer should allow reasonable unpaid time off. Most Civil Service employers are going beyond this requirement and the recommendations within the ACAS Code of Practice by allowing paid time off for internal trade union activities.

We recognise and support the legal requirement to allow reasonable time off to undertake trade union activities. The proposal is that the default position for Civil Service employers should be that paid time off is not granted for trade union activities. However we accept that there may be circumstances where paid time off for activities may be appropriate and wish to consult on a reasonable mechanism for deciding this.

Alongside this we propose to develop a rigorous checking regime to support Departments and managers to differentiate between time off for duties and for activities.

**We intend that the default position should be that departments do not pay for time off for trade union activities.**

**We intend that we will develop and introduce a rigorous checking regime to support departments to differentiate between time off for duties and activities?**

**Q3. How can we best introduce this approach? Are there any other approaches that you can suggest?**

## **Proposal 4 - Reduction in overall facility time and ensuring appropriate use of facilities across the Civil Service**

There are at least 6800 trade union representatives across the Civil Service. The spend per year is approximately £36 million on facility time in gross staff costs. This is on average 0.26% of the pay bill cost across the Civil Service.

Whilst the provision of paid time off needs to be reasonable in accordance with the legal requirements it also needs to be adequate but not excessive, properly monitored and accounted for.

Alongside proposals 1 – 3 we intend to consider how we can reduce overall facility time through rigorous line management so that the balance can be struck between reasonable paid time off and business needs and ensuring best value for money.

Employers should deal with requests rigorously and representatives should demonstrate requests are reasonable and proportionate.

We wish to ensure that the use of facilities e.g. telephones, photocopying and use of office accommodation, is appropriate and represents value for money for the taxpayer.

We propose that employers should operate rigorous management of facility time at line management level so that the balance can be struck between reasonable paid time off and business needs and ensuring best value for money. Likewise representatives should manage their time and prioritise to ensure that requests for paid time off are realistic and proportionate.

In order to provide a common basis for this rigorous process we propose to develop support and information for both line managers and representatives on the management of facility time.

**We intend to introduce a more rigorous management of facility time and facilities at a line manager level.**

**Q.4. How can we support line managers and trade union representatives to make sure that the provision of, and use of, facility time and facilities gives the best value for money and meets business needs?**

**Q.5. What mechanisms can we implement to ensure the most effective use of facility time and facilities?**

## **Conclusion**

We propose to set out a framework for Civil Service employers to use to manage the pre-approved amount of facility time that departments offer to trade union representatives. The framework will meet the statutory requirements and take account of the ACAS Code of Practice.

The parameters will be set with a view to better balancing the provision of paid facility time with the operational and financial needs of the business.

## **Next Steps**

Cabinet Office invites your views on the specific proposals and questions outlined in this document. Following the outcome of this consultation we will then ask departments and agencies to review their own facility time arrangements accordingly.

## ANNEX A

### What is facility time?

Facility time is the provision of time off from an individual's usual job to undertake trade union duties and activities. Civil Service departments and agencies generally have facility time agreements in place between themselves and their recognised trade unions which specify the arrangements for the taking of facility time.

The duties that facility time can be granted for will include matters such as representing individuals e.g. at grievance hearings; collective bargaining and representing the views of staff to management e.g. terms and conditions, redundancies; training e.g. examining, promoting and arranging training; and the undertaking of functions related to Health and Safety.

### Legal background and provision of paid and unpaid time

Since the Employment Protection Act 1975, union representatives of an independent trade union which is recognised by the employer have had a statutory right to paid time off from employment to carry out trade union duties. Union representatives and members of an independent trade union which is recognised by the employer have also had a statutory right to reasonable unpaid time off when taking part in trade union activities.

The relevant rights are now contained in the trade union and Labour Relations (Consolidation) Act 1992 (TULRA), Employment Relations Act 1999; and The Safety Representatives and Safety Committees Regulations 1977; and are supported by the ACAS Code of Practice on 'Time off for trade union duties and activities'; and the HSE Code of Practice on 'Consulting employees on health and safety.'

### Trade union duties

Section 10 Employment Relations Act 1999 and sections 168 and 169 TULRA provide the right to reasonable paid time off during working hours for the purpose of carrying out trade union duties.

These include:

- negotiating terms and conditions of employment;
- accompanying or representing a trade union member at a disciplinary or grievance hearing;
- accompanying trade union members to meetings to discuss flexible working requests;
- negotiating issues about trade union membership; or
- discussing issues that affect trade union members such as redundancies and policy changes.

## **Trade union activities**

Section 170 TULRA entitles members and representatives of the union to take reasonable time off during working hours to take part in any trade union activity and any activity in relation to which the employee is acting as a representative of the union.

There is no statutory entitlement to be paid for time off for trade union activities. The ACAS Code of Practice states that employers may nevertheless want to consider payment in certain circumstances, for example to ensure that workplace meetings are fully representative or to ensure that employees have access to services provided by Union Learning Representatives.

## **Safety Representatives**

We recognise Safety Representatives have a different statutory right to paid time off based on necessity to undertake the functions associated with that role.

## **Union Learning Representatives**

Sections 168A and 169 TULRA provide that where the union complies with the requirements in section 168A, there is a right to reasonable paid time off during working hours for Union Learning Representatives to undertake a number of related duties.

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