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Department for
**Employment
and Learning**
www.delni.gov.uk

Flexible working and time to train

Response to public consultation

June 2010



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1 Introduction

- 1.1 **On 31 July 2009 the Department for Employment and Learning launched a 12 week consultation on two policy issues; firstly, should the current right to request flexible working be extended to cover a wider cohort and secondly, should a new right be introduced allowing employees to ask their employers for time away from core work duties to undertake training?**
- 1.2 The public consultation ended on 31 October 2009 and this document provides a summary of the responses to public consultation and sets out the Department for Employment and Learning's policy response.

BACKGROUND

Extending the right to request flexible working

- 1.3 In April 2003, a new right to request flexible working for those with parental responsibility for children under six (or 18, if the child has a disability) was introduced, with a further extension of this right to carers of adults coming into effect from 6 April 2007. From April 2009, following the Walsh review covering the rest of the UK, the right to request flexible working was further extended to cover parents in Great Britain of children aged 16 and under.
- 1.4 The Department believes, and research demonstrates, that flexible working is beneficial if sensibly and appropriately managed. In this light, and following the policy review in Great Britain, the Department decided to seek views, by way of public consultation, on whether it is appropriate once again to consider extending the right's application in Northern Ireland. It proposed a range of possible options for extending the right, ranging from no change, through a number of potential cut-off ages, to a universal entitlement covering all employees.

Proposed right to request time to train

- 1.5 In June 2008 the Department for Innovation, Universities and Skills (DIUS) in England published a consultation paper seeking views on a proposed new right in the workplace for employees to request time to train. Similar consultations were also carried out by the Scottish Executive and the Welsh Assembly Government on whether this right should be extended to employees in Scotland and Wales. In light of the outcome of these consultations, a new right will be made available in Great Britain to employees in organisations with 250 or more employees from April 2010, and to all employees from April 2011.
- 1.6 The core of the time to train proposals is that employees should have the legal right to ask their employer to give them time (in some

instances away from their mainstream duties) to undertake training. The consultation sought views on the fundamental question of whether the new right would help skills development across the workforce. It explored a range of policy questions including the following.

- *To whom should the right apply?*
- *What sort of training should be covered?*
- *What sort of issues should the employer consider when reviewing requests?*
- *Will the new right change the behaviour of employers and their employees in respect of training?*

Consultation

- 1.7 As each of the above proposals was framed in a similar way, it was appropriate for the Department to ascertain the public's views on each as part of the same consultation process. Consultation began on 31 July 2009 and concluded on 31 October.
- 1.8 The consultation document is available on the Department's web-site at www.delni.gov.uk/consultation-zone.

EXECUTIVE SUMMARY

Flexible working

- 1.9 Support amongst respondents to the consultation was divided fairly evenly between two of the options proposed, extending the right to request to all employees and, alternatively, extending it to employees with parental responsibility for children aged 16 and under.
- 1.10 Advocates of the former option believed that it would help promote cultural change, benefiting a much wider pool of employees than the parents and carers who are currently targeted by the policy. On the other hand, supporters of the latter option preferred a gradualist approach to extending the right, which they felt would be more manageable for businesses, particularly given current economic conditions, and which would be consistent with the approach that has been adopted elsewhere in the UK, thereby helping to avoid confusion.
- 1.11 After careful consideration, the Department has concluded that extending the right to all employees in a single step could have unintended negative equality impacts. It does not wish to put at risk the gains already achieved by the right to request by moving in advance of a substantial body of opinion. It has therefore decided to extend the right to request flexible working to cover employees with parental responsibility for children aged 16 and under.

Time to train

- 1.12 The time to train proposals have been positively received by a majority of stakeholders. Although there were some differences of opinion on the detail of the right, most consultees saw it as a welcome addition to existing good practice which could reinforce the attention given to workplace training in supporting Northern Ireland's economy.
- 1.13 There was some concern from the small business sector about accommodating requests under the right, but the Department emphasises that the proposed right is to request training and not necessarily to receive it.
- 1.14 The Department has concluded that, in line with the proposals in the consultation document, all employees having an appropriate length of service should have an opportunity to put to their employer a request for training, that the employer should consider that request carefully, and turn down the request only where one of the specified business grounds applies.
- 1.15 The Department intends to set in place the required primary legislation to facilitate the introduction of a new right to request time to train. Subject to the prevailing economic circumstances being favourable, the Department will seek to implement the new right on a phased basis with it being available in organisations with 50 or more employees in year one of its operation and extended to all eligible employees in the following year. In determining when economic conditions are favourable the Minister will take account of factors such as unemployment rates and current and projected economic growth rates.

RESPONSES TO THE CONSULTATION

- 1.16 The Department received 22 responses in total, 13 of which contained substantive comment. A list of respondents is set out in **Annex A**. The Department thanks those who took the time to provide a response. **Table 1** provides a breakdown of responses received by organisation type.

Table 1: Breakdown of responses to the public consultation

	Total responses	Substantive responses	% of substantive responses
Business representative organisation/trade body	3	3	23.1%
Central government	4	1	7.7%
Charity or social enterprise	3	3	23.1%
Individual	1	1	7.7%
Local Government	2	0	-
Statutory Body	4	1	7.7%
Trade union or staff association	4	4	30.8%
TOTAL	22	13	100%

CONTACT DETAILS

1.17 All publications referred to in this response document can be obtained from the Departmental web-site at www.delni.gov.uk, or in alternative formats upon request from the Department.

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2 Extending the right to request flexible working

- 2.1 The consultation asked for views on whether, and if so to what extent, the right for employees to ask their employer for flexible working should be extended to cover wider groups than at present. This chapter lists the questions relevant to each area outlined in the original consultation document and then provides a summary of the responses received from consultees. Not every respondent is cited in each case because many expressed similar views and it is appropriate to cite a few representative examples. At the end of the chapter, the Department sets out the policy decisions that have been taken in light of the consultation.

QUESTIONS ASKED AND RESPONSES RECEIVED

Q1. *What are the arguments supporting an extension of the right to request flexible working?*

Consultees' views

- 2.2 The Department received 11 responses setting out specific arguments in favour of extending the right to request flexible working. A further five consultees supported the extension in general terms.
- 2.3 Most respondents agreed that, in light of the changes to flexible working arrangements recently made following the Walsh review in Great Britain, it was an opportune time to review the arrangements in Northern Ireland. Indeed, a number of respondents felt that making changes in line with those taken forward elsewhere in the UK would deliver welcome consistency and clarity.
- 2.4 A great variety of arguments were deployed in support of extending the right, the most popular of which included greater employee job satisfaction, reduced stress, benefits in terms of family life, enhanced motivation, productivity and performance gains, reduced absenteeism, better staff and skills retention and recruitment benefits. Examples of the arguments advanced by respondents to the consultation are set out below.

It is clear that there is a strong business case for extending the right to request flexible working to a wider group of employees. Benefits include reduced vacancy costs and increased skill retention; increased productivity, efficiency and profits; reduced absenteeism rates and workplace stress; improved employee satisfaction and loyalty; and improved employee relations. In addition to benefiting employers, flexible working can assist employees in balancing their caring and work responsibilities; for example, it enables parents with children to

spend additional time with their families, assisting them with their educational and other needs.

Equality Commission for Northern Ireland

Employees can feel that they have no choice but to seek alternative employment, with alternative hours, instead of approaching their employer to try to arrange hours or work patterns which are more suitable for them, either in the short or the long term. This is detrimental to both employer and employee as the costs of recruitment and providing training, as well as the costs associated with the loss of an experienced employee, can be extremely large for any employer.

Citizens Advice

The statutory right to request framework has helped raise awareness of the importance of flexible working in meeting the needs of a changing society, workforce and economy. The economy has benefited from flexible working as it has provided access to a larger pool of labour and skills, and various research shows that employers are likely to see a much more committed and productive workforce if they offer employees the opportunity to balance work with their caring or other responsibilities.

Northern Ireland Public Service Alliance

An increase in the number of people availing of flexible working opportunities will provide employment opportunities for others including school leavers and graduates in addition to those considering a return to the workforce or those who have experienced redundancy as a consequence of the current economic recession.

Royal College of Midwives

Skills shortages continue to be a major challenge for employers and by offering flexible working employers can widen the talent pool from which they may be able to recruit. The possible benefits in terms of reducing costs will also be important to many employers facing difficult economic conditions. Flexible working can improve recruitment by increasing the size of the talent pool to which the employer has access – especially when standard hours may prevent workers with caring responsibilities, the disabled and others with significant personal commitments from working. Offering greater flexibility has also been shown to help motivate and engage employees, thereby improving retention rates among key staff.

Chartered Management Institute

Q2. *What are the arguments against an extension of the right?*

Consultees' views

- 2.5 There were 10 responses to this question. Two of these specifically stated that they did not see any disadvantages in extending the right.

Given that the consultation proposals relate to a proposed extension to the right to request flexible working rather than a guarantee of access to it, we do not believe that there are any convincing arguments against an extension of this right.

Royal College of Nursing

- 2.6 However, although many more advantages were cited in response to the first question than disadvantages in response to the second, inevitably support for an extension to the right to request flexible working at this time was not without qualification or, indeed, criticism.
- 2.7 The FSB was of the view that small businesses already provide a wide range of flexible working practices to their employees and that further regulation will only cause “confusion and extra work” for the small business sector.

No new regulation should be introduced in the current economic climate, and at a time of increasing unemployment, including any extension of rights which will create an additional administrative burden and additional costs. The identified benefits – of increased productivity and reduced absenteeism – will not outweigh the costs if businesses suffering from increased levels of bureaucracy and increased threat of tribunal feel unable to employ people at all”.

Federation of Small Businesses

- 2.8 CBI, while not opposed to extending the right, stated that the proposals “represent a burden on business that could be postponed in the short term”.
- 2.9 A survey carried out by the Chartered Management Institute (CMI) was reported as showing that “61 per cent of managers feel that the new right will create additional bureaucracy for employers, with this figure rising to 67 per cent for small and medium sized organisations.” The CMI added that “there are significant concerns among employers that the proposals will create additional bureaucracy, particularly for small businesses”.
- 2.10 Concerns were also expressed about the potential, where additional requests are granted, for employers’ resources to be stretched.

Extending the right may make it more difficult to maintain the high percentage of granted requests.

CBI Northern Ireland

It may be difficult to ensure adequate staffing levels within the workforce especially where specific groups of employees are in short supply.

Royal College of Midwives

- 2.11 The effects of stretching employers’ resources, some suggested, would not be felt by businesses alone; pressures or stresses could be placed

upon those employees who are unsuccessful in their requests or upon others asked to take on work formerly undertaken by colleagues who, as a result of successfully exercising the extended right to request, have begun working flexibly.

Q3. Five options are proposed in the consultation, as follows:

Option 1: Extension to parents with children aged 12 or under

Option 2: Extension to parents with children aged 16 or under

Option 3: Extension to parents with children aged 18 or under

Option 4: Extension to all employees

Option 5: Maintaining the status quo.

Which of the five options proposed in the consultation do you favour and why?

Consultees' views

2.12 A total of 14 respondents answered this question, the responses revealing differing views on the best way forward. There was an almost even split between supporters of extending the right to all employees (Option 4, supported by seven consultees) and an extension to parents with children aged 16 and under (Option 2, supported by six). Regardless of their views, many respondents agreed that flexible working practices that go above and beyond the statutory requirements are already working well in many workplaces both large and small.

2.13 Advocates of extending the right to all employees took the view that work-life balance must not be regarded as an issue only for parents and carers. Rather, it should act as a driver for wider economic and social advancement.

This will give all employees where business needs allow to benefit from a better work-life balance and allow for parity among all employees in the workplace.

Northern Ireland Committee, Irish Congress of Trade Unions

The social and economic benefits of flexible working go far beyond accommodating the needs of parents and carers to include increasing job opportunities for disabled people, facilitating lifelong learning, extending working lives, reducing congestion and creating time for more civic and community participation...Limiting flexible working to parents and carers creates a vicious circle in which women are continually cast 'carers' with few options for increasing their earnings and progressing and men are cast as 'breadwinners', working longer and longer hours and playing less of a role in family life than they would

like...Different sections of the workforce prefer different working hours. Balancing these different demands for working hours should be easier to achieve if the right to request is made available to all employees.

Northern Ireland Public Service Alliance

- 2.14 The Law Centre (Northern Ireland) similarly felt that extension to all employees would “put all employees on an equal footing in terms of the law...increase clarity and transparency...help create a more permissive, sustainable working culture...[and] help Northern Ireland attract more job seekers to the labour market.” For all these advantages, however, “the real benefit of extending the right to all employees cannot be quantified in economic terms but rather has the capacity of introducing positive societal change”.
- 2.15 The Chartered Management Institute reported the findings of a September 2008 survey which found that the majority of managers supported extending the right to all employees – 57% agreed or strongly agreed with this proposal, more than double the number that disagreed or strongly disagreed (26%).
- 2.16 Other respondents, although they saw significant merit in extending the right to all employees, ultimately felt that Option 2 (extending the right to parents of children aged 16 and under) was the most appropriate in the present circumstances.

Option four would be the optimum, not only in encouraging a more healthy work-life balance on the part of employees but also in promoting innovative, flexible and creative employment practices. However, and particularly in the current context of economic recession and the prospect of significant cuts in public expenditure, option two would constitute an important first step and would also harmonise the law in Northern Ireland with the rest of the UK.

Royal College of Nursing

The Commission supports the option to extend the right to request flexible working to parents with children aged 16 or under. We agree that this will allow parents to support their children until the end of Key Stage 4 of their secondary education and GCSEs...As regards...extension of the right to parents with children aged 18 or under, we agree with the findings of the Walsh Review that it is reasonable to regard a person aged 17 or 18 as a young adult who can be expected to show a good measure of independence and personal responsibility whether as part of further education, a first full time job or vocational training...The Commission is aware that some employees without dependents may want to work flexibly for a variety of reasons; for example, to pursue further educational opportunities. It is also aware that a wide range of employers in Northern Ireland currently allow all employees regardless of child care or other caring commitments, to request flexible working.

Equality Commission for Northern Ireland

Whilst CAB gave serious consideration to lending its support to Option 4, overall it was felt that it was Option 2 which sought to achieve the social policy aims and objectives enshrined in the 2003 legislation, whilst maintaining the policy rationale which underpins it.

Citizens Advice

- 2.17 Larne Borough Council believed that this option “best balances the need to support family life and service and financial constraints”.
- 2.18 A number of consultees stated that their support for Option 2 was derived in part from the view that considerable benefits, not least clarity and consistency, can be derived from maintaining legislative parity with the rest of the United Kingdom.

Maintenance of clarity and avoidance of doubt and/or confusion arising from potential differences in other parts of the UK is something any change should be striving to achieve...Where differences exist between legislation here in Northern Ireland and that of Great Britain, confusion and uncertainty are likely to be increased.

Citizens Advice

- 2.19 The preference for a gradualist approach to extending the right expressed in response to earlier consultations was again evident from some supporters of Option 2. The CBI felt that the right to request flexible working had been a success and it was right “that parents with older children should be next in line to benefit”. For Citizens Advice, “the gradual introduction of other groups to within the scope of legislation has and will have a positive effect on the work life balance of employees”.
- 2.20 One respondent, the Federation of Small Businesses, favoured Option 5, representing no change to the existing arrangements. FSB argued “that introducing new or extending current legislation will place additional burdens on micro and small employers at a time of major economic stress, and that it is unnecessary given that SMEs already offer a wide range of flexible working options”. In FSB’s view, “small business owners work alongside their staff, know them well and are more likely to try to accommodate the needs of staff they value without the formality of having a ‘flexible working’ policy in place”.

Q4. *What can be done to improve the guidance available to employers and employees on the right to request flexible working?*

Consultees’ views

- 2.21 12 respondents answered this question, putting forward ideas that the Department might consider to further assist business, particularly Small and Medium Enterprises (SMEs), in implementing flexible working arrangements and promoting the benefits of flexible working.

2.22 The inclusion of good practice examples in guidance was advocated by a number of respondents. The Equality Commission recommended “that the guidance includes a specific section at the beginning outlining the benefits of flexible working as well as examples illustrating how flexible working has benefited employers during periods of economic downturn”. It also suggested “the inclusion of a wider range of case studies on best practice, including examples from sectors where there is limited access to flexible working”.

2.23 For the Royal College of Nursing,

guidance should be clear and include both examples of successful requests for flexible working and ways in which the adoption of flexible working practices has benefited employers as well as employees. Endorsements by leading Northern Ireland business figures and heads of public sector organisations would also help to promote the purpose of the legislation.

2.24 However, a campaign to raise awareness and promote the benefits of flexible working was the most popular suggestion put forward by consultees. Suggestions included posters for the workplace, information sessions for both employers and employees, provision of face-to-face advice and the making readily available of easily read and accessible materials which, in the view of the Royal College of Midwives, should be “cascaded through organisations including the trade union movement, Citizens Advice Bureau, local Social Security Agency offices, etc”.

2.25 Some comments reflected variations on a theme that promotion could be further encouraged by closer working between organisations or between employers and trade unions.

CBI members highlighted the utility of having a forum in which to exchange and promote good practice. This would be especially useful for SMEs, which might not have sufficient HR resources to adopt alone. Furthermore, offering companies a medium through which to pool ideas and experiences would provide a wealth of case studies.

CBI Northern Ireland

The Commission supports increased partnership working between advice giving organisations, including trade unions, in order to maximise opportunities as regards the sharing and dissemination of information, advice and best practice.

Equality Commission for Northern Ireland

Employers and unions should consider setting up workplace working groups...to review how the organisation of working time might be improved and how workers could be given increased choice regarding their working time arrangements.

Northern Ireland Committee, Irish Congress of Trade Unions

- 2.26 NIC ICTU also suggested that “financial support be provided to encourage the development of pilot work-life balance projects, for example, through a new work-life balance social partnership challenge fund”.

POLICY RESPONSE AND NEXT STEPS

- 2.27 The Department welcomes the very positive and constructive responses it has received in respect of this element of the public consultation. It is abundantly clear that stakeholders value the benefits of flexible working arrangements and perceive the right to request, as it has operated to date, to be a success. Nearly all agree that the right should be extended, but there is no consensus on the form the extension should take. Respondents fell into two camps, those supporting extension to all employees and those who advocated extension of the right to employees who are parents of children aged 16 and under. The Department notes that there was no support for Option 1 and that backing for Option 3 was limited to a second preference on the part of one respondent (NIPSA).
- 2.28 As the initial equality impact assessment concluded, the rationale for the present focus of the right to request on parents and carers is very clear, in that these groups face particular challenges in achieving work-life balance that are not experienced to the same degree by other groups. Extending the right to all employees in a single step could have unintended negative equality impacts with an increased number of requests from parents and carers being refused due to increased operational pressures. The Department would be loath to put at risk the gains already achieved by the right to request by moving in advance of a substantial body of opinion which continues to support a more gradualist approach.
- 2.29 The Department also appreciates that benefits in terms of clarity and consistency can be derived from maintaining parity with developments in Great Britain, particularly in the absence of a strong consensual view that a differing approach is warranted in Northern Ireland. Adopting an approach that some would see as over-ambitious, in the absence of significant consensus, could serve to undermine rather than contribute to the widespread acceptance and acknowledged success of the right to request flexible working.
- 2.30 The Department has therefore decided that it is appropriate to mirror the existing arrangements in Great Britain by extending the right to request flexible working to employees with parental responsibility for children aged 16 and under. In developing guidance, it will consider some of the helpful suggestions put forward by consultees.

3 New right to request time to train

- 3.1 The public consultation sought views on whether the Government should introduce a new right for employees to ask their employer for time to train. Following the format used in the previous section dealing with flexible working, this chapter cites the questions asked in the consultation document and goes on to provide a summary of the responses received. Again, not every respondent is cited but representative views are provided.

QUESTIONS ASKED AND RESPONSES RECEIVED

Q5. *Could a request for time to train help skills development in your organisation? How?*

Consultees' views

- 3.2 13 responses addressed this question substantively while a further three indicated their general approval for the introduction of a right to request time to train. Only one organisation, the Federation of Small Businesses, was opposed.
- 3.3 Some of the advantages cited by consultees included benefits to employers as a result of a better trained workforce, enhanced employee motivation and job satisfaction, and the potential to stimulate more fruitful discussion and planning of training needs within organisations.
- 3.4 According to the Chartered Management Institute, a recent survey established that 64% of employers considered that the new proposal would increase training levels, while 60% agreed that it would improve employee motivation. The Equality Commission believed that the right would be “likely to encourage a change in culture of an organisation so that they proactively consider and identify learning and training opportunities for staff”. For the Law Centre, the proposal “would build upon the principles outlined in the Skills Strategy for Northern Ireland” and “assist employers/employees work in partnership to address skills shortages and to improve skills”. The Northern Ireland Committee of the Irish Congress of Trade Unions suggested that “these proposals are more important than ever as high quality training is the very thing that will make organisations more productive and help lift us out of recession”.
- 3.5 A number of respondents, however, felt that many employers already have in place solid good practice on which the right should build. The CBI believed that “most employers regularly discuss skills and training needs with their employees”. The Northern Ireland Civil Service suggested that “a number of the key benefits cited in the consultation document are already enshrined within NICS culture/terms and

conditions". As a result, "the right would be of greatest benefit to those employed outside a large organisation such as the NICS, in organisations which do not currently consider employee requests for time to train fairly and seriously".

- 3.6 Some stakeholders also contended that maintaining parity with developments in Great Britain was an important consideration. The Law Centre thought it "desirable that employers and employees in Northern Ireland are not put at disadvantage in relation to skills development and that Northern Ireland should not be left behind any Great Britain initiatives". Citizens Advice thought it important to ensure that "employees in Northern Ireland are not left at a disadvantage in relation to the development and advancement of their skills". NIC ICTU was likewise "pleased that with these proposals, citizens in Northern Ireland would have the same rights in relation to skills development as in other parts of the UK".
- 3.7 While the trade union movement welcomed the proposals, they also believed that some aspects of the policy did not go far enough, arguing for the introduction of a statutory right to paid time off for training. They also suggested that allowing a formal request on one occasion per year was overly restrictive, a view also expressed by Citizens Advice.
- 3.8 NIPSA also suggested that the right should be available to an employee from day one of employment, or at least after three rather than the proposed six months. However, Citizens Advice took an alternative view:

An employee should be required to have 26 weeks' service before they can make a request under the legislation. This will hopefully ensure that sufficient time has been spent by the employee in forging a dialogue and strong relationship with their employer. It will also mean that the employee has had the opportunity to fully explore the scope of their post and have gained a better understanding and appreciation of what training might be suitable to enable them to better carry out their role.

- 3.9 In spite of a preference for more far-reaching change, NIC ICTU
- recognises that giving the right to request time off for training will pose a real challenge to those employers who neglect training and will give unions an important role in helping individuals to shape their requests to learn new skills.*
- 3.10 CBI Northern Ireland considered that the primary focus should be on training itself which may, or may not, require time away from core duties. CBI also argued that, an emphasis on the time off aspect may make it more difficult to accede to requests, particularly for SMEs "who will find it more difficult to absorb the disruption and costs associated with staff absences". Instead,

the starting point of discussions should be about training needs – only when a training need is agreed can employer and employee then decide the practical details of how to address it, including any time off required...The aim of the discussions should be about how best to raise individual performance and skills levels, not to agree a defined period of time off.

- 3.11 The Royal College of Nursing agreed that the focus on time off was inappropriate, feeling that it “reinforces the stereotypical view that access to training imposes some kind of burden on employers and that training somehow automatically takes place away from the current working environment”.
- 3.12 The only outright opposition to the proposal came from the Federation of Small Businesses. Though FSB “strongly support the government’s acknowledgement that there is an urgent need for reskilling and upskilling the current and future workforce”, it opposed the introduction of a new right to request time to train. The Federation argued that “Northern Ireland’s training strategy would be better implemented through the skills agenda and business support initiatives rather than through the introduction of additional legislation”.

Q6. *Do you think the right to request time to train should cover any training that the individual and the employer agree or only training that is organised across Northern Ireland and accredited?*

Consultees’ views

- 3.13 11 respondents answered this question. There was strong support for the proposal not to limit requests to nationally recognised and accredited training, but to encompass any training agreed by the individual and employer that would improve the productivity of the business and individual. There was no support for limiting the right to request to cover only accredited training. Stakeholders referred to the need for flexibility and latitude to work out arrangements that best suited the particular circumstances of each case.

The right to request time to train should cover any training that the individual and the employer agree.

Royal College of Midwives

The right must encompass a very broad scope of training, including all types of accredited and non-accredited training and learning.

Northern Ireland Public Service Alliance

Employers provide employees with different types of training and therefore allowing requests to be for both accredited and unaccredited training should make it easier for employers to accept requests.

CBI Northern Ireland

Training should not be limited to nationally recognised or accredited courses. It is for each employer and employee to decide what is the best type of training or course appropriate to enhance the skills of the employee and develop the business and services of the employer.

Citizens Advice

Q7. *For which of the following reasons do you think an employer should be able to reject a request for time to train?*

- *Relevance of training to business productivity and performance;*
- *suitable training is not available;*
- *burden of additional costs;*
- *detrimental effect on ability to meet customer demand;*
- *inability to reorganise work among existing staff;*
- *inability to recruit additional staff;*
- *detrimental impact on quality;*
- *detrimental impact on performance;*
- *insufficiency of work during the periods the employee proposes to work;*
- *planned structural changes;*
- *none of the above.*

Q8. *Are there any other reasons you think the employer should be able to cite in rejecting a request for time to train?*

Consultees' views

3.14 These questions are closely linked and are dealt with together. 11 respondents supplied the Department with varying views on this issue.

3.15 Several consultees suggested that most or all of the reasons given were appropriate.

Citizens Advice feels that the proposed reasons cited in the consultation paper represent a full and complete list and would suggest that no further reasons for rejecting a request would be necessary or appropriate.

Citizens Advice

The criteria for consideration are robust enough to ensure that the right can not be exploited and that as a public body the Council continues to provide value for money.

Larne Borough Council

3.16 The Federation of Small Businesses broadly concurred that the list of reasons was valid but considered that, because of the inevitable subjectivity of most decisions following a request, “any challenge by any employee to any of these reasons may cause an employer considerable work in addressing it, and may cause employers to feel that they are required to reveal information about their company which should be confidential”.

3.17 A number of other respondents, while supportive of some of the proposed reasons, felt that the list should be shorter or more focused on the specifics of training. In the view of the Chartered Management Institute, a shorter list of reasons was required because

some employers will reject requests for time off for leadership and management training because they do not see the business case for it. This could lead to a vicious circle whereby an employee suffers from bad management but cannot take action because the manager does not value management skills training.

3.18 NIC ICTU suggested that refusal of requests should be exceptional and the grounds for it should be set out in collective agreements. NIPSA considered that the list of reasons too closely resembles the list of reasons on the basis of which a request for flexible working can be rejected. The “different drivers” associated with training (as opposed to flexible working) led the union to conclude that “the acceptable reasons for rejecting a request must present a lower bar”. Requests for individual job progression, personal development and professional development reasons, in the union’s view, should be included amongst the criteria for considering a request and “guidance should clearly emphasise the need [for employers] to: (a) actively consider all possible sources of funding; and (b) help employees explore funding or other help to which they may be entitled”.

3.19 However, other respondents stressed that, although business needs and those of an individual could often be readily reconciled, requests should be focused on the needs of the business first and foremost.

It would be helpful to draw a clearer distinction between training that is relevant to the employee’s current and likely future role with the current employer on the one hand and, on the other, training that may be designed to benefit the employee’s future career prospects beyond the scope of the current employer. It is entirely appropriate that the employer should fully support the former; it is more debatable as to whether the employee should be entitled to the support of the current employer in respect of the latter.

Royal College of Nursing

3.20 For CBI Northern Ireland, the list of reasons would benefit from being “more strictly aligned to training issues” and, with less concentration

“on time off”. In the organisation’s view, it was important to ensure that “reasons for refusing requests should be related to skills needs and any training requests by employees must have a business relevance”. The organisation felt that additional criteria for considering a request should include lack of relevance of training to the individual and excessive time involved in training.

- 3.21 The Northern Ireland Civil Service was also concerned that “the business grounds for rejecting a request for time to train make no mention of any requirement to have considered existing provision – where an employer has spent time and money developing relevant and cost effective training for employees, it would seem appropriate for both the employee and the employer to address this issue early on in the process and for the employer to be able to reject a request if they can offer and agree an alternative but equally relevant option”.

Q9. *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?*

Consultees’ views

- 3.22 There were six responses to this question. Four consultees suggested that there ought to be circumstances in which an employer ought to be able to withdraw support for a previously granted request for time to train. These respondents cited unforeseen circumstances (in three cases) or financial difficulties (in two) as situations in which support should be capable of being withdrawn.

There are clearly circumstances when an employer could be justified in withdrawing support for an individual’s time to train where a request had previously been granted. For example, the loss of a major contract could leave a small business in a difficult financial position, in a way that would not affect a larger business, which could more easily absorb the cost.

Federation of Small Businesses

Employers must be able to respond flexibly to business situations. SME owners and managers, in particular, may be faced with situations where staff would have to be called back from training, e.g. if another member of staff was off sick or if a business encountered a particularly busy time, or had a logistical emergency. In these circumstances it would be important for staff to be available despite training being granted, so the new scheme must be implemented flexibly. However, it is incumbent on employers to behave responsibly and to honour training agreements unless there is a genuine emergency.

Chartered Management Institute

- 3.23 Two respondents stated that they were opposed to providing a facility permitting employers to withdraw support. Citizens Advice argued:

employers could and should carefully consider a request and its possible consequences at the time that it is made and before any approval is given. It would be unfair to an employee to have begun a course, or made arrangements to commence training, only to find that their employer's support has been withdrawn.

Q10. *Do you think any employers should be exempted from the right to request time to train? Why?*

Consultees' views

- 3.24 Nine respondents answered this question and the great majority (seven) were of the opinion that no employers should be exempt. The general view of consultees was that the right is simply a right to request and that an exemption would have the potential to impact negatively on employees in exempted firms.

Since the scheme is based on a right to request time off, rather than a right to receive training, the scheme should be applicable to all employers, so that any employers who do not feel the request is appropriate can deal with each individual situation as it arises.

Chartered Management Institute

- 3.25 For the Royal College of Midwives, it was important to bear in mind that employers "can in certain circumstances reject...a request". Citizens Advice argued that "ultimately any employer is free to reject a request if they have legitimate business reasons for doing so. There is therefore no reason to exempt any group of employers". CBI acknowledged this point, but also felt it "important that employers are able to turn down requests without fear of challenge at an employment tribunal".
- 3.26 The Federation of Small Businesses, however, did favour an exemption for employers employing 50 and under, arguing that there must be sufficient flexibility to allow such firms "to conduct training at a time and in a manner appropriate to their business". By contrast, however, NIPSA felt that "no employer, regardless of size, should be exempt. Furthermore, small employers are by far the most likely not to provide workers with any training at all. For this reason it is important that all employers, large or small, are included".

Q11. *If you are an employee, and had a formal right to request time to train, would you be more likely to approach your employer about your training needs than you are now? Why?*

Q12. *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? Why?*

Consultees' views

- 3.27 There were four and six responses respectively to each of these questions. A significant emerging message is that the right to request time to train has the potential to build on existing good practice as well as producing additional positive culture change in relation to training and the acquisition of skills.
- 3.28 In response to question 11, Disability Action felt that “in a business where training is not actively encouraged, the right to request would encourage a more proactive approach amongst employees”. Similarly, the Equality Commission was of the view that “the introduction of a formal right to request time to train will encourage more employees to discuss their training needs with their employer”.
- 3.29 The Royal College of Nursing suggested that
- if the accompanying guidance is sufficiently persuasive in encouraging employers to perceive access to training as an investment that will benefit the business of the organisation, rather than as a cost or administrative burden, the employee would be entitled to believe that the employer would take an active role in promoting and encouraging access and would therefore welcome such requests, within reasonable limits.*
- 3.30 In response to question 12, the CBI again emphasised that “these proposals build on the existing good practice of employers – good employers already provide employees with regular opportunities to discuss their skills needs”. Adopting a similar stance on the value of existing good practice, the Chartered Management Institute argued, “the new right to request time off for training would not change our behaviour in terms of giving staff time off to train”. However, the organisation was hopeful that “it might encourage staff to be more proactive in terms of the type of training they request, and to consider a wider range of training possibilities”. For the Northern Ireland Civil Service, the right
- can be adopted as an offering which is complementary to the Service’s existing training and development arrangements and...will become an additional tool in encouraging employee engagement in development activities now and in the future.*
- 3.31 The Equality Commission placed a slightly differing emphasis on the benefits of the right, suggesting that it was “likely to encourage a change in the culture of an organisation so that they would proactively consider and identify learning and training opportunities for staff”. However the FSB, which had reservations about the impact of the right on small businesses, was “concerned that the introduction of any extra employment rights could lead to a panic amongst small businesses that a refusal to request time off to train could be interpreted as constructive dismissal”.

POLICY RESPONSE AND NEXT STEPS

- 3.32 Responses to the public consultation have demonstrated substantial support for the introduction of a new right for employers to request time to train. It is clear that the great majority of consultees see the proposed new right as a positive development that can build upon existing good practice and reinforce the importance of workplace training in supporting Northern Ireland's economy.
- 3.33 Some respondents quite rightly pointed out that many employers already operate effective systems around training and development, and the Department, as it indicated in the consultation document, is well aware of the good work already done in this area. The right to request time to train is envisaged as supplementing rather than supplanting good practice, and it will establish formal mechanisms to request training where they do not already exist.
- 3.34 The Department also acknowledges that training and development activities do not necessarily require time away from core duties, and that the most effective learning can often take place 'on the job'. However, it is important in establishing the new right to recognise that training cannot always be delivered in this way, and hence to provide employees with a formal mechanism to make a case for development activity regardless of the means of delivery. Naturally, good management practices are associated with routine evaluation of an employee's training needs, goal-setting and identification of appropriate development opportunities, whether in-house or otherwise, and where these mechanisms operate effectively, employees will not need to utilise the new right.
- 3.35 There was no support for the suggestion that the right to request should cover only accredited training. The Department agrees, and is convinced that the employee and employer are in the best position to identify between them the training that is most suitable.
- 3.36 Some consultees expressed concerns as to whether training, approved under this new right, would have to be paid for by the employer. The Department, as stated in the consultation paper, will not be seeking to introduce a requirement for employers to pay. Many employers, of course, will do so, being fully aware of the contribution that well-trained and motivated staff can make to an organisation's productivity and success. The realities of business mean, however, that it is appropriate for an employer to be able to turn down a request where the burden of additional costs does not justify it.
- 3.37 The last point leads naturally to a discussion of the list of reasons on the basis of which an employer will be able to turn down a request. The Department notes that there was some support for the list set out in the consultation document and that a similar proportion of respondents preferred alternative approaches. In the absence of a

clear consensus, the Department feels that there are powerful arguments for replicating as closely as possible the model used in respect of requests for flexible working. Employers are used to dealing with requests under these arrangements and are likely to have well developed and understood processes already in place. The Department believes that these processes could be easily adapted and extended to support the new right whilst minimising the confusion and inconsistency that could result if a significantly different approach was adopted.

- 3.38 The Department does not, however, intend to include in the list of reasons for turning down a request the originally proposed criterion that 'suitable training is not available'. Where suitable training cannot be identified, a request would fall foul of the 'relevance' or indeed one of the other criteria. The 'suitable training' criterion was not included in the final legislation in Great Britain and the Department takes the view, on reflection, that it would be unnecessary and confusing to include it in Northern Ireland law.
- 3.39 The Department appreciates the point put forward by some respondents that personal and professional development for the individual are important aspects of training, but does not propose to make specific provision in the legislation in this regard. As the Department for Business, Innovation and Skills (BIS) noted in its response to consultation in Great Britain, where an employer is allowing time for an employee to undertake training, and may in some cases be paying for that training, it is appropriate that there is some demonstrable benefit to the business. It will therefore be for the individual to explain how any training, including personal development, will meet this key criterion. For very much the same reason, the Department does not intend to introduce a specific legislative requirement concerning requests for training which is already available to the employee in other forms. It also considers that any concerns around the time that will be required for training can be dealt with in making and agreeing the request.
- 3.40 A majority of respondents believed that, in limited circumstances, employers should have the right to withdraw support for training that has already been agreed. The Department agrees that employers should be able to withdraw support, and has concluded that the approach adopted in Great Britain, where consultees held similar views, is a sensible one. In its response to the Great Britain consultation, BIS committed to provide guidance recommending that the employer and employee should jointly agree, at the time the request is granted, any circumstances in which the employer's support can be withdrawn. BIS also included in the relevant legislation a requirement that employees must notify their employer if they fail to start the training that has been agreed to, cease to attend the training before the agreed completion date, or vary the training e.g. by switching to a different course without the employer's agreement.

- 3.41 Only a small minority of consultees believed that any type of business should be exempted from having to operate the right to request. The Department agrees with the majority of respondents that no exemption should apply. Whilst it is appreciated that some businesses, and in particular SMEs, may find it more difficult than others to accommodate requests, the Department considers that employees in all firms should have an opportunity to put to their employer a case for training, and that the employer should accept that request where the training is relevant to and can be accommodated by the business in line with the criteria referred to in the consultation.
- 3.42 A minority of respondents considered that the right to request should be a day one right, or that it should apply after three months of continuous employment. However, the Department is conscious that both the right to request time to train in Great Britain and the right to request flexible working across the UK are associated with a six month qualifying period, and considers that this is an appropriate length of time for an employee to have worked for an employer before acquiring the right to make a request for time to train. The Department agrees with a comment made by Citizens Advice on this issue: “whilst an employee may not have the required length of service to make an request under the legislation they should not feel barred from approaching their employer to informally discuss training opportunities and initiatives they feel would be of benefit to their development”.
- 3.43 A minority of consultation respondents also suggested that employees should be entitled to make more than one formal request for time to train per year. However, a majority did not raise this as an issue. The Department believes that one request per year is reasonable. The right to request will set a minimum standard that many employers already exceed through their own commendable efforts, and those of the trade unions, to promote workforce learning and development. Moreover, one request per year will be consistent with the right to request flexible working arrangements and with the right to request time to train in Great Britain. The Department believes that the right to request time to train will supplement existing good practice, whilst laying a foundation for it in firms where it may not already exist.
- 3.44 In conclusion, it is evident that a clear majority of respondents to the public consultation feel that the introduction of the proposed new right will be a positive development. It will supplement existing good practice by establishing a formal framework underlining the importance of training and development in the workplace.
- 3.45 The Department intends to set in place the required primary legislation to facilitate the subsequent introduction of a new right to request time to train. The Department would want to broadly mirror the GB approach where the new right is being introduced on a phased basis to allow smaller employers a longer lead-in time to put in place the necessary internal systems Subject to the prevailing economic circumstances being favourable, the Department will seek to implement the right on a

phased basis with it being available in organisations with 50 or more employees in year one and extended to all eligible employees in the following year. It is hoped that the enabling primary legislation will be in place by April 2011. The Minister will then determine the optimum time for the introduction of this new right based on an assessment of the prevailing economic conditions, taking account of such factors as unemployment figures and current and projected economic growth rates. Guidance to explain the operation of the right will be developed to ensure that employees and employers understand their rights and responsibilities in advance of the legislative change taking effect.

Annex A: List of respondents

RESPONSES RECEIVED

- *Citizens Advice*
- *CBI Northern Ireland*
- *Chartered Management Institute [CMI]*
- *Disability Action*
- *Department of Education [DE]*
- *Department of Enterprise Trade and Investment [DETI]*
- *Department of Social Development [DSD]*
- *Equality Commission for Northern Ireland [ECNI]*
- *Federation of Small Businesses [FSB]*
- *Karen Boutros*
- *Larne Borough Council*
- *Law Centre (Northern Ireland)*
- *Labour Relations Agency [LRA]*
- *Northern Health and Social Care Trust*
- *Northern Ireland Civil Service [NICS]*
- *Northern Ireland Committee, Irish Congress of Trade Unions [NIC ICTU]*
- *Northern Ireland Judicial Appointment Commission*
- *Northern Ireland Public Service Alliance [NIPSA]*
- *Royal College of Midwives [RCM]*
- *Royal College of Nursing [RCN]*
- *Strabane District Council*

RESPONSES WHICH CONTAINED SUBSTANTIVE COMMENT

- *Citizens Advice*
- *CBI Northern Ireland*
- *Chartered Management Institute [CMI]*
- *Disability Action*
- *Equality Commission for Northern Ireland [ECNI]*
- *Federation of Small Businesses [FSB]*
- *Karen Boutros*
- *Law Centre (Northern Ireland)*
- *Northern Ireland Civil Service [NICS]*
- *Northern Ireland Committee, Irish Congress of Trade Unions [NIC ICTU]*
- *Northern Ireland Public Service Alliance [NIPSA]*
- *Royal College of Midwives [RCM]*
- *Royal College of Nursing [RCN]*

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