

**TIME TO TRAIN?**

Consultation on the future of  
the right to request time to  
train policy

AUGUST 2010

Department for Business, Innovation and Skills  
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## **The future of the right to request time to train policy**

1. This consultation seeks views about the future of the 'right to request time to train' legislation and whether the right should be repealed, retained for large organisations or extended to small and medium sized organisations as planned.
2. This consultation is part of the review of regulations announced by the Government earlier this year. Views are sought by 15 September to inform the final submission that will be provided to the Cabinet's Reducing Regulation Committee on 17 September. The Committee will consider this submission when making its final decision about this legislation.
3. Ministers have agreed a shorter period for this consultation from the usual 12 weeks consultation period to 5 weeks to meet the deadline for submissions to the Reducing Regulation Committee. A full consultation was conducted in autumn 2008 prior to legislation. We are actively promoting the consultation to all interested parties who we know will have views on this policy. We would also be happy to meet key organisations face to face to discuss the issues in detail.

Issued: 11 August 2010

Respond by: 15 September 2010

Enquiries to: Pete Jinks, BIS, PO Box 12, East Lane, Runcorn WA7 2GJ, telephone 01928 794270 and email [pete.jinks@bis.gsi.gov.uk](mailto:pete.jinks@bis.gsi.gov.uk)

This consultation is relevant to: all employers and employees, colleges and training organisations, trade unions and representative bodies.

## Executive Summary

1. The Apprenticeships, Skills, Children and Learning Act 2009 introduced the right to request time to train for employees in large organisations in England, Scotland and Wales<sup>1</sup> with effect from April 2010. The legislation extends the right to employees in small and medium sized organisations from April 2011. A twelve week consultation in autumn 2008 obtained a broad range of views on the merits of introducing a right to request time to train.
2. The new Government is committed to reviewing all regulations the previous Government had in the pipeline. For all regulations important questions must be asked, not only about how they can be enforced in a legally binding way that is proportionate and sensible, but also about the balance and spread of costs and benefits that accompany the regulations. This includes who would meet the cost and who would reap the benefit.
3. We are now considering whether the ‘right to request time to train’ should be repealed, retained for large organisations or extended as planned. This consultation provides an opportunity for interested parties to give their views that will inform the review of this legislation.
4. We are specifically seeking views on whether:
  1. The right should be repealed;
  2. The right should be retained only for large organisations;
  3. The right should be extended to small and medium sized organisations from April 2011 as planned;
  4. The right, if retained for large organisations or extended, could be amended so it is less burdensome on employers who already train; and if this could be achieved in ways that do not increase complexity or reduce legal certainty.
5. The Government response to this consultation will be published in December 2010.

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<sup>1</sup> Responsibility for employment policy in England, Scotland and Wales is reserved by the UK Government. Employment policy in Northern Ireland is the responsibility of the Northern Ireland Government.

## 1. How to respond

6. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.
7. For your ease, you can reply to this consultation online at: [www.bis.gov.uk/time-to-train](http://www.bis.gov.uk/time-to-train)
8. A copy of the Consultation Response form is enclosed, or available electronically at [www.BIS.gov.uk/time-to-train](http://www.BIS.gov.uk/time-to-train) If you decide to respond this way, the form can be submitted by letter, fax or email to:

Pete Jinks  
Skills Directorate  
Department for Business, Innovation and Skills  
Castle View House, PO Box 12  
East Lane, Runcorn WA7 2GJ

Tel: 01928 794270  
Fax: 01928 794180  
Email: [time.totrain@bis.gsi.gov.uk](mailto:time.totrain@bis.gsi.gov.uk)

9. A list of those organisations consulted is in Annex B. We would welcome suggestions of others who may wish to be involved in this consultation process.

### Additional copies

10. You may make copies of this document without seeking permission. Printed copies of the consultation document can be obtained from:

BIS Publications Orderline  
ADMAIL 528  
London SW1W 8YT  
Tel: 0845-015 0010  
Fax: 0845-015 0020  
Minicom: 0845-015 0030  
[www.BIS.gov.uk/publications](http://www.BIS.gov.uk/publications)

11. An electronic version can be found at [www.BIS.gov.uk/time-to-train](http://www.BIS.gov.uk/time-to-train)
12. A Welsh language version can be found at [www.BIS.gov.uk/time-to-train](http://www.BIS.gov.uk/time-to-train)
13. Other versions of the document in Braille, other languages or audio-cassette are available on request.

## **2. Confidentiality & Data Protection**

14. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
15. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## **3. Help with queries**

16. Questions about the policy issues raised in the document can be addressed to:

Pete Jinks  
Skills Directorate  
Department for Business, Innovation and Skills  
Castle View House, PO Box 12  
East Lane, Runcorn WA7 2GJ

Tel: 01928 794270  
Fax: 01928 794180  
Email: [time.totrain@bis.gsi.gov.uk](mailto:time.totrain@bis.gsi.gov.uk)

A copy of the Code of Practice on Consultation is in Annex A.

## **4. What is the right to request time to train?**

17. The right to request time to train was included in the Apprenticeships, Skills, Children and Learning Act which received Royal Assent in November 2009 and came into force for employees in large organisations from April 2010. Under current plans it will come into force for all employees in April 2011.
18. The policy was designed to promote greater dialogue between employees and employers about skills and training. This was in

response to evidence<sup>2</sup> showing that around 10 million employees go without training each year and that only 35 per cent of employers have a training budget.

19. The right was modelled on the flexible working arrangements with which employers were already familiar and which was successful in changing employer attitudes. For example, in a 2004 survey 92 per cent<sup>3</sup> of employers reported that they would consider a request to change a working pattern from any employee even though the legislation only required an employer to do so for some employees.
20. The right gives employees a statutory right to ask their employer for time to undertake study or training. The type or level of training is not specified and there is no requirement for the training to lead to an accredited qualification. On the job training is in scope as well as short courses where employees may be seeking to develop a particular skill, for example, learn how to use a new software package. However, the training should help improve the performance of the employee and the business.
21. Employers are required to consider the request and respond in a set timeframe. Within 28 days of receiving a request employers must either approve the request or arrange to hold a meeting to discuss the request with their employee. Within 14 days of that meeting the employer must inform the employee in writing of their decision.
22. Employers are not obliged to pay for the training or the training time. They may turn down requests if they consider that one of the following business reasons applies:
  - The proposed study or training would not improve the employee's effectiveness in their business;
  - The proposed study or training would not improve the performance of the employer's business;
  - The burden of additional costs;
  - Agreeing to the request would have a detrimental effect on the employer's ability to meet customer demand;
  - The employer would be unable to reorganise work among existing staff;
  - The employer would be unable to recruit additional staff;
  - Agreeing to the request would have a detrimental impact on quality;
  - Agreeing to the request would have a detrimental impact on performance;

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<sup>2</sup> National Employer Skills Survey 2009

<sup>3</sup> CBI Employer Trends Survey 2004

- There would be an insufficiency of work during the periods the employee proposes to work; or
- There are planned structural changes during the proposed study or training period.

## **5. What are the pros and cons of the policy?**

23. While the way the right operates is now clear we need to consider again whether this regulatory approach to promoting training requests is the right way of achieving these outcomes.
24. There are some strong arguments for retaining the policy. These centre around its ambition to:
  - Promote and support work-based learning
  - Promote training that delivers real benefits for business

### Promote and support work-based learning

25. The policy aims to encourage greater and stronger dialogue between employees and employers about skills and training in the workplace which works alongside other measures such as unionlearn and Lifelong Learning.
26. The right aims to act as a lever to encourage employees to actively consider their training needs and to encourage more employers to take their employee's skills needs seriously. Evidence shows that around 10 million employees go without training each year and a third of employers do not train their staff (National Employer Skills Survey 2009).
27. It should lead to training that directly benefits both the business and the employee and contributes to productivity and business success.

### Promote training that delivers real benefits for business

28. At a national level the monetised benefits outweigh the monetised costs. The net benefits to the economy have been estimated at £225m in year one and £472m from year two onwards.
29. The right will contribute to an increase in workplace training, the benefits of which are well understood. It has been estimated that a one percentage point increase in the proportion of employees trained is associated with an increase in productivity of 0.6 percentage points, which in turn is worth around £6 billion a year to the UK economy.
30. However, at the same time, there has been criticism of the policy from some groups. This has been in three areas, which are:
  - Costs

- Scope of the policy
- The impact on good employers

### Costs

31. The published Impact Assessment (IA)<sup>4</sup> estimated the average gross annual cost of the policy in Year One to be £468m, of which £331m falls on employing organisations in the public and private sector. In Year Two and thereafter, when the right would be extended to all employees, gross annual costs would rise to £976m of which £690m falls on employing organisations in the public and private sector. This means that costs to SMEs would be £359m. The Exchequer picks up £275m of costs (in funding) and employees the final £11m.
32. These costs are based on a range of assumptions about how many people would make requests; how many would be approved by employers; and how many of the refused requests would result in either internal appeals or complaints to Employment Tribunals. The costs to employers therefore arise from the time taken to deal with the requests as well as the lost productivity as a result of the time spent training – an assessment of which is also included in the IA.
33. We therefore need to examine whether it is right that employers should be expected to bear these costs in a way that is driven by a regulatory process rather than through engaging with the provision of good training in their organisation.

### Scope of the policy

34. While the flexible working model is followed, there is a key difference between the two policies. The right to request flexible working is targeted on those with children or caring responsibilities, which limits the number of requests that can be made.
35. However, under the right to request time to train all employees can submit requests on reaching 26 weeks service. There is the potential for every eligible employee in an organisation to make a request once a year, although in practice this is unlikely to happen. Around two thirds of employees already have good access to training – so are unlikely to make statutory requests under this right.

### The impact on good employers

36. The current policy does not take account of what the two-thirds of employers who already invest in skills and training are doing. It does not

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<sup>4</sup> Impact Assessment for the Right to Request Time to Train on 22 January 2010 can be viewed at: <http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=5935767073394c51a999f570305816d4>

allow businesses to self-exempt themselves. So even where good training systems are in place, employers would still need to consider requests their employees make using this right. The risk is that these employers are being placed under unnecessary burden through having to deal with requests. However, it is not possible to quantify what this level of risk is – there is no way of knowing whether employees who have access to good training systems will be minded to make statutory requests or not.

37. There are ways in which the issues of scope and impact on good employers could be addressed. One approach could be to try excluding those employees who have access to good training systems from being able to make requests under the right. This could be effective in reducing the burden on employers as it could have the effect of reducing the number of requests. However, it would risk the burden falling disproportionately on small and medium sized organisations as they are typically less likely to have formal training systems in place.
38. An alternative approach could be to give employers an additional reason to refuse requests where they already operate effective review systems. This may give some employers more certainty in refusing requests. It may also act as a deterrent for those employees who have access to good systems meaning that they would be less likely to make a request. While it may have these effects the risk is that it would not reduce the burden as the employer would still have to deal with requests where they are made.
39. If there is interest expressed through this consultation in exploring these ideas, a key issue which we are also seeking views on is how these could be achieved without increasing burdens further or reducing legal certainty.
40. For example, could we amend the policy in such a way that employees would still know for certain whether they would be able to make a request? How would employees judge whether the training review systems met the standard to decide whether they could or could not make a request?
41. For employers, how would they know for certain that they had to deal with a request? What evidence requirements would we need to place on employers to be able to show that their training review systems were of the right standard so that a request could be refused on that basis?

## **6. Consultation questions**

42. A consultation response form with the questions we are seeking views on can be found at Annex D.

## **7. What happens next?**

43. A summary of views from this consultation will be provided to the Reducing Regulation Committee. This will be considered alongside other evidence and policy issues. The Government Response to this consultation will be published in December 2010.
44. Decisions in the light of the consultation will be made public promptly with a summary of views expressed and reasons given for decisions finally taken. This will be on the BIS website, including a link from the central BIS consultation web pages, with paper copies of the summary of responses made available on request.

## Annex A: The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

### Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Tunde Idowu,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone: 020 7215 0412  
or email: [Babatunde.Idowu@bis.gsi.gov.uk](mailto:Babatunde.Idowu@bis.gsi.gov.uk)

## **Annex B: List of Individuals/Organisations consulted**

157 Group  
ACAS  
Action with Communities in Rural England  
Association of Chief Executives of Voluntary Organisations  
Association of Colleges  
Association of Learning Providers  
British Chambers of Commerce  
Chartered Institute of Leadership and Management  
Chartered Institute of Personnel and Development  
Citizens Advice  
Confederation of British Industry  
Consortia+  
Co-operatives UK  
Council for Learning  
Development Trusts Association  
Employment Lawyers Association  
Engineering Employers Federation  
Federation of Small Businesses  
Institute of Directors  
Local Government Employers  
Local Government Association  
National Apprenticeship Service  
National Association for Voluntary and Community Action  
National Council for Voluntary Organisations  
National Employer Service  
National Institute of Adult Continuing Education  
Next Step  
Scottish Government  
Scottish TUC  
Sector Skills Councils  
Skills-Third Sector  
Social Enterprise Coalition  
Social Firms UK  
Third Sector National Learning Alliance  
Trades Union Congress  
Unionlearn  
Welsh Assembly Government

## **Annex C: The Impact Assessment of the right to request time to train**

The final IA for the right to request time to train was published in January 2010. It can be accessed through the following web link:

[www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=5935767073394c51a999f570305816d4](http://www.ialibrary.berr.gov.uk/ImpactAssessment/?IAID=5935767073394c51a999f570305816d4)

## Annex D: Time to train consultation response form

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The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 15/09/2010

Your Name:

Your Organisation (if applicable):

Your Address:

Please return completed forms to:

Pete Jinks  
Skills Directorate  
Department for Business, Innovation and Skills  
Castle View House, PO Box 12  
East Lane, Runcorn WA7 2GJ

Tel: 01928 794270

Fax: 01928 794180

Email: [time.totrain@bis.gsi.gov.uk](mailto:time.totrain@bis.gsi.gov.uk)

Please tick the box that best describes you as a respondent. This allows views to be presented by group type

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business ( over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

**Question 1:** Should the right be retained as it exists now in organisations with 250+ employees, and extend to small and medium organisations in April 2011 as planned?

Yes

No

Not sure

Comments

**Question 2:** Should the right only apply in organisations with 250+ employees, and not be extended to small and medium sized organisations?

Yes

No

Not sure

Comments

**Question 3:** Should the extension of the right to small and medium sized enterprises be delayed until the economic conditions improve?

Yes

No

Not sure

Comments

**Question 4:** Should the right be removed altogether?

- Yes                       No                       Not sure

Comments

**Question 5:** Should the right be retained, but made to function better for example by:

a. Exempting employees who can already access training from being able to use the right or introducing exemptions for other employees?

- Yes                       No                       Not sure

b. Adding new reasons for refusal where good training review systems already exist?

- Yes                       No                       Not sure

c. Introducing different procedures for dealing with requests? (If yes, please specify what these should be and how they would operate.)

- Yes                       No                       Not sure

Comments on how these changes could be made without introducing further complexity or reducing legal certainty for employees and employers

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes                       No