

Draft for consultation

Consultation on the
Acas Code of Practice 3 on time off
for trade union duties and activities

and

Draft guide on Developing effective employee
representation: a guide to managing provisions
for time off, training and facilities

December 2008

Further information is available
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Consultation on the Acas Code of Practice 3 on time off for trade union duties and activities

This document is made up of three parts:

1. Foreword explaining the consultation and the revised draft
2. Acas Draft Code of Practice 3 on time off for trade union duties and activities
3. Draft guide on Developing effective employee representation: a guide to managing provisions for time off, training and facilities

CONSULTATION ON REVISED ACAS CODE OF PRACTICE ON TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES: explanatory note

1. In November 2007 the Minister of State for Employment Relations and Postal Affairs, Pat McFadden MP, wrote to the Chairman of Acas Council to ask it to consider revising the Acas Code of Practice on Time Off for Trade Union Duties and Activities. Council agreed to do this at its meeting in the same month. In preparation for this revision Acas officials paid particular attention to the January 2007 DTI, now BERR, consultation document *Workplace Representatives: A Review of their facilities and facility time* and the subsequent Government Response to Public Consultation, published in November 2007. Acas produced its own Discussion Paper, *Employee Representatives: Challenges and change in the workplace* in January 2008 based on the experience of its field staff in advising employers and trade unions on employee representation and in providing training.
2. In his letter the Minister of State drew attention a list of issues that might be considered in revising the Code. These were:
 - the provision of cover when employees take time off to undertake their functions as representatives
 - the adjustment of workloads for representatives to take account of their time off
 - the position of line managers of workplace representatives, and advice to them in managing absences
 - the value of training and retraining workplace representatives to reflect the needs of modern workplaces and the changing legal framework
 - workplace access to e-learning materials by representatives
 - the position of representatives who have atypical work patterns or who service other employees with atypical work patterns
 - the use of ICT equipment and the internet by representatives; and
 - the confidentiality of communications involving representatives whilst ensuring necessary workplace security
3. The Minister also drew attention to the growth in non-union employee representation. He suggested that 'it might be appropriate to consider whether the Code should now provide advice on non-union representation. Alternatively, your Council might consider that guidance for this group of representatives should best be provided through other sources of Acas guidance'.
4. Acas Council considered the Minister's letter carefully especially in regard to the question of non-union representatives. It noted that the existing Code, last revised in 2003 to include union learning representatives, had the advantage of focussing on union workplace representatives in independent trade unions recognised for collective bargaining purposes. It appreciated that their needs for time off to conduct their duties and receive training were often more extensive than those of other types of representatives, for example those concerned only with joint consultation. At the same time there has been a growth in the number and types of employee representatives with statutory rights to time off, and in some cases with an additional right to be provided

with facilities. Some of these will be union representatives undertaking specific duties, for example in dealing with large scale redundancy or the transfers of undertakings. Non statutory employee representation has also developed. Some trade unions, and the TUC, have been championing equality and environmental representatives while the number of representatives concerned with information and consultation has grown in response to the Regulations of 2005. Some of these have statutory rights to time off with pay to carry out their duties while others do not. For these reasons Acas Council concluded that the distinction between union and non-union representation is neither straight forward nor easy to make.

5. It decided therefore to revise the Code using the text of the 2003 version as a template. This Code is thus restricting to the application of the Trade Union and Labour Relations (Consolidated) Act 1992.
6. At the same time it was felt imperative to issue guidance to cover the whole range of employee representation including eight different types of representatives with statutory rights to time off, and in some cases facilities, and the growing variety of non statutory or 'voluntary' representatives. This Guide, *Developing Effective Employee Representation: A guide to managing provisions for time off, training and facilities* is also issued on a consultative basis at the same time as this Code.
7. Comments on the content and structure of the revised code should be sent by post, e-mail or fax by 16 March 2009 to:
John Purcell
Acas
Time off code revision
Brandon House
180 Borough High Street
London SE1 1LW

Fax no: 020 7210 3664
E-mail: timeoffcode@acas.org.uk

When responding, please state whether you are responding as an individual, or representing the views of an organisation. If responding on behalf of an organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Comments received as part of this consultation may be made publicly available. If you do not wish all, or part of your response (including your identity) to be made public please state clearly in your comments which parts you wish to be kept confidential. Where confidentiality is **NOT** requested we may make responses available to enquirers to publish them by any means.

Further copies of this document - the Code and the Guide - Developing Effective Employee Representation, may also be obtained at www.acas.org.uk/timeoffguide.

DRAFT FOR CONSULTATION

DRAFT CODE OF PRACTICE ON TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES (Including Guidance on Time Off for Union Learning Representatives)

December 2008.

This revised code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid in draft in both Houses of Parliament on ?? The revised Code comes into effect by order of the Secretary of State in ??

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Introduction

1. Under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 the Advisory, Conciliation and Arbitration Service (ACAS) has a duty to provide practical guidance on the time off to be permitted by an employer:

(a) to a trade union official in accordance with section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992; and

(b) to a trade union member in accordance with section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992.

Section 199 of the Act, as amended by the Employment Act 2002, also provides for ACAS to issue practical guidance on time off and training for Union Learning Representatives.

This Code, which replaces the Code of Practice issued by ACAS in 2003, is intended to provide such guidance. Further advice on the role and responsibilities of employee representatives is provided in the Acas Guide *Developing Effective Employee Representation: A Guide to Managing Provisions for Time Off, Training and facilities*.

The background

2. Since the Employment Protection Act 1975, 'trade union officials', referred to in this Code as union representatives (i), have had a statutory right to reasonable paid time off from employment to carry out trade union duties and to undertake trade union training. Union representatives and members were also given a statutory right to reasonable unpaid time

(i) While the term 'trade union official' is used in the legislation it is not in common parlance in industry and commerce. 'Union representative' refers in this Code to workplace lay union representatives sometimes called 'shop stewards' or other terms specific to the industry where they work such as 'father/mother of the chapel' in printing.

off when taking part in trade union activities. Union duties must relate to the union representative's own employer and not, for example, to any associated employer. All the time off provisions were brought together in sections 168 - 170 of the Trade Union and Labour Relations (Consolidation) Act 1992. Section 43 of the Employment Act 2002 added a new right for Union Learning Representatives to take paid time off during working hours to undertake their duties and to undertake relevant training.

General purpose of the Code

3. The general purpose of the statutory provisions and this Code of Practice is to aid and improve the effectiveness of relationships between employers and trade unions. Employers and unions have a joint responsibility to ensure that agreed arrangements work to mutual advantage by specifying how reasonable time off for union duties and activities and for training will work. This may be particularly important in the case of Union Learning Representatives where the lack of such an understanding may result in duplication of functions concerning employees= training needs.

Structure of the Code

4. Section 1 of this Code provides guidance on time off for trade union duties. Section 2 deals with time off for training of trade union representatives and offers guidance on sufficient training for Union Learning Representatives. Section 3 considers time off for trade union activities. In each case the amount and frequency of time off, and the purposes for which and any conditions subject to which time off may be taken, are to be those that are reasonable in all the circumstances. Section 4 describes the responsibilities which employers and trade unions share in considering reasonable time off. Section 5 notes the advantages

of reaching formal agreements on time off. Section 6 deals with industrial action and Section 7 with methods of appeal.

5. The annex to this Code reproduces the relevant statutory provisions on time off. To help differentiate between these and practical guidance, the summary of statutory provisions relating to time off which appears in the main text of the Code is in **bold type**. Practical guidance is in ordinary type. While every effort has been made to ensure that the summary of the statutory provisions included in this Code is accurate, only the courts can interpret the law authoritatively.

Status of the Code

6. The provisions of this Code are admissible in evidence and may be taken into account in determining any question arising during employment tribunal proceedings relating to time off for trade union duties and activities. However, failure to observe any provision of the Code does not of itself render a person liable to any proceedings.

Section 1 - TIME OFF FOR TRADE UNION DUTIES

Union representatives undertake a variety of roles in working with management, communicating with union members, liaising with their trade union and in handling individual disciplinary and grievance matters on behalf of employees. The role can be both demanding and complex. In order to perform effectively union representatives need to have reasonable paid time off from their normal job in agreed circumstances

Entitlement

7. Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to carry out certain trade union duties.

8. A union representative is an employee who has been elected or appointed in accordance with the rules of the union to be a representative of all or some of the union's members in the particular company or workplace.

9. Union representatives are entitled to time off where the duties are concerned with:

- **negotiations with the employer about matters which fall within section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) and for which the union is recognised for the purposes of collective bargaining by the employer; or**
- **any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform.**

Matters falling within section 178(2) TULR(C)A are listed in the

sub-headings of paragraph 11 below.

10. An independent trade union is recognised by an employer when it is recognised to any extent for the purposes of collective bargaining. Where a trade union is not so recognised by an employer, employees have no statutory right to time off to undertake any duties except that of accompanying a worker at a disciplinary or grievance hearing (see para 16).

Examples of trade union duties

11. Subject to the recognition or other agreement, trade union representatives should be allowed to take reasonable time off for duties concerned with negotiations or, where their employer has agreed, for duties concerned with other functions related to or connected with:

(a) terms and conditions of employment, or the physical conditions in which workers are required to work. Examples could include:

- pay
- hours of work
- holidays and holiday pay
- sick pay arrangements
- pensions
- learning and training needs
- equality and diversity
- notice periods
- the working environment
- operation of digital equipment and other machinery;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers. Examples could include:

- recruitment and selection policies

- human resource planning
- redundancy and dismissal arrangements;

(c) **allocation of work or the duties of employment as between workers or groups of workers.** Examples could include:

- job grading
- job evaluation
- job descriptions
- flexible working practices
- work-life balance;

(d) **matters of discipline.** Examples could include:

- disciplinary procedures
- arrangements for representing trade union members at internal interviews
- arrangements for appearing on behalf of trade union members, or as witnesses, before agreed outside appeal bodies or employment tribunals;

(e) **trade union membership or non-membership.** Examples could include:

- representational arrangements
- any union involvement in the induction of new workers;

(f) **facilities for trade union representatives.** Examples could include any agreed arrangements for the provision of:

- accommodation
- equipment
- names of new workers to the union;

(g) **machinery for negotiation or consultation and other procedures.** Examples could include arrangements for:

- collective bargaining

- grievance procedures
- joint consultation
- communicating with members
- communicating with other union officials also concerned with collective bargaining with the employer.

12. The duties of a representative of a recognised trade union must be connected with or related to negotiations or the performance of functions both in time and subject matter. Reasonable time off may be sought, for example, to:

- prepare for negotiations
- inform members of progress
- explain outcomes to members
- prepare for meetings with the employer about matters for which the trade union has only representational rights.

Union Learning Representatives

13. Employees who are members of an independent trade union recognised by the employer can take reasonable time off to undertake the duties of a Union Learning Representative, provided that the union has given the employer notice in writing that the employee is a learning representative of the trade union and the training condition is met (see paras 23 - 28 for further information on the training condition) The functions for which time off as a Union Learning Representative is allowed are:

- **analysing learning or training needs**
- **providing information and advice about learning or training matters**

- **arranging learning or training**
- **promoting the value of learning or training**
- **consulting the employer about carrying on any such activities**
- **preparation to carry out any of the above activities**
- **undergoing relevant training**

In practice, the roles and responsibilities of Union Learning Representatives will often vary by union and by workplace but will include one or more of these functions.

14. Many employers have in place well established training and development programmes for their employees. Union Learning Representatives should liaise with their employers to ensure that their respective training activities complement one another and that the scope for duplication is minimised.

Payment for time off for trade union duties

15 An employer who permits union representatives time off for trade union duties must pay them for the time off taken. The employer must pay either the amount that the officials would have earned, including shift premia if appropriate, had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do. There is no statutory requirement to pay for time off where the duty is carried out at a time when the union representative would not otherwise have been at work unless the union representative works atypical hours, such as night shift, but needs to perform representative duties, including training, during normal hours. Staff who work

part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases the amount of time off must be reasonable.

Time off to Accompany Workers at Disciplinary or Grievance Hearings

16. Trade union representatives are statutorily entitled to take a reasonable amount of paid time off to accompany a worker at a disciplinary or grievance hearing so long as they have been certified by their union as being capable of acting as a workers companion. The right to time off in these situations applies regardless of whether the certified person belongs to a recognised union or not although the worker being accompanied must be employed by the same employer. Time off for a union representative or a certified person to accompany a worker of another employer is a matter for voluntary agreement between the parties concerned.

Section 2 - TRAINING OF UNION REPRESENTATIVES IN ASPECTS OF EMPLOYMENT RELATIONS AND EMPLOYEE DEVELOPMENT

Training is important for union representatives to enable them to carry out their duties effectively. Training should be available both to newly appointed and to more established union representatives. It is desirable, from time to time where resources permit it, for joint training and development activities between union representatives and managers to occur.

Entitlement

17. Employees who are union representatives of an independent trade union recognised by their employer are to be permitted reasonable time off during working hours to undergo training relevant to the carrying out of their trade union duties.² These duties must be concerned with:

- **negotiations with the employer about matters which fall within section 178(2) TULR(C)A and for which the union is recognised to any extent for the purposes of collective bargaining by the employer; or**
- **any other functions on behalf of employees of the employer which are related to matters falling within section 178(2) TULR(C)A and which the employer has agreed the union may perform.**

Matters falling within section 178(2) TULR(C)A are set out in paragraph 11 above.

² Section 1 of this Code gives a more complete summary of the statutory entitlement of union representatives to time off to undertake trade union duties.

18. Employees who are Trade Union Learning Representatives are also permitted reasonable time off during working hours to undergo training relevant to their functions as a Union Learning Representative.

What is relevant employment relations training?

19. Training should be in aspects of employment relations relevant to the duties of a union representative. There is no one recommended syllabus for training as a union representative's duties will vary according to:

- the collective bargaining arrangements at the place of work, particularly the scope of the recognition or other agreement
- the structure of the union
- the role of the union representative.

20. The training must also be approved by the Trades Union Congress or by the independent trade union of which the employee is a union representative.

21. Trade union representatives are more likely to carry out their duties effectively if they possess skills and knowledge relevant to their duties. In particular, employers should be prepared to consider releasing trade union representatives for initial training in basic representational skills as soon as possible after their election or appointment, bearing in mind that suitable courses may be infrequent. Reasonable time off could also be considered, for example:

- for further training, including e-learning where available and appropriate, particularly where the union representative has

special responsibilities

- for training courses to develop the union representative's skills in representation and negotiation
- where there are proposals to change the structure and topics of negotiation about matters for which the union is recognised; or where significant changes in the organisation of work are being contemplated
- where legislative change may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements.
- Where a union representative undertakes the role of accompanying employees in grievance and disciplinary hearings. Consideration could be given to the role of third party assistance, for example mediation, in resolving problems.

22. Access should be given to e-learning tools, where available and appropriate, related to the role of workplace representatives.

Training For Union Learning Representatives

23. Employees who are members of an independent trade union recognised by the employer are entitled to reasonable paid time off to undertake the functions of a Union Learning Representative. To qualify for paid time off the member must be sufficiently trained to carry out duties as a learning representative:

- **either at the time when their trade union gives notice to their employer in writing that they are a learning representative of the trade union**
- **or within six months of that date**

24. In the latter case, the trade union is required to give the employer notice in writing that the employee will be undergoing such training and when the employee has done so to give the employer notice of that fact. It should be confirmed by the union in a letter that the training undertaken is sufficient to allow the Learning Representative to undertake their role and it is good practice for the union to give details of the training which has been completed and any previous training that has been taken into account. In the interests of good practice, the six month qualifying period during which an untrained Union Learning Representative must receive sufficient training to continue operating as a learning representative may be extended, with agreement, to take into account any significant unforeseen circumstances such as prolonged absence from work due to ill health, pregnancy or bereavement.

25. To satisfy this training requirement an employee will need to be able to demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of the following areas of activity relevant to their duties as a Union Learning Representative:

analysing learning or training needs;

- this could for example include understanding the different methods for identifying learning interests or needs, being able to effectively identify and record individual learning needs or being able to draw up a plan to meet identified learning requirements.

providing information and advice about learning or training matters;

- including, for example, the development of communication and interviewing skills

- knowledge of available opportunities, in order to be able to provide accurate information to members about learning opportunities within and outside the workplace
- the ability to signpost members to other sources of advice and guidance where additional support is needed, for example, basic skills tutors or fuller in depth professional career guidance.

arranging and supporting learning and training;

- for example, obtaining and providing information on learning opportunities including e-learning where available , supporting and encouraging members to access learning opportunities and helping to develop and improve local learning opportunities;

promoting the value of learning and training;

- some examples of this activity could be, understanding current initiatives for the development of learning and skills in the workplace, promoting the value of learning to members and within trade union networks and structures and working with employers to meet the learning and skill needs of both individuals and the organisation.

26. An employee could demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of these areas of activity by:

- completing a training course approved by the Trades Union Congress or by the independent trade union of which the employee is a Union Learning Representative, or by
- showing that they have previously gained the relevant expertise and experience to operate effectively as a learning representative.

In the latter case, previous experience and expertise gained in areas such as teaching, training, counselling, providing careers advice and guidance or human resource development, may well be relevant, as may periods of extensive on-the-job training and experience gained in shadowing an experienced Union Learning Representative.

27. Reasonable time off should also be considered for further training to help Union Learning Representatives develop their skills and competencies.

28. Although not required by law it is recognised that there would be clear advantages both to the individual and the organisation if training undertaken leads to a recognised qualification standard.

Payment for time off for training

29. An employer who permits time off for union representatives or Union Learning Representatives to attend training relevant to their duties at the workplace must pay them for the time off taken. The employer must pay either the amount that the officials or Union Learning Representatives would have earned, including shift premia if appropriate had they worked during the time off taken or, where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work that they are employed to do. There is no statutory requirement to pay for time off where training is undertaken at a time when the union representative would not otherwise have been at work unless the union representative works atypical hours, such as night shift, but needs to undertake training during normal hours. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases, the amount of time off must be reasonable.

Section 3 - TIME OFF FOR TRADE UNION ACTIVITIES

To operate effectively and democratically, trade unions need the active participation of members. It can also be very much in employers' interests that such participation is assured.

Entitlement

30. An employee who is a member of an independent trade union recognised by the employer in respect of that description of employee is to be permitted reasonable time off during working hours to take part in any trade union activity. An employee who is a member of an independent and recognised trade union is also permitted to take reasonable time off during working hours for the purposes of accessing the services of a Union Learning Representative.

What are examples of trade union activities?

31. The activities of a trade union member can be, for example:

- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer
- meeting full-time officials to discuss issues relevant to the workplace
- voting in union elections.

32. Where the member is acting as a representative of a recognised union, activities can be, for example, taking part in:

- branch, area or regional meetings of the union where the business of the union is under discussion
- meetings of official policy making bodies such as the executive committee or annual conference
- meetings with full-time officers to discuss issues relevant to the workplace.

33. There is no right to time off for trade union activities which themselves consist of industrial action.

Payment for time off for trade union activities

34. Para 15 sets out the statutory entitlement to payment for time off to undertake trade union duties.

35. There is no statutory requirement that union members or representatives be paid for time off taken on trade union activities. Nevertheless employers may want to consider payment in certain circumstances, for example to ensure that workplace meetings are fully representative or to ensure that employees can make use of the services of a Union Learning Representative.

Section 4 - THE RESPONSIBILITIES OF EMPLOYERS AND TRADE UNIONS

Employers, trade unions, union representatives and line managers should work together to ensure that time off provisions, including training, operate effectively and for mutual benefit. Union representatives need to be able to communicate with management, each other, their trade union and employees. To do so they need to be able to use appropriate communication media and other facilities.

General considerations

36. The amount and frequency of time off should be reasonable in all the circumstances. Although the statutory provisions apply to all employers without exception as to size and type of business or service, trade unions should be aware of the wide variety of difficulties and operational requirements to be taken into account when seeking or agreeing arrangements for time off, for example:

- the size of the organisation and the number of workers
- the production process
- the need to maintain a service to the public
- the need for safety and security at all times

37. Employers in turn should have in mind the difficulties for trade union representatives and members in ensuring effective representation and communications with, for example:

- shift workers
- part-time workers
- home workers
- tele workers
- those employed at dispersed locations
- workers with particular domestic commitments.

38. For time off arrangements to work satisfactorily trade unions should:

- ensure that union representatives are aware of their role, responsibilities and functions
- inform management, in writing, as soon as possible of appointments or resignations of union representatives
- ensure that union representatives receive any appropriate written credentials promptly
- ensure that employers receive details of the functions of union representatives where they carry out special duties or functions .

39. Employers should make available to union representatives the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, colleague union representatives and full-time officers. Where resources permit the facilities should include:

- accommodation for meetings which could include provision for Union Learning Representatives and a union member(s) to meet to discuss relevant training matters
- access to a telephone and other communication media used or permitted in the workplace such as e-mail, intranet and internet where access is in accordance with company e-mail and internet policies.
- the use of notice boards
- where the volume of the official's work justifies it, the use of dedicated office space.
- Confidential space where an employee involved in a grievance or disciplinary matter can meet their representative.
- Access to members who work at a different location.

40. When using facilities provided by the employer for the purposes of communication with their members or their trade union, union representatives must comply with agreed procedures both in respect of the use of such facilities and also in respect of access to and use of company information. In particular, union representatives must respect and maintain the confidentiality of information they are given access to where it is described by the employer as confidential.

41. Union representatives will have legitimate expectations that they and their members are entitled to communicate without intrusion in the form of monitoring by their employer. In certain limited circumstances employers may require access to communications but such access should be subject to the general rules set out in statute and the Employment Practices Code issued by the Information Commissioner's Office. In the context of the Data Protection Act 1998 trade union membership is defined as sensitive personal data and there are therefore stricter provisions of how it can be used in compliance with the law. Any communication between union representatives and employees which may include sensitive personal data, such as that relating to grievances and disciplinary matters, will require even greater care to be taken if employers take steps to monitor these communications.

Requesting time off

42. Trade union representatives and members requesting time off to pursue their duties or activities or to access the services of a Union Learning Representative should provide management with as much notice as possible and give details of:

- the purpose of such time off
- the intended location
- the timing and duration of time off required.

43. Union representatives should minimise business disruption by being prepared to be flexible in seeking time off in circumstances where the immediate or unexpected needs of the business make it difficult for colleagues or managers to provide cover for them in their absence

44. In addition, union representatives who request paid time off to undergo relevant training should:

- give at least a few weeks' notice to management of nominations for training courses
- provide a copy of the syllabus or prospectus indicating the contents of the training course.

45. When deciding whether requests for paid time off should be granted, consideration would need to be given as to their reasonableness, for example to ensure adequate cover for safety or to safeguard the production process or the provision of service. Consideration should also be given to allowing Union Learning Representatives access to a room in which they can discuss training in a confidential manner with an employee. Similarly, managers and unions should seek to agree a mutually convenient time which minimises the effect on production or services. Where workplace meetings are requested, consideration should be given to holding them, for example:

- towards the end of a shift or the working week
- before or after a meal break.

46. For their part line managers should be familiar with the rights and duties of union representatives regarding time off. They should be encouraged to take reasonable steps in the planning and management of representative's time off, taking into account the legitimate needs of such union representatives to discharge their functions efficiently and effectively.

47. Employers need to consider each application for time off on its merits; they should also consider the reasonableness of the request in relation to agreed time off already taken or in prospect.

Section 5 - AGREEMENTS ON TIME OFF

To take account of the wide variety of circumstances and problems which can arise, there can be positive advantages for employers and trade unions in establishing agreements on time off in ways that reflect their own situations.

48. A formal agreement can help to:

- provide clear guidelines against which applications for time off can be determined
- establish realistic expectations on the part of workplace representatives and managers
- avoid misunderstanding
- facilitate better planning
- ensure fair and reasonable treatment.

49. Agreements should specify:

- the amount of time off permitted recognising that this will vary according to the fluctuations in demand on the union representatives' role
- the occasions on which time off can be taken including meetings with management, meetings with other union representatives, time needed to prepare for meetings, communicating with members and their trade union, time to undertake e-learning if appropriate and to attend approved training events.
- in what circumstances time off will be paid
- to whom time off will be paid
- the facilities and equipment to be provided and limits to their use, if any.
- The role of line managers in granting permission to legitimate requests for time off and, where appropriate and practical, ensuring that adequate cover is provided.

- the procedure for requesting time off
- the procedure for resolving grievances about time off.

50. In addition, it would be sensible for agreements to make clear:

- arrangements for the appropriate payment to be made when time off relates in part to union duties and in part to union activities
- whether payment might be made to shift and part-time employees undertaking trade union duties outside their normal working hours.

51. Agreements for time off and other facilities for union representation should be consistent with wider agreements which deal with such matters as constituencies, number of representatives and the election of officials.

52. The operation of time off agreements or arrangements should be reviewed from time to time.

53. In smaller organisations, it might be thought more appropriate for employers and unions to reach understandings about how requests for time off are to be made; and more broadly to agree flexible arrangements which can accommodate their particular circumstances.

54. The absence of a formal agreement on time off, however, does not in itself deny an individual any statutory entitlement. Nor does any agreement supersede statutory entitlement to time off.

Section 6 - INDUSTRIAL ACTION

55. Employers and unions have a responsibility to use agreed procedures to settle problems and avoid industrial action. Time off may therefore be permitted for this purpose particularly where there is a dispute. **There is no right to time off for trade union activities which themselves consist of industrial action.** However, where a union representative is not taking part in industrial action but represents members involved, normal arrangements for time off with pay for the union representatives should apply.

Section 7 - RESOLVING DISPUTES

There is advantage in agreeing ways in which disputes concerning time off arrangements, including training and access to facilities, can be settled and any appropriate procedures to resolve disputes should be followed.

56. Every effort should be made to resolve any dispute or grievance in relation to time off work for union duties or activities. **Where the grievance remains unresolved, trade union union representatives, Union Learning Representatives or members have a right to complain to an employment tribunal that their employer has failed to allow reasonable time off or, in the case of a Union Learning Representative or union representative, has failed to pay for all or part of the time off taken. Such complaints may be resolved by conciliation by ACAS or through a compromise agreement and, if this is successful, no tribunal hearing will be necessary.** ACAS assistance may also be sought without the need for a formal complaint to a tribunal.

ANNEX

THE LAW ON TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

Section 168 of the Trade Union and Labour Relations (Consolidation) Act 1992, states:

(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with -

- (a) negotiations with the employer related to or connected with matters falling within section 178(2) (collective bargaining) in relation to which the trade union is recognised by the employer, or
- (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union.

(2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations –

- (a) relevant to the carrying out of such duties as are mentioned in subsection (1), and
- (b) approved by the Trades Union Congress or by the independent trade union of which he is an official.

(3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.

(4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

Section 168A of the Trade Union and Labour Relations (Consolidation) Act 1992 states

(1) An employer shall permit an employee of his who is-

(a) a member of an independent trade union recognised by the employer, and

(b) a learning representative of the trade union,

to take time off during his working hours for any of the following purposes.

(2) The purposes are-

(a) carrying on any of the following activities in relation to qualifying members of the trade union-

(i) analysing learning or training needs,

(ii) providing information and advice about learning or training matters,

(iii) arranging learning or training, and

(iv) promoting the value of learning or training,

(b) consulting the employer about carrying on any such activities in relation to such members of the trade union,

(c) preparing for any of the things mentioned in paragraphs (a) and (b).

(3) Subsection (1) only applies if-

- a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
- (b) the training condition is met in relation to him.

(4) The training condition is met if-

- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,
- (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
- (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.

(5) Only one notice under subsection (4)(b) may be given in respect of any one employee.

(6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.

(7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes-

- (a) undergoing training which is relevant to his functions as a learning

representative, and

(b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).

(8) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.

(9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

(10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union-

(a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and

(b) in relation to whom it is the function of the union learning representative to act as such.

(11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.

Section 169 of the Trade Union and Labour Relations (Consolidation) Act 1992 states:

(1) An employer who permits an employee to take time off under section 168 or 168A shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he shall be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he shall be paid an amount calculated by reference to the average hourly earnings for that work.

The average hourly earnings shall be those of the employee concerned or, if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(4) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but -

(a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and

(b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

(5) An employee may present a complaint to an employment tribunal that his employer has failed to pay him in accordance with this section.

Section 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 states:

(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in -

(a) any activities of the union, and

(b) any activities, in relation to which the employee is acting as a representative of the union.

(2) The right conferred by subsection (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.

(2A) The right conferred by subsection (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.

(2B) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of having access to services provided by a person in his capacity as a learning representative of the trade union.

(2C) Subsection (2B) only applies if the learning representative would be entitled to time off under subsection (1) of section 168A for the purpose of

carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.

(3) The amount of time off which an employee is to be permitted to take under this section and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by ACAS.

(4) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.

(5) For the purposes of this section -

(a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and

(b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in section 168A(2) in that capacity.

Section 178(1) - (3) of the Trade Union and Labour Relations (Consolidation) Act 1992, states:

(1) In this Act "collective agreement" means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers' associations and relating to one or more of the matters specified below; and "collective bargaining" means negotiations relating to or connected with one or more of those matters.

(2) The matters referred to above are -

(a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;

(c) allocation of work or the duties of employment as between workers or groups of workers;

(d) matters of discipline;

(e) a worker's membership or non-membership of a trade union;

(f) facilities for officials of trade unions; and

(g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

(3) In this Act "recognition", in relation to a trade union, means the recognition of the union by an employer, or two or more associated employers, to any extent, for the purpose of collective bargaining; and "recognised" and other related expressions shall be construed accordingly.

Section 173(1) of the Trade Union and Labour Relations (Consolidation) Act 1992, states:

For the purposes of sections 168 and 170 the working hours of an employee shall be taken to be any time when in accordance with his contract of employment he is required to be at work.

Section 119 of the Trade Union and Labour Relations (Consolidation) Act 1992 states:

"official" means -

(a) an officer of the union or of a branch or section of the union, or

(b) a person elected or appointed in accordance with the rules of the union to be a representative of its members or of some of them,

and includes a person so elected or appointed who is an employee of the same employer as the members or one or more of the members whom he is to represent.

Developing effective employee representation:

A guide to managing provisions for time off, training and facilities

Developing Effective Employee Representation: A guide to managing provisions for time off, training and facilities.

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[1] The purpose of this Guide

1. This Guide is for employers, trade unions and workplace representatives. It gives advice on the provision of time off, training and facilities to enable workplace representatives to carry out their duties. It covers statutory and non-statutory representatives.

The status of this Guide

2. The Guide is good practice based on Acas' experience working with employers and workplace representatives, both union and non-union, to build effective methods of communication, consultation and negotiation between management and representatives. It is written to complement the *Acas Code of Practice on Time Off for Trade Union Duties and Activities* by going into greater detail and being relevant to all types of employee representative. This Guide has no standing in law.

The Acas Code of Practice

3. Trade union workplace representatives in those organisations where an independent union is recognised for collective bargaining purposes are covered by the *Acas Code of Practice on Time Off for Trade Union Duties and Activities*. The Code also covers union learning representatives. If an application is made to an Employment Tribunal by a union representative complaining about paid time off to carry out appropriate duties, or to gain training, the Code will be taken into account by the Tribunal to help determine what time off or pay can reasonably be required.

[2] The types of employee representatives and their rights.

Representatives with statutory rights to time off.

4. There are eight types of workplace representatives with statutory rights to paid time off to perform their duties and in some cases to receive training, and be provided with facilities. All are protected from dismissal or detriment in carrying out their duties or in standing for election¹.

Non-statutory representatives

5. Non-statutory or ‘voluntary’ representatives have no legal status but perform an important role in representing employees in discussions with management. They may be members of employee forums or joint consultation committees (JCCs) set up by a company management to aid dialogue and consultation on business performance and the management of change. Other non statutory representatives include equality and environment representatives which are championed by trade unions, and the Trades Union Congress (TUC).
6. The different types of statutory protected representatives are listed in the following table with a brief summary of their statutory rights.

Type of representative	Rights
<u>Union representatives</u> accredited by an independent union in workplaces where the union is recognised for collective bargaining purposes under the provisions of the Trade Union and Labour Relations (Consolidated) Act 1992 known as TU&LR(C). In the legislation these are referred to as ‘trade union officials’ while in manufacturing they are often called ‘shop stewards’.	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Protection against dismissal and detriment. <p><i>The Acas Code of Practice on Time Off for Trade Union Duties and Activities applies</i></p>
<u>Union Learning Representatives</u> accredited by independent unions in workplaces where the union is recognised for collective bargaining purposes. These rights are in TU&LR(C) as amended in 2002.	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Protection against dismissal and detriment. <p><i>The Acas Code of Practice on Time Off for Trade Union Duties and Activities applies</i></p>

<p><u>Health and Safety Representatives</u> appointed by trade unions in workplaces where the union is recognised</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • The provision of facilities to help them perform their duties • Protection against dismissal and detriment. <p>The Health and Safety Executive issues its own advice and Codes on health and safety representatives. They are not included in this Guide.</p>
<p><u>Information and Consultation Representatives.</u> This covers both those appointed for the purpose of negotiating an information and consultation agreement under the Information and Consultation of Employees Regulations 2004 (known as ICE), and representatives elected or appointed to the consultative body, often called an Employee Forum, JCC or Works Council.</p>	<ul style="list-style-type: none"> • Paid time off to carry their duties • Protection against dismissal and detriment. • The statutory rights only apply, however, to representatives covered by a ‘negotiated agreement’ or a ‘standard agreement’ under the Regulations. Where there is an ICE body established by a ‘pre-existing agreement’ (PEA) the representatives do not benefit from statutory protection but the expectation is that employers will extend the same type of time off arrangements and establish these in the PEA. It is certainly good practice to do so.
<p><u>European Consultative Bodies.</u> Employee members of a special negotiating body (a body established for the purposes of negotiating with central management an agreement for a European Works Council (EWC) under the Transnational Information and Consultation of Employees Regulations 1999) and the equivalent in a European Public Limited Liability Company (known as a European Company) and a European Cooperative Society (the European Co-operative Society (Involvement of Employees) Regulations 2006) all have statutory rights to enable them set up with management appropriate consultative bodies like a EWC. Once established the</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Protection against dismissal and detriment

rights apply to the employee representatives on these bodies	
<u>Pension representatives</u> are those workplace representatives elected for the purpose of consultation over changes to pension arrangements, known as ‘listed’ changes, under the Occupational and Personal Pension Scheme (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Protection against dismissal or detriment.
<u>‘TUPE’ representatives</u> are elected or appointed in circumstances where the employer is required to inform, and where relevant consult, over the transfer of undertakings (Transfer of Undertakings and Protection of Employees Regulations 2006, known as TUPE) Where an independent trade union is recognised for collective bargaining purposes, duly accredited union representatives will be consulted under TUPE some of whom may be specially elected for the purpose. Where there are no trade unions recognised the rights to time off apply to workplace representatives who are either members of ICE type consultative forums or are specially elected for the purposes of representing employees in TUPE.	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • The provision of facilities to help them perform their duties • Protection against dismissal and detriment
<u>Collective Redundancy representatives</u> are concerned with consultation with their employer in circumstances where 20 or more employees are to be declared redundant within a 90 day period (TU&LR(C) 1992 amended in 1995 and 1999) known as ‘collective redundancy’. Where a trade union is recognised consultation must be with union representatives some of whom may be specially elected for the purpose. Where there are no trade unions recognised the rights to time off applies to workplace representatives who are either members	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • The provision of facilities to help them perform their duties • Protection against dismissal and detriment

of ICE type consultative forums or are specially elected for the purposes of representing employees in TUPE.	
<u>Workplace agreement representatives.</u> Workplace agreements are required in circumstances where it is necessary for employers to agree the particular application of a statute to the workplace concerning working time, maternity and paternity and fixed term employment.	Employee representatives in these circumstances do not have rights to time off but have a right to <ul style="list-style-type: none"> • Protection against dismissal and detriment.

Associated employers.

7. It is important to note that the right to time off only applies to the representative's employer and not to any associated employer unless agreed by them. In circumstances where a number of employers share a site and agree joint negotiating and/or consultative arrangements it is advisable to establish special arrangements to ensure that the rights of workplace representatives are clearly established and understood by individual employers on the site in relation to their employees.

[3] The varying roles of workplace representatives.

A common sense approach

8. The different types of statutory rights to time off, training and facilities can be confusing and a cause of difficulty if applied without a wider consideration of the role of representatives and workplace circumstances. For example, a union representative has statutory rights only to paid time off and to training but if the same representative is involved in a TUPE or collective redundancy situation the rights are extended to the provision of facilities for duties connected with those issues. In the case of an ICE representative in the same situation the rights are extended to both training and facilities. In practice all representatives have a need to gain approved time off from their work to carry out their duties and they need at least some training and access to facilities if only to communicate with management and with their constituents. A common sense approach is to determine what is sensible in the circumstances with the aim of developing an effective system of employee representation while ensuring that statutory rights are met. It is the aim of this Guide to provide advice on how this may be done in a practical and fair way.

Different types of representatives have different needs

9. The role and responsibilities of workplace representatives can vary quite considerably between types of workplaces and sectors and between the different types of representatives listed above. It is important to consider what role the workplace representative plays in working out what time off and facilities can reasonably be expected and should to be granted. Four general types of workplace representative can be identified each with their own particular roles and thus needs for time off, facilities and training. These are:
 - Union representatives
 - Consultation representatives
 - Topic specific and time limited representatives
 - Multiple role workplace representatives.

Union representatives

Collective bargaining role

10. These are representatives elected and accredited by their trade union where the union has collective bargaining rights. They often undertake a wide range of activities including collective bargaining and joint consultation. To undertake this work, union representatives need to be trained and be able to communicate with their trade union and their members and with other representatives, if there is more than one on site or in the company. They need also to be able to access relevant information and have time to prepare for meetings with management. All of these activities require training and access to facilities to carry out the work, including access to external trade union officers.

The scope of collective bargaining

11. The range of topics covered in negotiations between union representatives and management can vary quite widely from one workplace to another. At the minimum a collective bargaining agreementⁱⁱ should cover hours, holidays and pay. Negotiations to change these, and other, terms and conditions of employment usually take place at regular intervals. In addition, there may be special needs to negotiate changes to payment systems, including job evaluation or agree procedures and arrangements for a range of employment issues like sickness, diversity, the environment, flexible working, work organisation and the design and operation of collective bargaining and consultative bodies and procedures dealing with grievances and discipline. The range of agreed topics covered in collective bargaining and the frequency with which bargaining and negotiation occurs will vary from one workplace and employing organisation to another. This will influence any definition of 'reasonable' time off which must vary according circumstances.

Union Learning Representatives.

12. A particular category of union workplace representation in recognised unions is the union learning representative (ULR). Their role is established by legislationⁱⁱⁱ and is listed in the Acas Code of Practice. Provided the union has given notice that the employee is a union learning representative who has been appropriately trained, or will be within six months, the representative can undertake functions related to the provision or propagation of training and learning. In practice the roles and responsibilities of ULRs will often vary by union and by workplace. Whatever the range of duties ULRs need access to approved training, time off to meet employees and meet with management. This, in turn, means they need some type of access to facilities.

Equality and Environmental Representatives

13. In some workplaces trade unions gain agreement from the employer to elect or appoint representatives with a specialist role. Equality representatives can be concerned with a wide range of diversity issues from the promotion of diversity management to ensuring legal compliance and conducting audits. Environmental representatives focus on the climate change agenda and changes in work organisation and green workplace projects. They may serve on environmental committees if these are established. These types of specialist representatives have no statutory rights and are more likely to be found in large workplaces. Appropriate training is available from trade unions and the TUC and the government sponsored Union Learning Fund is available to support approved training programmes for these representatives. In determining what time off, training and facilities will be agreed consideration needs to be given the relationship between these specialists and other union representatives concerned with collective bargaining and ULRs.

Accompanying workers in grievance and disciplinary cases

14. Union representatives may advise and accompany workers before or during grievance or disciplinary hearings provided that the trade union has certified

that they are capable of acting as a worker's companion. This is an established right in legislation and is covered both in the *Acas Code of Practice on Time Off for Trade Union Duties and Activities* and in the *Acas Code on Discipline and Grievance* and the *Acas guide: Discipline and grievances at work*. The right to allow accompaniment is a duty applying to all employers and not just where a union is recognised. However, the union workplace representative must be employed by the same organisation as the person to be accompanied. Representatives undertaking this work may have to appear as witnesses before outside appeal bodies or employment tribunals. This can be a demanding role and special training may be appropriate in addition to access to a confidential space to meet the worker involved.

Consultation representatives

A restricted role

15. These are workplace representatives whose role is generally restricted to meetings of consultation bodies on site, or sometimes at a higher level. Some senior representatives may attend both site and higher level, company wide meetings and even be members of a European Works Council (EWC). The purpose of consultation, as defined in EU statutes is the 'exchange of views and the establishment of dialogue'. This requires the sharing of information and consideration of options for change. The representative may be directly elected by the workforce or be a union representative taking on the additional role as a member of the employee forum or JCC. Consultation representatives are covered by the relevant provisions of the statutes, listed above, concerned with ICE, EWCs, and consultation in European companies and European Cooperative Societies. There are also many 'voluntary' representatives in workplaces with non statutory employee forums.

Consultation meetings.

16. The frequency, length and location of the consultation meetings, and the range of topics discussed, will vary from one organisation to another. It is this which most directly will influence the amount of time off required by these workplace representatives to perform their duties. The size of constituencies^{iv} and their dispersion also can vary widely and this, too, will influence the amount time needed by representatives to meet their constituents before and after meetings to communicate with them, as well as with other representatives. It is good practice for consultation representatives to receive initial training when they are first appointed and necessary refresher training during the course of their appointment.

Accompanying workers in grievance and disciplinary cases.

17. In some organisations without trade unions consultation representatives may take on an additional role of accompanying workers at grievance and disciplinary hearings, or advising them before hand. Care needs to be exercised in developing this role. Union representatives have to be certified as competent by their union to perform the role and have access to external

advice including from union legal officers. Non-union representatives involved in individual cases have neither of these provisions. There is no agreed process for the training and validation of non-union representatives. External training provision should be considered covering both a basic appreciation of the law together with an understanding of the role of the representative in accompanying a worker in dealing with what can be emotionally charged situations.

Workplace representatives for specific issues

One period consultation

18. Various statutes allow for the election of workplace representatives to deal with specific employment related issues such as business transfers, collective redundancy and changes to pension arrangements. Where unions are recognised these will be union workplace representatives. Otherwise employees will usually elect representatives especially to deal with these issues. Often, but not always, once the information sharing and consultation has been concluded the representative role disappears. Consultation is limited to a single period of time, but in this period the consultation process can be quite intense. Some organisations have found the value of consultation over a specific issue leads them to create a standing consultative body like an Employee Forum.

TUPE and Collective Redundancy Representatives.

19. The most common circumstances for representatives on specific topics are those relating to the transfer of undertakings (TUPE) or collective redundancies. The legislation requires, where there is no recognised union, that affected employees be invited by their employer to elect representatives long enough before the time specified to provide information on the planned changes. The employer is required to determine the period of office required by the workplace representatives to enable the consultations to be completed. The number of representatives is set by the employer in TUPE legislation ‘so that there are sufficient representatives to represent the interests of all affected employees having regard to the number and classes of those employees’.

Short period needs for time off, training and facilities.

20. The time off needs for these representatives can be quite intense over a relatively short period. The range of topics covered in information provision and subsequent consultation can be both broad and complex dealing, as it must, with business decisions and changes which directly affect often relatively large numbers of employees. This in turn requires the representatives to have close contact with their constituents especially with regard to the implementation phase of change. There are particular training needs related both to help understand the business issues and the information provided and to learn how to engage in consultation with management and communicate effectively with constituents at all stages of the process. E-

learning may be particularly valuable if appropriate material is available. The TUPE and Collective Redundancy regulations also stipulate that ‘the employer shall afford to appropriate representatives such accommodation and other facilities as may be appropriate’. The question of appropriate facilities is covered later in this Guide.

Temporary representatives setting up consultative bodies.

21. A further type of workplace representative on topic and time limited activities is linked to the negotiation of consultative forums under the ICE and EWC, European Company and European Co-operative Society regulations. These representatives have the role of negotiating and agreeing with relevant management the design and operational rules of appropriate consultative bodies set up under the provisions of the various Regulations. While many of these specially elected members of negotiating bodies may subsequently be elected to serve on the standing consultative forums there is no requirement to do so and it cannot be anticipated that they will. At the time of the operation of these negotiating bodies there are particular needs for time off to meet with management, prepare for meetings and communicate with constituents. Training on the purpose and planned operation of the consultative forum will be beneficial.

Multiple role workplace representatives.

22. Some representatives may take on multiple roles. This is most likely to occur where union representatives operate either because it has proved difficult to get others to volunteer for the variety of representative roles or because the experienced representative is considered the best person. It is quite often the case that a union representative will be the only representative on site. This can mean that one person is the workplace representative in collective bargaining, union learning, consultation and representing individuals in grievance and disciplinary matters as well as health and safety. Care needs to be exercised, especially by the union, to avoid role overload. In these circumstances there is joint interest between the recognised union and the employer in seeking to share the load by getting other representatives appointed and trained. In calculating what time off is reasonable in these circumstances it is not appropriate simply to add the requirement for each role into a total sum. It is sensible to agree how the multiple roles can best be undertaken in a way which regulates or predicts time off from work to certain periods. This can include agreeing priorities and allowing flexibility on the timing of time off.

[4] Drawing up an agreement on time off, training and facilities.

The need to avoid rigidity

23. Sections [2] and [3] of this Guide have shown the variety of workplace representatives and, for some, their statutory basis and the varying scope of their duties. This variety means that it is neither desirable nor possible for this Guide to specify the minimum number of representatives that should be appointed or state the number of hours per week that representatives require to undertake their duties. This will depend on the circumstances of each case and it is up to management with the union and/or the employee representatives to determine what is appropriate for them. Union representatives generally need far more time to undertake their role than consultation representatives while, for a short period, the needs of TUPE or collective redundancy representatives can be intense and, in some circumstances, become a full time project. What is reasonable will vary according to the type of representative and the operating requirements of the employing organisation.

The need to set down time off, training and facilities requirements in an agreement.

24. It is desirable for an agreement or protocol to be drawn up in each workplace, and/or the wider organisation as this can establish legitimate expectations for time off arrangements among representatives and managers. It can also help avoid confusion and minimise disputes. Such agreements should set out what time off and access to facilities is reasonable and appropriate in the particular circumstances taking account of:
- the size of the organisation and the number of workers
 - the production or operational process
 - the need to maintain a service to the public
 - the need for safety and security at all times.

A written agreement.

25. Such agreements should be in writing with the operational date established and signed by the appropriate authorities. These will be a nominated senior manager and a trade union official, if a union is recognised, and or the workplace representatives who were involved in drawing up the agreement. The agreement should be consistent with wider agreements which establish such matters as constituencies, the number of representatives including specialist representatives and methods of election. The agreement should include a termination clause and establish means for a periodic review of its operation. Where no agreement has been made, and in small organisations informal arrangements may be preferred, the factors listed below should be used to determine how time off will be managed.

26. Factors to consider in drawing up a time off agreement or protocol.

(1) *The circumstances where it is necessary to leave normal paid work to attend meetings with management.* This will include:

- regular meetings of negotiating and consultative bodies and the frequency with which they are held
- the need for special time off to attend ad hoc meetings called to deal with complex issues or major changes that affect employees
- meetings related to the operation of disputes procedures
- meetings associated with the handling of individual grievance and disciplinary matters. These representatives will need access to a confidential space for discussion with the employee involved
- It may be helpful in large organisations where a senior workplace representative is elected or identified to distinguish the greater amount of time off that this person, or people, will require

(2) *The agreement should recognise that the amount of time required can vary over a period according to the demands of the topics covered in joint discussions.* It is not desirable to establish a set number of hours per week. This can be too inflexible and can come to be seen as an entitlement.^v

(3) *The time needed by representatives to prepare for meetings with management.* This can include holding preparatory pre-meetings of all or some representatives. For union workplace representatives this should include time to communicate with and meet external trade union officers as appropriate.

(4) *The time needed for representatives to communicate with their constituents both before and after meetings with management.* The agreement should cover the way these activities can best be carried out whether face to face, in special meetings, via electronic communication media such as e-mail or intranet, and or as part of regular team meetings held by line managers for their staff.

(5) *Special consideration needs to be given to representatives who work unusual hours, or represent workers with unusual hours.* This includes part-time, shift working, weekend working, teleworking, home working and mobile workers, and workers with particular domestic commitments. Consideration needs also to be given to representatives whose place of work is different from some or all of their constituents. These 'off-site' representatives will be likely to need effective means to communicate with their constituents and from time to time to travel to meet them when necessary.

(6) *The needs of time limited workplace representatives such as in TUPE, collective redundancy situations.* This should determine, in accordance with the legislation, how far in advance representatives need to be appointed, the number of them and the duration of their period of office. The duty on employers to allow representatives access to any affected employees should be specified.

(7) *Arrangements to ensure that that work cover is provided when time off is required.* Representatives need to be confident that their normal paid work is covered while they are undertaking their duties. This can include the allocation of duties to other employees with the capacity to do the work, rearranging work to a different time or a reduction in work loads.

(8) *The facilities provided^{vi} to representatives to enable them to undertake their duties.* This can include office space, notice boards, telephones, and use of electronic media. Special attention needs to be given to the use of electronic communications media to ensure it is in accordance with company e-mail and internet policies and does not compromise the security of the employer and ensures the privacy of representatives' communications. This is considered in detail in Section [6] on facilities.

(9) *Arrangements for training.* This should specify what training is to be provided to newly appointed workplace representatives and to up dating or refresher training for established representatives and how it is to be provided including, if appropriate, the use of e-learning. In the case of union representatives this will include access to union approved training programmes. Particular attention should be paid to the training needs of workforce representatives dealing with TUPE and collective redundancy. The training of representatives is considered in detail Section [5].

(10) *The payment for time off needs to be specified^{vii}.* This is set out in detail in the various statutes for different types of workplace representatives. The general principles are that the employer must pay either the amount workplace representatives would have earned had they been working during the time taken off including shift premia, or where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do. Special consideration should be given to the payment of shift and part-time workplace representatives undertaking their duties or training outside their normal working time. There is no statutory requirement to pay for time off where the duty is carried out at a time when the union representative would not otherwise have been at work unless the union representative works atypical hours, such as night shift, but needs to perform representative duties, including training, during normal hours.

(11) *The responsibilities of management.* Managers, especially line managers, need to ensure that reasonable steps are taken in the planning and management of representative's time off, taking into account the legitimate needs of representatives to discharge their functions efficiently and effectively. This should include consideration of how the work of representatives can be covered when they are absent.

(12) *The responsibilities of workplace representatives.* Representatives should seek permission from appropriate management to engage in their duties or undertake training. They should provide as much prior notice as possible. Requests for time off should indicate the purpose of the time off, the intended location and the expected timing and duration.

Representatives should work to minimise business disruption by being prepared to be flexible in seeking time off in circumstances where the immediate or unexpected needs of the business make it difficult for colleagues or managers to provide cover for them in their absence.

(13) *The responsibilities of recognised trade unions.* Trade unions need to inform management in writing as soon as possible of the appointment or resignation of union workplace representatives, and the type of role undertaken, eg as a union learning representative. This includes notification of those union workplace representatives that the union certifies as being capable of acting as a worker's companion at disciplinary or grievance hearings^{viii}.

(14) *The resolution of disputes concerning time off.* The agreement should specify how disputes and disagreements on the operation of time off arrangements should be raised and a resolution sought^{ix}. It is sensible for records to be kept of periods when time off is taken, and its purpose, for the avoidance of doubt in any subsequent dispute. Acas assistance may be sought without the need for a formal complaint to a tribunal.

[5] Training of workplace representatives.

The value of training

27. It is necessary for workplace representatives to receive training to enable them to carry out their duties. Such training will enable them to undertake their role with greater confidence, more efficiently and quicker and thus help them work with management and build effective employment relations. Statutory rights to training are afforded to union workplace representatives and to representatives dealing with TUPE or Collective Redundancy situations^x. Although other types of representatives such as those appointed under ICE and EWC do not have such legislative rights it is good practice for employers to provide training whether themselves or by using outside specialist training providers and this should include consideration of e-learning where appropriate and available^{xi}.

Training provided by unions and the TUC

28. Many trade unions and the TUC provide training programmes for union workplace representatives. Specialist training is available for union learning, equality and environmental representatives. There is a requirement for the training provided to these representatives to be approved by the TUC or by the independent union that the representative belongs to. Employers will need to provide time off with pay to allow union workplace representatives to attend appropriate courses provided by the TUC or individual unions. These courses need to be relevant to the range of issues and necessary skills connected to the collective bargaining, and other specialist activities conducted in the organisation.

Induction training

29. The initial training of workplace representatives should take place as soon as feasible after they have been appointed. The precise syllabus will vary according to the type of representative role and the range of activities undertaken. There are, however, a number of basic areas which should be included:
- the role of the representative and the operation of time off agreements or procedures
 - the value and means of communicating with constituents before and after meetings with management
 - working with other representatives to develop an effective system of employee representation.
 - the methods and importance of handling confidential information, relating for example to business plans and proposed changes that are the subject of negotiation or consultation
 - basic skills in consultation and, for union representatives, negotiation
 - skills needed to contribute effectively in meetings
 - developing realistic expectations of their role including the desirability of compromise and the value of cooperative working with management

Training for established representatives

30. It is desirable for some form of further training opportunities to be provided to experienced representatives. This is important where a representative takes on a specialist role and responsibility. Training may also be appropriate where there are plans for substantial business changes that impact on employment and work organisation. Here the need is enable the representative to have the skills and confidence to understand and evaluate business proposals and their effect on the workforce and on employment relations, and to enhance skills in negotiation, consultation and partnership. It may be appropriate to provide access to relevant e-learning tools, provide some training in-house or use specialist external providers. In the case of union workplace representatives this should include courses and learning opportunities provided by the TUC and the relevant trade union. In Acas' experience, joint training with line managers can be especially beneficial in helping to advance mutual understanding and the building of trust.

TUPE and Collective redundancy related training

31. Workforce representatives, whether union or non-union, appointed for fixed time periods to deal with business transfers or redundancy have particular training needs. The function of the training is to enable them to learn quickly about their representative role related to the issue in question and the rights given to them under the various statutes at different times of the information sharing and consultative processes. A further important function of training is to provide the representative with the knowledge and skills to evaluate the employer's proposals especially the implementation plans. Without such knowledge and skills it is hard for the representative to gain the self confidence to engage in meaningful dialogue with the employer and evaluate the consequences of the decision on affected employees. Appropriate e-learning programmes, if available, maybe especially relevant.

Training in disciplinary and grievance handling

32. A growing role for union workplace representatives is that concerned with accompanying a worker in grievance and disciplinary hearings. In practice representatives often find their role in providing advice is especially valuable when it precedes a formal hearing. This can sometimes enable a matter to be resolved prior to the initiation of formal proceedings including applications to Employment Tribunals. The *Acas Code of Practice on Discipline and Grievance* and the *Acas guide: discipline and grievances at work* are relevant here. Trade unions are required to certify that the union representative is capable of acting as a companion. The relatively few non-union workplace representatives who undertake the individual companion role and who do not have access to external trade union advice and training will find the role especially challenging unless provided with appropriate training. Appropriate training for this role should cover
- a basic understanding of employment law and procedures
 - understanding of where and when to go for further advice^{xii}

- the role of the ‘companion’ in relevant hearings and limitations to it
- the role of third party assistance, for example mediation, in resolving problems^{xiii}

Training for Union Learning Representatives

33. Union Learning Representatives are subject to particular statutory provisions in respect to training. They are required to have been trained to carry out their roles or show that they will receive appropriate training within six months of appointment. This is a qualifying condition. Alternatively they are required to show they have the relevant expertise and experience to operate in this role. This prior experience may have been gained from extensive on the job training or shadowing an experienced Union Learning Representative, or come from previous experience in teaching, training, counselling or human resource development. The Union Learning Representative’s trade union is required to give the employer notice in writing that the representative will be undergoing the relevant training and tell the employer when it is concluded. In addition, the union must then inform the employer in writing that representative is now competent to undertake the role. It is good practice for the union to give details of the training provided and any previous experience which should be taken into account. There may be circumstances where the six month period to undertake the training will need to be extended, for example due to unforeseen circumstances such as ill-health, pregnancy or bereavement.

The coverage of training for union learning representatives.

34. The content of the training relevant to Union Learning Representatives is that related to one or more of the following areas of activity specified in the legislation. Examples of course content are given in the Code of Practice.
- Analysing learning or training needs
 - Providing information and advice about learning and training matters
 - Arranging and supporting leaning and training;
 - Promoting the value of learning and training;

Training for managers.

35. Line managers who have workplace representatives working in their area of control need to have an understanding of the role and duties of these representatives and their importance. It is desirable for the role of workplace representatives and their needs for time off and facilities to be included in management training programmes. It is Acas’ experience that joint training activities for line managers and workplace representatives can be especially beneficial in helping to enhance mutual understanding and building trust.

[6] Access to facilities

The need for facilities.

36. TUPE and Collective Redundancy representatives are entitled to appropriate accommodation and other facilities 'as may be appropriate'. While other representatives have no right to such facilities it is clearly in the joint interest of the employer and the representatives themselves for some facilities to be provided. Without a means to communicate to constituents and with other representatives, and to receive information from their employer prior to meetings it would be very difficult to carry out the role effectively. This need for facilities can also include, when necessary, a place to hold meetings with constituents or union members and a confidential space where an employee involved in grievance or disciplinary matters can meet the representative who is to be their companion. This can also include space for meetings with a union learning representative to discuss learning and training needs and provision. Dedicated notice boards should be provided. It will often be appropriate to provide separate, secure, storage space for representatives to keep papers etc, for example in a filing cabinet or office cupboard.

Facilities in large workplaces

37. In large workplaces where there are a number of workforce representatives and where the volume of business justifies it, or where there is a senior representative who has multiple roles and spends a large proportion of his or her time on these duties, it may be appropriate to provide a dedicated and equipped office space in an appropriate location. This is most likely to be required where unions are recognised and union workplace representatives take on a variety of roles. Union workplace representatives should be entitled to make telephone calls externally to full time union officers and other approved people.

TUPE and Collective Redundancy Representatives

38. Workplace representatives dealing with time limited issues such as TUPE and redundancy often are required to spend a large proportion of their working time over a short period in dealing with information and consultation and communicating with their constituents. The provision of fully equipped temporary office space will be particularly beneficial in helping them discharge their duties, especially where a large number of employees are affected directly and indirectly.

Off-site representatives

39. Particular arrangements will need to be made to enable workplace representatives to communicate with, and when necessary meet, those constituents or trade union members who work on a different site or have working hours out of the ordinary such as shift, weekend and teleworkers workers.

The use of electronic means of communication

40. A growing volume of communication in workplaces and the wider organisation is done via electronic means such as e-mail, the intranet and internet. The use of these raises questions of confidentiality and surveillance. The general principle is the need to ensure confidentiality and avoid monitoring and surveillance except in particular, specified circumstances. Representatives must comply with agreed procedures when using facilities provided by the employer for the purpose of communicating with constituents, or in the case of union representatives with their members and their trade union. This is in respect of the use of such facilities and access to and use of company information. In particular, representatives must respect and maintain the confidentiality of information they are given access to where it is described by the employer as confidential.

The monitoring of representatives communications

41. Representatives will have legitimate expectations that they and their constituents, or members, are entitled to communicate without intrusion in the form of monitoring by their employer. In certain limited circumstances employers may require access to communications but such access should be subject to the general rules set out in statute and the Employment Practices Code issued by the Information Commissioner's Office. In the context of the Data Protection Act 1998 trade union membership is defined as sensitive personal data and there are therefore stricter provisions on how it can be used in compliance with the law. Any communication between representatives and employees which may include sensitive personal data, such as relating to grievances and disciplinary matters, will require even greater care to be taken if employers take steps to monitor these communications.

Dedicated intranet and e-mail accounts.

42. Consideration could be given in large organisations, where electronic forms of communication are widely available, to providing representatives with separate e-mail accounts and password protected dedicated intranet pages. Company rules on monitoring restricted access provision will need to be applied equally to these communications as to others.

ⁱ Detriment can be loosely defined as suffering a disadvantage in terms of employment that otherwise would not have applied. In the case of dismissal, whether for alleged conduct or redundancy, the action is automatically unfair and there is no minimum qualifying time period of employment.

ⁱⁱ TU&LR(c) 1992 section 178(2) establishes matters for which the union is recognised for the purposes of collective bargaining. These are listed in the Acas Code of Practice.

ⁱⁱⁱ TU&LR(C) Section 168A (2).

^{iv} Under the Standard Provisions of ICE in Section 19(3) the relevant number of representatives is set at one per fifty employees provided the number is at least 2 and does not exceed 25. No other statutes establish the required ratio of representatives per employee.

^v Workplace representative with statutory rights, including union representatives, are not entitled to time off but only to ask for time off. The representative is entitled to be permitted to take the requested time and it is unlawful for the employer to unreasonably refuse to grant the request for time off. This means that where permission is refused the representative cannot simply take the time off with impunity. To do so would be a breach of contract.

^{vi} Only TUPE and Collective Redundancy workplace representatives have a statutory right to the provision of facilities. It is good practice, however for all representatives to have access to facilities since without these it is very difficult for them to carry out their duties effectively.

^{vii} The right to payment for time off only applies to representatives' work or training undertaken during their normal working hours. There is no right to payment for representative work performed outside these hours unless the representative works atypical hours, such as night shift, but needs to undertake the duties or training during normal hours.

^{viii} The right to time off in these situations applies regardless of whether the certified representative belongs to a recognised trade union or not although the worker being accompanied must be employed by the same employer.

^{ix} Employee representatives with statutory rights to time off, training and facilities, as appropriate, have a right to complain to an employment tribunal that their employer has failed to allow reasonable time off, provide facilities or provide normal pay.

^x This right also applies to Health and Safety, employee safety and offshore safety representatives.

^{xi} Acas has considerable experience in providing training to workplace representatives (www.acas.org.uk)

^{xii} Such as the Acas Helpline 08457 47 47 47.

^{xiii} Some employers, with the support of their recognised trade unions, provide training in mediation skills to a select number of union representatives ensuring that the representative acts as a mediator only in cases where he or she is not likely to have to represent the worker at a later stage. See the Acas CIPD Guide to Mediation 2008.

