

Government Circular No: 257/92

CODE OF PRACTICE

Issued by the Department of Industry

Under Section 87 of the Employment Act 1991

Time off for Trade Union Duties and Activities

*Approved by Tynwald
Coming into operation*

*16th June 1992
1st July 1992*

Introduction

1. Under the terms of the Employment Act 1991 (“the Act”), the Department of Industry is empowered to issue or approve Codes of Practice providing practical guidance for the purpose of promoting the improvement of industrial relations. This Code is intended to provide such guidance on the time off to be permitted by an employer:

- (a) to a trade union official in accordance with Section 26 of the Act;
and
- (b) to a trade union member in accordance with Section 27 of the Act.

2. The provisions of this Code are admissible in evidence and may be taken into account in determining any question arising in proceedings before the Employment Tribunal or a court. But failure to observe any provision of the code does not, of itself, render a person liable to any proceedings.

While every effort has been made to ensure that the summary of the relevant statutory provisions included in the Code is accurate, only the Employment Tribunal and the courts can interpret the law authoritatively.

3. Section 26 of the Act requires an employer to permit an employee, who is an official of a registered trade union which is recognised by the employer, to take reasonable paid time off during the employee's normal working hours for the purpose of enabling the employee:

- (a) to carry out duties concerned with:
 - (i) negotiations with the employer about matters which fall within the definition of 'trade dispute' in Section 88(1) of the Act and for which the union is recognised by the employer; or
 - (ii) any other function on behalf of employees of the employer which are related to matters falling within that definition and which the employer has agreed the union may perform.

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Or

(b) to undergo training relevant to carrying out those duties and which has been approved by the trade union.

Matters falling within the definition of 'trade dispute' in Section 88(1) are listed in the sub-headings of paragraph 7 below.

4. For the purposes of Section 26 of the Act the word 'official' means an employee who has been elected or appointed within the rules of the union to be a representative of all or some of the union's members in a particular company or workplace.
5. Section 27 of the Act requires an employer to permit an employee who is a member of an appropriate trade union to take reasonable time off during the employee's working hours for the purpose of taking part in any trade union activity to which the section applies.

Trade union activities to which the section applies are any activities of an appropriate trade union of which the employee is a member; and any activities in relation to which the employee is acting as a representative of such a union; but excluding activities which themselves consist of industrial action whether or not in contemplation or furtherance of a trade dispute. Section 27 does not provide for union members or representatives to be paid for time off taken on union activities.

'Appropriate trade union' for the purposes of the section means, in relation to an employee of any description, a registered trade union which, in respect of that description of employee, is recognised by his or her employer. A recognised trade union is described by Section 32(2) of the Act. The conditions and procedure for effective registration of a trade union are contained in Sections 1 - 7 of the Trade Unions Act 1991 (and associated regulations).

The amount of time off and the purposes for, the occasions on and any conditions subject to which time off may be taken are those that are reasonable in all circumstances having regard to this Code of Practice.

Trade union officials' duties

7. Within the terms of the recognition agreement, trade union officials should be allowed to take reasonable paid 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 any employees are required to work. Examples could include:

- * pay
- * hours of work
- * holidays and holiday pay
- * sick pay arrangements
- * pensions
- * vocational training

- * equal opportunities
- * notice periods
- * the working environment
- * utilisation of machinery and other equipment

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

- * job grading
- * job evaluation
- * job descriptions
- * flexible working practices

(d) matters of discipline. Examples could include:

- * disciplinary procedures
- * arrangements for representing members at internal interviews
- * arrangements for appearing on behalf of members, or as witnesses, before agreed outside bodies or the Employment Tribunal

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

- * representational arrangements
- * any union involvement in the induction of new employees

(f) facilities for officials of trade unions. Examples could include any agreed arrangements for the provision of:

- * accommodation
- * equipment
- * names of new employees to the union

(g) machinery for negotiation or consultation, and other procedures, relating to any of the matters in (a) to (f) above.

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.
8. The duties of an official 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 representational rights only.

Training of officials in aspects of industrial relations

9. To fulfil their duties effectively officials need to possess certain skills and knowledge. In addition to the practical experience obtained from holding offices they should undertake training in relevant subjects when necessary.
10. Training should be relevant to the industrial relations duties of an official, and approved by the appropriate union. The duties will vary according to the collective bargaining arrangements at the place of work and the structure of the union. Accordingly there is no universally applicable syllabus for training.
11. An official should be permitted to take reasonable paid time off work for initial basic training. Such training should be arranged as soon as possible after the official is elected or appointed.
12. An official should be permitted to take reasonable paid time off work for further training relevant to his or her duties concerned with industrial relations. This may be where he or she has special responsibilities or where such training is needed to meet new circumstances such as changes in the structure or topics of negotiation or legislative changes affecting industrial relations.

Trade union activities

13. To operate effectively and democratically trade unions need members to participate in certain activities.
14. Members should be permitted to take reasonable time off during working hours for such purposes as voting at the workplace in union elections or ballots. Also there may be occasions when it is reasonable for unions to hold meetings of members during working hours because of the urgency of the matter to be discussed.

Where a member is acting as a representative of his 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 fulltime officials to discuss issues relevant to the workplace.

The Responsibilities of Employers and Trade Unions

General Considerations

15. 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 employees
- * the production process
- * the need to maintain a service to the consumer
- * the need for safety and security at all times.

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

- * shift workers
- * part-time employees
- * those employed at dispersed locations
- * employees with particular domestic commitments.

17. For time off arrangements to work satisfactorily trade unions should;

- * ensure that officials are aware of their responsibilities and functions
- * inform management in writings as soon as possible of appointments or resignations of officials
- * ensure that officials receive any appropriate written credentials promptly.

18. Employers should consider making available to officials the facilities necessary for them to perform their duties efficiently and communicate effectively with their members, fellow lay officials and full-time officers. Where resources permit the facilities could include:

- * accommodation for meetings
- * reasonable access to a telephone and other office equipment
- * the use of notice boards

Requesting Time Off

19. Trade union officials and members requesting time off to pursue their industrial relations duties or activities should provide their employer 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.

20. In addition, officials who request paid time off to undergo relevant training should:
 - * give adequate notice to the employer of nominations for training courses.
 - * if asked to do so, provide a copy of the syllabus or prospectus indicating the contents of the training course.

21. When deciding whether requests for paid time off should be granted, consideration will need to be given as to their reasonableness, for example to ensure adequate cover for safety or to safeguard the production process or 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.

22. Employers need to consider each application for time off on its merits. This might include the reasonableness of the request in view of agreed time off already taken or in prospect and, where the application relates to training for officials, the availability of relevant courses.

Agreements on Time Off

23. 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 which reflect their own situations. Such an agreement can help to:
 - * provide clear guidelines by which applications for time off can be considered
 - * avoid misunderstanding
 - * facilitate better planning
 - * ensure fair and reasonable treatment.

24. Agreements might specify:
 - * a normal maximum amount of permitted time off
 - * the occasions on which time off can be taken
 - * in what circumstances time off will be paid

- * to whom time off will be paid
 - * the procedure for requesting time off
 - * procedures for reviews
25. In addition, it would be sensible to make clear that arrangements for the appropriate payment to be made when time off relates in part to union duties and in part to union activities.
 26. 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.
 27. In smaller organisations, it might be 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.
 28. All appropriate levels of management should be familiar with agreements and arrangements relating to time off.
 29. The absence of a formal agreement on time off does not in itself deny an individual any statutory entitlement. Nor does any agreement supersede a statutory entitlement to time off.

Industrial Action

30. 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 an official is not taking part in industrial action but represents members involved, normal arrangements for time off with pay for the official should apply.