



# Right to Request Time to Train consultation

TUC Submission

## Summary of key points in the submission

- The TUC welcomes the proposal to introduce a new statutory right to request time to train. New polling commissioned by the TUC (see Appendix) shows that 71 per cent of working people support the introduction of a new right along these lines and 53 per cent say they would be likely to use it;
- The TUC will, in the context of the Government's changed policy approach, continue to press the case for the introduction of a statutory right to paid time off to train for workers without a level 2 qualification over the longer-term;
- The framework for implementing Time to Train needs to differ from that of the right to request flexible working, not least because of the different drivers for workers to request training;
- Requests should include the right to request paid time to train and/or to request tuition fees;
- The qualifying period should be 13 weeks, not 26. All workers including agency workers and not just employees should be included;
- There should be no exemptions for small employers;
- The right should be collectivised and apply equally to groups or individuals;
- Union and union learning representative (ULR) involvement should be encouraged. It is welcome that union reps and ULRs can accompany workers. The rights of union reps including ULRs should be extended in order to ensure they have facilities and time to conduct their duties in this area;
- Employers should have both an obligation to help employees frame requests and a reduced set of reasons to refuse;
- Employees should have a right of appeal including for example where the employer has discriminated by not treating similar requests in a similar manner;
- Requests should not be limited to only one per 12 months;
- The right should be as far as possible UK wide; and
- There should be particular help for workers who may have difficulty framing requests e.g. those with ESOL, language or literacy needs.

## Introduction

1.1 The TUC welcomes the opportunity to comment on the Government's consultation on a new right to request time to train for employees in England. The TUC is the voice of Britain at work and represents 6.5 million employees in 58 affiliated trade unions.

1.2 The TUC supports the proposal to give employees a statutory right to request time to train and for employers to have a statutory duty to consider the request. This will help employees press employers to offer training and could also help establish a dialogue which would encourage a better balance between employee and employer demand for training. New polling commissioned by the TUC (see Appendix) shows that 71 per cent of working people support the introduction of a new right along these lines and 53 per cent say they would be likely to use it.

1.3 In the context of the Government's changed policy approach the TUC continues to support a statutory right to paid time off, particularly up to level 2, over the longer-term. Workers with few or no qualifications are more likely to be low paid and therefore less able to afford to access training. Therefore statutory rights to paid time off to train would be of particular benefit to those who missed out on gaining qualifications up to level 2 the first time around. This would increase the UK's skills base but also facilitate a more equitable distribution of training opportunities. It would also be a stronger mechanism to open up training to workers in the one third of organisations that don't offer any training to their employees.

1.4 The TUC has strongly argued that collective bargaining over training is the most effective way of increasing the quantity of training in recognised workplaces and we reaffirm that training should be included as a core topic covered by the statutory scheme for collective bargaining. We do not view the Time to Train proposal as an alternative to collective bargaining but as a process, including in those workplaces with learning agreements, whereby individuals can access training and development negotiated with employers.

1.5 We welcome the fact that union learning representatives (ULRs) or other union reps will be able to accompany employees in the process of requesting time to train. This should be added to the ULR statutory functions under the Employment Act 2002. The right to be accompanied by a ULR or other union rep in recognised workplaces should be explicit and on the same statutory footing as the right to be accompanied at a grievance/disciplinary hearing. The role of unions and ULRs in supporting employees to access time to train should be encouraged.

1.6 The right to request training should be framed differently from the right to request flexible working. The reasons for a different approach include that training can often be collectivised, the outcomes are very different, as are the drivers behind individual demand for training. The complexity of the types of training available, and the support often needed to access it provide other reasons to frame the right to request training differently.

1.7 The type of training to be requested should be inclusive. It should not just

allow workers to be more effective in their current job, but also help job progression, which would increase productivity in the medium and longer term. Requests should also include training which would support personal development and continuing professional development (CPD).

1.8 The right to request training should include the right to request paid time off and /or tuition fees. The employer duty to respond should include these issues. Where the training is job related then the employee would request and expect the employer to pay for the training. Where the request was in relation to a first level 2/Skills for Life course then under Train to Gain the training would be free and the employee would expect the employer to agree to provide paid time off. The new proposals must build on, not roll back, these opportunities for low skilled workers and must be joined up with existing government training programmes. For broader employee development the employer might agree an arrangement whereby the employee agrees to share the costs of time off to study and possibly fees. This could best be facilitated through co-investment schemes which are being piloted through the unionlearn/DIUS collective learning project in the North West and the East Midlands.

1.9 Where the training requested is related to improving the performance in jobs done by a number of employees or if a number of employees identified the same need for programmes such as Skills for Life/ESOL, it would make sense if requests were made collectively to the employer and brokered by a ULR or another union rep in unionised workplaces. Employers themselves will probably prefer to train such staff in groups rather than one by one.

1.10 The right to request should be as inclusive as possible, with eligibility based on 13 weeks (three months) of continuous employment and extending to agency workers.

1.11 The 28 day maximum period for meeting the employee in relation to requesting flexible working should be shortened to 14 days in respect to training. Where an employee wishes to revise the request after the meeting with the employer, then time should be made available for the employee to have a second meeting with the employer.

1.12 Given the different drivers for workers to seek training opportunities, the acceptable reasons for rejecting a request must present a lower bar than for the right to request flexible working. Acceptable reasons for rejecting a request should be limited to relevance to business productivity and performance, availability of provision and demonstrably unreasonable difficulties in reorganising work to facilitate training. No employer, regardless of size, should be exempt. Some workers may have additional support requirements. There should also be special arrangements for Skills for Life and ESOL to facilitate training for workers with such needs and the TUC strongly recommends that the acceptable reasons for rejecting a request for training in these particular circumstances should not include relevance of the training to business productivity and performance (see also paragraphs 9.5 - 9.7).

1.13 Employers would need to ensure that requests from employees in similar jobs and similar training needs are given equal consideration. Not to do so should be grounds for appeal and may well be discriminatory.

1.14 The TUC would wish to see the statutory right implemented throughout the UK as both an education and an employment right, but within the proposed timeframe.

## Impact on the review of a statutory right to training

2.1 The TUC will, in the context of the Government's changed policy approach, continue to press the case for the introduction of a statutory right to paid time off to train for workers without a level 2 qualification over the longer-term. The Government's position is that the 2010 review needs to be deferred to 2014/15 in order to gauge the impact of the implementation of the new right on employer and employee behaviour as regards take-up of training in the workplace and particularly in the case of employees without a level 2 qualification. However, the Government has also emphasised that it remains committed to the need for a wide-ranging review as set out in the DIUS press release (14/5/2008) accompanying the announcement of the proposed new right. This stated that: *'the review would still be of fundamental importance in considering the efficacy of the skills and employment policies and systems and progress towards meeting our skills ambition. It would be making vital recommendations for Government to consider and act upon. The 2014/2015 review will have the same terms of reference as for the 2010 review'*.

2.2 The trade union commissioners on the UKCES will continue to press the case for a statutory right to paid time off to be introduced as early as possible in the context of the Government's changed policy approach following the announcement of the proposed new right to request time to train. It is essential that the Government and the UKCES both set out a clear strategy for undertaking the 2014/15 review. They should also establish the necessary monitoring exercises which will be required ultimately to feed into the review. For example, it is essential that the UKCES sets out a programme of preparatory analytical work for the review that it will be undertaking over the coming years. This should be given a high priority in the five year strategic plan it will be finalising by March 2009.

2.3 The Commission's annual *State of the Nations* report also should also, from its very first edition (due in Spring 2009), highlight the most comprehensive internationally comparative indicators of employer investment in workplace training for employees without a Level 2 qualification. The TUC believes that the most reliable source of such data is the OECD and in particular the new sophisticated job-related training indicator (based on training duration rather than simply incidence of participation in training) which was first introduced in the 2006 edition of *Education at a Glance*. The TUC undertook an analysis of this new statistical series in its report – *The Training Divide* (TUC, 2007) – and highlighted the extent to which UK employers were failing to invest in training their low-skilled employees in comparison with most of our international competitors.

## The case for a revised operational model

3.1 The Government has argued in the consultation paper for the operation of the new right closely to follow the model already in place for the right to request flexible working, largely on the grounds that employers are already used to this framework. Whilst the TUC recognises there is logic in emulating the processes which employers will have developed to handle flexible working requests, the two issues are quite different, so different criteria will be needed.

3.2 One fundamental difference is that groups of workers in a particular area may well have similar training needs while requests for flexible working are likely to be individual, reflecting workers' home / childcare / carer roles and circumstances. It will be in the interest of employers to consider group as well as individual training needs since delivering training to a group may be more efficient and effective. Equally, staff may wish to be trained in groups with all the social and peer encouragement advantages this can bring. Consequently the right needs to be framed in a way which equally facilitates group or individual requests.

3.3 Another major reason for developing different criteria is that the outcomes of both processes differ to a significant extent and the respective models should reflect this. For example, a successful request for flexible working arrangements ultimately results in a permanent change to an employee's contract of employment. This contrasts with the outcome of the new right to request time to train, which will simply lead to individual employees undertaking a specific training course, rather than negotiating changes to their contract of employment.

3.4 The Government should compare the drivers which incentivise employees to request flexible working and the drivers which will incentivise employees to request time to train. They are very different. The new framework must be strong enough to incentivise individuals to request training. A case in point would be to compare the circumstances of an employee who is incentivised to request flexible working to meet demanding childcare needs with the circumstances of an individual employee who would like to learn how to use spreadsheets. In the former case the employee is under acute pressure. In the latter the employee may have a general wish but no acute urgency, although the employer may also be keen for employees to learn about spreadsheets. The drivers to undertake training need to be framed in a way which recognises the complexity of individual circumstances. All this means a different framework is needed.

3.5 Employee motivation may be very different from the drivers behind requests by employees for flexible working for a range of additional reasons. For example training: a) may express a general desire to upskill in a particular area without being very precise; b) may be uncertain where knowledge of what is involved or funding is uncertain; c) may involve a mix of outcomes; and d) employers may be (or should be) keen to encourage employee interest in training. All these factors are very different from the circumstances relating to the right to request flexible working to meet childcare and other caring needs.

3.6 Consequently, there need to be significant changes to the right to request flexible working model in order to establish a framework for the right to request

time to train that is more appropriate. Whilst the TUC accepts that the general processes of the framework need to be retained because employers will have well developed and understood systems, there is a need to relax many of the conditions to reflect the key difference in the eventual outcomes for employees and employers. The framework to request training must be different from the flexible working framework if the Government is to succeed in reaching the 400,000 employees the new right aims to embrace on an annual basis.

## Eligibility

### **Duration of employment**

4.1 The consultation document makes the case for restricting access to the new right to employees (and volunteers considered to be employees) who have been ‘continuously employed by their employer for a period of not less than 26 weeks’. The main justification given for this approach is that it would replicate the eligibility conditions used for the existing right to request flexible working. However, the TUC believes that these eligibility conditions are too restrictive and would exclude a number of groups of atypical workers who face the greatest barriers to accessing workplace training.

4.2 Whilst the TUC accepts that there may need to be ‘a reasonable period of prior continuous employment by an employee to be eligible for the right’, simply replicating the 26-week rule is not appropriate. The TUC believes that a more balanced approach would be to stipulate that eligibility should be based on three months (13 weeks) of continuous employment. Giving employees a right to request time to train at this juncture would hardly be seen as unreasonable since employers should be delivering some form of training from day one to ensure that new employees are proficient in carrying out their job duties. Introducing the right at the 13 week stage would therefore act as a useful incentive for employers to consider the training needs of new recruits as early as possible in their tenure.

### **Agency workers**

4.3 The TUC is also concerned that the consultation paper makes no reference to the position of agency workers, a group that face particular barriers to workplace training. The problems this group of workers have in accessing training was highlighted by the TUC during its campaign to persuade the Government to grant agency workers similar rights to employees with a permanent contract (*Agency Workers Facing Increasing Skills Gap, warns TUC*, November 2007). This highlighted that temporary agency workers were much less likely to receive training than directly employed staff. As a result they become ‘trapped in a career of low paid and insecure work [and] in a weak position to move on to better paid, more secure work’.

4.4 The latest statistics from the Labour Force Survey reinforce this point, showing that only 17 per cent of agency temps had received job-related training over the latest three months, compared to 28 per cent of permanent employees. In addition the same source shows that around two thirds (65 per cent) of agency temps have never been offered any training by their current employer compared

with only 29 per cent of permanent employees (DCSF et al, *Education and Training Statistics for the United Kingdom, 2007 edition*).

4.5 The TUC has welcomed the recent move by Government to grant agency workers similar employment rights to permanent employees after 12 weeks. However this measure will be undermined if agency workers are excluded from the right to request time to train. This right would be particularly helpful in countering the attitude of too many employers that they can ignore the training and development needs of these staff on the basis that they do not feel any responsibility for supporting their longer term career progression. All too often agency staff do not even receive much initial induction training. It would therefore make sense, and fall in line with recent policy changes, to open up access to the right to request time to train to agency workers and to base this on the same eligibility rules applicable to permanent employees that are being proposed by the TUC (i.e. 13 weeks of continuous employment with an employer).

#### **Employer exemptions**

4.6 The TUC is categorically opposed to the idea of exempting any employers from the right and on this point there is strong justification for mirroring the universal eligibility criteria used for the right to request flexible working. All employers are expected to consider requests for flexible working arrangements in order to ensure fairness to employees and equal costs to employers.

4.7 Furthermore, small employers (which the consultation paper makes reference to on this point) are by far the most likely not to provide workers with any training at all. According to the latest data 'size is a key determinant of likelihood to train', with 46 per cent of employers with 2-4 staff and 20 per cent of employers with 5-24 staff not offering any training at all to any of their staff (*National Employers Skills Survey 2007, LSC, 2008*). This compares with larger organisations with over 100 staff where only around 5-6 per cent of employers deny all their staff any training and development opportunities. Exempting smaller employers would therefore disenfranchise a large swathe of the workforce most in need of this new right from accessing it and would do nothing to tackle the long tail of small employers who have a dismal record on training. The simplest, most coherent and effective approach would be to apply the right to all workers in organisations regardless of size.

#### **What sort of training?**

5.1 The right must encompass a very broad scope of training, including all types of accredited and non-accredited training and learning. The consultation paper is right to say that 'such a broad scope for the right would mean that all employees – whatever their prior level of skills attainment – could exercise the right, thereby maximising its potential as a lever for cultural change and maximising its direct impact on the skills of the workforce'. If this scale of ambition is to be achieved it is essential that there should be as few restrictions as possible on the range of learning and training courses that can be accessed via the right. However at the same time there must be safeguards in place to prevent employers stopping

employees achieving full accredited qualifications by diverting them to take up informal training of a short duration which would not meet their need to acquire a qualification.

5.2 The consultation says the key restriction on the type of training that can be requested by workers is that it is training that ‘will help them to be more productive and efficient at work, **and** that helps their employer to improve productivity and business performance’. Guidance needs to ensure that the type of training to be requested should be inclusive. It should not just include being more effective in their current job, but also support progression since this training would increase productivity in the medium/longer term. It should also include personal development and CPD.

5.3 In certain circumstances there is clearly going to be significant disagreement on whether the training or learning in question meets both these criteria. When setting out guidance to support the interpretation of this rule, the Government needs to be aware that there are forms of ‘developmental learning’ which might not at face value appear to fall within these parameters but which genuinely do meet the criteria.

5.4 For example, for less confident learners the opportunity to be given time at work to undertake broad developmental learning can build their confidence and ability to subsequently progress to further training of a more vocational nature. Finding the right starting point for learners is essential. Union learning reps are adept at recognising the importance of such ‘first steps’ learning in building confidence and supporting progression and it is important that the model for the right to request does not deny such applications. For example, employers might want employees to learn spreadsheet skills but employees lacking in computer confidence might well need an initial broad ICT course which could include, for example, web or e-mail handling. This would not be directly relevant to spreadsheets but would help employees build a stronger foundation for such later specific ICT courses.

## The union role?

6.1 It is welcome that the consultation paper makes reference to the important role of trade unions and union learning reps in supporting the successful introduction and implementation of the new right to request. In particular the TUC welcomes the clear commitment that ‘employees will have the right to be accompanied in any meeting they have with their employer about a request for time to train, and may choose to ask their Union Learning Representative to provide them with that support’. Recognising the valuable role of ULRs is welcome, however it is also important to ensure that the implementation of the proposals takes into account the role of ULRs and the wider union in the workplace. The new right will enable unions to build on the significant role that they have forged engaging and supporting employees who face barriers in accessing workplace training. ULRs and other union reps can also play a greater advocacy role by helping individuals shape their requests for time to train and supporting them through the process itself.

6.2 From this perspective the new right chimes with the role of union reps and ULRs in tackling inequality at work by empowering employees to access learning or training opportunities. The new right will particularly help those employees who lack confidence due to a bad experience at school and/or who are often unfairly excluded from training by their employer on the basis of their occupational status. The fact that the new right will be open to all employees regardless of their existing skill level also means that it will resonate with all ULRs in all unions and it will support progression in the workplace. It also offers the opportunity for individual employees (supported by unions including ULRs) to make the case for greater access to higher level skills and continuing professional development as well as supporting those with few or no qualifications to climb the skills ladder.

6.3 While the new right to request training would provide unions and in particular ULRs with the opportunity to support learners in their bids to agree time to train with their employer, either individually or collectively, it is important that sufficient time and facilities are available to conduct these new additional duties. The TUC believes that accompanying workers and supporting them in their requests for time to train should be specified as one of the duties in the Employment Relations Act 2002, with ULRs being able to access the requisite time off and training to conduct their duties. Time and facilities to support the right to request training should also be considered in relation to the wider union role in the workplace.

6.4 The new right potentially also has wider ramifications for the negotiation of training in unionised workplaces. This could include the role of union reps and ULRs in coordinating union-led learning initiatives via Learning Agreements and also through negotiating other collective agreements on training. Unions and ULRs, along with other union reps, can play a big role in helping to collectivise requests as described earlier. Unions will also play a key role in considering how the new right can be maximised at the sector level and union representatives on Sector Skills Councils will be able to play a key role in supporting such strategies. Whilst it is too soon to gauge the potential impact of the new right on different kinds of agreements, the TUC and unionlearn are already looking at the potential linkages. For example, the new right can be used to strengthen collective action on skills in the workplace, including through the Collective Learning Funds project that the TUC and unionlearn, in collaboration with DIUS, are currently trialling. This project is trialling different approaches to maximising co-investment and in particular supporting learning not funded by other routes. The further development of the time to train proposals should take place with these trials in order to maximise the benefits of a collective approach and to ensure that the new right to request is joined up with this developing initiative.

6.5 The consultation document specifies that 'there will be no legal requirement for employers or employees to engage with their unions or ULRs on time to train but we know that many will wish to do so, linking time to train with their wider approach to considering skills needs in the workplace'. It is crucial that the accompanying guidance that will be produced by the Government gives strong encouragement to working with unions. It should spell out the range of benefits

that will flow from integrating the right to request with the role of union reps including ULRs and the range of collective approaches by unions on learning and skills in the workplace and beyond.

6.6 Employers must also consider the role of the union in supporting learning in the workplace, when considering requests, by ensuring that union learning courses are one option that is considered, where available. For example, if an individual worker makes a request for introductory IT training and is not aware that workplace unions are running such courses in a workplace learning centre, the employer or training manager should ensure that the worker is aware of the benefits of taking up this learning opportunity through the auspices of the union. Equally ULRs will also be able to advise individuals or groups about what may be the right kind of courses for them, about accreditation, different modes of delivery and possible sources of employee or employer funding.

### Who pays for the training?

7.1 The right to request training should include the right to request paid time off for training and /or tuition fees. Paid time off is a key factor in the affordability of training, particularly for low paid workers. Payment of fees by employers would also incentivise more workers to undertake training that would benefit employers in both the short and longer term.

7.2 In determining who pays for the training, there are a number of important criteria to be considered, including the type of training, whether or not the training relates to the particular job that a worker is currently doing, the level of training, and whether or not there are existing government programmes or subsidies available.

7.3 Where the training is job related then the employee would request and expect the employer to pay for the training. Where the request was in relation to a first level 2/Skills for Life course then under Train to Gain the training would be free and the employee would expect the employer to agree to provide paid time off. The new proposals must build on, not roll back, these opportunities for low skilled workers and must be joined up with existing government training programmes. For broader employee development it could be the case that the employer might agree an arrangement whereby the employee agrees to share the costs in terms of time off to study and possibly fees. This could best be facilitated through co-investment schemes involving, for example individual Skills Accounts and added employer input. Unions can help facilitate such collective approaches, which are being piloted through the unionlearn/DIUS collective learning project in the North West and the East Midlands.

7.4 The consultation paper quite rightly highlights that a wide range of requested training could be eligible for government support, especially through the Train to Gain service. However, the reality is that the latest evaluation of the programme has shown that ‘there is little strong evidence to suggest that Train to Gain is successfully targeting employers who have not trained recently’ (*Train to Gain Employer Evaluation: sweep 1 research report*, LSC, May 2008). Stimulating employee demand via the new right, will encourage recalcitrant employers to access Train to Gain support and invest more in training than they would

otherwise have done. The more supportive and encouraging the right to request framework is, the more such hard to reach employers will be likely to use Train to Gain.

7.5 In order to build employee demand for Train to Gain provision, the Government will need to consider how it markets the programme compared to the current approach which is largely focused on persuading employers of the benefits. If employees are going to be incentivised to access Train to Gain via the new right to request, the Government will need to adapt its marketing strategies to include a greater focus on building individual employee demand. It also needs to reinforce policy approaches in order to support a stronger role for ULRs and other union reps in enabling more employees to access Train to Gain provision, whether in a workplace that is already involved in the programme or in a workplace where the employer is new to Train to Gain.

7.6 This would build on a previous commitment by Government to support unions, and ULRs especially, to play a key role in Train to Gain. The Leitch Review implementation plan (*World Class Skills: implementing the Leitch Review of Skills in England*, DIUS, 2007) gave a commitment that trade unions, in particular via the role of ULRs, would be encouraged to work with employers to draw up action plans for delivering the Skills Pledge and to help more employers and employees to access Train to Gain provision.

7.7 The consultation paper is however also quite clear that employers will not be 'compelled to pay for training when they grant a request for time to train'. There is a danger that some employers will use this as a means of dissuading employees from continuing with a request. For example, there is nothing in the consultation paper to stop employers telling individual workers that they will have to fund the training themselves if their request is granted. While we are not suggesting employers should be required to fund all training, the guidance should be changed to include an equal emphasis on the need to: a) actively consider all possible sources of funding, including Train to Gain and b) help employees explore funding or other help (such as individual Skills Accounts) to which they may be entitled. This should include access to advice and guidance, either through a ULR in unionised workplaces, and/or through support to access the new adult careers and advancement service. It is therefore imperative that the resulting guidance drawn up for employees and employee representatives makes it clear that Train to Gain provision is available for a wide range of training that they might request, and that they have the right to contact Train to Gain brokers as an individual or through the support of a union learning rep or other union representative.

## How would employees make a request?

8.1 The TUC believes there should be a number of changes to the process for the right to request flexible working, including the one above relating to employers who unfairly use the funding issue to discriminate against workers making a request for time to train. However, other issues are the steps and timescales in the flexible working model and whether these are either appropriate or conducive to the effective operation of a new right to request time to train.

8.2 The process for requesting flexible working includes a number of steps and for each step there is a specified maximum period within which the employer or employee must fulfil certain obligations (e.g. the employer must meet with the employee within 28 days of receiving an application for flexible working). This process has the potential to be very lengthy if the employer decides to act in an obstructive manner even if ultimately granting the request. The time limits used in the flexible working model are not appropriate or compatible with a right to request time to train on the basis of the arguments set out earlier on the need for a revised model.

8.3 There are also practical reasons why the initial time limit should be reconsidered for the right to request time to train, in particular relating to the timing of training courses. In certain instances individuals will be requesting an opportunity to take up a training course that is only available at a certain time of the year and in many cases at a specific date(s) in the very near future. For example, the dates of internal training courses in many organisations would be notified to staff a few weeks in advance at the most. Employers could discourage some employees from accessing such training by 'spinning out' the right to request as long as possible so that the course had begun whilst the right to request process was still ongoing. For these reasons the TUC believes the time limits in the process should be reduced, especially the initial 28 days that the employer can delay even discussing the application. Requests may often be prompted by notice of a training course – usually involving an impending delivery date. Reasonably timely responses or applications to courses are often necessary, so 14 days between stages should be adequate.

8.4 The Government also needs to carefully consider the requirements relating to the written application procedure set out in the consultation document, especially for workers who require Skills for Life or ESOL learning in order to tackle problems with reading and writing. In many unionised workplaces ULRs will be able to support workers facing such challenges but clearly this will not be a resource available in all workplaces. The Government therefore needs to include measures requiring employers to provide help with these procedures for workers with problems with reading and writing. There may also need to be an alternative process to empower such individuals to use the new right to request in the absence of the support of colleagues or intermediaries such as ULRs.

8.5 Finally, the degree of detail applicants would be expected to provide is onerous, off-putting and unrealistic. Employers should use this new right to

encourage employees, rather than it becoming a bureaucratic hurdle. For example, in relation to paragraph 4.15 in the consultation paper, employees may well not know exactly what training they need. They may for example feel a need to ‘brush up’ their customer relations skills without knowing exactly what course or level is appropriate. They may not know what qualifications would be available, nor, consequently, know the exact amount of time it would take or when a course might start. They may not know where or how they would like to undertake the training nor, except in broad terms, how the training would help them be more productive and help improve employer productivity. By its very nature training is needed most by people who know least. It is unrealistic to expect staff to present a complete and detailed case; employers (and ULRs, the adult careers and advancement service and Train to Gain brokers) should be encouraged to help staff articulate their needs which can then be fleshed out in more detail. Learners require impartial advice on getting the right starting point in order to fulfil training needs.

## Acceptable Business Reasons for Refusing

9.1 The TUC believes that the list of ‘acceptable business reasons’ on page 18 of the consultation document, which largely emulate those in flexible working model framework, are not appropriate for the right to request time to train.

9.2 We propose that the acceptable reasons for rejecting a request should be substantially altered – partly to be seen as more encouraging and partly to reflect the differences described above – and should be accompanied by criteria setting out what employers should do to **help** employees frame requests and provide workers with supportive information and help. For example the following might apply:

When considering requests employers should:

- a) Ensure that workers have had a chance to discuss the request with, for example, a ULR or other union rep, Train to Gain Broker, the Adult Careers and Advancement Service, HR or Training manager;
- b) Ensure workers are aware of any possible sources of funding, either to them or the employer;
- c) Ensure workers have been guided in framing their request, if they wish in respect of its contribution both to their own development and enhancing employer productivity;
- d) Help workers understand and consider the advantages of any accreditation which may be available and appropriate;

Having done this, employers may reasonably then refuse a request if:

- e) The kind of training sought is not likely to help the worker become more productive either in the short or long term;
- f) The type of training is not available even after considering reasonable adjustments to work organisation and different models of training delivery;

- g) The cost of training, even after considering possible sources of additional funding, is demonstrably prohibitive;
- h) It would cause demonstrably unreasonable difficulties to reorganize work so as to deliver training, in respect of: meeting customer demand, recruitment of additional staff to cover; impact on quality or on business performance.

9.3 Employers should sympathetically consider requests where employees offer to change their normal working hours. Equally, where employers are unclear whether to agree due to uncertainty over future places, they should only refuse a reasonable request where the balance of probability is that the factors in e) – h) would apply. Employers should explain how and why factors e) – h) apply and show that they have given proper consideration to the request. It would not be enough simply to state that for example staff could not cover, the employer should show why they could not.

9.4 Needless to say the TUC does not believe that there are any grounds for considering any further ‘acceptable business reasons’ to be included in the framework.

9.5 Requests from workers for time to train in order to take up courses of English for Speakers of other Languages (ESOL) should be given special consideration. There are additional barriers to ESOL learners in exercising their right to request training and the changes to ESOL funding make it more difficult for workers with ESOL needs to access training if their employer does not pay for it. When considering requests for time to train in relation to ESOL, the reasons for refusal should be much tighter (see below).

9.6 Workers with Skills for Life needs are also likely to face additional barriers. The experience of unions has identified confidence as a key barrier to learning, and there are issues around how confident individuals would be to exercise their right to request training. There is a need for employers to recognise that there may need to be special arrangements and messages to ensure learners with Skills for Life needs get ULR support in unionised workplaces, and other appropriate support in non-unionised workplaces.

9.7 In principle the TUC believes that there is a strong argument for ensuring that workers requesting time to train in ESOL or Skills for Life are not unfairly prevented from doing so by their employer, as it can be argued that all workers need a grounding in these areas to attain minimum levels of effectiveness and productivity at work. On this basis the TUC strongly recommends that the acceptable reasons for rejecting a request for training in these particular circumstances should not include relevance of the training to business productivity and performance as there should be an automatic assumption that such a relationship does exist.

## How can the time be taken?

10.1 On the amount of time, paragraph 4.19 is right that this should be determined by the amount of time needed. However the TUC does not agree that the number of requests should be limited to only one in any 12 month period. As

described above, the approach should be to encourage, not limit requests. Limiting to one request would also limit progression in a way that is unhelpful to productivity and the economy. Learners can't always forecast at the outset a wider programme of learning, and employers should encourage a wider look at training needs at the initial request stage. It is highly unlikely that employees would make unreasonable multiple requests and the process of framing a request might well require iterative discussion and support rather than being a single event.

## Right of appeal

11.1 The TUC believes the internal appeals and employment tribunals procedure should be the same as in the right to request flexible working. The TUC is opposed to the suggestion in the consultation document that employers should in certain circumstances be able to withdraw their support for an individual's time to train where they had previously granted a request. This would completely undermine the new right and is not a feature of the right to request flexible working.

11.2 The model will also need to tackle the issue of how to deal with employers who deny funding for training even though it is available to other staff in the organisation. The process should specify that a worker can cite other workers in a similar position who have been given training. Equally, grounds for an appeal could be that their request has been refused (or the employer says that they will grant the time to train but will not pay for the training) even though this training is provided, or provided free, to other workers in the same organisation. In effect this would require an additional reason for appeal to be built into the process by enabling employees to appeal against employers who either refuse or only approve the request but bar the worker by unfairly making them pay for the training.

## An Employment or Training Right?

12.1 The TUC is concerned that the new right to request time to train may not be taken forward as a UK-wide employment right on the same basis as the right to request flexible working and other statutory rights to training (e.g. the existing right of 16-17-year-olds to request paid time off to achieve a Level 2 qualification if they are not already qualified to this level, which is a UK wide right). While education and skills policies are devolved powers, this new right covers both education and employment. There are a number of clear advantages in legislating for the new right as a UK-wide employment right.

12.2 First, trade unions and almost certainly employers operating across all the countries in the UK would welcome a uniform approach on the implementation of this new right across the UK. This will be especially relevant for large employers with sites across some or all of the devolved nations in addition to sites in England. If the new right is only introduced in England, many employers will be forced to produce different HR guidance on employee rights for their workforces in England and the devolved nations. Most trades unions also

represent employees across the UK and they will be faced with similar challenges and complexities if the right is only implemented in England.

12.3 The TUC is aware that the distinction between employment and training rights is an increasingly blurred area. If it appears necessary, despite the above points, initially to implement the right in England only, this would make it all the more important to avoid any slippage to the current proposed legislative timescale for introducing the new right by legislating in the forthcoming Parliamentary session and rolling out the right in spring 2010. Equally, there should be no delay in introducing the right to request time to train as a UK wide employment right.

## ESOL

13.1 As noted earlier in paragraphs 9.5 to 9.7, given the additional barriers for people with ESOL needs, it is important that the right to request is strengthened to support access to ESOL.

13.2 In addition, given the changes to funding arrangements and in particular the removal of the universal entitlement to free ESOL up to level 2, the right to request needs to be framed to increase the level of financial investment by employers in ESOL training. The TUC campaigned against the removal of the universal entitlement, arguing that the changes meant the burden of paying for ESOL training will shift to low paid workers with ESOL needs, who in many cases would now find ESOL unaffordable. Given the benefit that employers receive from employing workers with ESOL needs, the TUC believes that employers need to take responsibility for funding and providing ESOL training. Therefore the TUC recommends that in relation to ESOL, workers should have a particular right to request ESOL training. This would trigger a presumption that the employer would provide both the time needed to access such training, but also fund ESOL. As outlined earlier, the reasons for an employer refusing such a request should be only that it would be demonstrably be impracticable to do so.

## Young People

14.1 The TUC is extremely concerned about the Government's decision to remove the existing right to paid time off for 16-17 year olds in the context of raising the participation age to 18. This sends the wrong signal to employers, and while there has been comparatively little evidence of take-up, there are some 16-17 year olds taking advantage of this right who would be worse off financially under the new arrangements. The TUC does not support this roll back in policy and believes it to be out of step with the direction of policy for adults. The TUC would prefer for this existing right to be maintained, and to be extended to level 3 young people up to the age of 18, and as outlined above for adults up to level 2.

14.2 Other issues in relation to young people include the need to ensure that the rights and duties of young people and rights of adults are transparent and easily understood by employees. In particular, the interaction between efforts to raise the participation age to 18 and the time to train proposals should be explored. The transition and support arrangements, including advice and guidance, should also be seamless.

APPENDIX – TUC PRESS RELEASE (4<sup>TH</sup> September 2008)

## More than half the UK workforce would use a right to ask for training at work

Seven in ten (71 per cent) working people would like to see a new legal right to request paid time off for training and 53 per cent say they would be likely to use it, according to a new YouGov survey released today (Thursday) by the TUC and unionlearn, its learning and skills organisation.

The poll shows that people aged 18-24 are the strongest supporters, with four out of five (82 per cent) agreeing that “employees should have a legal right to request paid time off for training”. Three in five (59 per cent) agree that “if there was a legal right to request paid time off for training I would ask for more training”.

The TUC/unionlearn polling follows the Government’s announcement in June that it would introduce a new right for employees to ask for training at work.

Those earning less than £5,000 and those whose salaries are between £25,000 and £30,000 are most likely to be in favour of the right (at least 77 per cent) while those earning between £20,000 and £25,000 are most likely to say they would use the right (62 per cent).

People with no formal qualifications are also very supportive; 76 per cent support the right and 56 per cent say would be likely to use it. However, the TUC is concerned that despite this apparent enthusiasm to learn new skills, low skilled workers are the least likely to receive training at work. Just nine per cent of employees without formal qualifications participated in job-related training in the last three months, compared to 38 per cent of graduates, according to recent Government statistics.

Women (75 per cent) are stronger supporters of the right to request training than men (67 per cent) although there is no significant difference in the likelihood of them using the right. Full and part-time workers are also similarly supportive.

The TUC and unionlearn are currently using their network of more than 20,000 union learning reps in workplaces across the UK to ensure that everyone has access to training at work.

TUC General Secretary **Brendan Barber** said: “This polling shows that workers have a great zeal to learn new skills. The enthusiasm shown by people on low incomes, those with few or no qualifications and part-time workers shows that while those who most need training have the biggest appetite to learn, they receive the smallest share of the training pie.

“The Government must ensure that any new right to request training is strong enough to make a genuine difference. Otherwise, the one third of employers who refuse to train their staff will continue to shirk their responsibilities and overlook those that need training most. Meanwhile business groups will continue to moan about the lack of skills possessed by the UK workforce.”

**NOTES TO EDITORS:**

- According to the Education and Training Statistics for the UK 2007, published by the Department for Children, Schools and Families, nine per cent of people without any qualifications received job-related training in the last 13 weeks, compared to 38 per cent of graduates. These figures were taken from the Labour Force Survey Quarter 2, 2007.
- A full breakdown of the polling results, including organisation size, region, salary, trade union membership, full/part-time, public/private sector and type of occupation are available from 00.01hrs Thursday 5 September at [www.tuc.org.uk/extras/TUCtrainingpoll.pdf](http://www.tuc.org.uk/extras/TUCtrainingpoll.pdf) or under embargo from the TUC press office.
- All figures, unless otherwise stated, are from YouGov Plc. Total sample size was 2,857 adults. Fieldwork was undertaken between 28 July - 8 August 2008. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+), trade union members and non-trade union members.

**Employees should have a legal right to request paid time off for training and have that request considered seriously by their employer**

Group	Strongly / tend to agree	Neither agree nor disagree	Strongly / tend to disagree	Don't know
<b>Age</b>				
18-24 years old	82	11	3	4
25-34	72	14	11	4
35-44	71	17	9	3
45-54	72	16	12	1
55+	66	19	12	3
<b>Qualification level</b>				
None	76	16	4	5
Lower	71	18	8	4
Inter-mediate	72	17	7	4
Higher	70	15	14	2
<b>All</b>	<b>71</b>	<b>16</b>	<b>10</b>	<b>3</b>

**If there was a legal right to request paid time off for training I would ask for more training**

Group	Strongly / tend to agree	Neither agree nor disagree	Don't know
<b>Age</b>			
18-24 years old	59	29	4
25-34	61	21	5
35-44	53	30	3
45-54	52	27	1
55+	41	34	2
<b>Qualification level</b>			
None	56	29	5
Lower	53	29	4
Inter-mediate	54	28	3
Higher	53	26	2
<b>All</b>	<b>53</b>	<b>28</b>	<b>3</b>

- All TUC press releases can be found at [www.tuc.org.uk](http://www.tuc.org.uk)
- Register for the TUC's press extranet: a service exclusive to journalists wanting to access pre-embargo releases and reports from the TUC. Visit [www.tuc.org.uk/pressextranet](http://www.tuc.org.uk/pressextranet)
- Congress 2008 will be held at the Brighton Centre, Brighton from Monday 8 September to Thursday 11 September. All applications for media passes must be received no later than noon Tuesday 2 September. Any applications received after this date will be processed in Brighton and subject to a £50 administration fee. The form for media credentials, plus information on how to book wireless internet access and a phone line at the Brighton Centre can be accessed at [www.tuc.org.uk/mediacredentials](http://www.tuc.org.uk/mediacredentials)

**Contacts:**

*Media enquiries:*

Liz Chinchen T: 020 7467 1248 M: 07778 158175 E: [media@tuc.org.uk](mailto:media@tuc.org.uk)

Rob Holdsworth T: 020 7467 1372 M: 07717 531150 E: [rholdsworth@tuc.org.uk](mailto:rholdsworth@tuc.org.uk)

Elly Brenchley T: 020 7467 1337 M: 07900 910624 E: [ebrenchley@tuc.org.uk](mailto:ebrenchley@tuc.org.uk)