



FALKIRK COUNCIL

TIME OFF FOR TRADE UNION DUTIES & ACTIVITIES POLICY



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CONTENTS

		Page No.
PART 1	Policy Statement	3
PART 2	Policy	
2.1	Introduction	3
2.2	Scope	4
2.3	Duties & Activities	4
	Time Off for Trade Union Duties & Activities	4
	Trade Union Training	5
	Health & Safety Representatives	5
	Union Learning Representatives	6
	Industrial Action	7
2.4	Time Arrangements	7
	Allocated Time Off for Officials	7
	Time off for Other Representatives, H&S Representatives and Union Learning Representatives	8
	Time Off for Trade Union Members	9
	Amount of Time Off Permitted	9
	Refusal of Time Off	10
2.5	Payment for Time Off	11
2.6	Facilities	11
PART 3	Implementation and Review	
3.1	Implementation	12
3.2	Review	12
APPENDICES		
1	Request form	13
2	Time off arrangements	14

PART 1

1.1 POLICY STATEMENT

A Collective Agreement is in place between Falkirk Council and the following recognised trade unions of Falkirk Council, namely: EIS, GMB, SSTA, UCATT, UNISON and UNITE. The intention of the agreement is to ensure that appropriate levels of special leave are provided to officials and representatives of the unions in order for them to carry out trade union duties & activities.

The Time Off for Trade Union Duties and Activities Policy implements the agreement in full and applies to all employees of Falkirk Council. Its main aim is to promote fairness, equity and order in the treatment of individuals and in the conduct of employee relations.

The policy confirms Falkirk Council's commitment to encouraging participation, through effective consultation and communication and the sharing of decision making. This includes consulting and negotiating with recognised trade unions on a wide range of issues. For this to be productive, it is recognised that reasonable time off facilities for union duties, activities, health & safety, learning representative responsibilities and appropriate training should be available to trade union officials, representatives and members.

The Time Off for Trade Union Duties and Activities Policy also ensures that Falkirk Council's employee relations operate within, and comply with, the legal framework of employment law, namely: the Trade Union & Labour Relations (Consolidation) Act 1992. This gives officials and members of recognised trade unions certain statutory rights to reasonable time off from work for various trade union duties and activities, and Section 43 of the Employment Act 2002, which established rights for Union Learning Representatives. The policy also complies with the ACAS Code of Practice on Time Off for Trade Union Duties and Activities.

PART 2 POLICY

2.1 INTRODUCTION

This policy is designed to offer practical advice in the operation of requesting and managing time off for trade union duties and activities.

Employers and trade unions have a joint responsibility to ensure that agreed arrangements specify how reasonable time off for union duties, activities, learning representative and health & safety representative responsibilities and appropriate training, can operate to their mutual advantage. It is essential to have clear guidance against which applications for time off can be determined. Given the variations in the roles of trade union officials, the size of services and level of membership, the policy cannot provide precise details to deal with every request for time off. It does however provide specific leave allocation for one official from each recognised trade union. In addition, the general principles on how to determine the reasonableness of a request for time off for trade union representatives and members are given.

2.2 SCOPE

Officials and members of trade unions recognised by Falkirk Council should be permitted reasonable time off during working hours to carry out certain trade union duties and activities. There is no minimum qualifying period of service.

Officials are employees who have been elected or appointed to be a representative of all or some of the trade union members within Falkirk Council. This includes branch officers, shop stewards and health & safety representatives. Nominated learning representatives of recognised unions are also covered by this document, as are trade union members employed by Falkirk Council.

A trade union is only “recognised” where it is recognised for the purposes of collective bargaining. The unions currently recognised by Falkirk Council for the purposes of collective bargaining on behalf of all employees of Falkirk Council are: EIS, GMB, SSTA, UCATT; UNISON and UNITE.

2.3 DUTIES & ACTIVITIES

2.3.1 Time Off for Trade Union Duties and Activities

Trade union duties are issues which relate directly to the organisation and/or its employees, while trade union activities are issues which relate directly to internal trade union work. It is noted however that the dividing line between trade union duties and trade union activities may often not be absolutely clear cut. In appreciation of this difficulty, subject to recognition, officials and representatives should be allowed reasonable paid time off for undertaking trade union duties concerned with negotiation, or duties concerned with functions related to or concerned with:

- terms & conditions of employment or the physical conditions in which employees are required to work;
- engagement or non-engagement or termination or suspension of employment or the duties of employment, of one or more employee;
- allocation of work or the duties of employment as between employees or groups of employees;
- matters of discipline, grievance and employment tribunals;
- trade union membership or non-membership;
- facilities for trade union representatives;
- machinery for negotiations or consultation and other procedures;
- arranging workplace meetings and ballots to discuss the outcome of negotiations with the employer;
- carrying out the role of a trade union learning representative;
- carrying out the role of a health and safety representative.

In addition, subject to recognition, representatives should be allowed reasonable paid time off for undertaking trade union activities which have an impact on employees of Falkirk Council. Time off will only be paid where it is confirmed that no reimbursement for loss of earnings will be made by the relevant trade union for the time. Examples of such activities may include:

- attendance at a workplace meeting to discuss and vote on the outcome of negotiations with the employer;
- voting on properly conducted ballots on industrial action;
- Branch or District meetings of the trade union convened during normal working hours where issues relevant to Falkirk Council are under discussion, in addition to Union business;
- recruitment of members who are Falkirk Council employees;
- internal union work where work undertaken has an impact on Falkirk Council employees;
- meetings of the executive committee or annual conference where issues being discussed are relevant to Falkirk Council.

For any activities which relate solely to internal trade union matters, and have no impact on Falkirk Council employees, unpaid time off, (rather than annual leave), may be considered appropriate. This particularly relates to occasions when reimbursement for loss of earnings is made to representatives by trade unions to attend meetings such as Branch or District meetings.

2.3.2 Trade Union Training

Trade union representatives, including learning representatives, are more likely to carry out their duties effectively if they possess skills and knowledge relevant to their duties.

All new trade union representatives will be entitled to be paid for a maximum of 10 days in order to undergo approved induction training, regardless of the number of hours worked per week.

Reasonable paid time off to undergo relevant training should therefore be considered. Payment arrangements are detailed in Section 2.5.

Training should be in aspects of industrial relations, health & safety, or employee development. It must be relevant to the duties of the representative, and be matters which are relevant to the list of trade union duties outlined above.

Any training should be approved by the TUC or the recognised union and, where available, a syllabus indicating the contents of the course should be submitted with the request for this time off.

2.3.3 Health & Safety Representatives

Health & safety representatives of a recognised trade union are entitled to appropriate paid time off to carry out health & safety functions and duties and to attend relevant training courses.

Health & safety representatives would be expected to attend meetings scheduled to discuss and negotiate issues relating to the health & safety of workplaces and employees. Reasonable paid time off should be granted to attend these meetings.

Health & safety representatives have the right to accompany managers on health & safety audits or inspections as required by legislation. These inspections may be:

1. on a routine basis every three months; or
2. where there has been a significant change in conditions of work; or
3. following a notifiable accident, dangerous occurrence or notification of a notifiable disease.

A proposed annual programme of routine inspections may be prepared by the relevant health & safety representatives for a particular area for agreement with management.

While it is good practice that inspections are carried out on a joint basis, it is recognised that situations may arise in relation to 2 and 3 above where a health & safety representative may want to undertake immediate inspection. In such circumstances the representative will inform management to allow for a joint inspection to be undertaken, but it is recognised that there are times when a manager may not be available and it may be necessary for an inspection to proceed without a management representative being present.

Managers will ensure that Health & Safety Representatives are advised of a notifiable accident, dangerous occurrence or notifiable disease as soon as possible.

2.3.4 Union Learning Representatives

A learning representative is a nominated representative who focuses on the learning agenda in the workplace. Typically, they will give advice and guidance to members and answer queries about courses or learning opportunities in the Council.

Learning representatives are allowed reasonable paid time off for the following functions:

- 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 out any such activities;
- preparation to carry out any of the above activities;
- undergoing relevant training (in accordance with 2.3.2 above).

Given that in many cases within Falkirk Council there are established training and development programmes for employees, learning representatives should liaise with the Employee Development Section of Human Resources, or the relevant line manager, to ensure that respective training activities complement each other and to avoid duplication.

To qualify for time off, the representative must be sufficiently trained to carry out the duties of a learning representative, either:

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

In the former case the trade union should, in their notification, advise what training/ experience the individual has which means they are able to fulfil the role of learning representative.

In the latter case the trade union should notify the Head of Human Resources in writing that the employee will be undergoing the required training and what this training will be. When training has been successfully completed, the union should confirm this to the Head of Human Resources. Confirmation should also be given that this training is sufficient to enable the individual to fulfil the role of learning representative. The six month training period may be extended to take account of any significant unforeseen circumstances. If training is not completed within the agreed timescales then the Head of Human Resources will agree with the trade union whether it is appropriate for the employee concerned to continue as a learning representative.

To satisfy the training requirement an employee must be able to demonstrate that they have received sufficient training to enable them to operate competently in one or more of the areas of activity of a learning representative, ie:

- analysing learning or training needs;
- providing information and advice about learning or training matter;
- arranging learning or training;
- promoting the value of learning or training.

A learning representative could be considered to have gained appropriate training by completing a training course approved by the TUC or the recognised union, or by demonstrating that they have previously gained the relevant experience and expertise to operate effectively as a learning representative. Experience and expertise gained in areas such as teaching, counselling, providing careers advice and guidance or employee development may be relevant, as may a period of extensive on-the-job training and experience gained in shadowing an experienced learning representative.

2.3.5 Industrial Action

Time off facilities should be granted to trade union officials involved in negotiations with Falkirk Council relating to industrial action. There is no right to time off for trade union activities which themselves constitute industrial action.

2.4. TIME OFF ARRANGEMENTS

2.4.1 Allocated Time Off for Officials

A specified number of days paid time off is afforded to each trade union to cover trade union duties, activities and training. The allocated time off can be taken by one official or split between more than one person.

The allocated time off for each trade union will be based on membership levels as at 1 October each year. Each union should therefore notify Human Resources by 31 October each year of their membership levels and of the name(s) of the nominated official(s) who will be afforded the time off.

Human Resources will be responsible for consulting with services on whether each representative nominated can be given the time off in full or not and then confirming with each service and trade union the details of those who have been allocated time off.

Where appropriate a cover facility may be provided for nominated officials who are allocated the proposed time off for each respective union.

Any amendments to the nominated representative must be notified to the Head of Human Resources at least one month in advance, otherwise time off may be forfeited.

Members of the JCC will be provided with an additional ½ day for each JCC meeting which takes place to ensure adequate time to prepare and attend. The Depute Convenor of the JCC and Secretary of the JTUC will be provided with a further ½ day for each scheduled Informal JCC.

The time allocated should provide trade union officials with appropriate paid time off to cover both duties and activities and can be used as necessary by each official, but is mainly to cover the following:

- corporate and service based consultative and negotiating meetings with management;
- attendance at discipline hearings, grievance hearings, employment tribunals and preparatory meetings with their members, where they are required to represent the member;
- attendance at union meetings with the purpose of preparing for negotiations on matters which their union is recognised by Falkirk Council;
- meetings to communicate the outcome of negotiations with management to members;
- Branch or District meetings of the trade union convened during normal working hours where Union business is under discussion;
- meetings of the executive committee or annual conference or training courses;
- trade union learning representative duties;
- health and safety representative duties.

It is the responsibility of the trade union official and his/her line manager to come to an agreed arrangement for taking the specified time off. This should be recorded on the request form at Appendix 1.

The time off allocated, as detailed above, does not however allow for additional trade union duties required to deal with exceptional circumstances (eg Single Status). In such circumstances, the facility time may be reviewed in order to accommodate this and ensure adequate participation and involvement.

2.4.2 Time Off for Other Representatives, H&S Representatives and Union Learning Representatives

All other representatives will be afforded time off on an ad hoc basis, subject to the exigencies of the service and in accordance with Section 2.3 above.

Applications for time off to pursue duties and activities relevant to the representative's role should be made as far in advance as possible.

Applications should be made on the request form (Appendix 1) and addressed to the appropriate line manager. The request should indicate the purpose of such time off, the

intended location, and the timing and duration of time off required. It should be understood however, that in a minority of cases, it may be unreasonable for a representative to disclose details of the reason for the meeting, eg, in order to respect the confidentiality of an individual employee where they could be readily identified by the information imparted. It would not be expected however, that this should occur on a regular basis.

Where a trade union is organising an event which requires a number of representatives to take time off at one particular time, one request should be made to the Head of Human Resources indicating the names of the representatives and respective services. This should be sent at least 15 days prior to the event taking place. Human Resources will then consult with services on whether the request can be accommodated in full or not and will then confirm the allocated time off with the trade union.

Failure to comply with this procedure, may result in the time off being refused or payment for the period of time taken/requested being withheld.

2.4.3 Time Off for Trade Union Members

Trade union members may require time off to undertake trade union activities as detailed at 2.3.1 above or attend disciplinary and/or grievance hearings or to access the services of a union learning representative.

Where appropriate, members should try to arrange meetings out with normal working hours. In exceptional circumstances, where this is not possible, or appropriate, ie, to attend disciplinary or grievance hearings, time off with pay will be granted to attend meetings. All other leave will be unpaid and considered to be trade union activities.

Applications should be made on the request form (Appendix 1) and addressed to the appropriate line manager. The request should indicate the purpose of such time off, the intended location, and the timing and duration of time off required. It should be understood however, that in a minority of cases, it may be unreasonable for a member to disclose details of the reason for the meeting, eg discussing claims of harassment by their immediate line manager, until such times as they have discussed this with their trade union representative.

2.4.4 Amount of Time Off Permitted

The amount and frequency of time off should be reasonable in all circumstances. Line managers need to consider each application for time off on its own merits, seeking guidance from Human Resources as appropriate. Consideration should be given to the purpose of the request and the amount of time off the employee has already received.

The amount of time off permitted needs to take account of the requirement to maintain service delivery. In order to maintain a balance in time off being requested across the Council, if a request is made for a representative from one service area to be given time off to undertake trade union duties or activities in another service area, their line manager may, where they consider this to be appropriate, explore whether a representative from the second area could instead cover these activities. Trade unions should also consider whether there are occasions when it may not be necessary for all representatives of a particular service area to attend a meeting, eg, whether attendance at service based

forums could be rotated rather than for all of representatives from that service attending each meeting.

The employee's absence record should also be taken into account, although consideration should be given to the requirements of the Disability Discrimination Act (1995) in this regard. All time off should be recorded on the Resourcelink system which will assist in monitoring.

All time off should be granted subject to service delivery needs and safety considerations. In agreeing any time off, consideration should also be given to travelling time. Falkirk Council will not be responsible for travel and subsistence allowances in respect of officials undertaking trade union business.

Any time off should be reasonable, and be relevant to the number of members the trade union is representing, to any agreed consultative arrangements in place and any significant changes or workplace issues which are ongoing. In the case of requests made by learning representatives, consideration will also be given to existing training arrangements within the workplace. Unions will be expected to be reasonable in their requests for time off with the aim of ensuring minimum disruption to the services of the Council.

Consideration should be given to allowing part-time or shift working representatives who are required to attend meetings out with their normal working time the opportunity to taking the time back. Where meeting arrangements can flexible however, the representative would normally be expected to make these for a time during which they would normally work and request the time off as normal, otherwise any time taken may not be claimed back.

Where a union representative works night shift and is required to attend day time training or carry out union duties, consideration may be given to allowing an element of paid time off either the night before or after the course.

Where a representative normally works shifts or during weekends, evenings or nights and is required to attend regular meetings or training over a number of weeks, consideration should be given to re-arranging the shifts with an aim of minimising the disruption to service provision for the period concerned. The same approach should be taken for part-time employees who are required to attend regular meetings out with their normal working pattern.

2.4.5 Refusal of Time Off

After careful consideration, requests for time off for trade unions duties or activities can be refused. The line manager must however be able to justify this decision. Where a difficulty in allowing time off is experienced, the line manager should discuss this with the relevant head of service and with Human Resources. Once a final decision is reached the line manager should advise the employee verbally of the decision as soon as possible. If the request is refused the head of service should also confirm the decision in writing, explaining why the request has been refused.

Where the employee considers the refusal to be unreasonable, they can make a formal complaint. All complaints should be made in writing to the Head of Human Resources,

within 5 days of receipt of the written refusal. The Head of Human Resources will make appropriate arrangements to deal with the complaint.

2.5 PAYMENT FOR TIME OFF

Where time off with pay has been granted in accordance with Section 2.3.1 the amount of pay will be, either:

- the amount that the employee would have earned had they worked during the time off taken; or
- where earnings vary, an amount calculated by reference to the average hourly earnings for the work they are employed to do.

The above should include an average bonus payment, equivalent to the amount the employee would have earned had they worked during the time off taken. It will also include any contractual overtime, but will not include any payment for non-contractual overtime which they would have received had they been working.

There is no right to paid time off where a trade union duty or training occurs on a day when the employee would not otherwise have been in work unless when the employee is a shift worker who needs to perform representative duties during normal working time. Employees who work part-time and who are required to attend training or to undertake trade union duties on a day on which they would not normally work, would be entitled to be paid the rate equivalent to the time spent on the training course if staff who work full time would be entitled to be paid. Payment is subject to a maximum of the equivalent daily and weekly pay for a full-time employee on the same terms and conditions of employment. Where an employee would not normally be rostered to work on the day of the training their line manager could as an alternative agree to the employee's shifts being changed so that they would be treated as though they had worked on the day on which training takes place, and so are paid accordingly.

2.6 FACILITIES

No permanent facilities at present are provided to trade union representatives for the purposes of conducting trade union business.

Where necessary, managers/headteachers should make appropriate facilities available to officials in order to perform their trade union duties efficiently. Where appropriate, and taking account of available resources, such facilities shall include accommodation for meetings, access to a telephone, notice boards (including the intranet) and, where the volume of the officials' work justifies it, the use of office facilities. Any accommodation provided, should be appropriate to the number of union members and level of trade union workload.

In addition learning representatives may use the Learning Resource Centre, Municipal Buildings, Falkirk to meet with employees to discuss their learning/development needs. Information on booking arrangements can be sought from the Employee Development Section of Human Resources. The Learning Resource Centre can also be used as a source of learning materials. Further information can be found on the Learning Zone of the intranet.

PART 3 IMPLEMENTATION AND REVIEW

3.1 IMPLEMENTATION

Managers, directors, heads of service, Human Resources and trade unions will be responsible for ensuring the appropriate implementation of this policy.

Trade unions will be responsible for notifying Human Resources of their membership numbers, and nominated representatives to use allocated time by 31st October each year and Human Resources will be responsible for implementing the required checking and notification procedures in this regard.

3.2 REVIEW

This policy will be reviewed by the Head of Human Resources in conjunction with service directors and trade unions as appropriate.

This Policy has been Equality Impact Assessed and no adverse impact has been identified.

Request for Time Off for Trade Union Duties and Activities

Name: Trade Union:

Date of Request *	Time Off Required			Reason **	Authorisation	
	Date	Time From/To	Location		Signed	Date

* Notice of a request for time off should be provided as far in advance as possible.
 ** Reason for the request should be provided unless this is not possible due to confidentiality considerations. Please note whether the duty or activity is requested as a trade union representative, union learning representative or health & safety representative.

Allocated Time Off as at April 2009

TRADE UNION	MEMBERSHIP NUMBERS	PROPOSED LEAVE ALLOCATION	%	TIME OFF ARRANGEMENTS (DAYS)
UNISON	2237	100		260
T&G (UNITE)	395	20		52
AMICUS (UNITE)	79	10		26
UCATT	168	10		26
EIS	1695	80		208
GMB	800	40		104
SSTA	0	0		0