

CONSULTATION ON STANDING FOR OFFICE: TIME-OFF ENTITLEMENTS AND ENCOURAGING CIVIL ENGAGEMENT

Responding to this consultation paper

We are inviting written responses to this consultation paper by **16 March 2009**. Please send your response with the completed **Respondent Information Form** to:

Laura Halliday

Third Sector Division

Scottish Government

Highlander House

58 Waterloo Street

Glasgow

G2 7DA.

Email address: laura.halliday@scotland.gsi.gov.uk

All responses **must** be accompanied by a **Response Information Form** (see below). If you have any queries please contact Laura Halliday on 0141 305 4059 or Gareth Allen on 0141 271 3775.

We would be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to as this will aid our analysis of the responses received.

This consultation and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations> . You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations (SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form below** as this will ensure that we treat your response accordingly. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government are subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public (see the attached Respondent Information Form), these will be made available on the Scottish Government consultation web pages by **20 April 2009**. We will check all responses, where agreement to publish has been given, for any potentially defamatory material before placing them on the website.

What happens next?

Following the closing date, we will analyse the responses to the consultation and publish a summary of them. The responses will be shared with the UK Government who will take account of the responses received to this consultation in framing secondary legislation to extend the right to time off to people serving in a wider range of civic roles.

Comments or Complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

Laura Halliday

Third Sector Division

Scottish Government

Highlander House

58 Waterloo Street

Glasgow

G2 7DA

STANDING FOR OFFICE:

**Time-Off Entitlements and
Encouraging Civil Engagement**

A Consultation

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A Consultation

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1: THE CONSULTATION AND HOW TO RESPOND

THE SCOTTISH GOVERNMENT'S PURPOSE

- 1.1 Delivering sustainable growth with opportunities for all is at the heart of the Scottish Government's Purpose. The three "golden rules" of growth – solidarity, cohesion and sustainability – reflect the intrinsic importance of social equity, regional balance and respect for the environment among Scotland's diverse people.
- 1.2 Social Equity will be critical to the delivery of all Strategic Objectives. Creating the conditions for growth and cohesion, together with enhancing our environment are critical to our growth and prosperity.
- 1.3 Delivering equality of opportunity for all groups underpins the creation of a **wealthier** and **fairer** Scotland. We want to deliver a more inclusive Scotland so that, no matter where people live, opportunities are open to them.
- 1.4 The Scottish Government believes wholeheartedly in greater responsibility for Scotland. Responsibility should lie with those best able to use it – in central or local government, or in our communities. Central to this is using responsibility wisely and fairly, and empowering local government and our communities. Ensuring that communities and individuals can play their part in increasing sustainable economic growth in Scotland, turning the Purpose of Government into a reality.
- 1.5 Initiatives such as the launch of the Principles and Standards of Citizen Leadership produced by the User and Carer Forum, an important initiative of the Changing Lives programme, demonstrates the importance of empowering individuals in transforming lives. Citizen Leadership means providing opportunities for people who use services and family carers to develop their leadership potential.
- 1.6 Encouraging more and different people to take up specific civic roles is another important facet of empowering our communities, as is developing the potential of an enterprising third sector as set out in the Enterprising Third Sector Action Plan (<http://www.scotland.gov.uk/Topics/People/15300/Actionplan>)

BACKGROUND TO THE CONSULTATION

- 1.7 The United Kingdom Government is consulting on extending the right to time off to people serving in a wider range of civic roles with a view to implementation by secondary legislation in October 2009, and consideration of non-regulatory ways to encourage people to take on roles in third sector organisations (www.communities.gov.uk/publications/communities/timeoffconsultation).
- 1.8 The focus of the United Kingdom consultation paper is twofold. Firstly it is about encouraging more and different people to take up specific civic roles by helping remove time available as a barrier, thereby enabling people to get involved in decision making which affects their local communities. Secondly, it is about focusing on governance roles which are located within third sector organisations and considering what else can be done to encourage participation. Although it is not proposed by the United Kingdom Government to add these to the list of roles legally entitled to time off.

1.9 Employment rights are a reserved matter, although the issues raised also have implications for devolved responsibilities. Therefore in relation to Scotland, we are publishing this consultation in co-operation with UK Ministers.

1.10 Specifically, we are seeking views on:

Whether there are additional roles in the following areas which should be covered by time-off entitlements:

- Criminal Justice
- Local Government

Whether the following roles in the housing sector should be covered by time-off entitlements:

- Board members of Tenant Management Co-operatives
- Board members of Registered Social Landlords
- Committee members of Registered Tenant Organisations

1.11 In respect to how best to encourage participation in governance roles in third sector organisations via non-regulatory ways, this is a devolved matter. The Scottish Government is supporting research looking at governance in the third sector, and will consider in partnership with the sector, the Office of the Scottish Charity Regulator and other stakeholders, how best to take forward encouraging participation in governance roles in the third sector.

WHO WE ARE CONSULTING

1.12 This is a public consultation and it is open to anyone to respond to the questions which are summarised at **Annex A**.

1.13 We would particularly welcome responses from employers and employers organisations – within the private, public and third sectors, trade unions, third sector organisations, registered social landlords, tenant management co-operatives, registered tenant organisations, those organisations who host or recruit individuals to participate in civic roles and individuals currently undertaking civic roles.

HOW TO RESPOND

1.14 Your response must be received by **16 March 2009** and may be sent by email or by post to:

Laura Halliday
 Strategic Development and Partnerships
 Third Sector Division
 Highlander House, 58 Waterloo Street
 Glasgow G2 7DA
 Email: laura.halliday@scotland.gsi.gov.uk

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

WHAT WILL HAPPEN TO THE RESPONSES?

- 1.15** We will analyse the responses to the consultation and publish a summary of them. The responses will be shared with the UK Government who will take account of the responses received to this consultation in framing secondary legislation to extend the right to time off to people serving in a wider range of civic roles.

2: INTRODUCTION

PARTICIPATION IN CIVIC ROLES

- 2.1** Estimates have put the current number of UK citizens involved in formal governance roles at more than 450,000 people⁽¹⁾. This represents approximately 1% of the UK population although 9% of the population have taken part in some civic activism role in the past 12 months – including sitting on some decision making groups.
- 2.2** Participation in civic roles allows people to get involved in direct decision-making in their communities. This involvement can bring a range of benefits to those individuals taking part and to their wider community.
- 2.3** But there is significant evidence that those people undertaking these roles are not drawn from a representative spectrum of the population and that individuals taking part often have multiple roles. We want the pool of people serving their communities in this way to be deepened. More and different people need to be encouraged into governance roles. Younger people particularly are perceived to be difficult to target⁽²⁾. As with volunteering more generally, a lack of time is frequently mentioned as a key barrier to involvement in governance positions. People have limited time to get involved, and there is a perception that any kind of involvement in the community is time consuming and requires a large commitment⁽³⁾.
- 2.4** This consultation is specifically focusing on the United Kingdom Government's commitment to consult on extending time-off entitlements to specific civic roles, modernising the list to reflect changes to the nature and types of civic roles available.
- 2.5** The United Kingdom Government is not proposing to extend statutory time-off entitlements to governance roles in third sector organisations and will instead consider other ways to address barriers to participation in these roles, as will the Scottish Government. This is due to the fact that the relevant organisations, such as charities do not have a statutory status and that it is harder to draw consistency across similar organisations. For example the role and responsibilities of someone on a Children's Panel will be the same across all panels in all areas. This is less likely to be true of charity trustees. The United Kingdom Government have also weighed up the benefits of making such a change against the costs for employers which, given the very large number of governance roles within this sector, would be significant.
- 2.6** The Scottish Government is committed to creating the right operating conditions in which an enterprising third sector can play a full role in the development, design and delivery of policy and services in Scotland, putting the people of Scotland at the heart of their plans. We want to support a country in which an enterprising third sector is encouraged, valued and is given the opportunities it needs to prove its value and deliver more. We are supporting research looking at governance in the third sector, and will consider in partnership with the sector, the Office of the Scottish Charity Regulator and other stakeholders, how best to take forward encouraging and supporting participation in governance roles in the third sector.

1. Langlands Commission on Good Governance in Public Services

2. Dalziel *et al.* (2007)

3. Dalziel *et al.* (2007)

- 2.7** The UK Government has identified a number of roles across England and Wales as priorities to add to the current list of roles entitled to time off work, which are within housing, the criminal justice sector and within Local Government. At present no equivalent or new roles within criminal justice or local government in Scotland have been identified as priorities to add to the current list of roles entitled to time off work.
- 2.8** Criminal justice is a devolved matter and a number of roles in Scotland are already covered under the existing legislation on time-off entitlements.
- 2.9** **Children’s Panel members** are already covered under section 50 of the 1996 Act as a statutory Tribunal as are **Scottish Justices of the Peace**.
- 2.10** While **Multi-Agency Public Protection Arrangements** are well established in Scotland they do not include a lay advisor role as in England and Wales, one of the roles being considered for extending time off to.

CURRENT LEGISLATION

- 2.11** The current legislation under Section 50 of the Employment Rights Act 1996 states that if you carry out one of the roles listed you are entitled to time-off work to carry out your role. This includes:
- Justice of the Peace (magistrate);
 - member of a local authority;
 - member of a police authority;
 - member of any statutory tribunal;
 - member of a relevant health body;
 - member of the managing or governing body of an educational establishment;
 - member of the governing body of a further or higher education corporation;
 - member of a school council or board in Scotland;
 - member of the General Teaching Councils for England and Wales;
 - member of the Environment Agency or the Scottish Environment Protection Agency;
 - in England and Wales, prison independent monitoring boards, and in Scotland, prison visiting committees; and
 - member of Scottish Water or a Water Customer Consultation Panel.
- 2.12** The legislation operates flexibly in that individuals are allowed reasonable time-off to go to meetings or to carry out duties. The time must be agreed with employers beforehand and a specific amount of time off is not laid down in law. Employers do not have to pay individuals whilst they take time off, although many do.

- 2.13** The law on time off for public duties was reviewed in 2006/7 under the UK Government's Department for Business, Enterprise and Regulatory Reform's (BERR) Simplification Plans and was found to be working well. Stakeholders felt that revised guidance would be more effective than changing the terms of the legislation. BERR published this guidance in spring 2007 and it can be found at:
http://www.direct.gov.uk/en/Employment/Employees/WorkingHoursAndTimeOff/DG_10028529
- 2.14** Therefore, it is not proposed to make any changes to the terms of the entitlement. Instead the focus is on what other roles should be added to the existing legislation to bring some consistency and equality across a number of civic roles. **The focus is on roles which are in some way related to governance of organisations which impact their local community rather than the governance of national bodies.**
- 2.15** Employment rights are a reserved matter and this consultation in Scotland therefore complements the seeking of views from stakeholders across England and Wales. UK and Scottish Ministers will work constructively in relation to devolved responsibilities in this area.

POTENTIAL BENEFITS

- 2.16** There are a number of potential benefits which can be realised by employers as a result of their staff taking part in civic roles:
- employees can build competencies and develop skills which can be used in their jobs and could in some cases be part of ongoing personal development and training;
 - support from employers can be categorised as a contribution to Corporate Social Responsibilities which can in turn make a company more attractive to customers or clients as well as an appealing place to work for current or future employees; and
 - there is some evidence that flexible working practices have improved the productivity of their businesses.

The UK Government has published more detail on benefits as well as the costs incurred by employers as a result of an extension to time-off entitlements and this can be found within **Annex C of the UK Consultation** (www.communities.gov.uk/publications/communities/timeoffconsultation). The UK Government will be using information gathered during the consultation period to inform the final impact assessment.

Consultation Question 1:

Do you agree with the analysis of the benefits of undertaking civic roles?
 Are there any others?

Consultation Question 2:

Do you agree with the estimation of costs and the assumptions made in calculating the overall costs to employers from the UK consultation impact assessment?

Consultation Question 3:

Are there local Criminal Justice, Local Government or other local civic roles which should be considered?

STRUCTURE OF THE CONSULTATION

2.17 Section 3 considers whether roles in the housing sector such as board members of Tenant Management Co-operatives, board members of Registered Social Landlords and committee members of Registered Tenant Organisations should be covered by time-off entitlements.

2.18 Annex A includes the complete list of consultation questions.

3: EXTENDING TIME-OFF ENTITLEMENTS – THE CONSIDERATION OF HOUSING ROLES

INTRODUCTION

- 3.1** There is currently no governance role within the housing sector included in the time-off entitlements legislation. However, the policy intention behind this legislation was, and still is to include individuals where they are undertaking roles that in some way relate to making decisions which impact on their local community and provide some social benefit.
- 3.2** Social housing is a key service in any local area. The people who serve on its governance and decision making boards perform a function which is generally beneficial to the local community. So we would like views on whether the time-off entitlements list should be updated to cover such people to bring consistency and equal status to these roles.
- 3.3** We recognise that the governance of social housing providers or management organisations may involve sub-committees operating below board level but propose that any new time-off entitlement should be restricted to those individuals who are members of the main board. This is to ensure that the level of responsibility which entitles someone to time-off remains consistent and to maintain clarity for employers.
- 3.4** We also recognise that organisations registered with the Scottish Housing Regulator will be classified as third sector organisations and we consider that the relatively small number of third sector organisations that are registered as social landlords should be covered, because of the functions they perform.

BOARD MEMBERS OF TENANT MANAGEMENT CO-OPERATIVES

- 3.5** A Tenant Management Co-operative (TMC) is an organisation comprised of tenants that takes on responsibility for the day-to-day management of the homes where they live. Section 55 of the Housing (Scotland) Act 2001 sets out arrangements for a tenant management co-operative to enter into an agreement with a landlord, a registered social landlord or a water or sewerage authority to manage the landlord's houses in respect of their housing management functions.
- 3.6** To become a TMC, tenants who have formed themselves into a society, company or body of trustees must obtain the approval of Scottish Ministers. A tenant management co-operative must have a constitution which clearly defines its functions and provides a framework within which it is to be run. The constitution must reflect the aim of managing housing for the benefit of tenants, and secure the involvement of tenants in decision making. Those tenant members of the TMC elect a tenant-led management board (sometimes known as a committee) to run the organisation. This board is usually made up of a combination of tenant members and independent members. The TMC can then enter into a legal management agreement (contract) with the landlord.

- 3.7** The TMC is paid annual management and maintenance allowances in order to carry out the management duties that are delegated to them. The services managed by the TMC vary with local circumstances but may include day-to-day repairs, allocations and lettings, tenancy management, cleaning and caretaking.
- 3.8** We estimate that there are **165** people across the country who are members of 16 TMC boards.

BOARD MEMBERS OF REGISTERED SOCIAL LANDLORDS

- 3.9** Registered Social Landlords (RSLs) are significant providers of social housing. They are independent, non-profit-distributing social businesses set up to provide affordable homes for people in housing need. There are around 166 RSLs in Scotland, currently managing around 0.27 million homes, 11% of all homes in Scotland.
- 3.10** RSLs are social landlords who are registered with the Scottish Housing Regulator. Most are housing associations, but there are also co-operatives, and private companies limited by guarantee. Most RSLs are small and own fewer than 1,000 homes. However, the largest 7% of RSLs – those with 3,000 plus homes – own almost half of all of the sector’s homes. Many new RSLs have been formed to manage and develop homes transferred to them by the public sector.
- 3.11** Scottish Government invests public money in RSLs and the Scottish Housing Regulator, an executive agency of the Scottish Government, protects that investment by ensuring the continuing provision of good quality social housing, in terms of decent homes, good services, value for money, and financial viability for residents. RSLs receive investment funding to provide homes that meet local needs. Through regulation the Scottish Housing Regulator has sought to ensure that people will want, and be able, to live in these homes, now and in the future.
- 3.12** RSLs are run by boards of management including tenants and sharing owners and other committee members. They oversee management of the housing stock, compliance with the Scottish Housing Regulator’s performance standards and regulation guidance, business planning, ensuring commitments to tenants are carried out and selecting and assessing full-time staff including the Chief Executive.
- 3.13** Approximately 2,000 volunteer committee members currently govern the RSL sector. Most RSL’s have around 12 committee members, regardless of their size. Approximately 41% of all board members are retired. Board members can receive reasonable expenses and may opt to take payment for their services although most RSL Boards do not take up this option.
- 3.14** RSLs increasingly have a role beyond the provision of social rented housing, performing a wide range of other functions or initiatives for the community, including:
- regeneration, including community regeneration initiatives to improve the local environment and refurbishment and improvement of former council estates under stock transfer programmes

- providing care and support for vulnerable people such as elderly people or those with disabilities
- involvement in areas such as employment training and schemes
- projects with children and young people
- childcare facilities, community centres and food co-operatives

COMMITTEE MEMBERS OF REGISTERED TENANT ORGANISATIONS

- 3.15** Registered Tenant Organisations (RTOs) were created through the Housing (Scotland) Act 2001. Scottish Ministers set out the criteria for registration in a Scottish Statutory Instrument, order 2002, no. 416. An RTO is an independent organisation set up primarily to represent tenants' housing and related interests. RTOs are generally made up of tenant and resident volunteers and are accountable to their members who they represent.
- 3.16** To become an RTO groups must apply in writing to the Registered Social Landlord or Local Authority enclosing the following; a copy of their constitution; a list of office bearers and committee members; a contact address for correspondence which can be made public; a description of their operational area and details of other landlords they are registered with or are applying to become registered with.
- 3.17** An RTO committee must be elected annually and committee members must be required to stand down after a certain period. It consists of at least three members who can co-opt other members on, and reach decisions democratically. In Scotland there are more than 600 RTOs with between three and eleven members on each committee.

Consultation Question 4:

Do you agree with our proposal that these roles (any member of a TMC Board, an RSL Board or an RTO Committee) should be added to the list of roles under Section 50 of the Employment Rights Act 1996 entitled to time off work? Are there specific issues that should be considered?

Consultation Question 5:

Do you agree that this proposed entitlement should cover the main TMC Boards, RSL Boards, and RTO Committees only rather than members of other governance committees below TMC Board, RSL Board or RTO Committee level?

ANNEX A: FULL LIST OF CONSULTATION QUESTIONS

2: INTRODUCTION

Consultation Question 1:

Do you agree with the analysis of the benefits of undertaking civic roles?
Are there any others?

Consultation Question 2:

Do you agree with the estimation of costs and the assumptions made in calculating the overall costs to employers from the consultation impact assessment?

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