

# Making the case for facilities time and facilities agreements in the NHS

ACTIVISTS





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# 1. Introduction

The Trade Union Act 2016 poses significant challenges to UK unions – particularly in relation to their ability to take industrial action – but also in respect of the amount of paid facility time that might be available to trade union representatives in the future. The legal right to facility time (paid and unpaid) which allows union representatives to represent members have not changed.

This guidance sets out the provisions in the Trade Union Act, looks at the benefits of union representation and facilities agreements and restates what the law and good practice say about the issue.

It aims to provide you with information to make the case for facilities time and agreements. At the back of this publication, there are also template letters to share with employers to help you make the case.



## 3. The Trade Union Act

The Trade Union Act 2016 was passed on 4 May 2016. The most important element of the changes is that industrial action will be lawful only when there has been a ballot turnout of at least 50% and a simple majority must be in favour of action. In 'important public services' the 50% threshold has to be met but in addition 40% of all those balloted must be in favour of the industrial action before it is lawful.

The Act also covers facility time and covers employers in the public sector (and some private sector employers that provide public services) who will have to publish information on the amount of paid time off for union duties and activities. The Act also allows the government

to issue regulations restricting facility time at particular employers. After three years from the commencement of the Act the Secretary of State can exercise 'reserve powers' to limit the amount of paid facility time to a maximum percentage of payroll costs.

It may be the case that some employers seek to reduce the amount of facility time used in their organisations before the Secretary of State exercises their powers. RCN representatives need to be continually aware to any challenge to facility time in their workplace – whether it is time allocated to the RCN or other unions.

This section sets out various benefits that workplace representatives bring to an organisation, as well as the benefits of formal facilities agreements.

If you are trying to get a formal agreement, or stop your existing agreement

## The benefits of facility time

- Representing union members is complex and time consuming – and the best way of allocating time for these duties is through union facility time. This ensures that members have access to representation at a specific time and gives employers the confidence that union representatives are available for individual or collective representation.
- Investing in facility time is an investment in organisational development as employee relations and staff productivity are improved.
- It can sometimes be difficult to come to an agreement on how facility time is arranged, releasing people from their jobs to undertake union duties. It can also be difficult to come to an agreement on what constitutes reasonable time off. Flexibility is key to negotiating facilities arrangements – between HR, line managers and union representatives. Full-time RCN officers are available to help negotiate an arrangement to suit everyone.
- Many HR departments decide to centrally fund facility time; this can share the load rather than falling on the individual departments where those representatives work. Suggesting this option may help you make the case for facility time.
- Some employers pay for the full-time release of staff to take on a representative role and for the backfill for their job ensuring they can undertake their responsibilities without worrying about leaving their colleagues in the lurch. You could recommend this approach as a model of partnership working at its best.



The RCN has worked with Professors Nick Bacon from Cass Business School and Kim Hoque from the University of Warwick to look at the economic benefits of union representatives and facility time.

Union representatives take on many different responsibilities, ranging from individual member cases to regular meetings with management as well as keeping in touch with colleagues from the RCN and other unions. Union representatives and employers should work together to arrange appropriate time off and make arrangements for cover while representatives are undertaking union duties or activities.

Trade union representatives have a statutory right to paid time off from employment to carry out union duties and to undertake training

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Facilities agreements usually refer to trade union duties and trade union activities.

Trade union duties refer to all matters relating to collective bargaining and individual representation, such as pay negotiations, consultation meetings, disciplinary hearings and staff inductions.

Trade union activities may include attending branch meetings, or an RCN conference?

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2 There is no statutory requirement that union representatives should be paid for time off taken for trade union activities. However, employers may consider payment in certain circumstances.

3 [www.nhsemployers.org/your-workforce/pay-and-reward/pay/agenda-for-change-pay](http://www.nhsemployers.org/your-workforce/pay-and-reward/pay/agenda-for-change-pay)

4 [www.scotland.gov.uk/Pubc2 \(-\)-9.5.604 Td \(4\)Tj /Span<</Ac orac \(d\)io3..98 \(y h\)9ry4r](http://www.scotland.gov.uk/Pubc2 (-)-9.5.604 Td (4)Tj /Span<</Ac orac (d)io3..98 (y h)9ry4r)

## 8. Local practice

Sometimes local arrangements may not be written into formal agreements and local practice has developed which could either be written or unwritten. Local practices agreed in writing might be found in letters, minutes of meetings or emails. They usually have the same weight as an agreement but can often be changed more easily than a written agreement.

Some local arrangements are not written down anywhere and might be the result of a verbal agreement or just accepted as 'the way we've always done it'. Representatives and

managers may prefer to rely on unwritten arrangements – but these are easy to change or be misunderstood.

The RCN recommends that local practices – both written and unwritten – are written into formal agreements to provide you with safeguards. Representatives should get in touch with their regional office when planning to formalise any agreements.

# 9. Useful guidance and advice

## Acas Code of Practice

The 2009 Acas Code of Practice and Guidance on Time Off for Trade Union Duties contains provision for work and/or workload reductions for representatives when time off for trade union duties or activities is required. It states that:

“Employers should ensure that, where necessary, work cover and/or workload reductions are provided when time off is required. This can include the allocation of duties to other employees, rearranging work to a different time or a reduction in workloads.”

The code provides for reasonable paid time off for trade union duties even when a representative would not ordinarily be at work:

“There is not a statutory requirement to pay time off where the duty is carried out at a time when the union representative would not otherwise have been at work unless the union representative works flexible hours, such as night shift, but needs to perform representative duties during normal hours.”

The code provides guidance in determining what constitutes reasonable time off, and this list is not exhaustive, taking into account any operational difficulties, the need to maintain a service and the difficulties for trade union representatives in respect to shift patterns.

There is also an expectation for employers to

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# 10.

New regulations came into force on 1 April 2017 which require relevant employers in the public sector (with at least 50 employees) to publish information on facility time.

The regulations require the following information to be published on the employer's website before 31 July each year:

## What is not included?

The regulations do not require public sector employers to provide:

- a breakdown by types of union reps such as learning reps, safety reps or stewards – all facility time will be included together
- a breakdown of time spent on different union duties such as negotiating on pay, disciplinary or grievance hearings, promoting learning and development or health, safety or wellbeing
- a breakdown on how paid time spent on union activities is used, for example: consulting members, preparing for cases
- details about union facilities such as offices, phones, internet access.

## Devolution implications of the Trade Union Act

The provisions of the 2016 Act and the consequent amendments to the Trade Union and Labour Relations (Consolidation) Act 1999, extend to Great Britain — and not, therefore, to Northern Ireland. The National Assembly for Wales has introduced its own legislation to prevent certain provisions of the Trade Union Act 2016 from applying in Wales. The Trade Union (Wales) Bill could dis-apply parts of the Trade Union Act 2016 relating to facility time

## Checklist for officers and representatives

Know your rights as a union representative – remember that the Acas code sets on minimum obligations on employers – not the maximum. The RCN always tries to negotiate better arrangements for our rep than set out in the Acas Code.

The legal entitlement to time off with pay for trade union duties and time off without pay for trade union activities has not changed.

Employers cannot restrict the time that health and safety reps need to undertake their functions. There should be a guarantee that they will be given such time as they require.

Put together a case of the local benefits of facilities agreements and union representatives in your workplace. Use the RCN research. Use local evidence about the difference you make to both members and the employer.

Be clear that facility time is not 'trade union time' used for supporting staff and employers in employment, safety and learning issues in the workplace.

## Checklist on new reporting requirements

Keep a diary of the time you spend both on paid and unpaid union duties – every week will vary so it is important to keep an accurate record.

Make sure that the way the information is being collected by the employer is done in an agreed, transparent way – so that all unions at your workplace understand and agree with all definitions and classifications. Make sure that roles are not double counted so that if a rep is a steward as well as a learning rep then they are only counted once.

Make sure your regional office is updated on all developments.

Dear [name],

We all know that [



Dear [name],

This letter is to formally let you know that your staff member [ name] has been elected as a representative for the Royal College of Nursing. Their role will be as a [role] which will allow them to represent the interests of RCN members through partnerships within the workplace.

This role requires [name of rep] to be trained and competent to deliver both individual and collective support representation for members.

In the first instance, this will involve participation in the RCN Representative Development Pathway. [How many days will this involve? ]

The pathway is based on national occupational standards for trade union representatives in the workplace (ENTO standards) and ensures that RCN representatives are effective, competent and confident in their roles.

Once [name] has undertaken their learning and development, they will require time off to perform their trade union duties and activities. Your organisation may already have facilities arrangements for the RCN or other trade unions and it will be fairly straightforward to extend these arrangements to [name]. Developing a robust facilities agreement with time off for representatives to undertake trade union duties is an effective way of making sure they have adequate time and resources to get on with their roles.

RCN representatives take on many and varied roles, including offering advice and support to members on employment issues, representing members and working closely with employers on service improvements and restructuring.

Representatives are entitled to time off in order to perform their trade union duties and attend appropriate training (Ref Section 168 TULCRA 1992 and Employment Act 2002). In addition, Section 25 of Agenda for Change promotes agreement of paid time off and facilities for representatives to perform their duties in order to improve staff engagement.

A key feature of the RCN representative programme is the individual support they receive from RCN full-time officers. We provide mentorship to all our representatives and I will be working closely with [name]. I would be happy to discuss with you any aspect of the development pathway or how we can work with you in developing partnership arrangements.

Evidence shows that trade union representatives who are properly trained, and with access to a good facilities agreement provide many benefits to an organisation and an assurance that partnership arrangements are working effectively.

I enclose a copy of our role descriptor for [name] and if you would like to discuss this further, then please do contact me.

I look forward to working with you in the future.

The RCN represents nurses and nursing, promotes  
excellence in practice and shapes health policies

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