

EXPLANATORY MEMORANDUM TO

THE TIME OFF FOR PUBLIC DUTIES (PARENT COUNCILS) ORDER 2007

2007 No. 1837

- 1.** This explanatory memorandum has been prepared by Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Description**

2.1 Section 50 of the Employment Rights Act 1996 requires an employer to permit an employee to take time off for specified public duties, including membership of a relevant education body. The Scottish Executive is to replace Scottish school boards (who are listed in section 50 (9)) with parent councils through the Scottish Schools (Parental Involvement) Act 2006, which comes into effect on 1 August 2007. This order makes a consequential amendment to the definition of a relevant education body in Section 50 (9).

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

- 4. Legislative Background**

4.1 The Scottish Schools (Parental Involvement) Act received Royal Assent on 15 June 2006. The Act places a new duty on both Scottish Ministers and education authorities to promote and support the involvement of parents in their children's education and in school education generally. It also replaces current legislative provisions in the School Boards (Scotland) Act 1988 (the "1988 Act") relating to school boards and parental representation.

- 5. Territorial Extent and Application**

5.1 This instrument applies to employers in Great Britain but it will mainly affect those in Scotland.

- 6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

- 7. Policy background**

7.1 The Scottish Schools (Parental Involvement) Act introduces more flexible Parent Councils to replace the existing school boards system. It allows parents to determine the shape and nature of a Parent Council to represent their interests in their child's school. It also allows, if parents wish, more parents to be members of the Parent Council than sit on school boards. Currently the 1988 Act determines the format of the school board and limits

the number of members that a school board can have, ranging from 4 to 7 parent members, depending on the school roll. This means that less than 1% of parents in Scotland can ever be a member of a school board at any one time. The new Act imposes no such limit.

7.2 Ability to recruit parents who are representative of the population would be difficult without extending the existing right to time of work for school boards to the new Parent Councils.

7.3 The benefit to children of increased parental involvement in their education has been well researched with a report presented to DfES in 2003 concluding that parental involvement outweighed all other factors, including social class, in determining a child's success in school. Other research suggests that individuals who get involved in a formal way in groups such as school boards then tend to be more active in civic participation. The new Act may allow an increase in the number of parents (from the current 1%) who are able to be involved in this formal way, although the overall effect of the Act is more likely to be that parents choose to become more involved in informal ways which do not fall within the scope of the Employment Rights Act.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum

9. Contact

John Bissett at the Scottish Executive Tel: 0131 244 0790 or e-mail: John.Bissett@scotland.gsi.gov.uk can answer any policy queries regarding the instrument. Sophie Yule at the Department of Trade and Industry Tel: 020 7215 3019 or email: Sophie.Yule@dti.gsi.gov.uk can answer legal queries.

Partial Regulatory Impact Assessment

Title of proposal

1. Scottish Schools (Parental Involvement) Act 2006
 - consequential amendment to s50 of the Employment Rights Act 1996 (right to time off work for public duties)

The relevant provisions will be commenced in August 2007.

Purpose and intended effect

Objective

2. The Scottish Schools (Parental Involvement) Act received Royal Assent on 15 June 2006. The Act places a new duty on both Scottish Ministers and education authorities to promote and support the involvement of parents in their children's education and in school education generally. It also replaces current legislative provisions in the School Boards (Scotland) Act 1988 (the "1988 Act") relating to school boards and parental representation.

Background

3. The provisions in the Act apply to public schools, that is, schools that are under the management of an education authority. Most of the provisions of the new Act update or improve similar provisions in the 1988 Act and therefore replace existing legislation.

Rationale for Government Intervention

4. The particular aspects of the Act which relate to this RIA are with regard to representing parents in schools. The new Act introduces more flexible Parent Councils to replace the existing school boards system. It allows parents to determine the shape and nature of a Parent Council to represent their interests in their child's school. It also allows, if parents wish, more parents to be members of the Parent Council than sit on school boards. Currently the 1988 Act determines the format of the school board and limits the number of members that a school board can have, ranging from 4 to 7 parent members, depending on the school roll. This means that less than 1% of parents in Scotland can ever be a member of a school board at any one time. The new Act imposes no such limit.

Employment Rights Act 1996

5. Under Section 50(9)(d) of the Employment Rights Act 1996, members of a school board are entitled to "time off during the employee's working hours for the purposes specified". We have agreed with colleagues at the Department of Trade and Industry who have responsibility for the 1996 Act that, once Parent Councils come into being in August 2007, they will amend the 1996 Act to extend the same right to the new Parent Councils, which will replace school boards.

6. Since the new Act does not impose any limit on the number of parents who can be members of Parent Councils, it is likely that there will be a rise in the number of people who are **entitled** to time off from work. For example, the number of parents on a Parent Council is likely to fall within a range of about 5-20 members.

Consultation

Government

7. As stated in paragraph 5 above, we have worked with DTI colleagues towards an amendment of the 1996 Act, a reserved Act. Their Minister had asked for an assessment of the likely impact on business, before giving consent to the consequential amendment. Our assessment at that time was that, although more people will be entitled to time off, there would not be a significant increase in the number exercising this right. We also shared this assessment with colleagues in Employment, Training and Life Long Learning Department.

Public consultation

8. The change from school boards to Parent Councils was the subject of widespread consultation prior to the Bill being presented to and passed by the Scottish Parliament. The partial Regulatory Impact Assessment was shared with the Federation of Small Businesses who have confirmed that they feel no need to comment on the proposed amendment to the ERA to reflect the change from school boards to Parent Councils.

Options

9. Three options have been identified with regard to the proposed amendment to the 1996 Act:

Option 1 - do not extend right to time off for members of Parent Councils.

Option 2 – an increase in the number of members of Parent Councils increases the number of workers eligible for time off under the 1996 Act, but the level of activity that the members are involved in will not change, i.e. they will continue to carry out exactly the same functions as school boards do at the moment.

Option 3 – an increase in the number of members of Parent Councils increases the number of workers eligible for time off under the 1996 Act, and is accompanied by an expansion in the overall level of activity that members undertake.

Costs and benefits

Sectors and groups affected

10. As parents come from all walks of life, we need to assume that all businesses and sectors could be affected by these changes at one time or another. It could be argued that, as the pool of parents who participate will be increased, the costs will be spread across a larger number of employers.

Costs

11. **Option 1** would mean a saving of the order outlined as costs in option 2 below. However, not to give members of Parent Councils the same rights as those of school boards whom they are replacing would undermine the intentions of the Scottish Parliament in passing the Act. It would be at odds with the desire of Ministers and parents to extend and improve the involvement of parents in their children's education, with the consequent benefits for children, families and schools that the Act is expected to bring.

12. **Option 2** would mean that costs remain as at present. Our discussions with education authority officials have indicated that the most common reason for school board members taking time off work is to participate in interviews for the appointment of Head Teachers and Deputy Headteachers. Based on a limited number of responses, the average amount of time taken off work by school board members to attend such interviews is approximately **1 to 1.8 working days per board per year**.

13. To calculate the cost to employers of the right to time off, the average time taken off per board is multiplied by the average daily wage (£88.18)¹ and the number of school boards in Scotland (2350 in May 2004). The total estimated cost to all employers in Scotland lies **between £207,223 and £373,001 per year**.

14. This cost estimate should be viewed in the context of the following caveats:

- The average daily wage may not accurately reflect the true cost to employers. On one hand, there is anecdotal evidence to suggest that school board members are most likely to be university graduates in high-wage jobs and therefore earn above the average wage. On the other hand, a proportion of parents on school boards will not be in paid employment.
- The estimates of time taken off are based on information from a small number of local authorities and therefore may not give an accurate national picture.
- The number of head teacher appointments may vary from year to year, which may mean the costs to employers fluctuate over time. It has not been possible to factor this into the calculations.

15. Under option 2, because the level of activity will not change, any increased cost to business will be minimal. Indeed, costs in fact may be less since proposed changes in draft regulations, (out for consultation until 26 January 2007) suggest that there should be a lower minimum number of parent members on final interview panels, 30% rather the 50% figure set out in current school board legislation.

16. **Option 3** may see an increase in the cost to business, but not necessarily so, since it assumes that a greater number of members of Parent Councils will engage in an overall higher level of activity. It is hoped that the Act will encourage more parents to become involved and that Parent Councils may extend the range of ways in which parents' views can be obtained, e.g. developing and sending out questionnaires, taking soundings from other parents at the school gate. However, it is difficult to quantify the effect of any increase as there are a number of unknown factors:

¹ Annual Survey of Hours and Earnings 2006 Gross Weekly Pay
http://www.statistics.gov.uk/downloads/theme_labour/ASHE_2006/2006_all_employees.pdf

- how the Parent Councils, once they are established, decide to fulfil their functions
- whether any extension of activity actually requires time off from work e.g., questionnaires can be developed and analysed outwith working hours, with distribution undertaken by non-working parents

Benefits-option 1

17. The benefits of not extending the right to time off for members of Parent Councils amount to a small decreased financial overall cost to businesses in Scotland, and in the case of individual businesses any reduction would likely be minimal.

Benefits-options 2 and 3

18. The benefit to children of increased parental involvement in their education has been well researched with a report presented to DfES in 2003 concluding that parental involvement outweighed all other factors, including social class, in determining a child's success in school.

19. Other research suggests that individuals who get involved in a formal way in groups such as school boards then tend to be more active in civic participation. The new Act may allow an increase in the number of parents (from the current 1%) who are able to be involved in this formal way, although the overall effect of the Act is more likely to be that parents choose to become more involved in informal ways which do not fall within the scope of the Employment Rights Act.

20. In practice we consider that costs to employers are likely to be broadly neutral and, may in fact be lower if there are fewer parent members of interview panels for Head Teacher and Deputy Head Teachers in future. Under option 3, costs may be slightly higher as a result of higher levels of activities, but we believe that the increased benefits are worth the modest increase in costs that there may be.

Small/Micro firms impact test

21. The impact on small employers is likely to be minimal and no greater than that arising from the existing right of members of School Boards to paid time off for carrying out public duties. Paragraph 12 above indicates that the most common reason for parents taking time off work for public duties arises from their taking part in the interview panel for the appointment of Headteachers and Deputy Headteachers. Such staff tend to be in place for a number of years and, interview panels requiring input from the members of any individual School Board, or Parent Council in future, are therefore very infrequent. The scale of costs involved in an employer allowing one of their members of staff to take time off in such circumstances is very small ($1.8 \text{ days} \times \text{£}88.18 = \text{£}158.72$). It would be very rare for an employee to be involved in more than one such panel every few years let alone each year. Our assessment is that the effect on small or micro employers is that costs would be negligible.

Test run of business forms

22. No forms will be introduced by this legislation.

Competition assessment

23. This legislation will have no effect on competition since the costs involved are negligible and would arise very infrequently.

Enforcement, sanctions and monitoring

24. Under the 1996 Act, the right to time off under section 50 has an associated remedy under section 51 whereby an employee can make a complaint to an employment tribunal if his employer has failed to permit him to take time off as required by section 50. Where the tribunal finds a complaint well-founded, it may make an award of compensation to be paid by the employer to the employee. We will liaise with the Tribunals Service agency on the number of cases, if any, that arise as a result of amending the reference in regulations from school board to Parent Council.

Implementation and delivery plan

25. The following is the implementation plan for the Act:

	Date	Proposed actions	By whom
Royal Assent	15 June 2006		
Transition/preparatory year	June 2006- August 2007	<ul style="list-style-type: none"> • Promote parental involvement at national level • Work with parents to decide on arrangements for parent councils • Development of draft strategies for parental involvement • Development of complaints system 	Scottish Ministers/SEED Education authorities Education authorities Education authorities
Commencement of Act (<i>Parent Council provisions</i>)	August 2007	<ul style="list-style-type: none"> • Agree strategies for parental involvement and complaints system with Parent Councils • Communicate with parents and represent their interests 	Education authorities Parent councils

Post-implementation review

26. SEED Schools Division will work closely with the new Parent Councils and with existing, and any new, national parents body, to monitor the impact of the change in regulations. HM Inspectorate of Education, through their regular inspections of schools and education authorities, will also have an ongoing monitoring role and will be able to pick up feedback from Parent Councils on any issues that may arise in relation to their members' seeking time off to carry out their duties. We will discuss any feedback in this area with employers and, should the need arise, review the policy with them.

Summary

27. In order to fulfil the policy intent of the Act (to extend and improve parental involvement in education), the Scottish Executive will work towards option 3 - increasing the number of parents involved in Parent Councils and increasing their activity. Although this option may lead to modest increases in financial costs, we believe these are clearly outweighed by the benefits to parents, children and the education system in general.

Summary costs and benefits table

Option	Total benefit (social) per annum	Total cost (financial and social) per annum
1	Parental membership of current school boards limited to 1% of parents in Scotland. Act will lead to more parents involved in Parent Councils. Increased benefit for more parents and their children's education	Potential savings on existing costs between £207,223 and £373,001. Not to extend right to paid time off to members of Parent Councils would add to barriers to parents becoming more involved in parental representation in their child's school
2	Increased benefit for more parents and their children's education	Existing costs of order identified in option 1 would continue, assuming no significant increase in activity; or less if fewer parents involved in appointment panels
3	Increased benefit for more parents and for their children's education.	Modest increases in financial costs, but outweighed by improved benefits for parents and their children's learning and education

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed: Jim Fitzpatrick

Date 22nd June 2007

**Parliamentary Under-Secretary of State for Employment Relations
and Postal Services
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