

EXPLANATORY MEMORANDUM TO

CODE OF PRACTICE: RIGHT OF TRADE UNIONS TO ACCESS WORKPLACES

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Kate Dearden MP, Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.
- 2.2 James Silcox, Deputy Director for Trade Union and Collective Rights, at the Department for Business and Trade confirms that this explanatory memorandum meets the required standard.

3. Contact

- 3.1 Sam Pearce at the Department of Business and Trade can be contacted by email at the following address with any queries regarding the Code of Practice:
tradeunionpolicy@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Code of Practice

What does the legislation do?

- 4.1 The Secretary of State proposes to issue a Code of Practice on trade union right of access (“the code”) to provide practical guidance to individuals, trade unions, employers, businesses and other organisations, to support the understanding and delivery of the right of trade unions to access workplaces.
- 4.2 Section 203(1)(a) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) gives a general power to the Secretary of State to issue Codes of Practice containing practical guidance for the purpose of promoting the improvement of industrial relations.

Where does the legislation extend to, and apply?

- 4.3 The extent of this code (that is, the jurisdiction(s) which the code forms part of the law of) is England and Wales and Scotland.
- 4.4 The territorial application of this code (that is, where the code produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

- 5.1 This Code relates to the provisions in Chapter 5ZA (Right of trade unions to access workplaces) of the 1992 Act, as inserted by the Employment Rights Act 2025 (“the 2025 Act”), and related secondary legislation. It provides clear and accessible guidance on the operation of those provisions.

- 5.2 The Code is intended to support trade unions and employers where access to a workplace is being sought or an access agreement has been made, including guidance on the operation of such agreements and the resolution of disputes.
- 5.3 Prior to the 2025 Act, trade unions did not have a general independent right of access to workplaces. Instead, trade unions only exercised their functions through individual members in the workplace, or through ad-hoc arrangements with the employer. The Government therefore introduced a new trade union right of access. It considers that this change will enable unions to contribute positively to workplace culture and lead to more constructive industrial relations through supporting workers in employment-based matters.
- 5.4 The code is necessary to support the understanding and use of the new statutory trade union right of access, as this is the first time this new framework will be implemented.
- 5.5 The Code provides practical guidance on the roles of the relevant parties, the procedural requirements for requesting and agreeing access to workplaces, and the associated compliance expectations. This includes expectations around timely and constructive engagement, the practical steps required to give effect to access agreements, and cooperation with the statutory enforcement framework. The Code also explains the consequences of non-compliance, including the role of the Central Arbitration Committee (CAC) and the circumstances in which financial penalties may be imposed for breaches of statutory access agreements.
- 5.6 It is intended to support the understanding of the underlying legislation and to help trade unions and employers engage consistently with the access framework, including the operation of access agreements and the resolution of disputes.

What was the previous policy, how is this different?

- 5.7 Prior to the insertion of Chapter 5ZA into TULRCA, there was no statutory framework governing access agreements between trade unions and employers. In practice, access agreements relied on voluntary arrangements between unions and employers or existing workplace recognition agreements.
- 5.8 Section 59 of the 2025 Act establishes for the first time a clear and structured legal basis for trade union representatives to access workplaces in accordance with a statutory access agreement, supported by a statutory framework. These Regulations supplement that framework by setting out the procedural detail required for its operation.
- 5.9 Chapter 5ZA also introduces an enforcement framework for trade union right of access into workplaces, enabling complaints to be made to the Central Arbitration Committee (CAC) where a breach of a statutory access agreement has taken place. If the initial complaint was found well-founded by the CAC, and the non-compliant party either disregards an Order made by the CAC to take specified steps to ensure compliance or commits the alleged breach again, the CAC may impose financial penalties for non-compliance, in line with matters set out in secondary legislation and explained in this Code of Practice.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The Code is issued under section 203 of the 1992 Act. This section gives the Secretary of State a general power to issue Codes of Practice containing practical guidance for the purpose of promoting the improvement of industrial relations.

Why was this approach taken to change the law?

- 6.2 This Code itself imposes no legal obligations and failure to observe it does not in itself render anyone liable to legal proceedings. But section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992 provides that any provisions of this Code are admissible in evidence and are to be taken into account in proceedings before any court, tribunal or the CAC where they consider them relevant.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The Department for Business and Trade consulted on the draft Code of Practice between the 8 of April 2026 and the 20 of May 2026. During the consultation on the Code of Practice the Department engaged with interested parties such as Business Representative Organisations and Trade Unions such as via email or virtual meetings.
- 7.2 The consultation received 793 responses from a range of stakeholders including Academics, Business Representative Organisations, Employers, Individuals, Legal Representatives, Local Government Bodies, Trade Unions, and others. There were varying views throughout the consultation responses, with a mixture of support, opposition, and proposed changes.
- 7.3 Having considered the responses received from the consultation the Government has made changes to the Code of Practice to reflect points raised and is satisfied that it is appropriate to proceed with the Code of Practice on trade union right of access.
- 7.4 More information and the Government's response to the consultation is available here: www.gov.uk/government/consultations/make-work-pay-trade-union-right-of-access.

8. Applicable Guidance

- 8.1 The Code of Practice on trade union right of access is itself guidance.
- 8.2 Should the parliamentary process be successfully completed, the Secretary of State proposes to publish the code on GOV.UK.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for the draft code. A De Minimis Assessment has been prepared for The Trade Unions (Right to Access Workplaces) Regulations 2026 and The Trade Unions (Right to Access Workplaces) (Required Information) Regulations 2026, which this code supports and is published on the gov.uk website.¹

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because the code itself only sets out practical guidance on complying with legal obligations. It does not impose legal obligations on these parties.

¹ www.gov.uk/government/consultations/make-work-pay-trade-union-right-of-access

- 9.3 There is no, or no significant, impact on small or micro businesses because the code itself only sets out practical guidance on complying with legal obligations. It does not impose legal obligations on these parties.
- 9.4 There is no, or no significant, impact on the public sector because the code does not impose new obligations on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to the monitoring of the code is to consider how effectively it sets out the requirements and standards relevant parties must adhere to when conducting statutory trade union right of access.
- 10.2 The Code of Practice does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade has made the following statement regarding Human Rights: “In my view the provisions of the Code of Practice: Right of Trade Unions to Access Workplaces are compatible with the Convention rights”.

13. The Relevant European Union Acts

13.1 This Code of Practice is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).