



UK Government

Government response

Making Work Pay: Consultation on the revised Code of Practice on Access and Unfair Practices during the Recognition and Derecognition Process

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Introduction

The government's plan to Make Work Pay is a central part of our mission to grow the economy, raise living standards across the country and create opportunities for everyone. It will make work more secure and predictable, putting more money into working people's pockets and strengthening the foundations that underpin a modern economy. As part of this, the government is committed to updating Britain's employment protections so that they are fit for our modern economy and for the future of work.

The Plan to Make Work Pay included a commitment to simplify the trade union recognition process. The Employment Rights Act 2025 ("the 2025 Act") updates the legal framework around statutory trade union recognition so that workers have a meaningful right to organise through trade unions. This includes removing the requirement for a union to demonstrate at the application stage that it is likely there will be a majority for union recognition and the requirement for a union to have at least 40% of the workforce in the appropriate bargaining unit supporting union recognition. The 2025 Act also makes changes to provide better access arrangements for unions and deal more effectively with unfair practices during the recognition and derecognition processes.

The government is updating the Code of Practice on access and unfair practices during the recognition and derecognition process to reflect these changes. Between 4th February 2026 and 1st April 2026, we consulted on the revised Code of Practice on access and unfair practices during the recognition and derecognition process. The consultation sought views on the clarity of changes made to reflect the updated legal framework, structural amendments to reflect the legislative changes made by the 2025 Act, and other changes made to the Code unrelated to 2025 Act including updating the guidance in the Code so that it accurately reflects modern working practices and language. This Code applies to access and unfair practices under statutory recognition processes only; it does not apply to the right of access in Chapter 5ZA, Part 1 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"), which is a more general right of access.

It is important to note that the purpose of the Code is to provide practical guidance under section 203 of the 1992 Act, which may be taken into account by a court or tribunal or the Central Arbitration Committee under section 207. The Code cannot amend the recognition, derecognition, and bargaining unit provisions contained in Schedule A1 to the 1992 Act, as amended by the 2025

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Act. This limits the extent to which the government can respond to some comments made by respondents through the Code (even if it were the government's policy to do so).

Included in the same consultation, the government also included questions relating to unfair practices during electronic balloting. The government will provide a response to this section of the consultation separately.

We received 920 responses from a broad range of stakeholders. During the consultation period, we also held roundtable meetings with trade unions and business representative organisations. Trade unions and business representative organisations reflect the views of millions of members across the country. Their views were carefully considered to reflect this. This ensured that the consultation captured insight not only through formal submissions but also through deeper qualitative engagement with those most directly affected by the trade union recognition and derecognition process.

This document sets out a summary of the feedback received, the government's response, and next steps in relation to the Code of Practice on access and unfair practices during the recognition and derecognition process. The government is very grateful to all respondents to the consultation for their considered and helpful responses.

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Responses to consultation questions

Section 1: About you

These questions gave us information on the demographics of the respondents.

The statistics and tables below provide a breakdown of respondents. It is important to note that they do not capture all respondents. If a respondent has not completed the 'about you' section, then we have not included them in the statistical counts below. This may mean that the actual count may vary from what is displayed.

Multiple representative organisations (for example trade unions and business representative organisations) responded to the consultation. It is important to note that trade unions, business representative organisations, and industry bodies represent millions of workers and businesses across the country. But, for the purpose of the analysis for this consultation, contributions from these representative groups were considered as one response, noting that they reflect the views of their respective members.

We received 872 (95%) responses to an online survey¹ and 48 (5%) responses in writing. The most common category of respondent was 'an employer' (78%), followed by 'an individual' (15%). This was followed by 'a business representative organisation' (3%), Other (2%), and 'a trade union or staff association' (<2%), and 'a charity or interest group' (<1%).

In terms of business, organisation, or workplace size, respondents were more often from small organisations (10-49 staff) at 57%. This was followed by respondents from medium-sized organisations (50-250 staff) at 27%, then micro-organisations (1-9 staff) at 14%. Only 2% of respondents were from large organisations (250+ staff).

Responses were received from across the United Kingdom. Three responses received via email selected every region as where they are located so they have been counted across each region. South-East returned the highest number of responses (168), followed by North-West (110), South-West (104), East Midlands (99), East of England (97), West Midlands (89), Scotland (68), London (59), Yorkshire and the Humber (45), North-East (38), and Wales (29).

Regarding sectors, Manufacturing submitted the most responses with 254. This was followed by Construction (232), Wholesale and retail trade; repair of motor

¹ This excludes cases where respondents either opened the online survey and did not respond to any questions or only responded to the questions in the 'About you' section.

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vehicles and motorcycles (97), Other services (67), Services sector (50), Production (39), Human health and social work activities (19), Professional, scientific and technical activities (17), Education (16), Transportation and storage (16), Agriculture, forestry and fishing (14), Administrative and support service activities (10), Electricity, gas, steam and air conditioning supply (7), Information and communication (7), Financial and insurance activities (5), Real estate activities (5), Water supply; sewerage, waste management and remediation activities (5), Public administration & defence; compulsory social security (4), Activities of households as employers; undifferentiated goods and services-producing activities of households for own use (1), and Arts, entertainment and recreation (1).

Table 1: Breakdown of respondents.

All respondents	Count	%
An employer	707	78%
A business representative organisation/trade body	30	3%
An employee/worker/individual	132	15%
A trade union or staff association	17	2%
Other	19	<2%
A charity or interest group	3	<1%

Table 2: Count and proportion of respondents by organisation size

All respondents		%
Micro (fewer than 10 staff)	119	14%
Small (11 to 50 staff)	491	57%

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Medium (51 to 250 staff)	232	27%
Large (250+ staff)	19	2%

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Responses to consultation questions

Part 1: Code of Practice.

Q1: Do you have any comments about the changes to the Code to reflect the updated legal framework? You may wish to comment on whether the changes are clear, comprehensive, and practical to implement, or suggest areas that could be improved. Please explain your answer.

A total of 913 respondents answered this question. Generally, they indicated that further changes to the Code were required to reflect the updated legal framework.

Respondents expressed concerns around the shortened timescales for recognition processes, which would not allow smaller businesses – without dedicated human resources or legal teams – to seek external expertise to adequately prepare.

Employers also stated that unclear definitions of unfair practices and that early campaigning activity and a recognition ballot before a formal decision by the CAC would potentially impact routine management processes (such as performance reviews, shift changes, or legitimate business activity). For smaller organisations, staff absences (for reasons such as sickness) may also impact their ability to manage the shortened timelines and deadlines proposed in the Code. In response, there were calls for longer preparation periods, beginning after a formal decision by the CAC, with the possibility of deadline extensions for small businesses where legitimately required, as well as greater clarity on what constitutes unfair practices (in relation to management practices).

More broadly, some respondents questioned why the general access provisions – included in the 2025 Act¹ – were not referenced in the Code. They also questioned the timing of the consultation, stating they could not properly assess the implications of the Code and its cohesion with the Code of Practice on Trade Union Right of Access without knowing the outcome of the consultation on that draft Code of Practice.

Government response

In response to requests for greater clarity on the subject of management freedom of action during a recognition or derecognition process, the government has amended the Code. The Code now emphasises that the central issue for management to consider when taking management action during such a process is whether the intention of that action is to disrupt the recognition or derecognition process. If it is a

¹ See Chapter 5ZA of Part 1 Trade Union and Labour Relations (Consolidation) Act 1992.

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normal management action unconnected to the recognition process, it will generally not be considered an unfair practice. In the case of disciplinary processes – where some respondents cited this could be a particular concern – the government advises employers to continue to undertake clear and fair disciplinary processes as set out in the Acas Disciplinary and Grievances Code of Practice, to minimise any confusion.

Some respondents were concerned about the possibility of undue influence, through such means as workers being allocated to less favourable shift patterns, being potentially used or misconstrued as unfair practices during the recognition process. In response, the government has clarified in the Code that altering shift patterns would not necessarily constitute undue influence or an unfair practice, provided the management decision was for legitimate need, and was done so unrelated to the recognition process.

The government points out that the Code of Practice provides statutory guidance that explains what employers and unions must do in relation to access and unfair practices in the recognition and derecognition process to comply with the 1992 Act as amended by the 2025 Act. There are therefore restrictions as to its content and format. Other guidance is available on GOV.UK that explains more simply the recognition and derecognition process. This guidance will be amended at the same time as when the access and unfair practices provisions in the 2025 Act including this revised Code are implemented. The Central Arbitration Committee (CAC) also provides guides to the parties, to enable both the union and employer to navigate the statutory recognition and derecognition process. This also will be revised in time for implementation of the changes in the 2025 Act.

The government notes concerns expressed in the consultation by many employers in relation to earlier trade union access under Schedule A1 of the 2025 Act in the recognition and derecognition process. The government is however committed to levelling the playing field by giving unions earlier and more frequent access during a relevant application. Earlier trade union engagement with the workforce will ensure that workers are given adequate time to properly and fairly assess whether trade union recognition is right for them.

Q2: How well do the structural changes to the Code reflect the changes being made by the Employment Rights Act? Please highlight practical difficulties and suggest specific improvements or solutions to enhance clarity, usability, or effectiveness. Please explain why and note any other benefits.

There were 904 responses to this question. Respondents provided extensive feedback on how the structural changes to the Code reflect the amendments introduced by the 2025 Act, as well as on the practical implications of those changes in real workplace settings.

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Responses largely recognised that the revised structure of the Code has been designed to accurately reflect the legislative framework established by the 2025 Act, particularly the earlier application of trade union access and unfair practice provisions following acceptance of an application by the Central Arbitration Committee (CAC).

However, a consistent theme across responses is that while the Code may be legally aligned with the Act, further consideration is required to ensure that it is proportionate, clear, and workable in practice - especially for small and medium sized enterprises (SMEs). Respondents also raised concerns about indirect implications for businesses, such as the added cost-burden for businesses due to the recognition processes (employee time away from work, external legal advice, provision of premises to host trade union activity) and perceived impact on workplace relationships between employers and employees in small businesses. In response, an exemption for small businesses on these measures was frequently suggested.

To support the Code, respondents frequently requested further guidance in a simplified, more accessible format. They suggested this may support ease of use for trade union representatives and businesses undertaking the processes, as well as those smaller businesses who may have less legal and administrative expertise and be unfamiliar with the statutory recognition process.

Government response

Under the 1992 Act, as amended by the 2025 Act, applications to the CAC relating to statutory recognition are only considered for bargaining units where the workplace has 21 workers or more. In response, and reflecting that position, the government has amended the preamble section of the Code to clarify that workplaces that have less than 21 workers are out of scope in relation to the statutory trade union recognition and derecognition process, and the procedural steps and obligations described in this Code.

The government also recognises respondents' requests for additional guidance for those less familiar with the statutory recognition process. The government intends to amend the existing guidance on the GOV.UK website to support employers and trade union representatives participating in the recognition process. The CAC also provides guides to the parties, to enable both the union and employer to navigate the statutory recognition and derecognition process. This also will be revised in time for implementation of the changes in the 2025 Act.

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Part 2: Questions on practical implementation of the Code of Practice.

Q3: Do you agree that the suggested minimum frequency of meetings during the access period should be once every 5 working days? Please explain your reasoning or give an alternative.

This question received 887 responses indicating a yes or no viewpoint. 33 responses either did not complete this question or provide a sufficiently clear view in question 3 for it to be determined. Of the completed responses, 2% (22) agreed with the proposal and 865 (98%) disagreed with the proposal.

Respondents provided detailed views on whether meetings should take place once every five working days. This reflected a broad range of organisational contexts, sectors, and workforce arrangements. The responses outlined that there are concerns about the proportionality and practical impact of the proposed minimum frequency. Responses suggested the increased frequency of meetings would have a particularly disruptive impact for small and medium-sized enterprises, as the number of staff taken away from core business activities, and the requirement to provide an appropriate venue for the meetings, would be a proportionally greater burden than for larger organisations. Businesses stated that this could have tangible productivity implications. Respondents generally suggested a preference for maintaining a fortnightly meeting frequency or reducing the frequency to monthly.

Those respondents who were supportive of the change highlighted the importance of increasing the frequency of meetings on the basis that it would help to maintain momentum during the recognition process and would help to engage workers who may be on alternating shift patterns, with whom it may otherwise be difficult to engage.

Government response

The government is committed to levelling the playing field by giving unions earlier and more frequent access during the recognition and derecognition process. Following consultation analysis, the government has decided to increase the frequency of access meetings to once every five working days. The government understands that whilst a considerable proportion of respondents voiced their disagreement with the proposal, the proposed frequency should be carried forward as this will provide more opportunities for engagement between the union seeking recognition and workers within the bargaining unit.

We understand businesses' concerns regarding operational disruption and once again, reiterate that all parties should conduct themselves in a manner that limits such disruption when negotiating arrangements. The government would also stress

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to employers, workers, and trade unions that any worker within the proposed bargaining unit is not obliged to attend any meeting and should not be pressured to do so. However, they should not be pressured or prevented from doing so if they wish as to do so would usually constitute an unfair practice.

The government has also clarified in the redrafted Code that a union(s)' access to the workers should usually take place during normal working hours (including weekends if workers normally work at weekends), but at times which minimise any possible disruption to the operational activities of the employer. As is the case throughout the process of negotiating access arrangements, parties should give consideration to this, and the union and the employer should be guided by the employer's custom and practice when communicating with the workforce.

To address concerns surrounding a lack of flexibility for non-typical workers, the Code has also been amended to set out arrangements that should be considered for such workers in an access agreement. This should include the employer being receptive to the use of digital meetings. An employer should also be sufficiently flexible regarding arrangements where such workers need to travel to a different site for the meeting. The Code also advises that it is reasonable for the union to hold further meetings or surgeries to enable them to access these non-typical workers.

Q4: Do you agree that the suggested minimum duration of meetings be increased from 30 minutes to 45 minutes? Please explain your reasoning or give an alternative.

This question received 884 responses indicating a yes or no viewpoint. 36 responses either did not complete this question or provide a sufficiently clear view in question 4 for it to be determined. Of the completed responses, 3% (23) of respondents agreed with the proposal and 97% (861) disagreed with the proposal.

The majority of respondents indicated that they were not in favour of the proposal, stating that the existing duration offers sufficient time for engagement without increasing potential business disruption, particularly within SMEs. Some respondents disagreed with the principle of a minimum duration, stating that some meetings may not need the full duration, and therefore should not be legally required due to the inefficiencies it could create. They reiterated concerns that an increased staff absence from core business activities would have disproportionate productivity and economic impacts on SMEs when compared to larger businesses.

Some respondents supported the increase in minimum meeting duration to 45 minutes, with a number arguing that the minimum should be increased to an hour. This was justified on the basis that it would provide greater flexibility for trade union engagement, such as allowing more time for representatives to

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engage directly with employees' questions after the core meeting agenda had been covered. Several respondents also raised their concern that varying employee shift patterns and working days within certain sectors would make union-employee engagement difficult. They suggested that there should be a capability to stagger the time-period allocated to engagement meetings over the course of the proposed 5-working days.

Government response

Access during the recognition process can take many and varied forms depending largely on the type of workplace involved and the characteristics of the balloted workforce. The overall aim of the reforms in the ERA 2025 is to ensure that the union can reach the workers involved and put forward their case in favour of statutory recognition, but also to ensure that workers are, as a bargaining unit, content with proceeding with trade union representation.

By ensuring there is sufficient time for employees to meaningfully engage with trade union representatives, the Code will help to allow engagement with workers and allow union representatives to answer any questions that the workers may have, before the balloted workforce decides whether to agree to statutory union recognition. Any worker within the proposed bargaining unit is not obliged to attend any meeting and should not be pressured to do so. However, they should not be prevented from doing so if they wish to which would usually constitute an unfair practice. That is why the government has decided to implement the proposal to increase the minimum duration of access meetings to 45 minutes.

Q5: Do you think the updates to the Code appropriately reflect the increased use of digital communication in workplaces? Please explain your answer.

This question received 884 responses indicating a yes or no viewpoint. 36 respondents either did not complete this question or provide a sufficiently clear view in question 5 for it to be determined. Of the completed responses 4% (34) responded 'Yes' and 94% (850) stated 'No'.

Respondents provided significant feedback concerning the topic of the increased use of digital communication in workplaces. Respondents acknowledged that digital tools including email, intranet, and virtual meetings had become a much more important part of modern working practices. There was also recognition that digital communication has the potential to improve accessibility, reach and flexibility, especially for hybrid, shift-based, or dispersed workforces.

However, specific concerns were raised regarding concerns about confidentiality, commercial sensitivity, and cybersecurity risks. Respondents highlighted that they felt there were risks including data breaches, exposure of commercially sensitive

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information, and loss of personal data. This was combined with a consistent call to ensure that internal systems remain in the hands of the employer with clear safeguards for any potential digital access for third parties. Particularly concerning GDPR regulations, there was a consistent call amongst respondents to provide further guidance on digital access and data handling. Some responses felt that in certain instances they did not think digital access would be feasible. They cited a lack of dedicated IT, compliance, or cybersecurity capability and expertise. In response, some suggestions included that third-party digital access should only be permitted where agreement with the business is achieved or that employers should be able to have visibility of third-party communications before they are published via business communication channels.

Some respondents reiterated that digital access should supplement, not replace, physical access during the recognition process. Digital access was cited as being important for raising visibility of the recognition process for workers who were not able to be present on the occasions when recognition meetings occurred (such as those on varying shift patterns, on work absence, working remotely or away from the business premises).

Government response

The government notes these concerns and has provided further clarification on digital access provisions at paragraph 42 and elsewhere in the Code (notably in relation to written including digital communications at paragraphs 54 to 59). As well as physical access, digital access is an important element of the access provisions in the application process, recognising that in many businesses employees may not work from a physical business premises due to hybrid or homeworking arrangements. The Code states that in addition to a physical noticeboard, it is advisable for employers to share trade union materials on their digital counterparts where possible (such as staff intranets).

It has long been the practice that unions should be allowed to display union materials on a noticeboard in the workplace. The union should also be able to place additional material near to the noticeboard including, for example, copies of explanatory leaflets. If there are no local union representatives present at the workplace or available to travel to it, the employer should allow access to an official employed by the union to display the material. The Code now adds that it is advisable to extend this to the use of the employer's staff intranet as a digital noticeboard although this should be carried out on behalf of the union by an employee (who may be a union representative or otherwise) or HR official (or other nominated employee) within 2 working days of the union's request, after which confirmation should be sent to the union. This should be done to ensure

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the widest possible number of relevant workers have access to the relevant information.

The revised Code reiterates a long-standing provision where a union may also wish to make use of its own web-site pages on the internet for campaigning purposes. In this case, the employer should allow its workers access to the union's website material in the same way that it explicitly, or tacitly, allows its workers to view or download information in connection with activities not directly related to the performance of their job. If an employer generally disallows all such internet use, it should give permission to one of its workers nominated by the union to download the material, and it would be this person's responsibility to disseminate it more widely among other workers. The revised Code now clarifies that the employer should allow the nominated employee (who may be a union official or otherwise) or HR official to use the employer's systems to disseminate this information either via email or through the staff intranet. Again, this should be done within 2 working days of the union's request, after which confirmation should be sent to the union.

Where the employer has nominated an employee to disseminate union materials using the employer's electronic systems, it should be made clear that the information is from the union and not the employer. The employer, when disseminating union materials electronically, is not required to disseminate information that is contrary to the employer's legal obligations, unlawful, harassing, discriminatory, threatening or defamatory. Where the employer believes that one or more of these exceptions apply, then it should inform the union of its decision to refuse to disseminate the information, giving reasons in writing within two working days of the union's request. However, apart from these exceptions, the employer does not have a veto in relation to the content of the union's information. The employer also cannot refuse to distribute the union's materials simply because the content is contrary to the employer's views. Any disputes in relation to the dissemination of union materials should be resolved promptly by the parties and if this is not possible, then should be referred to the CAC.

Respondents also expressed concern about how the digital access measures may relate to the General Data Protection Regulations (GDPR). In response, the government has more clearly clarified that the Code does not require the employer to give the union itself, including any union official that is not one of the employer's workers, information that would be in breach of General Data Protection Regulation (GDPR) or other data protection law requirements. Nor does the Code require an employer to give the union itself, including an employee of the union, access to the employer's electronic systems or to change their IT system to meet access obligations.

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However, notwithstanding the above, the government has carried over the contents of the 2005 Code where there is a long-standing provision that allows a union representative that is an employee of the employer to use the employer's electronic systems. Paragraph 59 of the revised Code therefore states that a nominated union representative employed by the employer may also want to make use of internal electronic communication, such as electronic mail or intranets, for campaigning purposes. For example, they may want to remind workers of forthcoming union meetings or surgeries. The employer should allow the representative to make reasonable use of these systems if the employer explicitly, or tacitly, allows its workers to use them for matters which are not directly related to the performance of their job. In cases where such use is disallowed, it would still be reasonable for the representative to use them, if the employer uses such forms of communication to send to the workers information arguing against the union's case for recognition. When sending messages in this capacity, the representative should make it clear that the advice comes from the union and not the employer. We have now added a sentence to this paragraph to remind the trade union representative that they should also be mindful that the content of any union material that they circulate is not contrary to the employer's legal obligations, unlawful, harassing, discriminatory, threatening or defamatory.

Part 3: Role of the Central Arbitration Committee.

Q6: Do you think the role of the CAC in resolving disputes is adequately explained in the Code? Please explain your answer. If your answer is no, what additional guidance would you suggest?

Of 866 responses to this question, 4% (38) of respondents agreed that the Code adequately explained the CAC's role in resolving disputes, whilst 96% (828) respondents disagreed. A further 54 respondents did not express a sufficiently clear response or left the question blank.

Where suggestions were made, respondents requested additional guidance on how the CAC would retain impartiality and transparency when adjudicating on disputes between businesses and trade unions. We have sought to address these concerns by adding further clarity to the introduction of the Code.

The ability for the CAC to end the negotiation period early was a frequently cited area of concern for small businesses. Due to a lack of legal and administrative expertise within the organisations, they cited concerns that they would suffer adverse outcomes due to insufficient time to respond to procedural requirements,

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especially if negotiations were to end early. Respondents requested reassurances that the CAC would consider the operational capabilities of SMEs and offer flexibility (such as deadline extensions) when making judgements.

Respondents highlighted that greater clarity was required concerning the timescales that the CAC will operate against in making a determination. There were also calls for a clearer understanding of how to engage with the CAC if access is prevented. There were also calls to ensure that the CAC has the adequate resources available to deal with cases in a timely manner.

Specific concerns about how the operational realities of SMEs would be considered when making judgements were raised, with requests for flexibilities in the deadlines for SMEs, such as the ability to request extensions or an SME exemption because of missed deadlines. As many SMEs do not have in-house human resources or legal teams, the need to pursue external advice to engage with the prescribed recognition processes would make the time requirements for the procedural steps difficult to achieve and costly.

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In acknowledgement of the consultation responses received, the government has amended the Preamble section of the Code to provide greater clarity on the role of the CAC.

Whilst the government recognises that some respondents expressed concerns about the potential for the CAC to conclude access negotiations early, this will generally only occur where a voluntary settlement between the employer and trade union cannot be reached, or where there is no reasonable prospect of an agreement being reached in a timely manner. Therefore, it is beneficial for all parties involved in access negotiations to be cooperative and constructive in their approach to avoid outcomes where the CAC determines the access agreement.

Q7: Do you think that the Code includes sufficient information in relation to Section D of the Code which covers the elements in an access agreement? Please explain your answer. If your answer is no, please explain what additional information would be useful.

Of 860 responses, 3% (27) of respondents agreed that the Code provided sufficient information in relation to Section D of the Code which covers the elements in an access agreement, whilst 97% (833) disagreed. A further 60 respondents either did not express a view or did not provide sufficient clarity to appropriately determine their position.

Responses to this question showed a strong and consistent concern that Section D of the draft Code does not currently provide sufficient clarity or practical

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guidance, particularly for SMEs. It is noted that while many respondents accepted the principle of access agreements, many argued that the current drafting of this section could risk uncertainty, dispute, and disproportionate impact in practice. The responses highlighted that they felt there was an unclear meaning of “proportionate” access and that a more adequate definition – including specific criteria – should be provided. Respondents from across the board believed that the current lack of clarity could result in an escalation in disagreements between employers and unions, as well as leading to operational disruption.

Specific suggestions including explicit recognition in the Code that union access may not be required in businesses where strong employer-employee working relationships and working conditions already exist.

Some respondents stated that Section D of the Code should make clearer that access to workers through meetings and communications during the recognition should be on equal terms. They suggested that the Code should be amended to more clearly indicate that physical access should be the primary form of access, with on-site access preferential – where not possible, and justifiable to the CAC, it should instead be at a site convenient for workers to reach. Some respondents suggested that the Code should also make clear that health and safety provisions should not be unfairly used to discourage on-site meetings or trade union access. Some responses also suggested that the Code make clear that digital access should be supplementary to physical access, unless there is legitimate reason for which physical access is not possible (such as in the case of a remote workforce). Where digital access is used, some respondents made clear that it should be displayed to the same standards that other employer-published communications are.

Government response

The government welcomes the range of responses received to this question. While there was broad support for the principle of access agreements and the suggested content proposed in the draft Code, a consistent theme was that Section D does not currently provide sufficient clarity or practical guidance, particularly for SMEs. Respondents highlighted concerns that key concepts - such as “proportionate” access - are not clearly defined, which could lead to uncertainty, increased disputes, and potential operational disruption. Some respondents suggested that Section D should make clearer the provisions relating to fair and equal access to workers during the recognition period, for both physical and digital access.

The government has carefully considered this feedback alongside the intended role of Section D. Section D is designed to provide guidance on the elements that may constitute a “good” access agreement, rather than to impose an exhaustive set of requirements or criteria. It establishes a structured framework covering key areas

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such as who may be granted access, how and where access should take place (including digital options), and arrangements relating to timing, frequency, privacy, and communication. However, though we have aimed to provide guidance where possible, some issues are difficult to define - for example what is proportionate in terms of access may vary on a case-by-case basis, to define proportionate in terms of access would also fetter the CAC when it makes its decisions.

We are aware that several responses from trade unions raised a concern that the section as currently drafted may lead to issues including health and safety being used as a mechanism for rejecting an access request or delay it. Consequently, we have included language that states that many issues that fall under the bracket of health and safety, as well as other issues relating to safeguarding, commercial confidentiality and security for example, will not be insurmountable in the majority of cases and should be resolved through negotiation to ensure access to the workers. Parties are encouraged to take practical steps to that end when negotiating access.

Furthermore, Section D has been redrafted to include greater reference to digital access, as well as acting according to data protection considerations when engaging in such activity. We have also reiterated for clarity that digital and physical access are not mutually exclusive, and both should be considered in the access agreement.

In addition to this, we have included a recommendation that the parties consider whether they wish to record the union's presentation during an access meeting to enable this to be distributed to workers who could not attend that meeting, whilst ensuring care not to record the views of workers. This does not prevent the employer from monitoring its systems for legitimate business as usual purposes, so long as this monitoring does not impact on workers' privacy during the recognition and derecognition process. We believe that this further explanation should address concerns raised by business respondents regarding monitoring systems.

Q8: Do you think the Code provides sufficient guidance on how unfair practices might be used to influence the outcome of an application? Please explain your reasoning.

Of 867 completed responses, 4% (31) of respondents agreed that the Code provides sufficient guidance on unfair practices, whilst 96% (836) disagreed. 53 responses were not completed or sufficiently clear.

Broadly, respondents made clear a desire for clearer definitions of unfair practices, stating this would provide certainty, protection, and broader support for enforcement. Some responses suggested realistic examples and case studies to assist smaller businesses comprehend the parameters of legitimate business practices during the recognition process.

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Responses highlighted that many felt that there was a lack of clear distinction between legitimate management processes and unfair practice. They raised concerns that legitimate management activity such as performance management, quarterly reviews, and shift changes may be conflated with conduct that would amount to an unfair practice, stating that the Code needs to provide greater clarity on this point. Employers also highlighted that they felt there was a perceived imbalance between employer and union conduct.

Alternatively, some respondents raised the need for clearer restrictions on unfair practices, arguing that the Code does not adequately address the real-world influence that employers hold over workers. Furthermore, they emphasised a need for early, robust protections to address this perceived power imbalance.

Some respondents questioned the perceived ability for trade union representatives to determine who can attend access meetings. This was specifically raised in reference to SMEs, where a small premises may mean that managerial staff need to stop undertaking their duties and vacate working areas in order to ensure access meetings occur in privacy. The potential disruption to business activity this could cause was a recurring concern in many responses.

In some responses, the need for clarity on what constitutes unfair practices for trade unions representatives, in addition to employers, was suggested as necessary.

Government response

Respondents largely felt that there was insufficient clarity, for both employers and trade unions, on the definition of unfair practices and requested specific examples of unfair practices. Some questioned the perceived influence trade unions held to decide who could attend access meetings between employees and trade union representatives, and the potential impact this would have on organisations with limited-sized premises.

The legal definitions of what constitutes an unfair practice have not changed since 2005 and are not changing as a result of the 2025 Act. To provide clarity, the government has amended the Code to emphasise that the central issue for employers and management to consider when taking management action is often whether the intention of that action is to disrupt the recognition process. If it is a normal management action unconnected to the recognition process, it will generally not be considered as an unfair practice.

Some respondents requested specific examples or case studies of unfair practices. The government does not believe it is appropriate to include these within this Code. It is the responsibility of the Central Arbitration Committee (CAC) to make independent judgements on what constitutes unfair practices on a case-by-case

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basis, having regard to the legal definitions of unfair practices, as set out in Schedule A1 of the 1992 Act. The government instead recommends concerned parties refer to the existing guidance on conduct during the recognition process and the aforementioned amendments to this draft code.

Whilst the government acknowledges the concerns of small businesses relating to the potential disruption to business activity caused by access meetings occurring within working areas of limited-sized premises, it is important to the statutory recognition process that trade union meetings occur without interference from employer influence to ensure that workers are able to express their views without fear of potential prejudice or adverse treatment as a result.

Part 4: Requirements for additional guidance to in the Code of Practice.

Q9: Are there any areas or topics of the Code of Practice which relate to access that you think would benefit from further guidance? Please explain your reasoning or give an alternative.

Of 865 responses, 95% (921) of respondents stated that they believed the Code of Practice has topics or areas that require further guidance. 5% (44) respondents believed that the Code of Practice was already sufficient. 55 responses were not completed.

The majority of responses argued that the access provisions, as drafted, risk imposing a disproportionate administrative, operational, and economic burden on SMEs, while offering limited additional benefit in workplaces where employee relations are already strong. Respondents repeatedly called for clearer, more practical and more proportionate guidance, including explicit recognition of business size, capacity, and existing workplace conditions, to avoid a one size fits all approach.

Government response

Respondents stressed the perceived burden on small businesses that the procedural steps and deadlines in the Code may cause, instead suggesting that a bespoke code of practice including flexibilities for SMEs, would be more proportionate.

As stated in response to question two, the government has amended the Code to clarify that, as stated in Schedule A1, workplaces that have 21 workers or less are out of scope in relation to the statutory trade union recognition and derecognition process, and the procedural steps and obligations described in the Code. This should minimise the impact of the introduction of the Code on the operations of the smallest businesses, which the government recognises might have less

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administrative or legal resourcing to manage the procedural steps as currently set out. Due to this, the government believes that the requests for small business exemptions are already adequately addressed, and further bespoke guidance for small businesses with more than 21 workers would unnecessarily complicate the regulatory environment, without any meaningful benefit. Furthermore, the government will be amending its guidance on the recognition process on GOV.uk while the CAC will amend its guides to the parties. The CAC is always available to assist the parties in understanding their duties when a recognition, derecognition or bargaining unit application is in progress.

Q10: Are there any areas or topics of the Code of Practice which relate to unfair practices that you think would benefit from further guidance? Please explain your reasoning or give an alternative.

Of 862 responses, 95% (815) of respondents stated that they believed areas or topics of the Code of Practice relating to unfair practices would benefit from further guidance. 5% (47) responses stated that the Code was already sufficient. 58 responses were not completed.

Some responses felt the Code placed disproportionate burden and restrictions on employers and requested greater clarity on the expectations and obligations of trade unions during the recognition process. Responses were concerned that perceptions of fairness would lead to in a greater number of disputes between employers and trade unions.

Respondents raised concerns about the ability of employers to communicate with employees about their perspective on the likely consequences of trade union recognition.

Respondents reiterated concerns that the measures included in the Code were too burdensome for small businesses. Suggestions were made for greater detail in the guidance on how businesses can conduct their communications during the campaigning period without being at risk of accidentally undertaking unfair practices.

Some respondents raised a concern about the perceived power imbalance between employers and unions with particular calls for the Code to encourage employers not to actively campaign against recognition and allow the workers to decide amongst themselves. Specific reference was made to the International Labour Organisation Principles in this regard setting out that freedom of association and collective bargaining are a fundamental right for workers.

Government response

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Most respondents raised concerns about a perceived imbalance in the Code between the obligations of employers during the recognition process in comparison to the obligations imposed on trade unions. Such responses frequently cited a concern that employers should be able to freely make the case against trade union recognition, based on the potential economic and administrative implications it may have.

In response, the Code now more clearly explains that recognition is a process in which both sides are entitled to express their views, provided this is done in a reasonable manner. All parties are encouraged to be careful and measured in their activities and language. It is ultimately for the workforce to decide on trade union recognition; therefore, it is essential that the relevant workers are able to meaningfully question and evaluate the material presented to them, whether by the employer or by the trade union.

Alongside the revised Code, we will update the existing guidance on GOV.uk on the recognition process, ready for the implementation of these measures in October. We will also keep under review whether further non-statutory guidance is necessary. The Code will need to be updated in due course once the government response to the public consultation on e-balloting for recognition and de-derecognition ballots has been published. We will consider whether any further updates to the Code are necessary as part of that process.

Government response

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Next steps

The government would like to thank all respondents for their submissions to this consultation. The government has carefully considered all feedback received to improve and refine the Code. The government intends for the provisions relating to recognition and e-balloting unfair practices contained within the Employment Rights Act 2025 to come into effect in October 2026. The government will continue to work constructively with Acas, trade unions, and business groups ahead of October 2026 and beyond, to ensure effective implementation of the revised statutory regime.

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Annex A: further methodological detail

Analytical approach to the main consultation

For the multiple-choice questions, percentages were calculated for each option as a proportion of the respondents who answered the question to assess support for the changes proposed within the Code.

For the free-text questions, in order to accurately capture the key feedback, viewpoints, and issues raised across the responses, Department for Business and Trade officials assessed each response, noting key themes, respondent concerns, and suggestions for improving the code of practice and the broader statutory regime.

Use of Artificial Intelligence tools in consultation analysis

The analysis of consultation responses was undertaken by officials of the Department for Business and Trade. Officials' recorded summaries of key themes, respondent concerns, and suggestions for improving the code of practice and the broader statutory regime were collated using an artificial intelligence tool. This collation was checked and verified by officials as an accurate summation of the consultation findings.