Employment Rights Act 2025: second consultation launched on trade union access rights

On 8 April 2026, the Government published its response to the completed consultation on the new rights of trade unions to access workplaces, as well as a draft statutory Code of Practice on the practicalities of this right (the Code) and an accompanying second consultation on that Code.

These consultations and the Code aim to shape the substance of the rights given to trade unions under Section 59 of the Employment Rights Act 2025 and will inform regulations and any secondary legislation which will determine how the rights take effect.

The new rights of access will affect all employers, regardless of whether their workplace currently has a union presence.

Progress to date

Under the new framework, trade unions will have new rights to access workplaces and engage with workers in order to meet, recruit and support them or facilitate collective bargaining. This includes both physical and digital access. Unions are expected to work with employers to agree an "access agreement" for this purpose, which will then be recorded by the Central Arbitration Committee (**CAC**). If they cannot agree, either party can make a referral to the CAC to determine whether (and how) access should be granted.

The Government's initial consultation covered the practicalities of making an access request, notifying the CAC, the length of negotiation periods and the factors that the CAC will consider when assessing requests. For information on the initial consultation, which ran from 23 October 2025 to 18 December 2025, please see our coverage here.

Response, the draft Code and consultation

The Government has now published their response to the first consultation along with the draft Code, which takes account of the proposals that the Government is taking forward as described in their response.

The Code provides practical guidance for making and responding to a request, how to facilitate engagement constructively and how the CAC will exercise its powers if the employer and union cannot agree. It is intended to cover both the new primary legislation under Chapter 5ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 (as inserted by the Employment Rights Act 2025) and new proposed secondary legislation.

The key impacts to note of the Code in its current form are as follows:

- Requests will need to be made in writing, with email as the preferred option but with flexibility to use post if appropriate. If two or more unions make a joint application for access, they should prepare the request together and implement access arrangements jointly.

- There will be a standardised template for requesting access, with a baseline set of information requirements for the union to provide. There will be a similar template and set of information requirements for the employer's response to a request, and if the request is rejected the employer must make clear which elements are rejected and provide relevant reasons. Standard templates will also be provided for notifications to the CAC of successful access agreement, and for notifying variation and/or revocation of agreements.

- As part of any rejection, the employer must also specify if they have received an access request from any other union, or if they are engaged in negotiations with another union. The employer must also provide contact details, which we anticipate will likely be for the purpose of discussing the rejection.

- The timelines for responding to a request, the negotiation period and referring to the CAC have all been extended, which the Government states is aimed at balancing the need for timely access with the practicalities of requests for both employees and unions. The relevant periods will be:
    - 15 working days for an employer to consider and respond to a request, which can be extended by

agreement with the union;

- 25 working days for negotiation between the union and employer; and

- 55 working days for the union to make a referral to the CAC (i.e. 15 working days following the conclusion of the negotiation period).

- Guidance will cover the practicalities of access, such as who will be permitted to attend meetings, use of workplace facilities and accounting for non-typical working patterns. Employers and unions should negotiate in good faith, and guidance will set out the process for continuing negotiations beyond the initial period.

- A minimum of 5 working days' notice must be given before the first instance of access takes place, and agreements must have an expiry date (maximum two years from the date on which they come into force). Agreements can be extended beyond this date through a joint application to the CAC.

- The CAC will not grant access to employers with fewer than 21 workers, however in future this may be adjusted so that the size-based exemption does not apply to workplaces covered by a statutory national bargaining framework (such as the national bargaining frameworks for adult social care and school support staff). There will also be some other narrow safeguards to require refusal of access, for instance if doing so would prejudice the prevention, detection or prosecution of crime.

- The CAC will have a set list of circumstances where it is otherwise reasonable for access not to be granted, meaning that a request will be denied. These include the presence of a recognised union already in the workplace (although this will not be a default), multiple requests for access from different unions, or any ongoing statutory recognition process.

- Employers will be required to take reasonable steps to facilitate access but should not be required to make any significant changes to do so, and the preference is for access to be facilitated using existing facilities and systems. The CAC may consider it reasonable to refuse access if it would require excessive resources from the employer (such as new meeting spaces or IT systems, or material operational disruption).

- Model” terms of access agreements will be set out to use as a reference point when drafting an agreement. These are not mandatory to use, however consistency with them will mean that a request for an access agreement is more likely to be granted by the CAC.

- Employers and unions will be encouraged to resolve disagreements before taking formal action. The CAC will have the power to issue penalties for breach of an access agreement, taking account of factors such as the gravity and duration of a breach and any reasons. The maximum penalties will be:
    - Up to £75,000 for a first penalty;
    - Up to £150,000 for a second penalty, reflecting repeated non-compliance under the same access agreement; and
    - Up to £500,000 for a third breach under the same access agreement (potentially issued repeatedly if non-compliance continues).

The Government has opened a new consultation on the Code’s guidance and the draft templates, seeking views on whether the proposals are sufficiently clear, detailed, appropriate and

workable. This will close on 20 May 2026, after which the Government plans to introduce secondary legislation into Parliament along with the final Code of Practice, expected to take effect in October 2026.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Rose Lim (RoseLim@bdbf.co.uk), Amanda Steadman (AmandaSteadman@bdbf.co.uk) or your usual BDBF contact.