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PATTON BOGGS

Employment Rights Act (ERA) 2025:

New Statutory Right of Trade Unions to Access Workplaces

FAQS – July 2026

Following a period of consultation, the government has updated its proposed code of practice on the new statutory right of trade unions to access workplaces, with the aim of making it clearer how the rights will work in practice. The new rights are due to come into force on 30 October this year. We have therefore updated our FAQs to assist employers in preparing for these changes. The code of practice and regulations remain subject to parliamentary scrutiny so it is possible that there may be further changes. We will of course keep you updated.

1. Who can apply for access to a workplace?

Any trade union that has a certificate of independence can apply for access. Two or more trade unions may also make a joint application for access to a workplace.

2. What does "access" mean?

Access means physical entry to a workplace, as well as the ability to communicate with workers, including digitally. The government expanded the definition of "access" during the passage of the Employment Rights Bill to ensure digital access was covered.

Trade union officials can only access workplaces for any of the "access purposes" set out in the ERA 2025, namely meeting, supporting, representing, recruiting or organising workers (whether or not they are members of a trade union) and facilitating collective bargaining. The access purposes do not include organising industrial action.

In terms of physical access, where practicable, unions should be granted access to workers in the location of their work in the workplace, such as in a meeting room or in an adjoining work area. The actual arrangements will have to reflect specific local circumstances, e.g. safety, confidentiality and hygiene considerations, etc.. The code of practice gives the example of a workplace in which the workplace is more confined and so the custom and practice is to hold small meetings with workers – that being said, the updates to the code of practice make clear that if there are appropriate facilities available, the trade union may use them, even where the employer does not usually meet with staff in this way.

For digital access, the code suggests that the starting point would be for employers to cascade any factual union communications or information to their workers in line with the terms of the access agreement – unions would not generally be able to contact individual workers directly unless those workers had given their consent to the employer to share their contact details. If such consent has been given, the union is then free to contact that worker outside of the access agreement (such that the code states that the terms of the access agreement will not apply to digital access taking place in this context).

The updated code gives further examples of how digital access might work in practice e.g. via an intranet article or the employer's messaging system. Digital access could also involve an employer facilitating an online meeting between the trade union and workers. The update also makes it clear that employers should cascade information provided by trade unions in a stand-alone format and and avoid building it into wider updates about separate matters. However, please note that the code emphasises that a trade union's right to weekly access would not be exhausted if the employer cascades an email to employees, or by the administrative action of setting up an online meeting by the employer on behalf of the trade union. Such an action does not constitute an instance of access, unless this is the nature of the weekly access that the trade union would like to carry out. This is unhelpful, as it could pave the way for unions to expect employers to send out large numbers of emails to workers, without this counting as the "weekly access".

If the employer is asked to disseminate trade union materials electronically, it must do so unless it considers doing so would be a breach of a statutory obligation, or that the material is not covered by one of the access purposes included in the access agreement. Outside of these exemptions, the employer will have very limited ability to refuse to send any particular message. NB: organising industrial action is not included within the access purposes.

In the event of a dispute, the code requires that parties promptly attempt to resolve it, or if not should refer to the Central Arbitration Committee (CAC).

3. Are there any workplaces that are exempt from this new right?

Yes, employers with fewer than 21 workers (or employees) will be exempt. This threshold mirrors that used in the statutory union recognition scheme, under which trade unions may only apply for statutory recognition through the CAC where they have at least 21 workers. Note that individual workplaces with fewer than 21 workers would still be caught if the employer has 21 or more workers overall, e.g. across several sites.

4. How should unions apply for access?

The updated code of practice makes it clear that if a trade union wants access to a workplace it should first seek to agree any terms of access with an employer on a voluntary basis. It is only if the parties are unable to agree on a voluntary arrangement that the union should seek access via the statutory framework.

For clarity, the updated code confirms that there are now three types of access which a union may have to a workplace: (i) voluntary; (ii) under an access arrangement agreed through negotiation and notified to the CAC; or (iii) by access arrangements determined by the CAC in default of an agreement.

As you might expect, formal access requests by unions under the new framework will have to be made in writing, with email as the government's preferred method (the previous draft of the code had suggested that post would be allowed where email is not reasonably practicable, but this has been removed from the latest version , presumably on the basis that it is too easy for unions to claim that something was sent and too easy for employers to deny that something was received). The code contains a standard form that sets out the information that must be included in any request, including the purpose of the request, a description of the workers being sought access to and the type of access requested, etc. Minor accidental clerical or administrative errors in the trade union's application should not be regarded as a reason for the employer to reject the application.

A single request for access may include reference to multiple places of work operated by the employer.

5. What happens if there is already a recognised union in place for the workers to whom a trade union is seeking access?

The code of practice says that in such circumstances the CAC would have the ability to refuse access to the trade union that has made the access request. In practical terms, this means that an employer will be able to decline an access request where it already recognises an independent trade union for a specific group of workers, unless the union requesting access is the recognised union.

Similarly, if there is an ongoing statutory recognition process at the workplace concerning workers to whom access is sought, such a request may also be refused by the CAC, as per the code of practice. What is not clear is what would happen if the workers canvassed by the union make it clear that they are not interested – is the union still allowed to turn up weekly to try to change their minds? There is certainly nothing in the code which would allow an employer to refuse access on the grounds that most or all of its workforce had told it that visits from the union were unwelcome.

6. How should an employer respond to a request for access?

Upon receipt of the application, employers will have 15 working days to respond to a request for access (although the parties will be able to agree to an extension), either accepting or rejecting it, in whole or in part. This is a pretty tight timescale, especially if the employer has not taken any steps in advance to consider how it would even respond to such access requests. Again, an employer's response to an access request will have to be made in writing and the code of practice includes a response template.

The employer and the union are expected to negotiate in good faith. If the employer rejects any of the terms of access requested, it must do so in clear language, providing as much relevant information as possible, including whether another union has recently applied for access, or is awaiting a ruling from the CAC on whether access will be granted, as well as whether some of the workers to whom access is sought are already subject to another arrangement.

If the employer believes that the access request contains terms which will unreasonably interfere with its business or will require unreasonable steps to facilitate access, it must explain in its response why it believes this to be the case.

7. How long will the parties have to agree the terms of any access arrangements?

The trade union and the employer will have 25 working days from the date on which the response notice is given to negotiate the terms of an access agreement. Again, this does not give the parties long to achieve this, but there is scope to extend this by mutual agreement. If one of the parties is unwilling to agree to an extension, the other party may apply to the CAC for a determination.

If negotiations on the terms of the access agreement are successful, the parties must jointly notify the CAC, which will then lodge the access agreement.

If negotiations are unsuccessful, then either party can notify the CAC (via email), and it will begin its decision-making process on whether the trade union officials should have access. The timescale for making a referral to the CAC is 15 working days from the end of the negotiation period (assuming the above timescales have been complied with), i.e. there is a 55 working day window from the start of the process to make a referral to the CAC, although it can extend this to 70 working days if it was not reasonably practicable for a party to apply for a determination within the 55 day time limit.

8. What form should an access agreement take?

This will be for the parties to agree. The government has not produced a template agreement, but the code of practice refers to certain "model" terms. Where a trade union's request for access is consistent with these, the CAC is more likely to consider that access should be granted. Employers should therefore be mindful of these when negotiating with the trade union. For example, the CAC will regard access by a trade union on a weekly basis (meaning a visit or meeting with workers whether in person or virtually) as a term that does not unreasonably interfere with an employer's business – some employers may disagree! Indeed, several employers' groups have already voiced concerns about how disruptive and excessive such a provision would be without any clear benefit to workers. Another model term is that a trade union must provide a minimum of two working days' notice of an upcoming access visit (physical or digital). This does not apply to the first instance of access after the agreement has been finalised, which requires a five working day period, which in itself is not very long, especially for businesses that are not used to working with trade unions.

External trade union officials will also be expected to comply with all reasonable instructions given by the employer, including completing relevant health and safety inductions, providing relevant identification or signing in at the front desk, etc.

Any agreement will need to ensure it covers the key matters in sufficient detail to ensure the arrangements are clearly understood by both parties. This would include the type of access that will be provided (physical/digital, or both), the workers to whom access will be granted, the practical arrangements for the visits/communications, including any facilities to be provided by the employer, the amount of notice to be provided by the trade union, etc. On that note, the template access request in the code of practice would provide a useful starting point as to the issues that should be covered.

9. To what extent will employers be required to allocate resources to facilitate trade union access?

The government's position is that employers will have to take reasonable steps to facilitate access, but will not be required to make "significant, structural, technological or operational changes solely for that purpose". The code of practice states that employers should make available existing accommodation and facilities as is reasonable in the circumstances in order to facilitate access in line with the terms of the access agreement. The code itself remains silent on pay for workers while attending meetings with the union visitors, but the updated code does make clear that the usual rules on detriments and inducements apply. The ERA also introduces further rights for trade union representatives – for further information please see here.

10. How long will access agreements be valid for?

No access agreements will last longer than two years, starting from the date at which the agreement is either agreed between the parties or imposed by the CAC (unless otherwise agreed by the parties). The government says this provides a clear window for access agreements to support trade union access, but also ensures that any agreements which have become inactive, outdated or no longer reflective of the needs of the workers or employers can be updated or allowed to conclude naturally. Where both parties agree that continued access would be beneficial, they will be able to apply jointly to the CAC to vary the agreement and extend or reset its duration.

11. What is the role of the CAC?

If the parties make a referral to the CAC, it can, as outlined above, decide on whether access should take place or not. Such a decision must specify the terms on which the trade union officials are to have access, including as to what (if any) assistance the employer must provide in relation to the access.

This decision will usually be made by a three-member panel, as is standard practice for the CAC, unless the access request contains certain "model" terms, in which case the CAC can decide using a single panel member, which may expedite the progress as the request is likely to be less complex. As highlighted above, where a request is consistent with the model terms, the CAC is more likely to consider that access should be granted.

In making its decision on access, the CAC will have to consider the "access principles" set out in the ERA 2025, namely:

- Officials of a qualifying trade union should be able to physically enter a workplace or communicate with workers (or both) for any of the access purposes in any manner that does not unreasonably interfere with the employer's business
- An employer should take reasonable steps to facilitate access by officials of a qualifying trade union
- Physical entry into a workplace should not be refused solely on the basis that communication with workers by means not involving physical entry into a workplace is permitted
- Similarly, communication with workers by means not involving physical entry into a workplace should not be refused solely on the basis that physical entry into a workplace is permitted
- Access should be refused entirely only where it is reasonable in all the circumstances to do so

These principles reflect the government's intention that trade unions should have access to workers, but that this access should not unreasonably interfere with an employer's business and that employers should not have to take unreasonable steps to facilitate access.

The first part of this may be achieved but there is nothing in the code of practice as it stands which offers particular hope for employers on the second and third.

12. Can an access agreement be varied or revoked?

Yes, the parties to the agreement can agree to vary or revoke it at any time. This must be done in writing. Joint notification to the CAC will be required for any variation or revocation of a statutory access agreement. Minor variations will not require re-notification.

13. What happens if one party breaches an access agreement?

If a party believes that the other party has breached the terms of the access agreement, it may make an initial complaint to the CAC. Such a complaint must be made within three months of the date on which the breach is alleged to have occurred. The CAC has the power at this stage to vary the agreement, make a declaration that the complaint is (or is not) well-founded and, if it is, make an order requiring the party in breach to take the necessary steps to ensure access takes place in line with the relevant agreement.

The parties can make a further complaint to the CAC where one party has breached the agreement again within 12 months or breached the initial declaration made by the CAC. In such a situation, the CAC can require the party in breach to pay an amount to the CAC (who must then pay it to the government in the form of the Consolidated Fund), as well as make a further declaration. The government has now confirmed the amount of these financial penalties, and they are substantial!

The CAC will be able to issue penalties with maximum limits of £75,000 for a first breach of an access agreement, £150,000 for a second breach and a whopping £500,000 for third and subsequent breaches under the same access agreement.

It is clear that the government has set these limits at such a high level to deter those employers that might have been tempted simply to deny access to trade unions and pay any associated penalties. Adopting such an approach would prove very expensive under these arrangements.

Where multiple breaches occur before the CAC has made a determination on an initial complaint, these breaches may be raised as a single complaint or separate complaints – for example, where an access agreement covers multiple sites and access is obstructed at different locations before the CAC has had the opportunity to consider the initial complaint, these breaches may be treated cumulatively so as to allow for a higher penalty to be awarded (still using the three tier approach).

The government has set out in regulations the matters to which the CAC must have regard in considering what amount is payable by way of a penalty, including the nature of the complaint, whether the liable party has previously been subject to a complaint, the employer's turnover and the number of workers, etc.

It is to be hoped that these are sabre-rattling numbers only, to attract headlines, and that fines imposed for minor or inadvertent or purely administrative breaches, even repeated, would get nowhere near those numbers. Nevertheless, the prospect of union referrals to the CAC as a nuisance tactic or bargaining chip cannot be ignored.

In the same vein as collective agreements, access agreements will be presumed not to have been intended by the parties to be a legally enforceable contract and will only be enforceable by way of a complaint to the CAC.

If you would like to discuss the new trade union access rights under the ERA 2025, please speak to your usual contact at the firm or one of the partners listed below.

Contacts

Alison Treliving
Partner and Co-Chair, Labour & Employment Practice, Manchester
T +44 161 830 5327
alison.treliving@squirepb.com

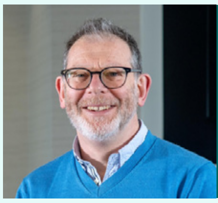
Annabel Mace
Partner, London
T +44 207 655 1487
annabel.mace@squirepb.com

Charles Frost
Partner, Birmingham
T +44 121 222 3224
charlie.frost@squirepb.com

Ramez Moussa
Partner, Birmingham
T +44 121 222 3346
ramez.moussa@squirepb.com

Miriam Lampert
Partner, London
T +44 207 655 1371
miriam.lampert@squirepb.com

James Pike
Partner, Manchester
T +44 161 830 508
james.pike@squirepb.com



Matthew Lewis
Partner, Leeds
T +44 113 284 7525
matthew.lewis@squirepb.com

Andrew Stones
Partner, Leeds
T +44 113 284 7375
andrew.stones@squirepb.com

Janette Lucas
Partner, London
T +44 207 655 1553
janette.lucas@squirepb.com

David Whincup
Partner, London
T +44 207 655 1132
david.whincup@squirepb.com

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