Making Work Pay

Right to Trade Union Access Workplaces

Introduction

This response is made by Unite the Union. Unite is the UK's strongest trade union, representing over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, hospitality, health, local government and the not-for-profit sector.

Executive Summary

Unite welcomes this consultation. Of all the measures in the Employment Rights Bill, the right for unions to access workplaces has the greatest potential to deliver genuine change for working people.

New access rights will for the first time enable millions of workers in the private, not for profit and outsourced sectors to meet with and join unions, to secure union representation and to organise for collective bargaining in their workplace.

There is clear evidence that trade union presence and collective bargaining leads to higher living standards, better working conditions, reduced inequality, enhanced pensions, safer workplaces and greater awareness and compliance with employment law. It also benefits employers through improved staff retention and recruitment, enhanced skills and training, and improved innovation and productivity gains. [1]

[1] Research by Alex Bryson and John Forth on the added value of trade unions, based on analyses of the Workplace Employment Relations Surveys 2004 and 2011, TUC 2017 https://www.tuc.org.uk/added-value-trade-unions

Despite these clear benefits, by 2024, unions were present in just 31% of private sector workplaces. Just 20% of private sector employees benefitted from collective agreements, and union membership density in the private sector stood at just 12%[2].

Delivering clear effective access rights is vital to ensure that working people, particularly in the private sector, have a say over their pay and conditions and benefit from trade union representation at work.

Access rights can also play a central role in the government's growth agenda, helping to drive up living standards and reduce in-work poverty.

Once new access rights come into effect, unions will develop strategies determining where requests for access will be made. Most workplaces are unlikely to be approached, at least initially. Rather unions are likely to prioritise larger workplaces or outsourced groups of workers in sectors where they regularly organise, expanding in the future to new parts of the private sector, if the access rights prove effective.

Where should access rights apply?

Unions should be legally entitled to access any workplaces after giving notice. Employers should not be able to refuse access.

Unite organises in a wide range of sectors which all have differing operational needs, including road transport, car manufacturing, food production, defence, health services, finance and construction. In our experience, reasonable access arrangements can work well in any sector of the economy without exception. There is also no justification for excluding small businesses with fewer than 21 workers.

The only grounds the Central Arbitration Committee (CAC) should be able to refuse access is where there is clear evidence of longstanding and active collective bargaining agreements with another union(s).

It is important that the CAC cannot refuse access on the grounds it would interfere with an employer's business, on the basis of size of a business or organisation or due to the level of union membership. Providing the CAC with the discretion to refuse access on these grounds would undermine the purpose of the legislation and will lead to lengthy and costly litigation.

Future regulations

For new access rights to be effective and meaningful, future regulations must be clear, robust and enforceable. **The Regulations should be accompanied by a statutory Code of Practice which demonstrates how the statutory minimum access**

[22] https://www.gov.uk/government/statistics/trade-union-statistics-2024

standards can be applied in different sectors or workplaces and should promote good practice, such as access during workplace inductions.

The Regulations MUST include the following mandatory model terms.

- Unions must be able to access workers *weekly* during normal working hours.
- Access arrangements must accommodate different shift patterns and ensure all workers have equal opportunity to meet with unions.
- Access must take place *where people normally work* or where they normally spend their breaks.
- While physical access should take precedence, “model terms” for digital union access must also be provided. Digital access must involve regular “face to face” engagement with workers, via online meetings and must not be limited to the sending of emails.
- Unions must be able to request access in multiple work sites in a single request form.
- Workers must not suffer any loss of pay for seeking to meeting with union representatives.
- Employers must be under a duty to co-operate and facilitate union access. Employers should not seek to influence, intimidate or harass workers into not meeting with union officials.
- Where a request is made to is access sub-contractors or outsourced workers on a multiple employer site, the CAC must award unions rights of access to the sub-contractor or outsourced service providers, and the owner of the main site must also be legally required to facilitate and not restrict access.
- Employers must be required to respect the privacy of union access. Unions must be able to meet with workers free from employer surveillance or interference. The employer or any representative must not attend access meetings unless invited to do so. Employers must not film, record or monitor union access meetings.
- Unions must be able to communicate with workers, without employer interference. Unions should have the option of requesting that a “suitable independent person” (SIP) is appointed. Employers should be required to provide the SIP with contact details of workers employed at and workplace and the SIP should disseminate direct to the workforce union messages about the benefits of and how to join the union, as well as information about access visits, and online meetings. The SIP would be paid for by the relevant union.
- Employers must be under a duty to co-operate with access requests. They should be required to email workers and display a poster in the workplace where access will take place confirming that unions have a right to access the workplace, workers have the right to join a union and that no workers will suffer

any detriment, victimisation or be dismissed for talking to a union official or for joining the union. The government should prepare a statutory template for the poster and email, which is translated into multiple languages.

In addition, future regulations must provide that:

- CAC access awards must apply for a minimum of 2 years. This will enable unions to test whether there is support for union recognition and collective bargaining. Voluntary access arrangements agreed by unions and employers should also apply for a minimum of 2 years and should become permanent in workplaces where union recognition is agreed.

- Any worker who meets with unions must be legally protected from all forms of detriment, dismissal or victimisation.

- Voluntary agreements between employers and unions can build upon or vary the minimum mandatory model terms.

- The legislation must provide robust penalties which are designed to promote compliance and penalize employers who refuse union access. The proposed maximum £75,000 fine is derisory and is utterly inadequate and will not incentivise compliance by multinational firms. Unite believes that sanctions for refusing access and where employers breach access arrangements should be linked to the employer's global financial turnover, mirroring GDPR laws.

- The adjudication of access rights must be swift and effective. New procedures should not be cumbersome or protracted. The CAC must be properly resourced to deal with the increased workload.

As noted above, new rights to access have the potential to deliver genuine change for working people, ensuring workers have a genuine opportunity to join a union, effective representation in the workplace and the right to a say over improving their pay, terms and conditions. Getting the regulations and accompanying Code of Practice right is very important. The government should therefore commit to consulting on the draft regulations and draft Code before they are finalised.

Section 1 - Requesting and negotiating an access agreement

Section 1A: How to apply for access and respond to a request for access

1) Form and manner of access requests and responses

Question 1:
Do you agree access requests and responses should be made in writing

Yes.

This will improve transparency and assist with enforcement.

Question 2:
Do you agree access requests and responses should be provided directly via email or letter

It should be possible for access requests and responses to be sent by email or post.

Question 3:
Do you agree access requests and responses should be made through a standardised template provided by the government

The creation of a standardised template may assist unions when making access requests. Any templates should explain the right to union access and the model terms which apply.

A template form may also assist employers to provide all relevant information when responding to a union request for access. It is important that any employer template does not encourage or make it easy for the employer simply to refuse access without engaging in talks with the union. Employers who refuse to enter discussions should risk a financial penalty.

While templates may prove useful, it should not be mandatory for unions or employers to use the template.

In some circumstances unions and employers may choose to provide additional detail, beyond prescribed information, in a request letter or response to assist or speed up negotiations.

2) Information contained within access requests from the trade union

Question 4:
Do you agree with the proposed information to be included in a trade union's request for access?

Unite does not agree with the government's current proposals as it would require unions to provide significant specific information to the employer upfront, much of which may not be in the union's possession when making an initial request for access.

Requests for access should be simple and straightforward. Unions should only be required to provide limited mandatory information when requesting access, with unions

having the option of providing additional information when they consider it is appropriate.

Reducing the proposed list of prescribed information would limit the ability of employers to challenge access requests in the courts, rather than in engaging in meaningful discussions with unions. The current proposals create the risk of protracted litigation, unnecessarily increasing the workload for the CAC.

During the early years of the statutory recognition scheme, multiple union applications were blocked because of minor technical errors on application forms. As a result, workers' democratic rights to union recognition and collective bargaining were either frustrated or delayed. This outcome should be avoided in new access rights.

The list of prescribed information should be kept to a minimum and future regulations should confirm that union requests for access cannot be refused if information provided on an initial request form was incomplete, inaccurate or subsequently updated by a union.

Detailed responses to government proposals that a union's request for access MUST include the following:

- ***A sentence making clear that it is a request for access under section 70ZB of the Trade Union and Labour Relations (Consolidation) Act 1992***

Unite agrees that unions should indicate that it is a request for access under section 70ZB of the Trade Union and Labour Relations (Consolidation) Act 1992. This will confirm the union is exercising their legal rights to access and should encourage employers to engage with requests rather than ignoring them.

- ***A description of the group of workers that the union is seeking access to***

It should not be mandatory for unions to describe the groups of workers who they are seeking to meet. In unorganised workplaces, unions will usually not be aware of the job titles or work responsibilities of the workforce. Employers often use specific terms for groups of workers which will not be publicly available.

It would be unfair to expect unions to supply such information in a request form.

If the government decides to include this question on the request form, unions must be able to state that they request access to all workers.

- ***The purpose of the requested access***

Unions should not be required to specify the purpose of the requested access.

The reasons why workers wish to meet with unions may change over the proposed 2-year period. Initially workers may want to ask about their rights at work. This may lead

to requests for union representation. Overtime, workers may decide to organise for collective bargaining.

Unions will not be able to anticipate worker needs when initially requesting access.

It would also be unfair if employers could block union access because the reasons for meeting workers had changed from that stated in the request form. Unions should not be required to submit new access requests where reasons for access change over time.

Including this question on the request form could lead to unnecessary litigation on a union's intention for proposed meetings and would deny workers the right to meet with unions in their workplace.

If this question was included, unions would be obliged to restate the full range of purposes of access specified in the Bill, i.e. to "meet, support, represent, recruit or organise workers (whether or not they are members of a trade union) and to facilitate collective bargaining".

- ***The type of access requested (physical and/or digital), including a brief description of the nature of the access that is requested***

Unions have extensive experience of accessing workplaces in the sectors they organise. However, every business or organisation is different.

Unions should not be required to describe in detail the nature of access requested on the initial request form.

Prior to discussions with the employers, a union will not always have the necessary information to set out a detailed proposal. For example, unions may not be aware of shift patterns, if the workforce is mobile or dispersed. Types of access may also vary for different groups of workers.

It must be possible for unions to update or change their request for access following an initial meeting with the employer or when applying to the CAC.

- ***The requested date of the first access visit***

It should not be mandatory for unions to provide the date of the first access visit on the request form. Unions would expect the date to be agreed as part of the access discussions with the employer.

- ***Information on how the union will provide practical information about the visit, for example an e-mail address or alternative contact details for the trade union***

Yes. Unions would expect to provide employers with the contact details of the union official or employee who can be contacted regarding an access request. However, for

reasons outlined above unions may not be able to provide other information about a visit in advance of discussions with employers.

- ***The notice period the union will give between access being agreed and access taking place for the first time, and any subsequent arrangements for notice***

It is expected that future regulations will specify the minimum notice which unions will be required to give employers of access visits.

While unions may indicate when they would like access to start and to provide notice for an initial visit, it would not be reasonable to require unions to set out subsequent arrangements for notice in an initial prescribed request letter.

Arrangements may change over time as the union becomes familiar with the workplace and workers' needs. Unions should not be held to or bound by notice arrangements given to the employer at an early stage.

- ***The frequency of access requested***

The government has proposed that access should take place on a weekly basis. We would request this standard is included in model terms in future regulations.

Any initial request to the employer is likely to mirror the statutory minimum. A union's preferences for the timing and frequency of access may vary once they become familiar with working practices and shift patterns. How regular access visits will work in practice is likely to be the subject of discussions with employers or for a submission to the CAC. Unions should not be bound by any initial suggestion for access specified in an initial request for access.

- ***In the case of physical access, the location of the workplace(s) to which access is being sought (this can include multiple workplaces in one access request)***

It is welcome that the government anticipates that access requests may apply to multiple work sites.

However, we are concerned that the location of a workplace where access is sought may form part of the prescribed information unions are required to provide to employers. When they make an initial request, a union is unlikely to be familiar with all an employers' work sites or where different groups of workers are located. It is not always reasonable to expect unions to provide such detail when making a request.

Providing accurate information will be particularly difficult, if not impossible:

- in multi-employer sites (e.g. large construction or manufacturing sites) where unions will not be familiar with the precise place of work of different categories of workers
- for dispersed or mobile workers.

The regulations must confirm that a request for access cannot be refused by an employer or the CAC on the grounds that a union has provided an inaccurate location or provided, for example, the wrong post code for a worksite.

- ***Number of members the union has at the workplace(s)/employer***

Unite is firmly opposed to the proposal that it should be mandatory for unions to provide the number of union members at a workplace or employed by the employer.

Providing such information may expose members to victimisation or blacklisting by employers. This is a heightened risk in smaller workplaces where it may be possible for employers to identify potential union members.

This requirement is also not consistent with GDPR / data protection standards which provide information about union membership with special protected status.

3) Information contained within access responses from the employer

Question 5:
Do you agree with the proposed information to be included in an employer's response to a trade union's access request?

The regulations, Code of Practice and any template form should encourage employers to be transparent and to provide information to unions at an early stage. This will enable unions to prepare detailed requests for access and support constructive and faster negotiations.

Detailed responses to government proposals that an employer's response to an access request should include the following:

- ***A sentence making clear that it is a response under section 70ZB of the Trade Union and Labour Relations (Consolidation) Act 1992***

It would be helpful for the employer to acknowledge in writing that they are responding to a statutory request for access from a union.

- ***Whether the employer accepts or declines the access terms submitted by the trade union (either in whole or in part)***

The details for access arrangements are likely to be finalised in discussions with the union or following a complaint to the CAC. It is however helpful for the employer to indicate if it accepts any access proposals which the union has chosen (voluntarily) to set out in a request letter. This would speed up negotiations.

It is not clear, however, what is meant by an employer accepting or declining access terms *in part*.

If accepting the request:

- ***The workplaces where the workers being sought access to are located (if the union has not listed them all in their request)***

We agree that employers should be expected to share details of the locations of workplaces in their response. Employers should also be expected to provide a breakdown of the numbers and categories of workers in each workplace and their working patterns, e.g. shift times and times for rest breaks etc. They should also provide a breakdown of numbers of workers who work remotely.

- ***The name and contact details of the appropriate person at the employer the union should liaise with as necessary in regard to access***

We agreed the employer should provide the name and contact details of the appropriate person who will liaise and will lead negotiations with the union.

- ***An email address or alternative contact details for the employer***

We agree employers should be expected to provide an email address or alternative contact details for the business or organisation.

If rejecting the request:

- ***If rejected only in part, which part(s) of the request they reject to***

It is important that a template for employers does not encourage employers to refuse an access request from a union. This would be inconsistent with government policy and manifesto commitments to create a right of union access.

Instead, the template response, accompanying regulations and guidance must emphasise that employers can only refuse union access in very exceptional circumstances.

The principal example is where an employer can refuse access if another independent union is already recognised for the group of workers affected and active collective bargaining takes place. See the responses to section 2 for more detail.

The template should confirm any unreasonable refusal may lead to a financial penalty for the employer.

- ***An explanation of why they have rejected the request, in whole or in part***

We agree that employers should be required to provide written reasons if they decide to refuse access. Any template response form and accompanying guidance must confirm that access can only be refused in very exceptional circumstances but that employers should be encouraged to negotiate reasonable access with the union.

- ***An email address or alternative contact details for the employer***

Agreed.

4) Notifying the CAC that access has been agreed

Question 6A:
Do you agree with the proposal on how the parties should notify the CAC that an access agreement has been reached?

Unite is not convinced that it should be compulsory for unions and employers to notify the CAC of any access agreements. If new access rights prove effective, requiring the CAC to file all agreed access arrangements could create a significant administrative burden. Such agreements may also soon become outdated, for example, where a business is taken over, changes location, or parts of the workforce move to a new work site. It is also not clear what the status of any submitted documents would have. Circumstances may temporarily change meaning the agreement is not accurate. For example, an in-principle agreement may state that a union official will visit the workplaces on Monday, but due to illness it is agreed with the employer that on one week they will attend on the Thursday. It would not be possible for unions and employers to submit agreements on each occasion there are such minor variations. Where a complaint is submitted to the CAC, the union or employer would be expected to attach any existing agreements and those documents should form the basis of any complaint.

If the government decides to proceed with this proposal, then both parties must be copied in where an access agreement is submitted to the CAC.

It is important that the regulations confirm that a union is not barred from making a complaint to the CAC where access agreements have not been filed with the CAC.

Where a complaint is made to the CAC, the union must retain the right to challenge the accuracy of any access agreement documents submitted by employers.

5) Form and manner of joint notifications to the CAC of a variation or revocation of an access agreement

Question 6B:
Do you agree with the proposal on how joint notifications to the CAC of a variation of revocation of an access agreement are made?

As noted in the response to question 6A, Unite is not convinced that there should be a requirement for unions and employers to submit access agreements to the CAC. Requirements for unions and employers to inform the CAC of variations to access agreements could be administratively burdensome for the parties as well as for the CAC.

The regulations must make clear that employers cannot unilaterally revoke any agreements, especially where an access award has been made by the CAC.

If the government decides to proceed with its proposal, the CAC must be under a duty to inform the relevant union if an employer notifies them that they propose to revoke the access agreement. Any such revocation will be null and void unless jointly agreed by the union concerned.

Section 1B: Response, negotiation, and referral to the CAC periods

1) Response period for employers

Question 7:
Do you agree with the proposed time period of 5 working days for the employer to respond to the trade union's request for access?

Unite agrees that employers should be required to respond to a union's request for access within 5 working days.

It is important that employers cannot procrastinate after receiving a request for union access. A prompt response can facilitate early negotiations between unions and employers. A speedy negotiating process would also assist a union to respond to urgent requests from workers, for example, relating to health and safety concerns or toxic and bullying working environments and the abuse of migrant workers.

We do not agree that a short response time would place unreasonable expectations on employers. For example, where a manager is on leave or off sick, a substitute should invariably be identified and able to respond.

The proposed timetable is more generous than those which apply in other comparative economies. For example, in Australia a union official is only required to give an employer 24 hours written Notice of Entry before entering the workplace to investigate suspected breaches of the Fair Work Act or hold discussions with workers, providing details of the purpose and alleged contravention.

2) Negotiation period

Question 8:
Do you agree with the proposed time period of 15 working days for the employer and trade union to negotiate the terms of an access agreement?

We agree that 15 working days (or three weeks) should be provided for negotiations between employers and unions.

It is important that the negotiation period is time-limited and not protracted. Employers should not be permitted to drag out discussions with a view to delaying union access.

Negotiations will be informed by the default or minimum access arrangements set out in regulations. Where an employer and a union mutually agree to extend the negotiation period to finalise an agreement, this should be possible.

3) Period for CAC referral

Question 9:
Do you agree that there should be a limit of 25 working days for a party to request that the CAC make a decision on access following an access request being submitted?

No.

The proposed 25-day period for a union to request that the CAC make a decision on access is prohibitively short.

We recognise the importance of requests for access being processed quickly by the CAC. However, a 25-day limitation period is unprecedented in UK labour law.

Unions are large organisations which represent millions of workers and in any week will be dealing with multiple different employment disputes in thousands of workplaces. Unions sometimes struggle to meet the 12-week limitation periods for Employment Tribunals (ET) claims, due to the difficulty in gathering relevant evidence from members or delays in escalating issues to legal departments.

A 25-day limitation period is likely to prove unworkable. It is also not consistent with the direction of government policy. The Employment Rights Bill was only recently amended to extend the standard 12-week limitation period for ET claims to 6 months.

Employers could game the government's proposals, appearing to engage in meaningful negotiations for 15 days, only to pull out from discussions at the last minute. This would leave unions with just 10 days to apply to the CAC or an even shorter period if both parties were to agree extended negotiations.

There is no precedent in UK employment law for limitation periods to run from the start of a process rather than from the date on which employers stop complying with the law – i.e. when negotiations break down.

If such a short limitation was adopted, unions may be forced into making default applications to the CAC as soon as any access request is made. This will limit the scope for effective negotiations and for genuine agreement to be reached. It would also generate tensions between the union and employer from the outset of the relationship. The proposal would also significantly add to the workload of the CAC which is already under-resourced and under-staffed.

Section 2 – Central Arbitration Committee (CAC) determinations

Section 2A: Circumstances where access must not be granted

1) Size of the employer

Question 1:
Do you agree that employers with fewer than 21 workers should be exempt from the right of access policy?

Unite is opposed to this proposal which would exclude 5.3 million workers, or approximately one in five (19.2 per cent) of the workforce[3], from the right to union access.,

Unite does not accept the argument that smaller employers might find facilitating access requests difficult. Facilitating meetings between the union and a relatively small

[3] Business population estimates for the UK and regions 2024: statistical release - GOV.UK

group of workers may in reality be easier to manage than in a larger workplace with more complex working patterns.

Workers employed by smaller employers are at greater risk of mistreatment, than those employed in larger organisations:

- Employers in small businesses or organisations tend to be less aware of their obligations under employment law due to the absence of HR departments.[4]
- Similarly, workers in small firms are less aware of their employment rights.[5]
- Claimants from small or medium-sized employers are considerably more likely to be successful in employment tribunal (ET) claims compared with those from large employers.[6]

A small employer exemption would also mean that where one member reports on exploitative employment practices, the union could not access the workplace to speak to other staff and to address wider abuse.

Unite is particularly concerned that a small employer exemption would disproportionately affect younger workers. Over 35 per cent of 18 – 24-year-olds and over half of 16- to 17-year-olds work for employers with under 21 workers. Young workers are particularly vulnerable to exploitation and less likely to be aware of their employment rights or know how to enforce them.

The proposed threshold will have a disproportionate impact on some sectors in the labour market, for example, social care and the print sector. According to Skills for Care[7], two thirds of social care employers – that is 12,240 care organisations - would be exempted from access rights under the government's proposal. Social care is a high-risk sector characterised by low pay and poor working conditions. The workforce is predominantly female and includes a high proportion of BAEM workers. The Low Pay Commission has reported on the significant problem of underpayment of the National Living Wage in the sector and there is evidence of exploitation of migrant workers.

The proposed exemption is particularly problematic given the government's plans for a Fair Pay Agreement in the adult social care sector. Union access to workplaces is vital to the success of the Fair Pay Agreement, allowing unions to monitor its implementation and boost their membership, thus strengthening the workforce voice and representation on the Negotiating Body.

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[4] Nigel Meager, Claire Tyers, Sarah Perryman, Jo Rick and Rebecca Willison (2002), *Awareness, knowledge and exercise of individual employment rights,* IES: https://sp.ukdataservice.ac.uk/doc/5082/mrdoc/pdf/5082userguide.pdf

[5] Jo Casebourne, Jo Regan, Fiona Neathey And Siobhan Tuohy, Institute of Employment Studies, (2005)

[6] https://assets.publishing.service.gov.uk/media/5f06c2e3e90e0712d0206e99/survey-employment-tribunal-applications-2018-findings.pdf

[7] The state of the adult social care sector and workforce in England, 2025

It is also likely that employers will adjust their business models in order to avoid union access rights. This is particularly a risk in the hospitality industry and in retail where franchising is common. Complex litigation is however inevitable. If the government decides to proceed with its proposal, it must robust legal tests to prevent employers from gaming the system to avoid new worker rights.

2) Initial notice period

Question 2:
Do you agree that the CAC should refuse access unless the access agreement specifies that there will be a minimum of 5 working days between when the terms of the initial access agreement are finalised and when access takes place for the first time?

Unite does not agree with this proposal.

In comparable economies such as Australia, a union official is only required to give an employer with 24 hours written notice of entry. Making it mandatory for unions to wait for an additional 5 days for access after negotiations have concluded or the CAC has awarded access is unnecessary. It will prevent unions from responding to urgent worker requests, for example, health and safety issues, toxic and bullying working environments or the abuse of migrant workers.

The suggestion that employers will need time to prepare for an initial union access visit is unjustified. As noted below, employers will not be expected to deploy additional resources to facilitate union access. Employers could only use such preparation time to seek to deter workers from meeting with or joining a trade union.

A cumbersome CAC process, combined with longer notice periods will mean access rights could provide meaningless in key sectors such as construction. By the time a union has completed the CAC process and provided notice, building works will often have been completed and the site will be closed.

Question 3:
Do you agree that access agreements should expire two years after they come into force?

Unite welcomes the proposal that CAC access awards and access agreements should last for at least two years. Allowing unions to access a workplace weekly over a two-year period will support union presence in a workplace becoming a normal practice and will provide time for unions to test whether the workforce supports union recognition and collective bargaining.

Where employers and unions voluntarily negotiate access arrangements, such agreements should not expire at the end of the two year period but should form part of on-going industrial relations in the workplace, alongside any wider collective agreements.

Question 4:
In general, are there other circumstances under **which you think that the CAC must refuse access? (This question refers to section 2A generally).**

No.

Unions should be legally entitled to access in any workplace after giving notice. Employers and the CAC should not be able to refuse access where there is clear evidence of longstanding and active collective bargaining agreements with another union(s).

It is important that the CAC cannot refuse access because:

- it would interfere with an employer's business
- of size of a business / organisation
- of the level of union membership
- of national safety reasons.

Requiring or allowing the CAC to refuse access on such grounds would undermine the purpose of government policy to facilitate wider union presence and collective bargaining across the public and private sectors.

All workers, except for police officers and members of the armed forces, have a right to join a trade union. New access rights should support and not hinder the exercise of this fundamental right.

Unite organises in a wide range of sectors with differing operational needs, including road transport, car manufacturing, food production, defence, health services, finance and construction.

Examples of existing access arrangements include:

- In defence: the Ministry of Defence (MOD) arranges Security Check Clearance. Once received, National Officers are permitted to visit the vast majority of Ministry of Defence sites and engage with members and staff. Sites included are MoD facilities including standard Ministry of Defence sites, including those for Royal Navy, Army, and RAF operations; Defence Supply Chain Sites operated by defence equipment manufacturers and aerospace technology providers that

handle classified MoD contracts; Government Departments; Critical Infrastructure including nuclear facilities and aerospace sites that require a higher level of vetting than the baseline standard and international sites. The existence of such arrangements confirms there can be no justification for refusing access on the grounds of national security.

- In defence: Unite has recently reached an accord with Kuehne + Nagel Ltd, UK (Contract Logistics). The accord allows for effective access arrangements for union representatives who commit to respect the confidentiality of the business.

- In construction: Unions have negotiated a framework recognition and access agreement for HS2 projects. Construction firms such as Mace have adopted this framework. Under the framework agreement, employers are expected to provide union officials of the contact details of their representatives. Union officials are required to give 24 hours' notice of their request to visit a site and no requests can unreasonably be refused. Trade union officials are entitled to move around the welfare site unaccompanied during work and break periods. During visits officials are entitled to carry out all their union duties. Employers are required to provide a notice-board in a prominent place where union materials can be displayed. Unions are entitled to a 15-minute slot at the end of each site induction and workers are informed of the partnership approach on site and given the opportunity to join a union. Employers are also required to provide facilities for union meetings.

- In construction: At Hinckley Point C Construction site, Unite, GMB and Prospect have negotiated a comprehensive Industrial Relations Common Framework Agreement (CFA) with employers including comprehensive facilities and access arrangements.

- In civil aviation: Employers have agreed that unions can have access airside areas using security passes provided by the employers. Union officials can access areas where cabin crew wait to report for their flight, providing opportunities for workers to receive information about the union, join the union and raise employment concerns. Unions also attend induction meetings and training courses.

- In health: Union access is a normal part of industrial relations in the NHS and unions rarely need to refer to formal agreements to arrange access. Union reps can arrange meetings with members in meeting rooms, whilst prioritising patient safety.

- In public sector: Recently Unite has reached a new national agreement with Mears which operates in local government, construction and the government defence sectors. The agreement gives the union a right of access to all sites for the purpose of recruitment and organising. The union is also informed in advance of apprenticeship events and is also allowed to arrange visits and meetings when the union chooses.

- In road transport: Unite has agreements to meet with new starters as part of the induction process. Unite can arrange meetings with members as required. It is agreed that union meetings do not add to the length of the working day. If a driver is planned for a 12-hour day and the first hour is allocated for a union meeting, we ensure the shift length isn't increased by an hour, unless premium overtime rates are agreed. This ensures that working time regulations are complied with but also that workers do not lose out on pay for engaging in union activities.

In our experience, reasonable access arrangements can work well in any sector of the economy.

Section 2B: Circumstances where it is reasonable for access not to be granted

Unite believes that union access should only be refused where another independent union is recognised and where active collective bargaining regularly takes place.

As demonstrated above, union access arrangements already exist in a wide range of successful businesses and organisations across the public and private sectors. There is no reason why reasonable access arrangements cannot be applied in all workplaces.

1) Presence of a recognised union

Question 5:
Do you agree that the presence of a recognised union representing the group of workers to which the union is seeking access be considered a reasonable basis for the CAC to refuse access to another union?

The primary purpose of new access rights is to enable millions of workers across the public, private and voluntary sectors to meet with and join unions, to secure union representation and to organise for collective bargaining in their workplace.

Trade unions are committed to building union presence across the labour market and to ensuring that millions more workers can have a say and power over their pay, terms and conditions and their working environment.

But the extent of the challenge is real. In 2024, unions were present in just 31% of private sector workplaces and just 20% of private sector employees could negotiate their own pay, terms and conditions through collective agreements.

Unite agrees that when seeking wider access rights, unions should not focus on workplaces which are already organised and where established active collective bargaining arrangements are in place.

It is good practice for existing collective bargaining arrangements to be respected. Our first choice would be for this to be achieved through non-statutory methods, e.g. through TUC dispute principles and procedures. In our opinion, it is preferable for inter-union disputes to be dealt with between unions and not to be resolved in the courts.

Imposing a total legal bar on access requests where another independent union is recognised could be counterproductive and could damage good industrial relations. It could enable employers to agree 'sweetheart deals' with a new union, even though another union has run effective organising campaigns in the workplace over several months and even though the workforce support another union being recognised. Only workers collectively, not employers, should be able to decide which union represents them.

It could also prevent access requests where genuine collective bargaining is no longer taking place because a recognised union's membership has fallen, the union cannot recruit workplace reps and/or the recognised union can no longer devote adequate resources to a workplace. Here, workers should have the right to meet with an alternative union.

A de facto bar on access could also mean it is more difficult for unrecognised unions to represent its members in a workplace. At present, the statutory right to be accompanied does not include a right for a union official to attend the worker's place of work.

The government is currently proposing that where an employer already recognises an independent trade union to negotiate on behalf of the group of workers in question, the CAC should consider that is a reasonable basis on which to refuse access. This consideration would not automatically prevent access being granted but would make it less likely and help the CAC assess the potential impact of a new access arrangement on workplace harmony and representation.

If the government decides to proceed with this proposal, additional safeguards need to be introduced:

- Access requests must only be refused where an independent union is recognised, as proposed.

- There must be evidence that recognition and collective bargaining is active and that negotiations regularly take place.
- Employers must be prevented from entering a “sweetheart deal” with another union to block access for a better organised unions with higher union membership. The CAC should only automatically refuse access where collective agreements pre-existed the access request by at least two years.
- Where staff are transferred as part of a TUPE transfer, or under the government’s proposed “two-tier workforce code”, any transferred recognition rights must be protected and the relevant union must have access rights to the new workplace.
- Unions must have a right to access a workplace to represent its members to prepare for and attend grievance and disciplinary hearings.

2) Ensuring employers are not obligated to allocate more resource than is required to fulfil the terms of the access agreement

Question 6:
Do you agree that an access application that would require an employer to allocate more resources than is necessary to fulfil the agreement (e.g., constructing new meeting places or implementing new IT systems) should be regarded as a reasonable basis for the CAC to refuse access?

It is not anticipated that any employer would need to allocate substantial resources to facilitate union access, e.g. by constructing new meeting places or implementing new IT systems. Unions should be able to use its own technology when organising digital access, e.g. via MS Teams or Zoom.

However, employers must not be able to refuse access on the grounds that it may involve operational costs, for example, management time taken to allow unions into a premises.

In some workplaces where Unite organises, security passes are required for union officials to gain access. This includes the defence sector, where security passes are required to access defence sites and civil aviation where security passes are required for union officials to access airside spaces at airports. Employers should be expected to arrange and cover the cost of providing such passes as part of their duties to facilitate access.

Employers should not be able to rely on spurious or vexatious arguments for why access is not feasible, e.g. they would choose to recruit additional security staff when unions are on site or install additional security cameras to carry out surveillance on union meetings.

As stated above, it is very important that the CAC should not be required or have the discretion to refuse access on the grounds that it would interfere with the operation of a business or service.

3) ‘Model’ agreements

a. Frequency of access

Question 7:
Do you agree that weekly access (physical, digital, or both) be included as a ‘model’ term in access agreements, to help support regular engagement between trade unions and workers?

Yes.

It is welcome that the government recognises weekly access should form part of model agreements reached between unions and employers and model CAC access awards.

Allowing unions to access a workplace weekly over a two-year period will enable union presence in a workplace to become a normal practice.

It is important that weekly access relates to access to all relevant groups of workers and not just workplaces. For example, access arrangements should accommodate different shift patterns. It should also be possible for unions to request concentrated periods of access, for example, four days in a row each month for workers deployed in remote locations.

Question 8:
Please describe any other terms that you think should be regarded as ‘model’ terms.

For new access rights to be effective and meaningful, the government should introduce new regulations which are clear, robust and enforceable. The regulations should specify ‘model’ terms which would automatically form part of all CAC access awards.

It is also anticipated model terms would influence and form a floor for voluntary agreements between employers and unions. Where an employer refuses to sign up to model terms it should be possible for a union to bring a complaint to the CAC.

The model terms should be defined generically in regulations and should be supplemented in the Code of Practice. The Code should illustrate how the model terms should be applied in different work settings and sectors. Practical examples should be included in the Code of Practice. The Code should encourage good practice, for example, by encouraging employers to invite unions to inductions and training courses.

The 'model' terms set out in regulations must include the following points set out in bold, supplemented by guidance in the Code of Practice:

- **Unions muste be able to access workers *weekly***
    - Access arrangements must allow for and accommodate different shift patterns. All workers, including those who work unsocial hours, should have the opportunity to meet with union representatives.
    - In exceptional cases, where weekly visits are not feasible, for example in remote workplaces, more concentrated visits should be arranged, e.g. 4 visits on successive days once a month.

- **Access must take place *during normal working hours***
    - **Workers must not suffer any loss of pay for meeting with union representatives**
    - Access arrangements should not lead to longer working days, unless the employer agrees the payment of overtime premia. Employers should arrange shift patterns and work rotas so as to accommodate access.
    - Employers should be encouraged to allow unions to attend staff inductions and training courses.

- **Access must take place *where people normally work***, for example:
    - in offices, access should take place at desk areas, or in meeting rooms which adjoin work areas.
    - in civil aviation, unions must be able to meet workers on airside where staff wait to board or disembark from flights.
    - on construction sites, unions should be able to meet works on site or immediately after foreman's meetings at the beginning of shifts.
    - in road transport or the bus sector, unions must be able to meet with workers at the depot at the start of shifts.
    - In small workplaces or in workplaces with no dedicated meeting rooms, it may be difficult to find suitable accommodation on site which can be set aside for the exclusive use of the union to hold a meeting.

- **Where access where staff work is not feasible, e.g. for hygiene or safety issues, access must take place in staff canteens or staff rooms where and when workers normally spend their breaks,** for example:
    - in food processing plants, access must take place in staff canteens when staff take their breaks.
    - in schools, access should take place in staff rooms.
    - in hospitals or residential care homes, access should take place in staff offices or meeting rooms.

- **While physical access should take precedence, "model terms" for digital union access must be provided. Digital access must involve face to face engagement between unions and workers and must not be limited to email messages sent to workers.** Unions must not be required to rely on employer technology. Digital access may include:
    - communication via social media, and SMS messages.
    - regular online meetings on MS Teams or Zoom which are hosted by unions.

- **Employers must be under a duty to co-operate and facilitate union access**.
    - **Employers should not seek to influence, intimidate or harass workers into not meeting with union officials.**
    - **Employers should be required to email workers and display a poster in the workplace where access will take place confirming that unions have a right to access the workplace, workers have the right to join a union and that no workers will suffer any detriment, victimisation or be dismissed for talking to a union official or for joining the union.** The government should prepare a statutory template for the poster and email, which is translated into multiple languages.

- **In multiple employer sites**, e.g. where sub-contractors or outsourced service providers operate on a site owned by another employer, **the CAC must award unions rights of access to the sub-contractor or outsourced service provider and the owner of the site must be legally required to facilitate and not restrict access**.

- **Employers must be required to respect the privacy of union access and unions must be able to meet with workers free from employer surveillance or interference.**
    - The employer or any representative must not attend an access meeting unless invited to do so. It is for unions to decide if supervisors or managers can attend meetings, or if separate access arrangements should be made for them.
    - The employer must not use the union's unwillingness to allow him or his representative to attend as a reason to refuse an access meeting
    - The employer must not record or otherwise be informed of the proceedings of a meeting.

  - Where employers have security cameras or other recording equipment permanently positioned on site employers should be required to turn off the equipment in question during access visits.
  - The employer should not eavesdrop on access meetings or pressurise any of those attending to disclose what occurred at them.
  - Employer should not seek to question attendees about the proceedings of meetings

- **Unions must be able to communicate freely with workers, without employer interference.**
  - **Unions should have the option of requesting that a "suitable independent person" (SIP) is appointed.** Employers should be required to provide the SIP with worker contact details and the SIP should disseminate union messages direct to the workforce.

- **Any worker who meets with unions must be legally protected from all forms of detriment, dismissal or victimisation.**

b. Notice periods for access

Question 9:
Do you agree that access agreements include a commitment from the union to provide at least two working days' notice to the employer before access takes place?

In line with the practice in countries such as Australia, we propose that the minimum period of notice in access agreements should be 24 hours.

4) Further matters for the CAC to have regard to

Question 10:
Are there any further matters to which you think the CAC must have regard when making determinations on access? If so, what are they? For example, you might want to suggest practical, legal, or workplace-specific considerations that haven't already been covered.

As stated above, the only ground for which the CAC should be permitted to refuse access if where there is evidence of a longstanding recognition of another independent

union and active collective bargaining continues to take place. Otherwise, the CAC should be expected to award access automatically.

Where staff have been transferred as part of a TUPE transfer, or under the government's proposed "two-tier workforce code", the CAC must respect and protect any transferred recognition rights and ensure that the relevant union of transferred staff continue to have access rights to the new workplace.

Any CAC access award and any decision by the CAC to vary an access agreement must incorporate the model terms listed above. When determining how the terms should apply in different industries, the CAC should consider the Code of Practice and to any industry standards for access which exceed the model terms.

The CAC should also consider any pre-existing collective agreements which exceeded the model terms outlined above.

Any CAC process for deciding access rights must be swift and effective. New procedures must not be cumbersome or protracted. If the process is protracted, it will prove effective in sectors such as construction, where work on a site may well have finished before a request for access has been administered by the CAC.

It is also critical that the CAC is properly resourced to deal with the increased workload arising from new access legislation.

Section 3 – Maximum value of fines and how the value of fines for breaches are determined

1) Maximum value of the fine

Question 1:
Which of the following options do you consider most appropriate for setting the maximum value of the fine?

[ ] Option A: A fixed maximum fine of £75,000

[ ] Option B: A two-stage system: £75,000 for initial breach and up to £150,000 for repeated breaches

- ✓ **Neither of these options**

Unite considers that the proposed level of maximum fines utterly inadequate and will not prove effective in ensuring employer compliance with access arrangements. Such

derisory maximum fines will be factored in by multinational and profitably firms which are hostile to unions, as the price worth paying to block union access.

Firms such as Amazon, have already devoted £millions in any union campaigning to defeat union access and recognition campaigns. A negligible fine will not act as a deterrent against their continued non-compliance.

Unite believes that fines should be linked to a company or organisation's global turnover, mirroring GDPR laws. As outlined in the consultation document, the CAC will always consider the size and financial capacity of an organisation to pay before imposing an award.

Matters the CAC must consider when deciding value of fines

Question 2:
Do you agree with the proposed matters the CAC must consider when determining fines?

In general, Unite agrees with the proposed matters which the CAC should take into account when determining fines. We would propose that the "reason for the failure" should be omitted as it would require the CAC to consider the employer's motivation and intentions. The fact that an employer has blocked access, has failed to comply with an agreement or not observed model terms set out in a CAC award, is sufficient grounds for the CAC to award a substantial fine.

We would also propose that fines imposed should be set a level designed to penalise the employer and to deter non-compliance with the law. The CAC should not only consider costs or losses incurred by the union or the workforce.