EXPLANATORY MEMORANDUM TO

THE CODE OF PRACTICE (ACCESS AND UNFAIR PRACTICES DURING THE RECOGNITION AND DERECOGNITION PROCESS) ORDER 2026

2026 No. 1129

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Kate Dearden, the Minister of State (Minister for the Future of Work) at the Department for Business, Innovation, Science and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 James Silcox, Deputy Director for Trade Union and Collective Rights, at the Department for Business, Innovation, Science and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Laurence Evans at the Department for Business, Innovation, Science and Trade can be contacted by email at the following address with any queries regarding the instrument: tradeunionpolicy@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Statutory Instrument

4. Overview of the Statutory Instrument

What does the legislation do?

4.1 The purpose of this Statutory Instrument is to commence the revised Code of Practice on Access and Unfair Practices during the Recognition and Derecognition Process. The Employment Rights Act 2025 ("the 2025 Act") makes some significant changes to the statutory trade union recognition process. These include changes to primary legislative provisions in Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") in relation to access and unfair practices during the trade union recognition and derecognition process. Parliament has recently approved on 21 October the revised Code of Practice laid before Parliament on 6 July 2026 to ensure that all parties, including employers, workers and unions, understand how these changes affect them. The Code is not mandatory, but seeks to advise employers and unions on how they can comply with the revised legal requirements in the 2025 Act. The Code is admissible in proceedings before a court or employment tribunal or the Central Arbitration Committee (an independent body with statutory powers responsible for resolving collective disputes in the workplace) and therefore can have some legal effect. The Code will come into effect, alongside all remaining changes to the recognition process in the 2025 Act, on 30 October 2026.

Where does the Statutory Instrument extend to, and apply?

4.2 The extent of this Statutory Instrument (that is, the jurisdiction(s) in which the Statutory Instrument may have legal effect) is England and Wales, and Scotland.

4.3 The territorial application of this Statutory Instrument (that is, where the Statutory Instrument produces a practical effect) is England and Wales, and Scotland.

5. Policy Context

What is being done and why?

5.1 Trade union recognition is the process by which an employer agrees to work with and negotiate with trade unions that represent groups of employees, known as bargaining units. The Government's Plan to Make Work Pay included a commitment to simplify the trade union recognition process. The 2025 Act updates the legal framework around statutory trade union recognition so that workers have a meaningful right to organise through trade unions.

5.2 The 2025 Act amends Schedule A1 to the 1992 Act in relation to access and unfair practices in the recognition and derecognition process by extending the legislation on access and unfair practices during the recognition and derecognition process to apply from the point where the Central Arbitration Committee (CAC) accepts an application (usually from a trade union). It also requires the parties to seek to negotiate an access agreement. If no agreement is reached, then this is determined by the CAC.

5.3 The 2025 Act sets a timetable for negotiations on access – upon notification that the CAC has accepted an application, the union has 5 working days to request access, indicating what type of access it is seeking. There then normally follows a 15 working days negotiation period between the employer and the union to seek to agree an access agreement. This period can be extended if both parties agree. If no agreement is reached, the CAC will have 10 working days to determine a reasonable access agreement. The CAC may extend this period, giving reasons in writing for doing so.

5.4 The 2025 Act also allows for a period ending 5 working days after the close of the recognition ballot for complaints to be submitted to the CAC where an unfair practice is alleged. It also changes the test for determining such complaints by only requiring the CAC to consider whether an unfair practice has occurred without having to determine the effect it may have had.

5.5 The structure and content of the recently approved Code, which this Statutory Instrument will allow to come into effect on 30 October 2026, reflect the above changes brought about by the 2025 Act. The Department for Business, Innovation, Science and Trade has also taken the opportunity to bring it up to date with changes in digital communications and the Code now provides significantly more detailed guidance in this area, including guidance on digital access.

5.6 In line with the Government's aim to provide earlier and more frequent access to unions in the recognition process, the Code increases the suggested access meetings' frequency to once every 5 working days, and the suggested minimum length of these access meetings is also increased to 45 minutes.

What was the previous policy, how is this different?

5.7 Previously, the 2005 version of the Code of Practice on access and unfair practices only applied to the recognition (or derecognition) ballot phase. This was because unions could not obtain access to the workforce to make their case for recognition

until the recognition ballot phase: i.e., the CAC would notify the parties of its intention to hold a ballot at which point there would follow a 10 working day period where the parties could request for the ballot to be postponed. In practice, the parties would also seek to agree access arrangements during this time. However, there was no clear legislative timetable in relation to negotiations on agreeing access and there was no requirement for the parties to seek to agree to an access agreement. This could lead to delays in the recognition process, something the changes in the 2025 Act set out to solve.

5.8 Where parties wished to submit an unfair practice complaint, they could do this at the point when the unfair practice was alleged, but no later than 1 day after the close of the recognition ballot. This led to instances where parties missed the deadline. Furthermore, for an unfair practice complaint to be upheld, the CAC had to be satisfied not only that the alleged unfair practice had occurred, but also that it had affected the outcome of a recognition ballot. This second test was hard to establish, resulting in the CAC refusing some unfair practices complaints which might otherwise have been upheld.

5.9 The previous version of the Code, dated 2005, suggested that the frequency of access meetings during the ballot phase should be once every 10 working days, with a minimum time of 30 minutes. It also provided limited guidance on digital access or digital communications, as this was less prevalent at that time.

6. Legislative and Legal Context

How has the law changed?

6.1 Paragraphs 5.2 to 5.4 of this Explanatory Memorandum set out some of the legislative changes in the 2025 Act in relation to access and unfair practices provisions during the recognition and derecognition process. These will come into force on 30 October 2026. This Statutory Instrument also comes into force on 30 October 2026 and is intended to enable the revised Code, recently approved by Parliament, to come into effect alongside the legislative changes on that date, subject to some transitional provisions set out in this instrument.

6.2 Under section 203(1)(a) of the 1992 Act the Secretary of State may issue Codes of Practice containing such practical guidance as the Secretary of State thinks fit for the purpose of promoting the improvement of industrial relations. Under section 203(2) of the 1992 Act the Secretary of State may from time to time revise the whole or any part of a Code of Practice issued by him and issue that revised Code. In pursuance of section 204(1) of the 1992 Act, the Secretary of State, after consultation with the Advisory, Conciliation and Arbitration Service, prepared and published the draft Code of Practice on Access and Unfair Practices during the Recognition and Derecognition Process.

6.3 In pursuance of section 204(1) of the 1992 Act, the Secretary of State considered representations made to him about the draft Code and modified the draft accordingly. In pursuance of section 204(2) of the 1992 Act, the Secretary of State has now laid the draft Code before both Houses of Parliament.

6.4 The revised Code reflects the changes made in the 2025 Act. The Code also sets the suggested minimum frequency of access meetings to once every 5 working days, and sets a suggested minimum time for access meetings to 45 minutes. The Code has been drafted so that frequency and length of access meetings can be interpreted

flexibly by the parties. The Code also provides substantially more guidance on digital communications, including digital access.

6.5 Now that the revised Code has been approved by Parliament on 21 October 2026, under section 204(3) of the 1992 Act, the Secretary of State must issue an Order setting out the date when the revised Code will come into effect. This will be on 30 October 2026. Section 204(4) of the 1992 Act requires that this Order shall be made by Statutory Instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Why was this approach taken to change the law?

6.6 The Code has been changed to reflect the changes in the 2025 Act to the access and unfair practices provisions in the statutory recognition process.

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

7. Consultation

Summary of consultation outcome and methodology

7.1 Policy on changes to the statutory trade union recognition scheme, including changes in relation to access and unfair practices, was settled in the 2025 Act. The Department for Business, Innovation, Science and Trade ran a public consultation on a draft revised Code from 4 February to 1 April 2026. The consultation sought views from respondents on whether the revised Code and structure reflected accurately the changes in the 2025 Act.

7.2 The Department for Business, Innovation, Science and Trade also sought views on whether the Code reflected appropriately increased use of digital communications in workplaces; whether the role of the CAC was adequately explained in the draft Code; whether there was sufficient information in the Code in relation to the access agreement; whether there was sufficient guidance in relation to the area of unfair practices, and what suggestions respondents might have in relation to further areas of guidance on access or unfair practices during the recognition process.

7.3 During the consultation period, the Department also held roundtable meetings with trade unions and business representative organisations. 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.

7.4 We received 920 responses to the consultation, over 80% of which were from employers and their representative organisations. The remainder (15%) were from individuals, trade unions (2%) and charity and interest groups (1%).

7.5 Though respondents recognised that the Code and its structure accurately reflected the changes in the 2025 Act, respondents felt that further revisions were required to ensure the Code was proportionate, clear and workable in practice. They felt that the Code did not reflect the increased use of digital communications in workplaces, did not adequately explain the role of the CAC, and that there was not sufficient information in relation to the proposed elements for an access agreement and on unfair practices.

7.6 Unions were broadly in favour of the proposed changes to the Code. They welcomed the proposed increased frequency and duration of access meetings but were concerned that access meetings should be implemented flexibly.

7.7 Employers and their representative organisations felt the proposed increase in frequency and length of access meetings would lead to greater costs and that there was insufficient information on employer obligations in relation to digital access.

7.8 In response, the Department amended the Code to try to aid clarity and support practical use as far as possible. We have sought to address concerns from employers, and unions, for example by providing more guidance on digital access and clarifying that the frequency of access meetings should be implemented flexibly.

7.9 In relation to the frequency and length of access meetings, having considered responses to the consultation, the Department concluded that the Code should provide for the suggested frequency of access meetings to be once every 5 working days and the suggested minimum meeting length to be 45 minutes. This is in line with the Government's commitment to level the playing field by providing earlier and more frequent access for unions during the statutory recognition and derecognition process.

8. Applicable Guidance

8.1 In addition to the Code, which provides statutory guidance, the Department will update guidance on the statutory recognition scheme on GOV.UK and keep under review whether further non-statutory guidance is necessary. The CAC has updated its guides to the parties. These will be published once the remaining reforms in the 2025 Act to the statutory recognition process have come into force or effect.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Statutory Instrument as this Statutory Instrument is, in effect, a commencement order for the revised Code of Practice, which has recently been approved by Parliament. No full impact assessment was prepared for the revised Code because the Code is only statutory guidance. The law in relation to statutory recognition is set out in Schedule A1 to the 1992 Act as amended by the 2025 Act, for which an Enactment Impact Assessment has already been published[1]. This covers the legislative changes in the 2025 Act as a whole, including the legislative changes to the statutory recognition scheme.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because this Statutory Instrument commences the revised Code which provides statutory guidance to the changes in the 2025 Act.

9.3 The Statutory Instrument commences the revised Code which does not impact small or micro businesses as it is statutory guidance and does not impose new legislative requirements on them. Furthermore, micro businesses are not in scope of the statutory recognition scheme as this only applies where the employer employs at least 21 workers.

[1] https://assets.publishing.service.gov.uk/media/695d3ebfbd1c076f787e7399/employment-rights-act-2025-economic-analysis.pdf

9.4 There is no, or no significant, impact on the public sector because this Statutory Instrument commences the revised Code which provides statutory guidance to the legislative changes in the 2025 Act.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The Department for Business, Innovation, Science and Trade will consider whether any further updates to the Code are required alongside revisions in due course to reflect phase two implementation of e-balloting in relation to recognition and derecognition ballots.

10.2 The instrument does not include a statutory review clause.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This negative procedure Statutory Instrument breaches the convention that legislation subject to the negative procedure should be laid before Parliament at least 21 days before it comes into force. This Statutory Instrument is being laid on 27 October 2026 and will come into force, as well as the revised Code recently approved by Parliament, on 30 October 2026.

11.2 The main reason for this breach is that the Government has committed to stakeholders to implement in full all the remaining changes to the statutory recognition process, including the supporting Code of Practice on access and unfair practices during the recognition and derecognition process, by 30 October 2026.

11.3 It was not possible to lay before Parliament the revised draft Code prior to 6 July 2026 in view of the significant number of consultation responses (920) that had to be analysed post consultation. In view of scheduling constraints and Parliamentary days available for debate, it was not possible to hold debates until 13 and 14 October 2026 on the revised Code, and therefore it has not been possible to meet the 21 day rule if the Government is to adhere to its publicly committed implementation timetable. If the Code does not come into effect on 30 October 2026, the remaining changes to the statutory recognition process would come into effect on different dates which would be both undesirable and confusing to both businesses and trade unions.

11.4 It should be noted that Parliament and stakeholders have been able to see the final revised Code since it was laid and published in draft on 6 July 2026. Parliament has now recently approved this Code following the affirmative debates on 13 and 14 October 2026.

11.5 This Statutory Instrument simply serves as a commencement order to bring into effect on 30 October 2026 the revised Code that Parliament has recently approved.

11.6 If this Statutory Instrument were not made so as to bring the Code into effect on 30 October 2026, the consequence would be that the legislative provisions in the Employment Rights Act 2025 in relation to access and unfair practices during the recognition and derecognition process would commence on 30 October 2026 without a supporting revised Code of Practice. This would not be an ideal situation for our stakeholders, both unions and employers.

11.7 As this Statutory Instrument serves as a commencement order, we hope that Parliament will understand the failure to comply fully with the 21 day rule in this instance.

12. European Convention on Human Rights

12.1 The Minister of State (Minister for the Future of Work) at the Department for Business, Innovation, Science and Trade has made the following statement regarding Human Rights: “As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.”

13. The Relevant European Union Acts

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