EXPLANATORY MEMORANDUM TO

THE TRADE UNIONS (RIGHT TO ACCESS WORKPLACES) REGULATIONS 2026

2026 No. 1101

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business 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, Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business 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 and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Samuel Pearce at the Department for Business 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 Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations support the operation of the statutory trade union right of access into workplaces introduced by Chapter 5ZA of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"), as inserted by the Employment Rights Act 2025 ("the 2025 Act").

4.2 They prescribe the operational and practical details necessary for the statutory access framework to operate effectively in practice.

4.3 Part 1 of the Regulations relates to general matters, such as the definition of certain terms used in these Regulations.

4.4 Part 2 sets out time limits for stages in the statutory access process, including the period within which employers must respond to access requests, the period for negotiation between employers and unions, and the period within which applications may be made to the Central Arbitration Committee (CAC) where agreement cannot be reached.

4.5 Part 3 makes provision in relation to determinations by the CAC. It specifies the circumstances in which access must be refused, circumstances in which it is to be regarded as reasonable for the CAC to refuse access, and additional matters to which the CAC must have regard when determining applications for access.

4.6 Part 3 also sets out types of access terms that the CAC must consider a) would not unreasonably interfere with an employer's business; b) would be reasonable steps for employers to comply with; and c) would be reasonable for trade unions to comply with.

4.7 Part 4 establishes the enforcement framework for the statutory access regime. It sets out maximum financial penalty levels for non-compliance with access agreements and the factors the CAC must consider when determining the amount of a penalty.

4.8 Part 5 provides for a review in accordance with section 28 of the Small Business, Enterprise and Employment Act 2015. This requires the Secretary of State to carry out a review of the regulatory provisions and publish a report setting out the conclusions of that review.

Where does the legislation extend to, and apply?

4.9 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

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

5. Policy Context

What is being done and why?

5.1 The Government committed in Make Work Pay to introduce an independent right for trade unions to access workplaces in a regulated and responsible manner, providing employers, unions and workers the clarity and certainty when navigating their interactions surrounding access.

5.2 This Government believes that unions are essential to tackling insecurity, inequality, discrimination, enforcement and low pay. The right of access for trade unions is intended to support fair, modern and effective industrial relations by enabling independent trade unions to engage directly with workers in workplaces across Great Britain.

5.3 The 2025 Act introduced a new statutory right for independent trade unions to access workplaces, both physically and/or digitally for the purposes of meeting, supporting, representing, recruiting or organising workers, and facilitating collective bargaining. It established a new legal framework for unions and employers to negotiate and agree statutory access agreements.

5.4 The statutory access framework was designed to encourage agreement between employers and trade unions wherever possible. In most cases, access arrangements should be reached through discussion and negotiation. However, where agreement cannot be reached, the case can be referred to the CAC who has a statutory role in determining whether access should take place, and if so, on what terms.

5.5 These Regulations are necessary to give effect to that framework by setting out the operational and procedural detail required for it to function effectively in practice. For example, these Regulations prescribe defined time periods, define circumstances in which access must be refused by the CAC, and the circumstances in which it is to be regarded as reasonable for the CAC to refuse access. The Regulations also identify matters the CAC must have regard to when making a determination on whether access should take place, set out access terms that are to be treated as reasonable, and establish a proportionate enforcement regime.

5.6 These Regulations affect independent trade unions, employers to whom statutory access requests are made, third parties where their cooperation is required in order to ensure access takes place in accordance with the access agreement, and the CAC in its statutory role of determining access and enforcing access agreements.

What was the previous policy, how is this different?

5.7 Prior to the introduction of Chapter 5ZA of the 1992 Act, there was no general statutory right for independent trade unions to access workplaces. In practice, access agreements relied on voluntary arrangements between unions and employers or existing workplace recognition agreements.

5.8 Where no such agreement existed, trade unions seeking to engage with workers often depended on individual members employed in the workplace. In workplaces where membership is low, this limited unions' ability to engage with workers and carry out their core functions.

5.9 The statutory framework introduced by the 2025 Act, together with these Regulations, establishes for the first time a clear and structured legal basis for trade union representatives to access workplaces in accordance with an access agreement, supported by a statutory framework, safeguards and a mechanism for decision-making where an access agreement cannot be reached.

6. Legislative and Legal Context

How has the law changed?

6.1 The Employment Rights Act 2025 inserted Chapter 5ZA into the 1992 Act, establishing for the first time a statutory framework governing trade unions' general right of access into workplaces.

6.2 Chapter 5ZA creates a legal right for independent trade unions to request access to workplaces and sets out a framework for how access agreements can be agreed, including mandatory time periods that employers must respond to statutory access requests by, and a role for the CAC to determine whether access should take place where negotiations between employer and union were unsuccessful and agreement cannot be reached. It also provides for enforcement of access agreements by the CAC and the imposition of financial penalties for non-compliance.

6.3 While the primary legislation establishes the core elements of the statutory access framework, it enables further provision to be made in secondary legislation. In particular, Chapter 5ZA of the 1992 Act confers powers on the Secretary of State to prescribe provision relating to:

- the length of the response period, negotiation period and the period within which an application may be made to the Central Arbitration Committee (CAC) for a determination;
- the circumstances in which the CAC must refuse access;
- the circumstances in which it is to be regarded as reasonable for the CAC to refuse access;
- the matters to which the CAC must have regard when considering applications for a determination;
- the terms of access agreements that are to be treated as reasonable for trade unions and employers to comply with, or as not unreasonably interfering with an employer's business;

- the maximum amounts of financial penalties which the CAC may impose for non-compliance with access agreements; and
- the matters the CAC must take into account when determining the amount of any financial penalty.

6.4 These Regulations supplement the framework in primary legislation by setting out procedural and operational provisions necessary for the framework to function effectively and consistently in practice.

Why was this approach taken to change the law?

6.5 The approach taken reflects the structure and intent of Chapter 5ZA of the 1992 Act, which establishes a core framework in primary legislation while enabling detailed operational matters to be set out in Regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Government consulted on the Right of Trade Unions to Access Workplaces as part of its Make Work Pay programme, to inform the detailed operation of the new statutory access framework introduced by the 2025 Act.

7.2 The public consultation ran from 23 October to 18 December 2025 and sought views on how the statutory right of access should operate in practice. It covered matters including the process for requesting and responding to access requests, applicable time periods, the role of the Central Arbitration Committee (CAC), safeguards and grounds for refusing access, model access terms, and the enforcement mechanism.

7.3 The consultation attracted substantial engagement from a broad range of stakeholders, including employers, trade unions, business representative organisations, legal professionals, charities, academics and individual respondents. In total, 1,612 responses were received, with respondents representing organisations of all sizes, sectors and regions across the United Kingdom.

7.4 In addition to written submissions, the Department for Business and Trade undertook targeted stakeholder engagement, including roundtables and meetings with employers, trade unions and representative bodies, to supplement the formal consultation responses and gather qualitative evidence from those most directly affected by the framework.

7.5 Responses were analysed using a combination of qualitative analysis by policy officials and an artificial-intelligence-assisted tool (Consult), with human oversight and quality assurance applied throughout. The Government considered the full range of views expressed, including areas of support and concern, when finalising its policy position.

7.6 The Government published its response to the consultation on 8 April 2026. Please see the Government response here: www.gov.uk/government/consultations/make-work-pay-trade-union-right-of-access.

7.7 The Regulations give effect to the Government's final policy position by setting out the operational and procedural detail of the statutory access framework, alongside a statutory Code of Practice on trade union right of access which provides practical guidance and is laid concurrently with these Regulations.

7.8 There was no statutory requirement to consult the devolved governments.

8. Applicable Guidance

8.1 A new statutory Code of Practice on trade union right of access will be laid alongside these Regulations to provide practical guidance on how the statutory access framework should operate in practice.

8.2 The Code of Practice is intended to operate alongside these Regulations. While the Regulations set out binding legal requirements, the Code provides practical guidance and illustrative examples to support consistent and effective implementation of the statutory right of access.

8.3 The Code of Practice will be commenced and published at the time these Regulations come into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because Department for Business and Trade analysts have concluded that annual costs to business are expected to remain below the De Minimis threshold. A De Minimis Assessment is published on the gov.uk website.[1]

Impact on businesses, charities and voluntary bodies

9.2 We expect the equivalent annual direct cost to business, charities and voluntary bodies (EANDCB) to remain below the £10 million de minimis threshold. The benefits of the policy have not been monetised.

9.3 The legislation does impact some small or micro businesses.

9.4 To minimise the impact of the statutory right of trade union access on small or micro businesses (employing up to 50 people), the approach taken in the Trade Unions (Right of Access Workplaces) Regulations 2026, is that the CAC, if asked to make a determination as to whether access should take place, must refuse access where an employer has fewer than 21 workers, except from 2027 for those employers who are covered by statutorily supported national bargaining frameworks (for adult social care and school support staff). This is to enable trade unions to more easily engage with workers covered by these frameworks and working for these small and micro employers. The power of the CAC to make a determination that trade unions have access does apply to employers with 21 or more workers in order to maintain consistency with the statutory recognition framework.

9.5 The impact on the public sector is expected to be low due to high existing levels of unionisation, but resources for the Central Arbitration Committee will need to be increased to reflect the additional caseload.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation will focus on how the statutory right of access operates in practice, including the effectiveness of details set out in these Regulations and whether its implementation and operation meet the core objectives of the policy. The Government will monitor implementation through ongoing

[1] www.gov.uk/government/consultations/make-work-pay-trade-union-right-of-access

engagement with stakeholders, including employers, trade unions and the CAC, and through consideration of information arising from the operation of the statutory framework, such as number and nature of access requests, CAC decisions and enforcement outcomes. Following implementation, the government will review the statutory access framework within 6 months of implementation to ensure it is delivering the policy objectives.

10.2 A statutory review clause is included in the instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Alongside this instrument, The Trade Unions (Right to Access Workplaces) (Required Information) Regulations 2026 sets out certain requirements in relation to the access requests made by trade unions to employers, and the employer's response notice to such an access request. Those requirements include the information that must be contained in an access request and response notice. The instrument also makes provision as to how the parties notify the CAC that they have agreed an access agreement, and how to vary or revoke that agreement. That instrument is subject to the negative procedure and is intended to come into force on the same day as this instrument.

11.2 A new statutory Code of Practice on trade union right of access will be laid alongside these Regulations to provide practical guidance on how the statutory access framework should operate in practice. A separate explanatory memorandum for the Code provides further details.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade has made the following statement regarding Human Rights: "In my view the provisions of The Trade Unions (Right to Access Workplaces) Regulations 2026 are compatible with the Convention rights."

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").