

EXPLANATORY MEMORANDUM TO

DRAFT CODE OF PRACTICE ON TIME OFF FOR TRADE UNION DUTIES AND ACTIVITIES

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.

2. Declaration

- 2.1 Kate Dearden, Minister 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 Gary Wedderburn at Acas can be contacted by email at the following address with any queries regarding the Code of Practice: workplacepolicy@acas.org.uk Alternatively, Acas can be contacted by telephone: +44 (0) 300 123 1150.

Part One: Explanation and context of the Code of Practice

4. Overview of the Code of Practice

What does the legislation do?

- 4.1 This is an updated Code of Practice on time off for trade union duties and activities, reflecting recent changes to the underlying statutory rights. It provides practical guidance to employers, employees and trade unions on the statutory rights to time off and access to facilities for trade union duties, purposes and activities, as set out in the Trade Union and Labour Relations (Consolidation) Act 1992 (the “1992 Act”) and as amended by the Employment Rights Act 2025 (“the 2025 Act”). The Code is issued under the procedure in section 200 of the 1992 Act.
- 4.2 The new statutory provisions, as amended by the 2025 Act and reflected in the updated code include:
- strengthening the existing right to reasonable paid time off for union representatives to carry out their duties by establishing, a requirement that the employer show in the tribunal that the time off proposed was not a reasonable amount of time;
 - a right for trade union equality representatives to reasonable paid time off to carry out specified equality representative purposes and undertake related training; and
 - a requirement for employers, where reasonable, to provide union representatives with access to accommodation and other facilities to enable them to carry out their duties and purposes.

Where does the legislation extend to, and apply?

- 4.3 The extent of this Code of Practice (that is, the jurisdiction(s) which the Code of Practice forms part of the law of) is Great Britain.

- 4.4 The territorial application of this Code of Practice (that is, where the Code of Practice produces a practical effect) is Great Britain.

5. Policy Context

What is being done and why?

- 5.1 The Government wants to ensure that union workplace representatives can take sufficient reasonable paid time off and have sufficient access to facilities to enable them to fulfil their union representative duties. This will lead to improved worker representation and industrial relations by giving trade union representatives the freedom to organise, represent and negotiate on behalf of their workers, and increased cooperation between employers and workers, leading to beneficial outcomes for the economy.
- 5.2 Evidence suggests that representatives cannot always take sufficient time off or facilities to carry out their duties. This can limit effective worker representation.
- 5.3 The Employment Rights Act 2025 strengthens trade union representatives' access to facilities and strengthens the existing right to reasonable paid time off for trade union representatives to carry out their duties. The Act also creates a new statutory right for trade union equality representatives to take reasonable time off during the employee's working hours.
- 5.4 The Code of Practice has been revised to provide a clear explanation of the law, alongside practical guidance to support employers, trade unions and representatives to support balanced and constructive implementation of the law.

What was the previous policy, how is this different?

- 5.5 Prior to the Employment Rights Act 2025, trade union representatives and union learning representatives were entitled to reasonable paid time off for duties and training. However, there was no statutory entitlement for time off for trade union equality representatives, and no statutory entitlement to provide facilities except in specific circumstances connected to collective redundancy and TUPE transfers. The Employment Rights Act 2025 strengthens this framework by introducing a statutory right for trade union equality representatives, trade union learning representatives and trade union equality representatives to reasonable paid time off for specified purposes and training, and requiring employers, where reasonable, to provide access to facilities (for example, office and meeting space and access to the internet / intranet) to enable trade union representatives to carry out their duties and purposes. The Act also strengthens the existing right to reasonable paid time off for union representatives to carry out their duties by requiring that the employer show that it was not a reasonable amount of time off, in any eventual Employment Tribunal claim. The updated Code of Practice provides clear guidance on the application of these rights.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The Employment Rights Act 2025 amends the existing statutory framework by strengthening rights to reasonable paid time off for trade union representatives, introducing new rights for trade union equality representatives, and requiring employers, where requested to provide facilities for carrying out specific duties or purposes, as is reasonable.

- 6.2 The updated Code reflects these changes, explains the new law and provides practical guidance to support their consistent application.

Why was this approach taken to change the law?

- 6.3 An updated Code of Practice is necessary to provide clarity on the operation of the strengthened rights in practice. The Employment Rights Act 2025 sets out the rights, and the revised Code of Practice provides practical guidance on how those rights should operate in practice. This approach supports clarity and consistency, enabling the framework to be applied by employers and union representatives in a way that reflects the needs of their workplace.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The Acas consultation ran for 8 weeks in total, from 20 January 2026 to 17 March 2026. The consultation received 47 responses. Of the total responses, 14 were from unions, 11 were from employers, 7 from trade associations/professional bodies and 15 were from individuals responding in a personal capacity.
- 7.2 Most respondents agreed that guidance on the union equality representatives' right to reasonable time off is sufficiently detailed (64% agreed) and sufficiently clear (63% agreed).
- 7.3 Respondents were split on whether the draft Code should present guidance on time off for union equality representatives and union learning representatives in the same section (55% agreed). In response, the Code now sets out detail on the two roles in separate sections while maintaining a single section on the qualifying criteria and notification requirements where it is identical.
- 7.4 Most respondents agreed that the examples help understanding of the duties for which union equality representatives have a right to time off (75% agreed). While the majority of respondents agreed that the examples provided are sufficiently broad (61% agreed), the examples in the Code have been expanded to increase reference to proactive duties and operational activities following recommendations from some respondents.
- 7.5 Respondents expressed mixed views on the training guidance, raising the possibility of confusion. The Code now sets out the guidance on training in two sections, covering guidance on training as a condition of qualifying for time off and guidance on time off for in role and ongoing training separately.
- 7.6 Respondents were more likely to agree the guidance on the provision of accommodation and other facilities is sufficiently detailed (58% agreed) and sufficiently clear (65% agreed). Some respondents emphasised the view that the guidance could be expanded to include additional factors relevant to reasonableness, more detail on confidentiality and digital workplace facilities. The Code now includes more detail on these areas.
- 7.7 A large majority of respondents agreed that the proposed presentational changes and updated language make the revised Code clearer (79% agreed) without changing their interpretation of the pre-existing guidance (76% agreed).
- 7.8 The Code has been updated with further small drafting changes to amend and update wording, structure and language used throughout following consideration of consultation responses.

- 7.9 Following the consultation, the Code has also been updated with a small number of drafting changes to improve the wording, structure, and overall clarity and usability. The finalised Code has been approved by the Acas Council.
- 7.10 The response to the consultation will be published in due course, setting out further details.

8. Applicable Guidance

- 8.1 The Code sets out statutory guidance on the application of the law and will be freely available on the Acas website (www.acas.gov.uk). Acas will also produce non-statutory guidance to accompany the Code.
- 8.2 The Government will also publish accompanying updated guidance on GOV.UK to support implementation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this Code of Practice, as the Code does not introduce new policy or regulatory requirements. Instead, the Code reflects changes made by the Employment Rights Act 2025, for which an impact assessment has been published setting out the costs and benefits of the relevant measures. The impact assessment is available to view on the following:
https://assets.publishing.service.gov.uk/media/67129bcc8a62ffa8df77b3df/Impact_assessment_strengthening_workers_rights_trade_union_access_recognition_representation.pdf
- 9.2 In developing the Code, Acas has separately conducted a full equality impact assessment which identifies no likely negative impacts.

Impact on businesses, charities and voluntary bodies

- 9.3 The impact on business, charities or voluntary bodies is expected to be limited. Employers may incur some initial familiarisation and transition costs, as well as additional costs associated with increased time off and paid facility time, and the provision of facilities for trade union representatives. There is evidence that the provision of paid time off and access to facilities for trade union representatives supports worker representation and engagement which can deliver benefits for employers, including improved dispute resolution, reduced dismissal rates, and enhanced skills and training.
- 9.4 The legislation does impact small or micro businesses. However, these businesses are less likely to have union members in their workforce and have recognised unions. Where micro, small and medium sized employers do have recognised unions, the requirement to provide time off and facilities will depend on what is reasonable, taking into account the size of the employer and the facilities available.
- 9.5 The Government does not consider an exemption for small or micro businesses to be appropriate or proportionate. The Code is intended to support all employers and employees in applying statutory rights to time off and access to facilities and has been designed to be workable across organisations of all sizes.
- 9.6 The impact on the public sector is expected to be greater than in the private sector, reflecting higher levels of trade union membership and collective bargaining coverage. However, as arrangements for time off and facilities are already well

established, changes are expected to be limited. Any impact is likely to be incremental, including some increase in paid facility time and access to facilities where existing arrangements are adjusted.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is a Post-Implementation Review (PIR) of the policy which will be undertaken 5 years following introduction. The PIR will summarise the evidence that we gather on the policy's effectiveness as well as any learnings that can be applied to future policy making.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Minister for Employment Rights and Consumer Protection has made the following statement regarding Human Rights: “In my view the provisions of the Draft Code of Practice on time off for trade union duties and activities are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This Code of Practice 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”).