

Consultation Response

Make Work Pay: Right of Trade Unions to Access Workplaces

December 2025



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18 December 2025

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law sub-committee welcomes the opportunity to consider and respond to the UK Government's consultation: *Make Work Pay: Consultation on Right of Trade Unions to Access Workplaces*.¹ The sub-committee has the following comments to put forward for consideration.

¹[Make Work Pay: Right of Trade Unions to Access Workplaces](#)

Consultation Questions

Section 1 Requesting and negotiating an access agreement

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

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.

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

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.

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

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.

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

☐ Yes

☒ No

If your answer is no, please explain your reasoning or give an alternative

We agree with the proposed information to be included in a trade union's request. However, in addition, we consider it ought to be made explicit that the union should include in its request details of the workplaces where the workers being sought access to are located. We further recommend that a standardised template response is sent by the trade union to the employer along with their

request for access. This will ensure employers are clear as to the response required of them.

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

☐ Yes

☒ No

If your answer is no, please explain your reasoning or give an alternative.

We agree with the proposed information to be included in an employer’s response to a trade union’s access request, with the exception of the requirement to provide a name and contact details of an appropriate person at the employer with whom the trade union can liaise. We suggest that it would be sufficient to stipulate that the employer, if accepting the access request, will provide contact details at the employer. This would afford the employer flexibility to provide contact details of a named person, department or otherwise.

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

☐ Yes

☒ No

If your answer is no, please explain your reasoning or give an alternative.

We agree with the proposal on how the parties should notify the CAC that an access agreement has been reached. However, we consider that it is overly onerous on the parties to also be required to notify the CAC in the event that an access agreement has been varied. Whilst we recognise the benefit in the CAC having formal notice of an access agreement being agreed or revoked, we believe the parties should be permitted to vary their access agreements as and when agreed between them, without the additional requirement to notify the CAC each time.

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?

☐ Yes

☒ No

If your answer is no, please explain your reasoning or give an alternative.

We consider that 5 working days is insufficient time to permit the employer to fully consider the access request and to make, and provide, a reasoned and informed response. We consider that a more realistic timescale for an employer to respond to an access request is 20 working days. We also recommend that it is made clear in the regulations that the time period will run from employer receipt of the trade union request.

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?

☐ Yes

☒ No

If your answer is no, please explain your reasoning or give an alternative.

We consider that 15 working days is insufficient time to ensure both parties can participate fully in negotiation of the terms of an access agreement. We recommend that the timescale be amended to 20 working days and that it is made clear in the regulations that the time limit will start to run from receipt by the trade union of the employer's response to its access request.

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?

☐ Yes

☒ No

If your answer is no, please explain your reasoning or give an alternative.

We consider that the trade union should be permitted at least 10 working days to make a referral to the CAC. This would ensure the trade union has sufficient time to prepare a referral which contains full information on the trade union's request, thereby minimising the need for the CAC to make further requests of the trade union for information. As such, we consider there should be a limit of 50 working days for a party to request that the CAC make a decision on access following an access request being received by an employer.

Section 2 Central Arbitration Committee (CAC) determinations

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

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.

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?

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.

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

☒ Yes

☐ No – there should be a different time limit.

☐ No – there should be another mechanism to remove dormant access agreements.

☐ No – there should be no requirement for access agreements to have an expiry date.

Please explain your answer.

We anticipate that after an access agreement is entered into, intervening circumstances such as TUPE transfers, declining union representation, the advancement of new unions etc. might render the access agreement no longer fit for purpose. Given there is no statutory right to terminate an access agreement, we consider it is important that there is an expiry date to minimise the instances of agreements remaining in force which no longer meet the needs of the parties. We consider 2 years is a reasonable time limit for access agreements: a shorter time limit would create an undue administrative burden on the respective parties, whilst a longer time limit would increase the risk of access agreements remaining in force which do not meet the interests of the parties.

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).

We consider that the presence of a recognised union representing the group of workers to which the union is seeking access ought to be a basis to refuse access.

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?

☐ Yes

☒ No

If your answer is no, please explain your reasoning or give an alternative.

We consider that the presence of a recognised union representing the group of workers to which the union is seeking access ought to be mandatory grounds for the CAC to refuse access. This would not affect the CAC's discretion to permit access where there is an existing union recognised by the employer in respect of one group of its employees in circumstances where the union is applying for access to another group of workers.

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?

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.

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

☒ No

If your answer is no, please explain your reasoning or give an alternative.

We consider that weekly access will cause undue disruption to employers whilst being difficult for trade unions to sustain. We would suggest that a more manageable frequency of access for the purposes of the model terms would be

monthly. It would remain open to the parties to agree more frequent access if required or considered beneficial.

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

No comments.

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?

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.

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.

No.

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

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

Please explain your answer or suggest an alternative approach.

We do not hold firm views on the maximum value of the fine. We consider, however, that a maximum fine of £75,000 is likely to be a sufficient deterrent for employers to comply. Further, we observe that the factors to be considered by the CAC when determining fines ought to ensure that fines are proportionate to the circumstances of the breach. If option B is pursued, we consider it important that

the Government's intention that a second breach be penalised by a fine up to £150,000 (and therefore a total fine of up to £225,000 for two breaches) is made clear in the regulations.

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

☒ Yes

☐ No

If your answer is no, please explain your reasoning or give an alternative.



For further information, please contact:

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