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IoD response to Make Work Pay: Right of Trade Unions to Access Workplaces

About the IoD

The IoD is an independent, non-party political organisation representing 20,000 company directors, senior business leaders, and entrepreneurs. It is the UK's longest-running organisation for professional leaders, having been founded in 1903 and incorporated by Royal Charter in 1906. Its aim is to promote good governance and ensure high levels of skills and integrity among directors of organisations. It campaigns on issues of importance to its members and to the wider business community with the aim of fostering a climate favourable to entrepreneurial activity in the UK.

The IoD welcomes the opportunity to respond to this call for evidence on the right of trade unions to access workplaces. Making the Employment Rights Bill as workable for employers as possible is of considerable interest to the IoD and its membership, and we are therefore pleased to present our views.

Section 1

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

Yes.

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

Yes.

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

Yes.

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

Yes. Providing information on the proposed purpose of access was highlighted in engagement with IoD members as particularly important:

> "The key I think to this question is actually clarity in the 'purpose' of access to employees, and a balance of access to support whilst not over stepping and creating disruption is essential." – 2-9 employees, Financial services, London

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.

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

Yes.

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?

No. Five working days would be an unreasonably short response period given the everyday operational pressures which employers face. 10 working days would be the minimum reasonable 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?

No. 15 working days may well be sufficient where the employer and the trade union agree on all, or most, of the principles underlying the terms of access. Where there are points of divergence to be reconciled, 15 working days would likely be insufficient. In order to facilitate and encourage genuine dialogue before referral to the CAC, the time period should be no shorter than 30 working days.

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. While a minimum of five working days in addition to the response and negotiation period is reasonable, given that we believe those periods should be 10 and 30 days respectively, the limit for requesting that the CAC make a decision on access should be 45 days following an access request being submitted.

Section 2

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

Yes. However, this should be expanded to all employers with fewer than 100 workers.

An IoD survey of 680 business leaders in November 2025 found that only 10% support the threshold being set at 21 employees, while 74% believe the threshold should sit at a higher level (Figure 1). While the survey found no clear majority in favour of one threshold, the 100 employee threshold represents the midpoint response. Analysis of the qualitative survey data found that the disproportionately negative impact that union access right would have on SMEs is a key concern in the business community:

> "Keep union organisations focused on larger companies that have resources and time to deal with them and avoid damaging small businesses" – 250+ employees, Financial services, London

> "I am not against unions in principle, however, from an SME perspective, unions do not understand us… [SME] business leaders and owners are very close to our staff by nature." – 2-9 employees, Professional, scientific and technical activities, West Midlands

Figure 1: IoD Policy Voice results: November 2025, 680 responses

The government is considering exempting employers with fewer than 21 employees from the union right of access. If an exemption is put in place, up to what size of organisation do you think it should apply?

Up to 21 employees	10.0%
Up to 50 employees	20.1%
Up to 100 employees	21.0%
Up to 150 employees	4.6%
Up to 250 employees	27.9%
Don't know	5.6%
Other	10.7%

Setting the threshold at 100 employees represents a reasonable compromise by exempting the smallest employers – many of whom do not have a dedicated HR function and would consequently struggle to cope with the bureaucracy and demands on staff time which will accompany the union right of access – while maintaining access to medium and large employers.

The alternative proposal of enabling the CAC to take employer size into account, while preferable to there being no consideration of employer size, would do little to tackle the uncertainty and concern which SMEs will experience when this right comes into effect.

If the union right of access is imposed on any employers with fewer than 250 employees, they should be given an additional three years to prepare for implementation from the current planned date of October 2026. IoD research found that only 13% of business leaders believe that SMEs should not be given additional time to prepare (Figure 2), while over a third (35%) believe they should be given an additional three years. The Make Work Pay package will impose significant administrative and financial costs on all businesses but – as acknowledged by the government's own impact assessment – the impact will be borne disproportionately by SMEs. Given that the government has indicated that it considers it likely that unions will, at least in the early stages of the new access rights, focus on large employers, we strongly encourage them to provide all SMEs with certainty in having more time to prepare for implementation.

Figure 2: IoD Policy Voice results: November 2025, 680 responses

Trade union access provisions are due to take effect in October 2026. Do you think that SMEs should be given additional time to prepare for implementation?

Yes, an additional year	20.9%
Yes, an additional two years	16.3%
Yes, an additional three years	35.4%
No	12.9%
Other	9.0%
Don't know	5.4%

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?

No. The CAC should refuse access unless the access agreement specifies a minimum of 10 working days' notice.

While the concept of a minimum notice period before access first takes place is welcome, five working days is insufficient. The lack of detail in policy development thus far is such that employers have little conception of what 'reasonable steps to facilitate access' may in actuality constitute. Securing the necessary resources – such as staff time and meeting spaces – may take more than five working days if it is not to unreasonably interfere with business operations.

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

No – there should be a different time limit.

Access agreements should automatically expire five years after they come into force, to reduce the bureaucracy involved for employers in renegotiating agreements which are otherwise working well. However, it would be appropriate to add a mechanism which enables either side to trigger a renegotiation of the terms of access after two years, should they wish to do so.

Question 4 – In general, are there other circumstances under which you think that the CAC must refuse access?

Safeguards should be put in place to prevent employers from being bombarded with multiple access requests from the same trade unions. If a trade union has an access request denied by the CAC, therefore, it should not be able to reapply for access at the same organisation for a 12-month period.

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. Any other approach risks employers being required to facilitate unlimited numbers of access arrangements, which would worsen the already damaging impact of this policy on business operations.

Government should be explicit in the drafting of regulations that access requests from unions seeking to access the same group of employees represented by another union should be automatically denied, that is, that access requests should only be granted where the proposed employee group is *substantially* different from those covered by another recognised union.

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, the CAC must have the unambiguous right to refuse an access application where it would impose disproportionate or unnecessary resource burdens on an employer. Regulations should be explicit that employers should not be required to invest in any kind of additional infrastructure or staffing for the purpose of adhering to an access requirement. Without such clarity from the outset, there is a significant risk of scope creep.

What is deemed necessary to facilitate the terms of an access agreement must be defined stringently in guidance. The consultation's language on the topic – specifically, "employers should not be required to allocate more resource than is required to facilitate the terms of an access agreement" – is problematic due to its subjectivity.

The government should confirm via guidance that what is considered by the CAC as necessary means the minimum reasonable requirement to achieve the statutory purpose of access, utilising what is already available on-site. It should not be interpreted as what is desirable or optimal from the union's perspective, that is, employers should not be required to allocate any resources beyond reasonable amounts of staff time and reasonable access to existing infrastructure to meet the terms.

Crucially, any requirement in an access request that employers allow staff paid time to attend union meetings, beyond existing agreed arrangements for rest breaks or collective consultation, should be grounds for refusal. Such a request should not be automatic grounds for refusal since some employers may be happy with those terms, but where an employer does not wish to provide paid staff time then the CAC must be clearly instructed to refuse the request.

The fundamental principle must be that the employer's obligation is to provide reasonable facilitation using existing resources, not to fund, build, or staff the union's operational model. Any demand that

creates a new capital cost, significant recurring operational expense, or material operational disruption should be grounds for CAC refusal.

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?

No. A requirement to facilitate weekly access would severely impede business operations in most organisations.

An IoD survey of 680 business leaders found that only 3% believed that access should be up to weekly (Figure 3). The most popular options were once a year (25%) and quarterly (22%). We consider that a requirement to facilitate up to quarterly access would be a reasonable compromise, allowing unions regular access while going some way to mitigating the disruption to business operations which will be necessarily entailed.

Figure 3: IoD Policy Voice results: November 2025, 680 responses

The government is proposing that employers be required to facilitate up to weekly union access (physical, digital or both) to workplaces. How frequently do you think employers should be required to facilitate access?

Once a week	2.5%
Once a month	11.6%
Once a quarter	22.2%
Every six months	10.1%
Once a year	25.3%
Other	20.7%
Don't know	7.5%

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

Model terms should also include termination and renegotiation provisions in the event of the employer recognising a different union and where a significant change to the business has occurred which precludes its ability to reasonably facilitate access as previously agreed.

Model terms should furthermore make provisions to protect employee choice, specifically their ability to opt out of communications from the union if the employer's communications infrastructure allow for it.

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?

No. The union should be required to provide at least 10 working days' notice before access takes place. Two days' notice would be unequivocally insufficient, given the time needed to ensure that facilities and personnel are available and that the visit can be communicated to workers. Two days is short

enough that even a short period of leave among key personnel could make compliance highly challenging.

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.

The CAC should be explicitly directed to take into account union conduct when making determinations on access. The degree to which the implementation of this right of access will damage business productivity and economic growth will depend largely on union conduct. IoD research found that the lack of checks and balances on union conduct in the proposals is a key source of concern for business leaders:

> "If there is such desire to provide unions with such statutory access, there needs to be protection for employers, such as a new Government Body to police trade unions and how they conduct themselves." – 10-49 employees, Manufacturing, North West England
>
> "Encouraging constructive union participation seems reasonable. However, it's not clear how the government intends to manage or prevent intentionally disruptive impacts." – 0-1 employees, Professional, scientific and technical activities, Scotland
>
> "Unions need strict governance, training and updating in workplace practices and the law. There must be a clear set of standards in terms of behaviours with organisations and staff members that are enforceable." – 2-9 employees, Other services, South East England

Giving employers the ability to revoke access agreements where the union has behaved unreasonably would provide employers with significant reassurance that unions will not seek to disrupt business operations.

Section 3

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

Neither of these options. Both options are excessive and pay no heed to the ability of SMEs in particular to pay for what will in most cases be inadvertent breaches.

Employers should receive a warning before fines are applied, and the maximum fine should be set at £50,000 in cases of repeated and deliberate breaches.

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

I hope you have found our comments helpful. If you require further information about our views, please do not hesitate to contact us.

With kind regards,

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