Royal College of Nursing response to Department for Business and Trade consultation on Trade union right of access

About the Royal College of Nursing

With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

1. Introduction

Section 1A proposal

The Employment Rights Bill sets out a framework for how a qualifying trade union (a trade union that has a certificate of independence) may provide an employer with a request for access.

The government proposes that it provides a standardised approach and template for access requests and responses through the new Code of Practice on Trade Union Right of Access, which we will encourage both trade unions and business to use.

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

A standard template promotes consistency, reduces disputes about missing information, and helps employers and unions comply.

The template should be clear, concise and include mandatory fields only. It should allow factual annexes, that reflect the varied nursing workforce and workplaces, without permitting persuasive or promotional language by employers.

Section 2A proposal

The government proposes that a union's request for access must include:

- a sentence making clear that it is a request for access under the Trade Union and Labour Relations (Consolidation) Act 1992
- a description of the group of workers that the union is seeking access to the purpose of the requested access
- the type of access requested (physical and/or digital), including a brief description of the nature of the access that is requested
- the requested date of the first access visit
- information on how the union will provide practical information about the visit, for example an e-mail address or alternative contact details for the trade union
- the notice period the union will give between access being agreed and access taking place for the first time, and any subsequent arrangements for notice
- the frequency of access requested
- in the case of physical access, the location of the workplace(s) to which access is being sought (this can include multiple workplaces in one access request)
- number of members the union has at the workplace(s)/employer

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

[ ] Yes with comment

[ ] No

Our position is to oppose the inclusion of information relating to the number of union members in the workplace(s)/employer. Unions are only required to provide this information to employers during statutory ballot and industrial action periods, and we therefore view it as an excessive instruction.

Section 3A proposal

The government proposes that an employer's response to an access request should include:

• a sentence making clear that it is a response under section 70ZB of the Trade Union

and Labour Relations (Consolidation) Act 1992
• whether the employer accepts or declines the access terms submitted by the trade union (either in whole or in part)

If accepting the request:
• the workplaces where the workers being sought access to are located (if the union has not listed them all in their request)
• the name and contact details of the appropriate person at the employer the union should liaise with as necessary in regard to access
• an email address or alternative contact details for the employer
If rejecting the request:
• if rejected only in part, which part(s) of the request they reject to
• an explanation of why they have rejected the request, in whole or in part
• an email address or alternative contact details for the employer

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

Section 4A proposal
Where trade unions and employers come to an agreement on a request for access, they must notify the CAC that access arrangements have been agreed.
The government proposes, in line with request and response notices, that this notification is provided in writing and directly on behalf of both parties.
As with access requests and responses, the government proposes that it provides a standardised approach and template for notifications to the CAC through the new Code of Practice on Trade Union Right of Access, which both trade unions and businesses will be encouraged to use.

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
Joint written notification to the CAC provides transparency and enables oversight. The notification should include the agreed terms, dates, and any site-specific safeguards.

Section 5A proposal

There may be circumstances where the parties will want to vary or revoke an access agreement, for example if the address of the workplace changed or the workers have moved to a different premises.

To do this, the parties will need to speak to each other and agree on the terms of the variation or revocation, and then jointly notify the CAC.

The government proposes that joint notifications to the CAC of a variation or revocation of an access agreement should be made in writing and directly, for example via an email or letter.

Question 7: Do you agree with the proposal on how joint notifications to the CAC of a variation of revocation of an access agreement are made?

[ ] Yes

[ ] No

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

Written joint notifications create a clear record and avoid uncertainty, and aligns with other recommendations in our consultation response.

Section 1B proposal

The first time-based requirement is the 'response period'. This is the period of time from when an employer receives an access request to when they must respond to the access request, either accepting the terms of access or refusing the terms of access. If an employer does not respond within this period, then the CAC can, upon notification from the trade union, begin its process of deciding whether or not access takes place.

The government proposes that employers have 5 working days to respond to a union's request for access.

Question 8: 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:

Five working days is a reasonable, proportionate timeframe to review and respond while keeping the process timely.

Similar timeframes are used in other statutory processes, such as grievance acknowledgement and flexible working requests.

Section 2B proposal

The second time-based requirement is the 'negotiation period'. This is the period of time between when the employer's response is given and when the parties must conclude negotiations on the terms of access.

If terms are not reached by the end of this period, then the union can notify the CAC and the CAC can begin its process of deciding whether or not access takes place.

The government considers that the negotiation period should be 15 working days. This time period is also consistent with the period for negotiating access requests during the statutory recognition process as provided for by the Employment Rights Bill.

Question 9: 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:

Similar statutory processes such as collective bargaining initiation and flexible working negotiations often allow 14–28 days, so there may so 15 days is a desirable baseline, and there may be scope for a longer negotiation period.

Section 3B proposal

The third time-based requirement is the time in which a referral can be made to the CAC. Where the trade union and employer have not been able to agree on the access request, either party can refer the request to the CAC for a determination.

The government intends to set a maximum period that can elapse between when an access request is made and when an application can be made to the CAC. This is to ensure that access requests are dealt with quickly and employers are not left in an ongoing uncertain position about whether the request for access will be referred to the CAC.

The government proposes that the period of time after which a party can no longer submit a request for the CAC to make a decision should be 25 working days, starting from the day the request for access is submitted.

This would mean that the employer or union has a minimum of five working days to request that the CAC make a decision on whether access takes place or not following the response and negotiation period.

Question 10: 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:
There are no comparable statutory timeframes, however, a 25 day time limit would represent a satisfactory baseline.

Section 4A proposal
The secondary legislation will specify circumstances under which the CAC must refuse access. This will include circumstances that would prejudice the security or defence of the United Kingdom or the investigation or detection of offences.
The government considers that there are several further circumstances under which access must not be granted, and would welcome views on other circumstances where access must not be granted that are not mentioned here.
The government proposes that employers with fewer than 21 workers should be excluded from the new right of access.

Question 11: Do you agree that employers with fewer than 21 workers should be exempt from the right of access policy?
[ ] Yes
[ ] No
Many nursing and care staff work in small or micro-employers (domiciliary care, small care homes, GP practices). Exempting employers under 21 staff would leave vulnerable workers without access and create inequity compared to those in large hospitals.

Nurses often work in settings where access to policies, training, and grievance mechanisms directly impacts patient outcomes. Exempting small employers could compromise standards.

To ease the administrative burden on smaller employers, instead of exemption, they could be offered simplified compliance tools or sector-wide shared resources.

To monitor impact, data collection on compliance burden and workforce satisfaction will allow the adjustment of thresholds if necessary.

Section 4B proposal
In circumstances where a case has been referred to the CAC and they have determined that access should take place, the government believes that employers should have a specified period of time to prepare for access.
The government believes that this should be a period of 5 working days from the notification of the CAC's decision. This will provide employers with sufficient time to prepare for access.

This would be achieved by setting out that that the CAC must refuse an access arrangement unless the agreement contains provision for at least five working days of notice before the first access takes place once the agreement is finalised.
This would provide a minimum notice period. There may be circumstances where the CAC considers there should be more than a five working days' notice period.

Question 12: 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

Five working days give employers time to prepare and manage patient safety. The CAC should be able to require longer notice in specific safety-critical nursing settings, and shorter notice should be permitted by agreement or where urgent worker contact is necessary.

Section 4C proposal
The government proposes that access agreements under the statutory framework should not be granted by the CAC where they do not have an expiry date.
The government proposes that the expiry period should be a maximum of 2 years, starting from the day that the access agreement comes into force.

Question 13: 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.

Nursing staffing levels, patient care models, and workforce policies can change rapidly, especially with evolving healthcare demands.

Despite this, nurses need stable union access to maintain advocacy on critical issues like pay, staffing ratios, and working conditions. Hospitals and unions already face heavy compliance workloads, and frequent renegotiation adds complexity.

Amending the government's proposal for a two- year limit, consideration should be given to a two-year term with automatic renewal.

This would mean agreements renew unless either party requests a review, reducing administrative burden while maintaining flexibility.

Question 14: In general, are there other circumstances under which you think that the CAC must refuse access?

Employers also support a more compliant union to avoid dealing with a stronger, independent one, such as the RCN.

Collective agreements can also be undermined, whereby a "new" union can negotiate competing agreements, weakening solidarity and consistency in terms and conditions.

It should be the role of the CAC, among others, in ensuring this practice of undermining other unions and their members does not take place.

Section 5A proposal

The government proposes that where an employer already recognises an independent trade union to negotiate on behalf of the group of workers in question, the CAC should consider that a reasonable basis on which to refuse access.

This consideration would not automatically prevent access being granted but would make it less likely and help the CAC assess the potential impact of a new access arrangement on workplace harmony and representation.

Question 15: 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:

The RCN is calling for a flexible approach that takes into account situations whereby a specific section of a workforce which may be in a union that isn't recognised (e.g. RCN) because there are more staff in a general union from other roles.

Section 5B proposal

The government proposes that when taking decisions on access, the CAC should take into account that employers should not be required to allocate more resource than is required to facilitate the terms of an access agreement.

Specifically, an employer should not, for the purposes of facilitating the terms of an access agreement, be required to:

- Construct new meeting places in the workplace
- Implement new IT systems

Question 16: 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

Nursing unions often seek access to ensure safe staffing levels, fair working conditions, and adequate resources for patient care.

Limiting access because it requires additional resources could undermine these objectives, which are directly linked to patient outcomes.

Healthcare employers have a duty of care to both patients and staff. Facilitating union access, even if it involves some resource allocation, supports staff advocacy and professional standards, which ultimately benefit patient safety.

While resource constraints are real, in nursing environments, the stakes are higher. Constructing meeting spaces or improving IT systems may not be "excessive" if these changes enhance communication, staff engagement, and compliance with regulatory standards.

We would also want to see clarity on what is categorised as the allocation of "more resources than necessary", particularly as it pertains to the nursing workforce.

Section 5C proposal

The government proposes that weekly access (physical, digital or both) is a reasonable requirement for employers to facilitate whilst also being frequent enough for trade unions to carry out the purposes of access agreements effectively.

Weekly access will provide trade unions with regular contact with workers and allow for continued discussions on an ongoing basis. It would allow unions to develop relationships with workers and assist them in generating momentum behind a future recognition bid.

Question 17: 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

A hybrid approach is one that best reflects the varied workforce and workplaces.

Question 18: Please describe any other terms that you think should be regarded as 'model' terms.

We recommend accessibility provisions for shift, agency and homecare staff, which would include digital meetings, recorded briefings, and provisions that reflect the diversity of the nursing workforce.

Section 5D proposal

It is important that once an access agreement is in force that the union continues to provide sufficient notice ahead of future access taking place.

The government proposes that access applications that contain a commitment from the union to provide at least two working days of notice to the employer of upcoming access taking place as the agreement is implemented should be regarded as a 'model' term by the CAC.

Question 19: 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

Two working days' notice is a reasonable operational safeguard. For recurring, scheduled access (e.g., monthly meetings) parties may agree longer notice cycles; for urgent worker welfare issues, shorter notice should be permitted with documented justification.

Section 5 further considerations

In addition to the circumstances under which the CAC must refuse access, the circumstances under which it is reasonable for the CAC to refuse access, and the 'model' access agreement terms, the government is also able to specify further matters that the CAC must consider when making a determination on access.

Question 20: Are there any further matters to which you think the CAC must have regard when making determinations on access? If so, what are they?

Shift patterns and workforce accessibility to ensure access reaches night and bank staff, and other nursing members of the workforce employed on irregular contracts.

Section 6A proposal

The Employment Rights Bill provides for an enforcement mechanism managed by the CAC for access agreements established through the framework set out in the Bill. Within this system, the CAC can impose a penalty fine for non-compliance with access agreements.

The government proposes a two-stage maximum fine, linked to repeated breaches. This option would introduce two maximum penalty amounts: a standard cap of £75,000 (consistent with the ICE Regulations), and a higher maximum for repeated breaches (an upheld complaint following at least one previous upheld complaint for which the CAC had issued a penalty).

Question 21: Which of the following options do you consider most appropriate for setting the maximum value of the fine?

[ ] A fixed maximum fine of £75,000

[ ] A two-stage system: £75,000 for initial breach and up to £150,000 for repeated breaches

[ ] Neither of these options

Section 6B proposal

The government will specify a list of factors that the CAC must be guided by when deciding values of fines:

The gravity of the failure;

The duration of the failure;

The reason for the failure;

The number of workers affected;

Scale of the organisation;

Previous history of non-compliance.

Question 22: 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:

Seamus Colclough, seamus.colclough@rcn.org.uk

Policy and Public Affairs
Royal College of Nursing
December 2025