

Royal College of Nursing response to Acas consultation: draft Code of Practice on time off for trade union duties and activities

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.

Question 1

Does the draft Code provide sufficient detail on the legal requirement for union equality representatives' right to reasonable time off?

- Yes (with additions)
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also identify where further detail could be added to the guidance along with suggested detail.

RCN response

The draft code mirrors and then enhances the established approach for union equality reps. It sets out the scope of union equality reps' duties and a definition of equality at work, and signposts the training and experience provisions within a familiar reasonableness framework.

For the nursing workforce, the updated code should include one or two shift-work examples under the 'reasonableness' factors that take into consideration safe staffing and handover periods, while maintaining the workers' right to time off for union equality reps. This would aid 24/7 clinical services to adhere to the code without changing the legal standard.

The updated code should also include explicit cross-references to facility provision, because equality casework and data reviews require private space and secure digital access in clinical settings.

More broadly, we share the publicly shared position of other unions and The Institute for Employment Rights, who have made the case for statutory rights for union equality representatives, and for equality to be recognised as a core subject in collective bargaining and recognition frameworks.

Statutory time off for union equality reps under the new Acas framework will underpin that equality activity in workplaces.

Question 2

Is the guidance on union equality representatives' right to time off sufficiently clear?

- **Yes with comment**
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also identify where the Code could be clearer.

RCN response

We welcome the distinction between 'must' (legal duty) and 'should' (good practice).

For the nursing workforce, the Code should include two or three brief clinical scenarios, such as supporting adjustments for pregnant staff on rotating shifts or addressing harassment from patients/relatives.

This would make application in nursing contexts more straightforward while retaining the general principles.

Acas should also provide link, supplementary to the code, to TUC equality-rep materials and the RCN's current EDI strategy, so trusts recognise union-delivered training and the value of structured equality conversations in clinical teams.

Given round-the-clock rosters, a worked example on scheduling would aid application on wards, aligning with existing Code principles on practical implementation.

Combining guidance on union equality representatives and union learning representatives

The new right for union equality representatives to take reasonable time off closely mirrors the existing right to reasonable time off for union learning representatives.

Acas believes there are sufficient similarities to integrate references to union equality representatives alongside references to union learning representatives in the same section. This is particularly the case in paragraphs 41 to 50 (**above**).

Acas recognises presenting the guidance in this way could risk confusion between the two types of representatives. However, Acas believes that:

- where there are differences between the two types of representatives, this is made sufficiently clear
- presenting the guidance in this way prevents significant duplication of information and overall lengthening of the draft Code

Question 3

Do you agree the guidance on union equality representatives should be provided in the same sections as the guidance on union learning representatives?

We are particularly interested in your views on paragraphs 41 to 50.

- Yes (with comment)
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also explain how it should be introduced.

RCN response

We agree in principle, as combining guidance for union equality reps and union learning reps avoids duplication. Clarification is needed, however, as UERs and ULRs have distinct purposes and evidence bases.

A combined section with clearly signposted sub-headings (and an annex of side-by-side examples) would minimise confusion, especially for NHS line managers unfamiliar with equality-specific duties such as analysing workforce race equality indicators or advising on reasonable adjustments.

Unions have long argued for parity of esteem between equality and learning functions, and combining content signals this parity while allowing targeted examples.

We also urge Acas to add a short note on how both roles support constructive relations and problem-solving. This aligns with the Institute for Employment Rights' emphasis on a stronger "voice at work". This ensures employers see both of these union rep roles as complementary rather than overlapping.

Combining guidance for union equality reps and union learning reps, while clearly setting out the differences in these roles are crucial in 24/7 clinical nursing settings.

Duties covered by the right to time off

The Employment Rights Act 2025 sets out the purposes for which the right to time off for a trade union equality representative will apply.

At paragraph 46 in the draft Code (**below**) Acas has sought to set out practical examples of those duties – it is not intended to be an exhaustive list. These examples aim to help users interpret the types of activities that could fall within the right to time off, without making the Code overly prescriptive or unnecessarily long.

(a) Promoting the value of equality at work. Examples could include:

- *understanding current equality initiatives in the organisation*
- *working with employers to raise awareness of equality issues*
- *working to identify and remove barriers to workplace equality*

(b) Arranging learning or training relating to equality at work. Examples could include:

- *obtaining and providing information on learning opportunities relating to equality, including e-learning where available*
- *supporting and encouraging members to access learning opportunities relating to equality*
- *helping to develop and improve local learning opportunities relating to equality*

(c) Providing information, advice or support relating to equality at work. Examples could include:

- *providing basic advice to members on addressing discrimination and harassment*
- *signposting members to other sources of advice, guidance, and support where needed*
- *keeping members informed about workplace developments relating to equality*

(d) Consulting with the employer relating to equality at work. Examples could include:

- *reviewing policies relating to equality and monitoring their effectiveness*
- *considering the impact of policies and procedures on equality at work*
- *identifying equality issues and raising them with the employer*

(e) Obtaining and analysing information relating to equality at work. Examples could include:

- *monitoring under-representation*
- *analysing information about the employer's equality performance through audits and equal pay surveys*

Question 4

Do you agree that the examples set out in paragraph 46 of the draft Code will help users of the Code to understand the duties for which union equality representatives have the right to time off?

- Yes
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also explain why. For example, should something be elaborated on further?

RCN response

These examples align with the statute's non-exhaustive list (promoting equality, advice to members, consulting the employer, obtaining/analysing equality data and preparation).

To help NHS application, Acas should add sector-specific illustrations such as supporting Workforce Race Equality Standard action plans, advising on flexible working for safety-critical teams, participating in equality impact assessments for rostering or redeployment, and working with HR on bullying/harassment prevention.

Equality reps' contribution to culture, retention and safe staffing is well-evidenced in national NHS planning and union practice, making this explicit would increase uptake and reduce disputes about scope on clinical units.

Question 5

Does paragraph 46 of the draft Code provide a sufficiently broad set of examples of the main types of activities to which the right to time off could apply?

- Yes
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also set out additional examples of activities that should be covered.

RCN response

In health settings, there should be references to engagement on disproportionate disciplinary outcomes and career progression (banding/promotion).

As well as disability reasonable adjustments for shift workers and students, liaison on harassment (including third-party) and microaggressions, and equality considerations in recruitment and redeployment.

These reflect common nursing workforce issues and align with the legal purposes set out in Section 168B of the Trade Union and Labour Relations (Consolidation) Act 1992.

Going further, the code should include references to uniform/PPE policies, cultural/religious accommodation, menopause and reproductive health policies, alongside return-to-practice support, as these are issues frequently raised by nursing staff.

Research shows that UER's proactive work reduces conflict and improves understanding of flexible working and adjustments, which is critical in 24/7 care.

Broadening the examples of the main types of activities to which the right to time off could apply will amplify these benefits across nursing settings.

Training for union equality representatives

The Employment Rights Act 2025 sets out that the right for union equality representatives to take time off to carry out their duties applies if both:

- the trade union gives notice in writing that the employee is an equality representative of the union
- the employee has met the training condition

To satisfy this training condition, an employee will need to be able to demonstrate that they have received sufficient training to enable them to operate competently as a union equality representative.

Paragraphs 44 to 48 of the draft Code (below) are intended to set out practical guidance on how an employee could demonstrate to their union that they have received sufficient training. This guidance should also help a union to understand the evidence that might be acceptable for this purpose.

44. To satisfy this training requirement, an employee needs to be able to demonstrate to their trade union that they have received sufficient training to enable them to operate competently in one or more of the activities set out in paragraphs 45 and 46.

45. For a union learning representative, the areas of activity referenced at paragraph 44 are as follows:

(a) Analysing learning or training needs. Examples could include:

- *understanding the different methods for identifying learning interests or needs*
- *being able to effectively identify and record individual learning needs*
- *being able to draw up a plan to meet identified learning requirements*

(b) Providing information and advice about learning or training matters. Examples could include:

- *the development of communication and interviewing skills*
- *knowledge of available opportunities, in order to provide accurate information to members about learning opportunities within and outside the workplace*
- *the ability to signpost members to other sources of advice and guidance where additional support is needed, for example, basic skills tutors or in-depth professional career guidance*

(c) Arranging and supporting learning and training. Examples could include:

- *obtaining and providing information on learning opportunities, including e-learning where available*
- *supporting and encouraging members to access learning opportunities*
- *helping to develop and improve local learning opportunities*

(d) Promoting the value of learning and training. Examples could include:

- *understanding current employer or other initiatives for developing learning and skills at work*
- *promoting the value of learning to members and within trade union networks and structures*
- *working with employers to meet the learning needs of both individuals and the organisation, and appreciating the value of learning agreements and how they may be developed*

46. For a union equality representative, the areas of activity referenced at paragraph 44 are as follows:

(a) Promoting the value of equality at work. Examples could include:

- *understanding current equality initiatives in the organisation*
- *working with employers to raise awareness of equality issues*
- *working to identify and remove barriers to workplace equality*

(b) Arranging learning or training relating to equality at work. Examples could include:

- *obtaining and providing information on learning opportunities relating to equality, including e-learning where available*
- *supporting and encouraging members to access learning opportunities relating to equality*
- *helping to develop and improve local learning opportunities relating to equality*

(c) Providing information, advice or support relating to equality at work. Examples could include:

- *providing basic advice to members on addressing discrimination and harassment*
- *signposting members to other sources of advice, guidance, and support where needed*
- *keeping members informed about workplace developments relating to equality*

(d) Consulting with the employer relating to equality at work. Examples could include:

- *reviewing policies relating to equality and monitoring their effectiveness*
- *considering the impact of policies and procedures on equality at work*
- *identifying equality issues and raising them with the employer*

(e) Obtaining and analysing information relating to equality at work. Examples could include:

- *monitoring under-representation*

- *analysing information about the employer's equality performance through audits and equal pay surveys*

47. *Where an employee needs to show that they have received sufficient training to carry out their duties competently as a union learning representative or union equality representative, they could either:*

- *show they have completed a training course approved by the TUC or by the independent trade union of which the employee is a union learning representative or union equality representative*
- *show the relevant expertise and experience they have previously gained*

48. *Relevant previous experience and expertise could have been gained in areas such as:*

- *for union learning representatives: teaching, training, counselling, providing careers advice and guidance, human resource development*
- *for union equality representatives: leading staff networks focused on equality, involvement in initiatives to address discrimination and harassment*

Periods of extensive on-the-job training and experience gained in shadowing an experienced union learning representative or union equality representatives may also be relevant.

Question 6

What are your views on the guidance in the draft Code (paragraphs 44 to 48)?

For example, does it sufficiently explain how an employee can show they've had sufficient training to operate competently as a union equality representative?

RCN response

The approach is sensible but should state that union-provided equality training (TUC/union curricula) meets the competence test, where it covers law, data skills, and NHS-specific practice, such as WRES/WDES.

Employers should recognise this as Continued Professional Development and facilitate refresher training as laws and organisational risks change over time.

Acas should include indicative outcomes, such as advising managers on adjustments and leading an equality impact reviews. This should be supported by acceptable evidence (certificates, portfolios, case reflections).

The guidance rightly leaves room for sectoral variation, but including illustrative indicators of 'sufficient training' would aid consistency in relation to the core content on Equality Act 2010 when applied to clinical settings.

Section B: Guidance on accommodation and other facilities

There is currently no general duty on employers to provide accommodation and facilities for union representatives. However, there are specific requirements in this regard for representatives engaged in duties related to collective redundancies and TUPE.

The Employment Rights Act 2025 introduces a new right requiring the employer to 'provide the employee with such accommodation and other facilities for carrying out of duties (or undergoing relevant training) as is reasonable in all the circumstances, having regard to any relevant provisions of a Code of Practice issued by Acas'.

Acas has updated the draft Code to reflect this new statutory right and set out practical guidance in paragraphs 72 to 75 (**below**). Acas has focused on setting out general principles in the draft Code, allowing for a clear understanding of the standards it sets out. Acas's accompanying non-statutory guidance will expand on these principles and give further detail.

72. Employers must provide accommodation and other facilities for representatives to carry out trade union duties, or undergo training, as is reasonable in all the circumstances. This right applies where the representative:

- *is entitled to take such time off*
- *has made a request to the employer to provide accommodation and facilities for those purposes*

73. What is reasonable to provide may be different depending on all the circumstances. For example, taking the size, resources and organisational structure of the employer into account could be relevant. Where resources allow, accommodation and other facilities should include:

- *somewhere private in the workplace for in-person or online meetings so representatives can meet with union members – for example, to discuss sensitive issues privately*
- *access to a telephone and other forms of communication used or allowed in the workplace such as email, intranet and internet*
- *the use of noticeboards*
- *the use of dedicated office space, where the volume of the union representative's work justifies it*
- *confidential space to meet a worker involved in a grievance or disciplinary matter, or to discuss other confidential matters*
- *access to members who work at a different location*
- *access to computers and other technology to do online training or take part in online meetings*

74. In addition to this right, union representatives engaged in duties related to collective redundancies and TUPE transfers have separate rights that entitle them to accommodation and other facilities as appropriate.

75. When using accommodation and other facilities provided by the employer, representatives must comply with agreed procedures around:

- *the use of accommodation and other facilities*
- *accessing and using company information*

The agreed procedures will be either:

- *procedures agreed between the union and the employer as part of an agreement on time off*
- *procedures that comply with general rules applied to all workers in the organisation*

In particular, representatives must respect and maintain the confidentiality of information they are given access to where the disclosure would either:

- *seriously harm the functioning of the employer's business interests*
- *be prejudicial to the employer's business interests*

Representatives will have legitimate expectations that they and their members are entitled to communicate without being monitored by their employer. Employers must respect the confidential and sensitive nature of communications between union representatives and their members and trade union.

Rules concerning the confidentiality of communications involving union representatives should be agreed between the employer and the union.

The disclosure of information for collective bargaining purposes is covered by the Acas Code of Practice on that topic.

Question 7

Does the guidance in the draft Code (paragraphs 72 to 75) provide sufficient detail on the provision of accommodation and other facilities?

- **Yes (with additions)**
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also explain why. For example, what should be changed, removed or added to this guidance?

RCN response

They set the right legal principle and recognise reasonableness and the new request-triggered facilities duty framed by reasonableness is well explained, but NHS employers need clearer practical benchmarks and clinical examples.

The guidance should set out specific guidelines for rooms for confidential casework, access to secure email/HR systems for equality data reviews, and safe access to sites and staff on shifts (including nights).

The 2010 Code already frames facilities as enabling effective representation, and aligning examples with that Code will help trusts translate those “reasonable” guidelines into concrete arrangements.

Health unions provide workable model clauses on rooms, IT and release, which Acas should reference in non-statutory guidance to aid local agreements and reduce disputes.

The inclusion of explicit examples of what is typically reasonable looks like in clinical settings is an important step that aligns principle to practice without over-specifying.

Question 8

Is the guidance on the provision of accommodation and other facilities in the draft Code (paragraphs 72 to 75) sufficiently clear?

- Yes
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also, where appropriate, set out additional examples that you would like to see.

RCN response

The guidance is clear at a high level but requires additions that would aid NHS settings.

The guidance should clarify digital and out-of-hours considerations that confirm facilities can include digital access, such as secure accounts and video conferencing tools for multi-site UER work. A short, non-exhaustive list, which may include meeting rooms, secure devices, and digital meeting tools, would mirror the 2010 Code’s approach and help line managers.

The code should also include explicit reference to secure storage and IT access for equality casework, alongside anonymised workforce data analysis.

This broader guidance on accommodation and facilities reflects the needs of the nursing workforce and shift patterns.

A cross-reference back to the reasonableness factors (paras 61–67, 69) would help managers balance operational needs.

Section C: Guidance for smaller organisations

Question 9

Does paragraph 82 provide appropriate practical guidance for smaller employers?

- Yes (with additions)
- No
- Don't know

Please explain the reason for your answer. If you answered no, please also identify what further detail could be provided and where in the Code it could be added.

RCN response

Proportionality and flexible, locally-tailored agreements are essential for small providers in health settings such as community, primary care, social care.

To make it more actionable, we suggest templates for simple requests, examples of pooled/rotational facility time across partner organisations, and guidance on remote access as set out in our previous answer (video meetings, secure portals) in settings where physical workspace is tight.

Unions already supply concise models that scale to smaller employers, and signposting these would speed agreement and reduce administrative burden.

In large providers with many small units, such as community nursing hubs, it would help to state that proportionality may be applied at team/department level where local constraints resemble SMEs, provided decisions remain consistent with the employer-wide framework.

Section D: Restructure of the existing Code

While Acas's existing Code requires updating due to changes in the law, we also see this as a welcome opportunity to carry out a full review of the Code's layout, structure, phrasing and formatting. Website accessibility and usability standards have moved on since the Code was last updated in 2010.

With this in mind, Acas has sought to update the layout, structure, phrasing and formatting of the Code of Practice in line with the public sector accessibility regulations introduced in 2018. At the same time, we have sought to ensure that:

- the draft Code allows for a clear understanding of the practical guidance that it sets out
- the meaning and interpretation of the good practice principles already contained in the existing Code are maintained in the draft Code

Question 10

Do the changes to the layout, structure, phrasing and formatting in the draft Code make clearer your understanding of the good practice principles when compared with the existing Code?

- Yes
- No
- Don't know

Please explain the reason for your answer.

RCN response

Under the Terminology section, there is no mention of Health and Safety Representatives. The first reference only appears at paragraph 13 of the draft code, with another reference to this in the Time Off section under paragraphs 34–35.

There is established case law relating to trade union safety representatives, as well as a specific Approved Code of Practice (ACoP) which holds quasi-legal status, issued by the Secretary of State under the provisions of section 2(4) of the Health and Safety at Work etc. Act 1974 (c.37).

Therefore, Acas should direct employers to the HSE's ACoP from the outset, making clear that the Acas Code does not replace or supersede the HSE's Consulting workers on health and safety (L146). This clarification should appear at the beginning of the document, not partway down at paragraph 13.

The HSE's L146 itself references Acas guidance in relation to dispute resolution, which aligns with issues frequently arising in tribunal contexts.

Elsewhere, updating for accessibility and grouping new rights with existing time-off and facilities rules improves usability and provides clearer signposting for NHS managers.

The consultation materials and sector briefings also make commencement timing (from October 2026 for the new rights) easier to track, which matters for workforce planning in NHS settings.

By preserving the 2010 Code's good-practice principles while modernising navigation, Acas increases the likelihood of consistent, tribunal-resilient decisions on release and facilities.

Crucially, the modernised structure that reflects recent developments in trade union communication and member engagement, the plain language, and explicit 'must/should' usage make interpretation and training easier than the 2010 edition.

This will aid early resolution and consistency across multi-site nursing services.

Question 11

Do the changes to the layout, structure, phrasing and formatting in the draft Code change your interpretation of any of the good practice principles contained in the existing Code?

- Yes
- No
- Don't know

Please explain the reason for your answer. If you answered yes, please also identify where in the draft Code the meaning of a good practice principle has changed and how your interpretation has changed.

RCN response

The substance is largely preserved, but one phrase risks misinterpretation: “where resources allow” in the facilities section could be read as diluting baseline obligations.

Acas should reiterate that statutory rights (time off and reasonable facilities on request) are not contingent on budget cycles.

The ‘Time Off’ section is unduly weighted towards benefiting the employer, with too many hurdles being placed on trade unions to consider in paragraph 62.

In the following paragraph 63 on employer considerations, the text should include a reference to restrictions in accessing alternative dates. This should be added as there can be issues in accessing training or the availability of dates with courses only being run over limited periods.

*Paragraph 65 on work cover should be amended to say that “Employers should ensure that, **wherever possible** and feasible, work cover and workload reductions are provided when time off is required”.*

“Reasonableness” weighs resources but does not permit a blanket refusal. Furthermore, public-sector reporting on facility time shows costs are typically a very small share of paybill, supporting proportionate provision even under financial pressure.

The Institute for Employment Rights’ commentary on strengthening voice and effective remedies sets out why this clarity is important: enforceable, practical rights prevent disputes and support constructive relations.

As we have made clear in previous answers, restating the 2010 Code’s joint responsibilities and adding NHS-relevant examples would ensure continuity of interpretation while reflecting new legal duties.

This update of the 2010 code should reduce disputes by clarifying expectations rather than shifting them.