Acas consultation on the updated draft Code of Practice on time off for trade union duties and activities

Section A: Guidance on equality representatives' right to time off

Detail and clarity of the Code

The Employment Rights Act 2025 introduces a legal right for union equality representatives to take paid time off to carry out specified duties. Qualification for this right mirrors the existing right for trade union learning representatives to take time off.

Acas has added guidance to the draft Code setting out and explaining the new legal requirements for union equality representatives to take time off.

These additions include:

- the duties for which union equality representatives must be allowed
  Finally, *equality* representatives may also be eligible for time off under Section 168 of the 1992 Act, which includes time off for
- "negotiations with the employer related to or connected with matters falling within section 178 … in … which the trade union is recognised by the employer".
- **We believe that these measures are broad enough to include a range of activities, which encompass collective bargaining, negotiating with employers and representing members.** reasonable time off (paragraph 23)
- a definition of equality in the workplace for the purposes of union equality representatives' right to time off (paragraph 24)
- guidance on training for equality representatives (paragraphs 41 to 46)
- wording on relevant previous experience for equality representatives (paragraphs 47 to 50)

Acas has focused on setting out these 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.

Question 1

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

- Yes
- 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.

The Code should provide more detail on the important role that equality reps can play in the collective bargaining machinery of their workplace and make explicit their right to paid time off for such duties.

This was explicitly acknowledged during the passage of the Employment Rights Act 2025. The minister stated in the House of Lords: "We recognise that equality reps have a key role to play in raising awareness and promoting equal rights for all members, as well as developing collective policies and practices that will enable organisations to realise all the benefits of being an equal opportunities employer. New Section 168B(2)(a) therefore provides for the broad purpose for equality representatives to take paid time off for carrying out duties 'for the purpose of promoting the value of equality in the workplace'.

"In addition, new Section 168B(2)(c) makes provision for 'providing information, advice or support to qualifying members of the trade union in relation to matters relating to equality in the workplace', and new Section 168(2)(d) makes provision for 'consulting with the employer on matters relating to equality in the workplace'.

"Finally, equality representatives may also be eligible for time off under Section 168 of the 1992 Act, which includes time off for "negotiations with the employer related to or connected with matters falling within section 178 … in … which the trade union is recognised by the employer".

"We believe that these measures are broad enough to include a range of activities, which encompass collective bargaining, negotiating with employers and representing members."

Exactly the role played by an equality rep will depend on the union, the workplace and the details of the collective agreement. But the negotiation function can be integral to an equality rep's role and should be explicitly covered in paragraph 23 of the draft code (or in any relevant revised section of the draft code).

Question 2

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

- Yes
- No
- Don't know

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

Section 64 (5) of the ERA 2025 reverses the burden of proof so that on complaint to the employment tribunal, it is now for the employer to show that the amount of time off which the employee proposed was not a reasonable amount. The code should draw attention to this key change and provide an example showing how requests for paid facility time will now be treated differently. The draft code, in its current form, fails to address this sufficiently.

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.

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
- No
- Don't know

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

The TUC strongly believes that the guidance on union equality reps and union reps should be separated in the code.

The two roles are distinct. Combining the guidance could lead to employers to equate the two positions, potentially undermining the importance of both roles.

In particular, there is a risk that it gives the impression that equality reps are primarily a source of information on equalities issues. In fact their role is much broader ranging from challenging instances of harassment and discrimination to negotiating with employers on policies and procedures that advance equality.

It should also be noted that affiliated unions tell us that there are likely to be many more equality reps than there are learning reps.

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, 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.

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?

Examples are helpful but the code should include a wider variety of examples outlining the role of equality reps in engaging in a union's bargaining agenda.

As set out in paragraph 16 the collective bargaining agenda can include "equality and diversity". This might include elements like policies around exit interviews for departing staff and how the information is used. Or it might involve ensuring that there are effective equality and diversity policies in place.

Equality reps are also likely to be involved in other elements of the collective bargaining agenda such as pay, in the context of reducing gender pay gaps, and leave policies, which has a particular effect on workers with caring responsibilities. They will also be integral to delivering other aspects of the Employment Rights Act and related legislation such as working with employers to develop effective equality action plans.

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.

See above our answer to question 4 regarding collective bargaining.

This list could be expanded to better demonstrate the range of activities that are likely to involve equality representatives, though this should not be treated as an exhaustive list.

Other areas could include participating in discussions and negotiations about workplace policies that cover equality and inclusion issues; supporting members who raise issues regarding systemic barriers in the workplace; requesting and analysing data about the pay,

progression and success in flexible working requests for workers with protected characteristics; work with members and the employer on equality action plans.

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 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.

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?

Paragraphs 47 and 48 are insufficiently clear on whether it is the union or the employer who determines whether an employee has sufficient training. Reps are likely to be elected locally and then undertake the union's training to support their colleagues. They should be accountable to members first and foremost.

There is a longstanding problem of reps having time off for training approved and then having permission withdrawn shortly before the event due to the apparent business needs of their employer. The code should state that employers should not cancel time off less than seven days before the training takes place. The drafting as it stands focuses far more on the responsibilities of the rep.

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 existing Code includes good practice guidance on the provision of facilities for union representatives (paragraphs 46 to 47). It also includes guidance on including facilities for union representatives in formal agreements on time off between an employer and trade union (paragraphs 56 to 61).

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'. The right will apply to trade union representatives including union learning representatives and union equality representatives. The right will be triggered where the employee requests accommodation or facilities.

Acas has updated the draft Code to reflect this new statutory right and set out practical guidance in paragraphs 72 to 75. 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.

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
- 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?

As it stands, the code states that: "Representatives will have legitimate expectations that they and their members are entitled to communicate without being monitored by their employer." We urge Acas to strengthen this wording to make it clear to employers that it is unacceptable for employers to monitor communications between reps and members. The prospect that their employer might be intercepting their messages can have a hugely deterrent effect on workers approaching their rep about workplace issues. More could be done to emphasise the need for facilities to enable representatives to carry out their duties in a modern workplace. In some circumstances this will mean having access to digital communication to reach colleagues who are based in different locations. Sometimes reps will require meeting rooms to discuss sensitive issues such as disciplinary or grievance proceedings.

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.

The Code should have stronger wording emphasising that accommodation and other facilities should be agreed between the union and the employer. This should include removing the reference to "procedures that comply with general rules applied to all workers in the organisation" in paragraph 75.

The code should make it clear that a trade union representative can request a specific room and equipment be made available as part of a reasonable adjustment to facilitate the meeting.

Section C: Guidance for smaller organisations

Acas is keen to ensure that the guidance contained in the draft Code provides appropriate practical recommendations for employers and trade unions in smaller organisations. As such, Acas is seeking views on the guidance in paragraph 82 of the draft Code. This has been adapted from the wording in paragraph 61 of the current Code.

Acas recognises that agreements between employers and trade unions in smaller organisations may benefit from:

- reaching a mutual understanding on how to make requests for time off, accommodation and other facilities, and the relevant factors to consider when requests are made
- agreeing more flexible arrangements that can be adapted to their specific circumstances

This approach is intended to provide for flexibility and proportionality in organisations where a less flexible agreement setting out a mandatory set procedure may not be practical. Acas would like to understand:

- whether the Code remains appropriate and effective for smaller organisations
- whether providing any additional detail would help smaller employers apply the principles in the Code

Question 9

Does paragraph 82 provide appropriate practical guidance for smaller employers?

- Yes
- 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.

Paragraph 82 should remind small employers that while arrangements might be less formal than in larger organisations, statutory rights relating to time off, training and facilities still apply.

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.