

Paper to lie before both Houses of Parliament until approved by a resolution of each House



Department for
Business & Trade

Code of Practice on Electronic and Workplace Ballots for Statutory Trade Union Ballots

Issued by the Secretary of State pursuant to
section 203 of the Trade Union and Labour
Relations (Consolidation) Act 1992

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UK Government

**(DRAFT) Code of practice on
electronic and workplace
balloting for statutory trade union
ballots**

***(Subject to Parliamentary
Process)***

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Introduction

1. This code provides practical guidance to independent scrutineers, and trade unions, for the use of electronic and workplace balloting methods for statutory trade union ballots. It aims to promote the improvement of industrial relations and good practice in the conduct of trade union ballots and elections by electronic, or workplace voting means.
2. This code also provides information relevant to employers, and union members to support their understanding and participation in electronic and workplace ballots. While every effort has been made to ensure that the code accurately explains the law, only the courts can give authoritative interpretations of the law.
3. This code does not deal with other matters which may impact a trade union's liability in relation to any statutory union ballots and there may be other legal obligations not referred to in this code that parties must comply with.
4. Nothing in this code changes the statutory requirements that must be met for statutory trade union ballots or the existing complaint or enforcement routes. Voluntary union ballots, such as indicative ballots, or those run by the Advisory, Conciliation and Arbitration Service (Acas) are outside the scope of this code.
5. This code applies to the use of electronic and hybrid voting methods for the following ballots under the Trade Union and Labour Relations (Consolidation) Act 1992 (the "1992 Act")
 - a. industrial action ballots –Section 226(1)(a)
 - b. union elections¹ – Section 46(1)(a)
 - c. ballots on union political funds – Section 72C(1)
 - d. ballots on amalgamations of unions – Section 97(1)(b)
 - e. ballots on transfers of engagements between trade unions – Section 97(2)(b) ²
6. This code applies to the use of workplace balloting for industrial action ballots under section 226(1)(a) of the 1992 Act.
7. Any combination of permitted ballot methods can be used for a ballot, and ballot methods can be used in conjunction with each other. For example – a union could ballot all their members by multiple methods. Or different members by different methods. For example, in the case of an industrial action ballot of 500 people, it would be permitted to ballot 250 people by hybrid ballot, 150 people by electronic ballot, 50 people by postal ballot, and 50 people by workplace ballot. Voters are also permitted to be balloted by more than one method.

¹ Please note that where it generally refers to 'ballots' throughout this Code, this is intended to also include these elections.

² "Merger ballots" is used in this code to mean both transfer ballots and amalgamation ballots as set out in Chapter VII of Part 1 of the 1992 Act.

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8. This code does not apply to ballots conducted by the Central Arbitration Committee (CAC), which is addressed in Schedule A1 of the 1992 Act.
9. Other codes of practice may also apply to the individual ballots to which this code relates. Where this is the case, parties should also familiarise themselves with the specific codes of practice that have been issued for the relevant individual statutory ballot type.
10. This code intentionally avoids specifying the electronic or workplace balloting methods in great detail as independent scrutineers' processes will vary by design and architecture.

Background to the code

11. Trade union statutory ballots must meet specific requirements under the 1992 Act.
12. Prior to The Trade Unions (Permissible Means of Voting) and Employment Rights (Unfair Dismissal) (Amendment) Order 2026 ("the 2026 order"), most statutory union ballots were only permitted to be conducted by post.
13. The 2026 order has expanded the range of permitted balloting methods to include the use of electronic balloting methods and workplace voting as options permitted for use when conducting the specific statutory ballots under the 1992 Act as set out in paragraph 5 of this code.

Legal status under the 1992 Act

14. The code is produced under section 203 of the 1992 Act. The code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. However, section 207 of the 1992 Act provides that any provisions of this code are to be admissible in evidence in proceedings before a court or tribunal, and are to be taken into account in any proceedings by the court or tribunal where it considers them relevant.

Must and should distinction

15. Where the term '**must**' is used in this code of practice, it indicates a legal requirement which must be complied with.
16. Where the term '**should**' is used in this code of practice, it indicates something that is recommended by the Secretary of State to be done, but there is no legal requirement to do so. However, the recommendation is intended to be admissible in evidence or taken into account by a court or tribunal where it considers the recommendation to be relevant.

Applicability to statutory ballots under the 1992 Act

17. The two electronic balloting methods permitted are:

- a. **Electronic voting** – the independent scrutineer distributes the voting access method to voters electronically. This could be done by sending the voting access method in an email to a personal email address or in a message to a personal mobile telephone number or internet message via a qualifying internet messaging service. The voter can then use the voting access method to access the electronic voting form and cast their vote electronically.
- b. **Hybrid voting** – the independent scrutineer sends a physical voting paper to the voter (with a return address for voting by post) as well as a voting access method which the voter may use if they wish to cast their vote electronically. The physical voting paper and voting access method must be sent to the voter by post.

18. **Workplace voting** - an in-person ballot, conducted on or near to the site of the employer for which the industrial action ballot is being held.

- a. The consent of the employer is mandatory before workplace balloting can be used for an industrial action ballot.
- b. Workplace balloting requires the voter to attend the voting location at which the ballot is to take place and provide a form of identification as specified by the independent scrutineer. The independent scrutineer confirms the individual's eligibility to vote by checking a list of those individuals to be balloted by workplace voting that has been provided to them by the union and provides a voting paper to the voter to be marked by the voter and dropped into a ballot box. The entire process must be operated by the independent scrutineer.

Ballot Timing

19. It is possible to have different start and end dates in respect of different voting methods where a combination of voting methods are being used for the conduct of a ballot. However, the ballot must continue to have a single overall opening and closing date irrespective of ballot method(s) used. For example, a ballot that is open for 4 weeks and is conducted via multiple permitted balloting methods, could include use of a workplace ballot for a number of days within that 4-week period, alongside use of hybrid voting that was open for the full 4 weeks.

Responsible person - factors and criteria

Responsible person

20. The “responsible person” is the person who decides which method or combination of methods of voting will be used to conduct a statutory ballot. They also decide which voters will be entitled to use which methods.
21. The responsible person is the trade union calling the ballot. The responsible person may be anyone within the trade union that the union considers would be suitable to conduct the role of responsible person.
22. For a union election, the responsible person should not be any person standing for election.
23. For transfer ballots, the trade union that is transferring is the responsible person. For amalgamation ballots, each of the amalgamating trade unions is their own responsible person.

Explanation of Responsible Person’s Role

24. The “responsible person” must determine, in relation to a ballot or election, which of (or combination of) the permitted means of voting are to be used. This applies even if the trade union plans to conduct the ballot entirely by post.
25. When making a determination regarding the method or combination of methods to be used when holding a statutory ballot or election, factors and criteria must be applied by the responsible person.
 - a. **Factors** must be taken into account by the responsible person.
 - b. **Criteria** must be applied by the responsible person. The Responsible Person’s determination will not be valid if it does not satisfy the criteria.
26. The responsible person may wish to record their considerations of the factors and criteria by writing their considerations in a draft balloting plan so they have an audit trail of their determination in case of any challenge. A balloting plan could be developed and agreed between the responsible person and the independent scrutineer to describe how the eligible voters are to be balloted, and record in writing the factors and criteria considered by the responsible person in respect of the chosen voting methods.

Factors

27. In making a determination of the permitted means of voting to be used, the responsible person must take the following factors into account:

- a. Whether an electronic voting platform would be accessible to those entitled to vote.
- b. Where those who are entitled to vote have expressed views about the means of voting they would prefer, those views.
- c. Such other matters as the reasonable person considers appropriate. This could include matters such as trade union rules, or other considerations that the responsible person wishes to make.

28. In making a determination that the means of voting is to include electronic voting, hybrid voting, or workplace voting, the responsible person must also take the following factors into account:

- a. the level of security risk for the ballot or election (noting that security may be particularly important where a ballot or election is politically sensitive or where there is a risk of attempted interference);
- b. any risks associated with a particular permissible means of voting, including:
 - i. the risk of disruption to the operation of the electronic voting platform.
 - ii. risks which have, to the responsible person's knowledge, been identified in previous scrutineer's reports.
 - iii. in relation to an industrial action ballot, the risk of interference with the ballot or coercion of persons entitled to vote in the ballot.
- c. where the ballot or election is urgent, whether the use of a particular means of voting will make it more difficult to ensure that those entitled to vote have a convenient opportunity to do so.
- d. whether some persons who are entitled to vote would benefit from the availability of an alternative means of voting.

Criteria

29. In making a determination of the permitted means of voting to be used, the responsible person must apply the following two criteria:

- a. Criteria One: the determination must, as far as reasonably practicable, allow every person who is entitled to vote in the ballot or election to have the opportunity to do so.
- b. Criteria Two: the responsible person must not be aware of any reason why it would not be possible to satisfy the requirements of the relevant

legislation which relate to the means of voting which are to be used in the ballot or election.

Postal voting

30. When making a determination to conduct a ballot entirely by post, Criteria One is considered to already be met and the responsible person only needs to apply Criteria Two (in paragraph 29b), and take account of the relevant factors – namely the three set out in paragraph 27 a, b, and c - before making the decision to use this method.

Single method of voting

31. In making a determination that a ballot is to be conducted by electronic, hybrid and/or workplace voting, the responsible person must consider whether voters would benefit from having more than one method of voting. For example: voters may need to take leave from work during a workplace ballot and may benefit from having the opportunity to vote by another method.

Multiple methods of voting

32. A determination by the responsible person to conduct a ballot or election by more than one means of voting must ensure that everyone entitled to vote in the ballot or election, is assigned at least one of those means of voting.
33. Different voters can be assigned different methods of voting. Voters can also be assigned more than one method of voting. To assign the voting methods the determination can either identify exactly which voters will be assigned which method(s) of voting or set out which descriptions of voters will be assigned which method. For example, the responsible person might determine that a ballot is to be conducted by hybrid voting and electronic voting. To assign the voting methods to voters, the responsible person might provide that voters without a recorded personal email address, telephone, or qualifying internet message contact method will use hybrid voting and voters who have a suitable electronic contact method will use electronic voting.
34. Where the responsible person determination permits that voters will be eligible to vote by hybrid voting or by more than one means of voting, the determination must make provision for which vote is to count in the event a voter attempts to cast more than one vote. This is further detailed in the section *hierarchy of voting methods* in this code.

Moving voters between voting methods

35. The responsible person's determination must assign voting methods to all eligible voters before the ballot or election opens. The responsible person's determination may allow voters to move between permitted methods of voting following the commencement of the ballot or election. It may also select more than one voting method but provide that the ballot will be conducted entirely by one method with the other method(s) as a "backup" option.

36. Any such determination should describe when a voter may be moved between selected voting methods. For example, in the case of a determination that a ballot will be conducted by electronic and postal voting, the determination may state that voters who are given an electronic vote, may also be given a postal vote if they report being unable to access their voting access method within a period that will still enable a postal vote to be cast before the ballot closes.
37. Where electronic voting is to be the main method of balloting, it is recommended that the responsible person, when making their determination, considers a backup method of balloting as an option to be used such as post or hybrid voting. If there are technical difficulties with the electronic voting method that prevents eligible voters from receiving their ballot, and no backup has been provided for in the determination, it may mean that the ballot or election has to be restarted under an alternative method with a new determination by the responsible person. Whereas if the responsible person provides for a backup option in their original determination, then voters experiencing technical difficulties can be moved to other methods. This would not mean that a union has to prepare backup voting papers for all voters "just in case" but would enable a voter to be moved to postal or hybrid voting without requiring the ballot to be restarted and a fresh responsible person determination made.

Scrutineer Appointment

38. The union may want to appoint an independent scrutineer as the first step of calling a ballot. This may enable the responsible person to seek the views of the independent scrutineer when making their determination and creating their balloting plan. It may also make it easier for the independent scrutineer to satisfy themselves that all the required steps and legislative obligations have been complied with.

National Sensitivity and Interference Risk

39. The level of security risk of the ballot or election must be considered in making a determination that a ballot is to be conducted by electronic, hybrid and/or workplace voting.
40. In the case of any statutory ballot being conducted that may attract attempted interference from hostile actors, the responsible person may wish to consider any potential security trade-offs that different balloting methods may have. Hostile actors could include but are not limited to nation states and hacking groups. This may be the case if the responsible person considers that a ballot is any combination of significant in size, sensitive, or relates to a ballot with regards critical national infrastructure or public services.
41. The responsible person and their independent scrutineer may want to consider seeking advice from the National Cyber Security Centre (NCSC) in this case to assure the security of the ballot and confidence in its outcome.

Seeking views from members

42. The union may contact members ahead of the ballot (if the union chooses to do so) to seek the voter's preference as to how they would like to be balloted, or to seek electronic contact details. This contact seeking preferences may be via workplace email address or any other means of contact the union chooses. However, there is no requirement for the union to do this.

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Electronic voting requirements

43. Nothing in this code places any requirement on the union to use a particular brand or product of electronic balloting created by a specific independent scrutineer.
44. The electronic ballot method could involve the use of apps, websites, web-apps and any other technological process provided it meets the legislative requirements.

Scrutineer standards

45. The trade union must appoint an independent scrutineer to conduct a statutory union ballot using electronic balloting methods. Only persons that meet the conditions in or are listed in the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993 may act as an independent scrutineer for these ballots.
46. The independent scrutineer must hold one or more valid Cyber Essentials Plus Certificates; in respect of the computer networks and systems they intend to use for conducting the ballot. The certificate must be valid for the duration of the ballot.
47. Holding the Cyber Essentials Plus certification will mean that the scrutineer has appropriate technical controls in place to conduct electronic balloting. Independent scrutineers should also have in place the following process controls:
 - a. Service Protection Policies, Processes, and Procedures - the independent scrutineer should: 1. define (set out in writing), 2. implement (set in place internal processes, policies, and procedures), 3. communicate (ensure internal staff understand the requirements) and 4. enforce (ensure compliance with) policies, processes and procedures that codify their overall approach to securing systems and data that support the operation of essential functions
 - b. Identity and Access Controls - the independent scrutineer should understand, document and manage access to networks and information systems supporting the operation of electronic voting systems. Users (or automated functions) that can access data or services should be appropriately verified, authenticated and authorised.
 - c. Data Security Standards - Data stored or transmitted electronically must be protected from actions such as unauthorised access, modification, or deletion that may cause an adverse impact on essential functions. Such protection should extend to the means by which authorised users, devices and systems access critical data necessary for the operation of electronic balloting. It should also cover information that would assist an attacker, such as design details of networks and information systems.
 - d. Risk Management Processes - the independent scrutineer should take steps to identify, assess and understand security risks to network and

information systems supporting the operation of essential functions. This includes an overall organisational approach to risk management.

48. The independent scrutineer should work with the independent assessor for Cyber Essentials Plus to define the scope of the Cyber Essentials Plus audit to include the hardware, systems, devices, networks, processes, and policies relevant to their delivery of electronic balloting.

Voter access and distribution of voting access methods

49. The trade union should ensure that the period between sending out voting materials (voting papers and voting access methods), and the date on which the ballot closes is long enough for the eligible voters to consider and cast their vote.
50. The hierarchy statement must be sent with hybrid voting materials. This is because the voter may attempt to vote by post and electronically. The hierarchy statement must also be sent with electronic voting materials when a voter is eligible to vote by one or more other methods. The statement will inform the voters that only one vote will be counted, and that if they vote more than once, which vote will count. This is further detailed in the section *hierarchy of voting methods* in this code.
51. When the independent scrutineer issues the voting access methods to eligible voters, they must include the electronic voting instructions (this can be a link to them if sent electronically). Those instructions must state the name of the scrutineer and the date by which the ballot must be returned. The instructions should also explain how to obtain technical support.
52. The independent scrutineer should by default restrict access to the electronic voting system from IP addresses located outside of the UK unless advised otherwise by the union. Where a union expects voters to be based, or to be frequently outside the UK (e.g. in sectors such as shipping or aviation), the union should discuss this with the independent scrutineer to ensure that the electronic voting system is accessible by those voters.
53. Where an individual is to be balloted by electronic voting, and hybrid voting, they can be sent the same voting access method by post and by multiple electronic means (for example, email and/or SMS message). However, if the scrutineer will need to know whether a vote cast electronically was cast using the electronic voting method or the hybrid voting method, different voting access methods may need to be sent to the voter for the two different methods.

Electronic voting distribution methods

54. The voting access method must be distributed by the independent scrutineer using one or more of the following methods:
- a. An email to a personal (private) email address provided to the union by a voter for the purposes of communication from the union. The email address must not be an email address that is provided to the voter by or is controlled by the voter's employer (in their capacity as their employer), or

the trade union. For example, an email provided by a company to their employee for the purpose of work that can be controlled by the employer is not permitted to be used. Whereas an email address provided by that company in their capacity as an Email Service Provider that is available for public sign up is permitted to be used.

- b. A mobile telephone message to a mobile telephone number provided to the union for the purposes of communication from the union. The mobile telephone number must not be a number that has been provided to the voter by or is controlled by the voter's employer in their capacity as the voter's employer or the trade union. If the mobile telephone number has been provided to the trade union as a 'work number', then it must not be used.
- c. A message sent via a qualifying internet messaging service associated with a mobile telephone number (that meets the same requirements as those in 54.b) provided to the trade union by a voter for the purposes of communication from the union.

55. The voting access method must be sent to a unique email address or telephone number.

- a. Only voting access methods associated with a single voter can be issued to a single email address or mobile telephone number.
- b. This means if the trade union provides the same email address or telephone number for two voters to the scrutineer, the scrutineer cannot send voting access methods to those voters using that email address or telephone number. This is intended to prevent the use of shared email inboxes or shared mobile telephone numbers (with shared qualifying internet messaging accounts), which could enable multiple ballots to be cast by one individual, risk voter secrecy and potentially deny eligible voters the opportunity to vote.

56. Before the contact information of eligible voters is provided by the union to the independent scrutineer, the union should review the information to check that there are no workplace or union-controlled email addresses, workplace telephone numbers, or duplicate email addresses or mobile telephone numbers included. The scrutineer should also review the contact details they receive to check that there are no workplace or union-controlled email addresses or (to the extent that they can identify them) phone numbers. Where there are duplicates, or workplace or union contact information provided, the union must seek updated information for the voter which complies with the requirements if the voter is to be balloted via the electronic voting method. Where there are duplicates provided to the independent scrutineer by the union, the independent scrutineer should inform the union. If no alternative contact method is available that meets the requirements of the 1992 Act, electronic voting cannot be used for that voter. The independent scrutineer may also wish to undertake reachability or other fraud prevention checks to confirm whether a mobile telephone number is active and can receive messages.³

³ Nothing in this code prevents the issuing of voting papers to a shared physical address.

57. If after attempting to contact eligible voters using the contact information provided the independent scrutineer finds that the contact information no longer works (for example if they receive a bounce back from an email, or a report that a mobile telephone message is undelivered) the independent scrutineer should inform the union. The union should then either provide the correct contact information to the independent scrutineer or refer to the determination made by the responsible person to see if the voter has or can be given an alternative 'back-up' method of voting to ensure the voter receives the opportunity to vote.
58. Where the distribution method used is mobile telephone message, it is recommended that the provider of the messaging service is a UK-based provider to ensure that voters do not receive mobile telephone messages from abroad that they may consider to be spam or see blocked by spam filters. It is also recommended that the independent scrutineer consider any guidance issued by the NCSC for mobile telephone messaging and telephone use in business communication.

Hybrid voting distribution methods – statutory union ballots

59. The independent scrutineer must ensure that the hybrid voting materials posted to the home address include the electronic voting instructions along with the voting access method in case the voter wishes to return their vote electronically instead of via the postal system.
60. When hybrid voting is used, the voter will be provided two potential routes for voting (post and electronic). Therefore, the hierarchy statement and explanation of its effect must also be sent along with the voting materials.⁴

Electronic voting platform requirements, and cybersecurity

Voting platform requirements

61. The independent scrutineer must ensure that the electronic voting system⁵ used for the electronic balloting methods is compliant with data protection and computer security legislation, wherever relevant.
62. The electronic voting platform and electronic voting form provided by the independent scrutineer for electronic balloting should be perceivable, operable, understandable and robust for any user to utilise. Any platform should be operated to the latest Web Content Accessibility Guidelines.⁶ Any platform should be device and browser agnostic to enable widespread use. It must also be compatible with assistive technologies that enable voters with disabilities to use the platform to cast their vote.

⁴ Or otherwise provided in the case of merchant seamen who may be provided their voting materials aboard a ship, or at the ships port.

⁵ Where this code refers to an electronic voting system it does not tie the independent scrutineer to a specific process or technology, and the independent scrutineer is permitted to develop and use any 'system' for electronic balloting that meets the requirements of the legislation.

⁶ <https://www.gov.uk/service-manual/helping-people-to-use-your-service/understanding-wcag>

63. The electronic voting platform used for e-balloting should have a plain English description of the platform, and instructions (electronic voting instructions) on how to use the electronic voting platform must be sent to eligible voters alongside their voting access method. For hybrid voting, a physical copy of the instructions must be included in the envelope with the hybrid voting materials. For electronic voting, an electronic copy of, or a link to, the instructions must be sent with the electronic voting materials.
64. The independent scrutineer must ensure that data is stored in secure databases and encrypted.⁷ There must also be end-to-end encryption for the electronic vote transmission from the voter to any vote storage database. Data should be encrypted to a secure standard that ensures a level of security appropriate to the risk posed and assures the confidentiality and integrity of the information. Encryption should be at minimum to the AES256 standard.
65. Independent scrutineers may wish to seek advice from the NCSC to support the security of their electronic voting system.

Voting access method and electronic voting form requirements

66. Each voter who is to be balloted by electronic balloting methods must be sent a voting access method by the independent scrutineer to enable them to access the electronic voting platform and submit an electronic voting form for the ballot in which they are entitled to vote. This voting access method must be linked by the independent scrutineer, to the individual voter through the unique identifier (*detail regarding the unique identifier is in the section titled database requirements*).
67. The voting access method must be generated by the independent scrutineer in a fashion that ensures no two voters shall ever be issued the same voting access method.
68. The voting access method must be resistant to code prediction or reverse engineering.
69. Examples of possible voting access methods are, but are not limited to:
- a. login codes – whereby an eligible voter is provided with a code or combination of codes that they can use to access the electronic voting platform.
 - b. usernames and passwords – whereby an eligible voter is provided with a username and password that they can use to access the balloting platform.
 - c. Links that enable access to the voter's electronic voting form.
70. Where an independent scrutineer distributes voting access methods to the voter via multiple methods of communication, the voter casting an electronic vote via one access method must result in any other voting access methods being

⁷ The 1992 Act refers to voting information, voting access method information, relevant personal information and unique identifiers when referring to the data that must be held in secure databases.

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deactivated to prevent multiple electronic votes by the same person. For example, if the voter can access the electronic voting platform via a voting access method provided by mobile telephone message, email, and post, and chooses to access the platform via the voting access method received by email and submit their electronic voting form, the voting access methods received by mobile telephone message and post must be deactivated. All voting access methods provided to a voter must be deactivated once an electronic voting form has been submitted by the voter, or at the close of the ballot if no vote has been cast.

71. Upon the use of the voting access method by the voter, the voter must be presented with the electronic voting form which must contain all the information as required by the 1992 Act for the ballot in which they are engaging, alongside the option(s) for casting their vote(s).
72. The voting access method(s) must:
- a. enable an individual voter to access the electronic voting platform, and their electronic voting form for the purposes of casting their votes(s) in the statutory ballot.
 - b. only permit eligible individuals to vote in ballots to which they are eligible to vote.
 - c. only enable an individual to vote once via the electronic voting form on the electronic voting platform.
 - d. have the ability to be re-issued by the independent scrutineer in case of need to issue new access methods. This may be due to technical issues, security breaches, or other reasons.
73. The electronic voting form must:
- a. Provide the option to “spoil” the ballot on the electronic voting form (as a way of showing dissent or opposition to all options available for a question) for each question in the ballot for voters to select if they so choose.
 - b. Include the name of the scrutineer
 - c. Include the date by which the form must be submitted
 - d. Include the hierarchy statement (if applicable)
74. Once an individual has submitted their electronic voting form using the electronic voting platform, they must be displayed a message on their screen confirming that their vote has been received. This message should not show how the voter has voted, and the voter should not receive any other confirmation (for example by email) that they have cast a vote, to prevent the possibility of the voter being asked to show how they have voted by a third party.
75. The independent scrutineer must ensure that every vote cast by electronic means is stored exactly as cast, without modification, and with a record of the IP address, time, and date of voting, to ensure that there are clear records of a vote being cast. Further detail on the vote storage requirements is in the section titled *Audit trail logs and data retention*.

Database requirements

76. Each eligible voter must be assigned a randomly generated “unique identifier” for the purposes of internal independent scrutineer handling. This identifier must be used for all handling purposes when referring to individual voters. The contact information used to distribute any voting papers and/or voting access methods should not be used to identify voters once the unique identifier has been assigned and the voting access method distributed.
77. The purpose of the unique identifier is to ensure that when a voter casts their vote via the electronic voting form, and their vote is stored in the voter database, any unauthorised access to the voter database will not enable identification of who has voted, or how they have voted. This will ensure voter identity is stored separately from the ballot returns. This process will continue to permit an independent scrutineer to authenticate the validity of votes and ensure that they can also provide support to individual voters in the case of technical issues, by comparing the unique identifier with the user database to identify an individual voter where required.
78. The unique identifier must be associated and stored with both the relevant personal information and the voting information, which must be stored separately. i.e.:
- a. Database one (the user database) – will hold the unique identifier, such of the relevant personal information as is necessary for administering the ballot, and any other information required by the independent scrutineer that is not voting information. The voting access method information may be held in this database
 - b. Database two (the voter database) – will hold the unique identifier, such of the voting information and voting access method information as the independent scrutineer possesses, and any other information required by the independent scrutineer that is not relevant personal information.
79. It should be noted that:
- a. Separation of databases can be achieved by database segregation. The legislation does not require distinct standalone servers for each individual database relating to the electronic voting system.
 - b. The terms “user database” and “voter database” are indicative, and do not require an independent scrutineer to use these terms or restrict their electronic balloting system to using only two databases.
 - c. Relevant personal information and voting information must not be stored together in one database unless one of the following legislative exceptions applies: 1. Necessary in response to a request for technical support, 2. Required by a court order, 3. Required for the purposes of the investigation of crime or criminal proceedings, 4. Required under a request or order made by the Certification Officer, or 5. Required under another enactment.

80. The independent scrutineer's handling of voters' personal data must comply with the UK General Data Protection Regulation (UK GDPR) and other data protection legislation. This includes the requirements on international transfers if the scrutineer's processing of personal data involves any data being transferred outside the UK.

Database integrity and access controls

81. The electronic voting system must be designed and operated so that it is not possible for anyone to access personal information, voting information, or to identify how or whether a voter has voted, without the scrutineer's authorisation.
82. With regard to the electronic voting system, the independent scrutineer must:
- a. Ensure all voting information, relevant personal information, voting access method information and unique identifiers, stored in user and voter databases or otherwise, is encrypted to a secure standard that ensures a level of security appropriate to the risk posed and assures the confidentiality and integrity of the information. Encryption should be at minimum to the AES256 standard.
 - b. Ensure that the server (database(s) and/or infrastructure) on which the electronic voting system is hosted:
 - i. Is protected at all times by physical security. For example, this could involve access authentication to gain access and 24/7 physical and CCTV security.
 - ii. Prevents access without the authorisation of the owner. For example, this could be met by having 24/7 digital monitoring, and virtual access controls and logs.
 - iii. Has timestamped records of physical and digital attempts to access the server.
83. If using cloud infrastructure, the independent scrutineer may wish to ensure that the ballot is not in relation to industrial action at an organisation owned by the provider of the servers upon which the database and/or electronic voting system is hosted.
84. Access to the user database, voter database, and administration of the electronic voting system before, during, and after the electronic ballot operation must be strictly controlled by the independent scrutineer. Only named individuals under direction of the independent scrutineer, with multi factor authentication methods may be permitted to access any data related to the ballot.
85. The independent scrutineer must also:
- a. Have in place role-based access controls for the electronic voting system.

- b. Protect digital and physical access to voting information, relevant personal information, voting access method information and unique identifiers using multi factor authentication.
- c. Report any changes made to permissions to access and edit the electronic voting system, including those that would enable editing of live voting data throughout the balloting period, in their post-ballot report.

Electronic voting system security

- 86. The independent scrutineer must ensure that the electronic voting system has in place controls to ensure that the electronic voting platform and electronic voting form is readily available for use throughout ballot.
- 87. The independent scrutineer should have in place procedures that ensure an electronic ballot can continue in the case of interference, power outages, data failure, data corruption, or other issue that delays or interrupts the ballot. The union and the scrutineer should agree in advance of the ballot how and whether they will proceed with the ballot in the case of technical challenges such as system downtime. This agreement should include a threshold of permitted downtime for electronic balloting methods (period in which the electronic balloting system is not operational) before the ballot would need to be re-run.
- 88. A ballot may not be extended under the 1992 Act once it has opened, therefore if an electronic voting platform is unavailable for a period of time that makes it unlikely the ballot has provided voters a convenient opportunity to vote, the ballot may need to be re-run.
- 89. The independent scrutineer should take appropriate and proportionate measures to prevent and minimise the impact of incidents affecting the security of the network and information systems used for the provision of an electronic voting system, with a view to ensuring the continuity of the balloting service. The electronic voting system should be designed so that there is no single point of failure.
- 90. The independent scrutineer should have security information and event management (SIEM) tools in place to continually monitor the electronic voting system and alert them to any unauthorised intrusion. Logs from this monitoring should be reviewed to detect anomalies or security threats in real time.
- 91. The independent scrutineer should have clear, defined, and audited back up procedures in place to ensure continuity and recovery of data.
- 92. The independent scrutineer must have methods in place to monitor and flag suspicious activity including but not limited to any voting patterns that cause suspicion.
- 93. Capturing the IP address associated with a vote is required for audit and investigation purposes and must be held by the independent scrutineer as part of the voting information.

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94. The independent scrutineer should regularly back up the electronic voting system throughout the operation of the ballot with both full and incremental backups stored securely.
95. The independent scrutineer may also wish to test the security of the electronic voting system and retain details of that test before they commence a ballot, to ensure that they can demonstrate the platform met the required standards.
96. To assure the security of the electronic voting system, independent scrutineers should consider arranging for their electronic voting system to undergo periodic penetration testing.
97. Any unauthorised access to the electronic voting system, whether by an employee of the independent scrutineer or external party, will mean that the ballot has not complied with the legislative requirements of Schedule A1A to the 1992 Act. This will mean that the scrutineer will be unable to issue a post-ballot report stating that they are satisfied that there are no reasonable grounds for believing that there was a contravention of a legislative requirement. The union and independent scrutineer should have in place a contingency plan for this circumstance ahead of ballot commencement.
 - a. The independent scrutineer should determine in advance which persons are authorised to access the electronic voting system. During the operation of a ballot the authorised persons should not change once the ballot goes live. However, the scrutineer may need to update the authorised persons in cases of sickness, or assistance required to investigate issues.
98. If the unauthorised access is suspected to be by hostile actors, the independent scrutineer should consider making the NCSC and relevant law enforcement aware.

Audit logs and data retention

99. Nothing in this code or the 1992 Act requires the audit logs for electronic balloting to be a single document, or a single unified 'trail'. It is at the discretion of the independent scrutineer as to how their audit is conducted and log(s) generated / stored.
100. However, the independent scrutineer must, when operating the electronic or hybrid vote methods, gather, record, and securely retain the audit information for the purposes of ensuring a disputed ballot can be audited by an independent third party or enforcement body or court and a ballot result verified.
101. The audit information must be collected throughout the entire balloting process, commencing with the set-up of the electronic voting platform by the independent scrutineer, to the closure of the ballot and distribution of the scrutineer's report to the trade union. The independent scrutineer is free to adapt the audit process to their method of balloting so long as they gather the information required by the 1992 Act.
102. The audit log(s) are not published.

103. The 1992 Act does not define the audit requirements beyond the level of information that must be maintained. This allows flexibility to enable differing technical methods and processes offered by independent scrutineers to be provided, while also permitting independent scrutineers to utilise their expertise in determining how to collect the required audit data.
104. The independent scrutineer should take steps to ensure that the audit logs are a true reflection of the ballot process, conduct, and operation. Any required corrective action to audit logs must be recorded within the audit logs themselves.
105. The audit logs must include information at a minimum that covers:
- a. The creation and configuration of each ballot including:**
 - i. A description of the process of setting up the electronic voting platform.
 - ii. A description of the process by which the unique identifiers and voting access methods for the ballot were generated.
 - iii. Changes made to permissions to access the databases the scrutineer is required to maintain under the 1992 Act.
 - b. The operation of the ballot, including:**
 - i. A description of any instance where a voting access method was reissued
 - ii. The electronic voting form(s) used for the ballot.
 - iii. The voting instructions used for the ballot.
 - iv. A description of any alteration made to the electronic voting form(s) or voting instructions during the ballot.
 - v. The duration of the ballot
 - vi. Complaints made by voters to the independent scrutineer
 - vii. The IP address associated with each electronic voting form submitted.
 - viii. The number of voters who voted in the ballot.
 - ix. A record of authorised access to the voting platform by the scrutineer, and by others (including access by means of a voting access method)
 - x. An account of the availability of the electronic voting platform and form throughout the duration of the ballot.
 - xi. An account of the availability of the electronic voting system throughout the duration of the ballot, including details of any unplanned instances of the electronic voting system being shut down.

xii. Details of any security events including:

1. An attempt by a person to gain unauthorised access to the electronic voting platform.
2. A cyber-attack or suspected cyber-attack which affects or could have affected the electronic voting platform.
3. Other events which have the effect of overwhelming or causing a failure or requiring a shutdown of the electronic voting platform.

c. Records relating to compliance with the security requirements

i. Records that the electronic voting system satisfies the security requirements.

1. The security requirements are:

- a. a person cannot access the electronic voting platform without a voting access method or the scrutineer's authorisation.
- b. a person cannot access any other aspect of the electronic voting system without the scrutineer's authorisation.
- c. a person who is authorised to access the electronic voting system can only access the system so far as is necessary for the person's role in relation to the ballot.
- d. a person cannot modify data stored as part of the electronic voting system without the scrutineer's authorisation.
- e. copies of the data which forms part of the electronic voting system are regularly made.

ii. Records that the scrutineer has taken such steps as are appropriate for achieving the security standards.

1. The security standards are:

- a. that the electronic voting system is equipped with up-to-date software which protects against malware.
- b. That the electronic voting system is resistant to commonly used methods for breaking encryption or forcing access to the system.
- c. that the electronic voting system is operating throughout the duration of the ballot.

- iii. Records that throughout the duration of the ballot, the electronic voting system has been monitored for instances of, and any such instances recorded:
 - 1. unauthorised access.
 - 2. unauthorised modification of data.
 - 3. unusual voting patterns.
 - 4. other security compromises.
- iv. Records that the server(s) which hosts the electronic voting platform satisfies the following:
 - 1. Is protected at all times by physical security.
 - 2. Cannot be accessed without authorisation of the owner of the server.
 - 3. There is a timestamped record of physical and digital attempts to access the server.
- v. Records that the scrutineer made technical support available to persons who are entitled to vote in the ballot.

d. Records relating to the outcome of the ballot

- i. A description of the process by which the result of the ballot or election was calculated.
 - ii. A description of attempts to access and edit the audit logs
- e. Any other information that the independent scrutineer considers is relevant to the integrity, confidentiality, and accessibility of the ballot.**

106. At the close of the ballot, the audit logs created, the relevant personal information, voting information, voting access method information and unique identifiers must be stored securely for a period of 12 months by the independent scrutineer beginning with the announcement by the trade union of the result of the ballot. These records should be encrypted when stored.
107. If within that 12 month period any complaint or claim is made in relation to the ballot, then the archived files must be retained until the Certification Officer or court authorises disposal, or the matter is otherwise concluded.⁸
108. If no complaint or claim is brought, the independent scrutineer should delete the personal data in the archived files after 12 months unless they can justify

⁸ For political fund ballots, and trade union elections and merger ballots, the 1992 Act already requires the independent scrutineer to retain custody of all returned voting papers, and the copy of the register for a period of one year following the announcement of the result of the ballot or, if a complaint is made about the conduct of the ballot, for any longer period that the Certification Officer or a court may require.

retaining the data for a longer period in compliance with data protection legislation. The UK GDPR storage limitation principle will apply to any personal data so the independent scrutineer will need to ensure they do not retain personal data for longer than it is needed.

Counting of the ballot

109. The independent scrutineer should keep a record of the counting of the votes and combining of any ballot results from different sources such as post, hybrid, and electronic.

Technical support

110. Any technical support required by voters using the electronic voting platform / electronic voting form to cast their vote must be provided by the independent scrutineer conducting the ballot. Unions should pass any information they receive from voters regarding missing or un-received voting materials to the scrutineer.
111. If the union receives a request from a voter for technical support / assistance in relation to an electronic ballot, they should direct the member to the relevant independent scrutineer for support.
112. The ballot must be conducted so as to allow votes to be cast in secret. The independent scrutineer must never confirm whether, or how, an individual has cast their ballot to anyone unless one of the exceptions in legislation applies. If an independent scrutineer is contacted by an individual who has received their voting access method and the voter claims that they are unable to access the electronic voting platform as it shows their vote has already been cast, the independent scrutineer is permitted to enable the individual to cast a fresh vote themselves, and discount any previous vote. However, this must be reported in the independent scrutineer's post-ballot report and the union and independent scrutineer should agree what level of identification is required from an individual before an independent scrutineer "discounts" a previously cast vote.

Workplace voting requirements

113. This section of the code applies to workplace voting for statutory industrial action ballots only. It does not apply to CAC workplace voting which is provided for in Schedule A1 of the 1992 Act. Workplace voting for statutory industrial ballots is only permitted with the consent of the employer.
114. Both the union and the employer should consider the impact upon their relationship before making or rejecting a request for a workplace ballot. The employer should consider any request with an open mind, and if rejecting the request, clearly explain the reasons for doing so to the union.
115. Unless the union is confident that a single ballot method can meet the requirement of 1992 Act (all those eligible are given a convenient opportunity to vote) then the responsible person should consider combining use of workplace voting with another method to ensure those unable to participate in workplace voting have the opportunity to participate. For example, if the union considers that some eligible voters may be on annual, parental, or sick leave, and therefore would not have the opportunity to participate – the union should consider combining workplace balloting with another permitted method.

Scrutineer standards

116. The trade union must appoint an independent scrutineer to conduct an industrial action ballot via the workplace voting method. Only persons that meet the conditions in, or are listed in the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993 may act as an independent scrutineer for these ballots.

Ballot requirements

117. The union must confirm that they have the voluntary consent of the employer to conduct a workplace ballot before they appoint an independent scrutineer.⁹
118. The union may wish to appoint an independent scrutineer once the union has an initial agreement from the employer to permit a workplace ballot. This may make it easier for the independent scrutineer to satisfy themselves that all the required steps and legislative obligations are complied with, and any access agreement is workable.
119. The union may wish to ensure that arrangements with the independent scrutineer for producing and distributing physical voting papers will prevent mistakes which might invalidate the ballot.
120. The union must:
- a. provide the independent scrutineer a list of the names of the persons who are to be balloted by workplace voting.

121. The independent scrutineer must:

⁹ This does not require a completed Voluntary Access Agreement, but the union and employer should have agreed the principle of a workplace ballot before a scrutineer is appointed.

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- a. Supervise the production of all the voting papers used in the ballot.
 - b. Ensure they have the list of the names of the eligible voters who will be balloted via the workplace balloting method provided to them by the union..
 - c. Determine what method of identification must be used by voters to identify themselves to the scrutineer before being provided a voting paper.
 - d. Distribute the voting papers for use in the ballot.
 - e. Send a notice to every person entitled to vote in a ballot stating:
 - i. The location they need to attend to cast their vote
 - ii. The operating hours and duration of the ballot
 - iii. The times at which voting is to be permitted
 - iv. The question(s) which will be included on the voting paper.
 - v. If applicable: the hierarchy statement, and explanation of its effect
 - f. Inspect the workplace voting list for the purpose of the ballot and confirm that the individuals receiving the voting paper are listed.
 - g. Ensure that the workplace voting list is not seen by anyone not involved in administering the ballot.
 - h. Control and maintain possession of the ballot box(es) that voting papers will be placed in by voters, and ensure the box remains secured with an unbroken seal until the ballot ends.
 - i. Count the votes cast by the return of voting papers at voting stations at a location that is not the workplace.
 - j. Take whatever steps they consider necessary to enable them to produce a report on the conduct of the ballot in accordance with the requirements of the 1992 Act.
122. The independent scrutineer should:
- a. Maintain possession of all the unmarked ballots other than when providing a ballot to an eligible voter to cast their vote.
 - b. Control access to the workplace qualifying location so that only those being balloted are permitted to access the location for the duration of the ballot.
123. The employer is not liable for any costs of workplace balloting.

Voluntary access agreement and contingency planning

124. Before the ballot takes place, the union, and employer must agree the process of the ballot and terms of access in writing for the ballot to be conducted (the voluntary access agreement).
125. The voluntary access agreement must be written, and should be signed and dated by the employer, and the union.
126. A copy of the signed completed agreement must be shared with the employer, union, and independent scrutineer and should be saved by each party to ensure there are no disputes about the content of the agreement.
127. The employer and the union should engage in good faith, and with the intent of agreeing a workable agreement for the conduct of workplace voting.
128. The agreement must include the following minimum provision:
 - a. The location at which the ballot will be conducted.
 - b. Access by the scrutineer to the workplace of persons entitled to vote in the ballot, where this is necessary for the conduct of the ballot.
 - c. Where relevant, the employer's right to access the qualifying location in the case of an emergency.
 - d. The operating hours and duration of the ballot.
 - e. The times at which the employer of the persons entitled to vote in the ballot will permit those persons to vote.
129. The agreement must include at minimum the following provisions regarding the employer:
 - a. The employer must not unreasonably prevent persons who are entitled to vote in the ballot from voting.
 - b. The employer must not monitor the qualifying location.
 - c. The employer must co-operate with the scrutineer and the trade union for the purposes of carrying out the ballot.
130. The agreement must provide for the consequences of a breach of the agreement by the employer, including:
 - a. Which party is responsible for the costs arising from such a breach, and
 - b. Where such a breach prevents the completion of a ballot, the status of any votes cast in the ballot.
131. The agreement should also provide for the consequences of a breach of the agreement by the union.
132. Where a breach of the agreement requires the employer to pay costs, the agreement must require the employer to pay the union directly.

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133. The agreement should include anything else that the employer or union agree should be considered and codified ahead of a ballot.
134. Where material issues arise during the ballot which may affect confidence in the balloting process, the independent scrutineer should record those matters and reflect them, where appropriate, in their statutory report.

Voter access and identification

135. Those eligible to vote in an industrial action ballot, who are seeking to do so by workplace means must bring a form of identification as specified by the independent scrutineer to enable them to identify themselves and participate in the workplace ballot. The identification must be one that the independent scrutineer considers suitable to verify the in-person identity of an individual.

Site requirements

136. Workplace balloting may only be conducted by provision of a voting station (an area where a person entitled to vote can do so that is compliant with the requirements of the 1992 Act) at three possible qualifying locations:
 - a. A workplace location within the workplace of the employees being balloted as agreed with the employer (for example an office, a meeting room, a portacabin, or other location within the workplace that meets the requirements in paragraph 141). The qualifying location must be a workplace location unless it is not possible to secure a workplace location.
 - b. A workplace installation (such as a portacabin, or vehicle, or other movable environment) placed at the employer's site (for example in a car park, or outside space) as agreed with the employer that meets the requirements in paragraph 142. The qualifying location must be a workplace installation if a workplace location cannot be secured, unless it is not possible to secure a workplace installation.
 - c. An off-site location near to the employer and agreed between the independent scrutineer, union, and employer, that meets the requirements in paragraph 143. The qualifying location must be an off-site location if a workplace location, and a workplace installation cannot be secured.
137. The union may wish to consider the feasibility of eligible voters' attendance if the qualifying location is to be off-site.
138. So far as is reasonably practicable there must be as many voting stations as is necessary to give every person entitled to vote in a ballot a convenient opportunity to vote.
 - a. For example, in a large workplace, where it would be unreasonable or impossible to expect a voter to travel across the workplace, multiple voting stations may be a suitable option.
139. In the case of a ballot which is held for more than one workplace:

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- a. a voting station may serve more than one workplace only where the voting station is near all of the workplaces it serves.
- b. The voting station may also be at any of the three qualifying locations and does not require the union and employer to seek to agree a workplace location as the first option.

140. The qualifying location or installation must be:

- a. A location that the employer of the persons who are entitled to vote in the ballot has agreed may be used for the purposes of the ballot.
- b. Be capable of being secured against unauthorised entry of persons
- c. So far as is reasonably practicable, not be monitored by the employer during the carrying out of the ballot
- d. A suitable location or environment for the purposes of enabling the carrying out of the ballot that enables an eligible voter to mark and submit their ballot without their marking of the voting paper being observed by anyone other than the independent scrutineer.

141. A workplace location:

- a. Must be a location in the workplace of those who are entitled to vote in the ballot.
- b. Should be, wherever possible, located out of the direct sight of management and/or team leaders.
- c. Should not, wherever possible, be actively monitored by the employer via CCTV or other methods.
- d. Should be physically accessible to all voters eligible to vote.

142. A workplace installation:

- a. Must be controlled by the scrutineer
- b. Must be placed in the workplace of those who are entitled to vote in the ballot during the ballot.
- c. Must be provided at the cost of the union.
- d. Should be a temporary structure such as (but not limited to), a vehicle, portacabin, or other removable private structure controlled by the scrutineer during the balloting period.

143. An off-site location:

- a. Must be a nearby location to the workplace of those who are entitled to vote in the ballot.
- b. Should be a location:

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- i. within a reasonable distance of the relevant employers working location that the employees work at,
- ii. that the employer has agreed is suitable as to not cause significant disruption to the working day,
- iii. that can be accessed by those who are eligible to vote.
- iv. funded / hired by the union via the independent scrutineer

144. For the avoidance of doubt, the 'qualifying location' does not mean the entirety of the employer's work location, it means the room, workplace installation, or other off-site location where the voting station is situated, and within which votes are marked and cast, and those not voting are excluded from gaining access. For example, the room within the workplace, the portacabin placed in the car park, or the room within the off-site location would be a qualifying location, but the entire workplace building, or the entire off-site location itself would not be.

Voting requirements

145. Only those eligible to vote in the ballot should be permitted to access the qualifying location while the independent scrutineer is on site conducting the ballot, for the duration of the ballot period.
146. Employers and union members who are not physically participating in the ballot should not access the qualifying location.
147. The workplace balloting method must:
- a. Include a physical voting paper that meets the requirements of the 1992 Act that is provided to an eligible voter by an independent scrutineer on the site of the qualifying location.
 - b. Require that the physical voting paper is marked by the eligible voter on the site of the qualifying location and placed into a qualifying ballot box at the qualifying location. The qualifying ballot box(es) must be under the control and possession of the independent scrutineer at all times.
 - i. A qualifying ballot box is a ballot box that is possessed solely by the scrutineer throughout the ballot, is sealed with a single use seal that makes it clear if the ballot box has been opened. If the seal on the ballot box is broken on site of the qualifying location, the ballot is invalidated and must be re-run.
148. The voter must mark their ballot in the qualifying location. Removal of the voting paper from the qualifying location by the voter will render that ballot as 'disqualified'.

Ballot handling

149. All voting papers must continue to meet the requirements of the 1992 Act as set out for industrial action ballots.
150. Following the closure of the industrial action ballot, the voting papers produced by the independent scrutineer (whether used or unused), and any other information that the independent scrutineer considers would enable an independent third party to verify a ballot outcome (in case of legal challenge), must be held for a period of 12 months and may be required to be held for a longer period if a complaint about the conduct of the ballot is made.¹⁰

Counting of the ballot

151. The independent scrutineer should keep a record of the counting of the ballots and combining of any ballot results from different sources such as post, hybrid, and electronic. The independent scrutineer may want to consider measures to assure confidence in the count in case of dispute.
152. The count of the ballot must be held off-site from the workplace and therefore cannot be counted at the workplace location or installation.

¹⁰ Political Fund ballots, and trade union Executive Election ballots already require the independent scrutineer to retain custody of all returned voting papers, and the copy of the register with which the union has supplied him for a period of one year following the announcement of the result of the ballot or, if a complaint is made about the conduct of the ballot, for any longer period that the Certification Officer or a court may require.

Hierarchy of voting methods

153. Where a person has been provided multiple permitted means of voting (for example: electronic voting, workplace voting, and hybrid voting options for the same ballot) or has been provided the hybrid voting method which contains two possible routes for returning a vote, there may be a case where the individual attempts to vote more than once. Therefore, where the responsible person determines that more than one means of voting is available for a ballot, or hybrid voting is to be used, the determination must also set out which vote is to be counted in a case where a person casts more than one vote.
154. Where there are only two ways of returning a vote, the responsible person may determine that a vote cast by one method will always be the vote that is counted and a vote cast by the same voter using the other method, will always be the vote that is not counted. For example, if a ballot is held using post and electronic voting methods, the responsible person might determine that in the event a person votes using both methods, the electronic vote is the vote that will be counted. However, where the responsible person determines that voters will have more than two ways of voting, the responsible person might create a hierarchy of voting methods with the vote cast by the highest voting method being the vote that is counted. For example, if a ballot is held using workplace and hybrid voting, the responsible person might rank the voting methods as 1) workplace, 2) hybrid electronic vote and 3) hybrid postal vote. Where a voter votes in the workplace and returns a postal vote, the workplace vote will count. Where another voter votes electronically and by post, the electronic vote will count.
155. The code uses the term “hierarchy statement” to refer to the statement that is sent to voters to explain that only one vote will be counted and if they vote more than once, which vote will count. The hierarchy statement must be sent, or otherwise provided¹¹ along with the voting materials and workplace ballot notice to a person who:
- a. Has been provided or may be provided more than one permitted means of voting for a ballot.
 - b. Has been provided the hybrid voting method (because it contains two possible routes for returning a vote).
156. The hierarchy statement must also be present on the electronic voting form for the voters that received a hierarchy statement with their voting materials.

¹¹ Or otherwise provided in the case of merchant seamen

Small accidental failures to be disregarded

157. A failure (or failures) to comply with certain provisions set out in the 1992 Act may be disregarded if the failure(s) is/are accidental and on a scale which is unlikely to affect the result of the election or ballot. The following sets out the failures that may be disregarded in these circumstances. Some of these are specific to the electronic voting method and might occur if incorrect electronic contact details are used to send the voting materials.

158. For all ballots and elections – a failure to:

- a. Provide personal email addresses or personal phone numbers to the independent scrutineer for every person being balloted by electronic voting.
- b. Provide every person being balloted by electronic voting with a convenient opportunity to vote.
- c. Provide a hierarchy statement to those voters being balloted by electronic voting and at least one other voting method.
- d. Provide the electronic voting materials to every person who is balloted by electronic vote, by email, or mobile telephone message, or virtual internet message.
- e. Send the voting access method to the email address or phone number provided by the union to the scrutineer.

159. For union elections – a failure to:

- a. Provide every person being balloted by electronic vote with a copy of any election addresses and a list of the candidates along with their voting access method.

160. For merger ballots – a failure to:

- a. Provide every person being balloted by electronic vote with a notice in writing about the amalgamation or transfer approved for the purpose by the Certification Officer.

161. For industrial action ballots – a failure to:

- a. Provide equal entitlement to all members of the trade union who it is reasonable to believe will be induced to take part, or continue to take part in the industrial action, and to no others.
- b. Provide every person who is entitled to vote a convenient opportunity to do so.
- c. Provide every person entitled to vote in a workplace ballot a notice stating, the location they need to attend to cast their vote, the times at which voting is to be permitted, the question which will be included on the voting paper.

- d. Provide as many voting stations as is necessary for a workplace ballot to give every person entitled to vote, a convenient opportunity to do so.
 - e. Provide a voter with a voting paper in accordance with the identification requirements, and the list of eligible voters provided to the independent scrutineer by the union.
 - f. Send persons balloted by postal or hybrid voting their voting materials to their home address or any other address they have requested in writing to treat as their postal address.
 - g. Provide to a merchant seaman who is balloted by postal or hybrid voting, the voting paper or hybrid voting materials while on the ship or while at a place where the ship is, and be given an opportunity to vote while on the ship or while at a place where the ship is.
162. Deliberate failure to meet a provision of the 1992 Act, or failure to meet a provision on a scale likely to impact the outcome of the ballot or election, cannot be disregarded. It is for the courts or Certification Officer to determine what is permitted to be disregarded.

Specific ballot requirements

Industrial Action Ballots

164. Notice to employer

- a. Where a responsible person has determined to use multiple voting methods for an industrial action ballot, the union will need to send samples of all the different voting materials (voting papers and electronic voting forms) to the employer to meet their obligation under section 226A of the 1992 Act.
- b. Where the responsible person has determined that a voter can be given another method of voting as a contingency (for example given a postal vote in the event of a technical issue receiving their voting materials electronically), it would be sensible for the union to provide the sample voting materials for the contingency method (in this example a postal voting paper) to the employer before the ballot opens. This will ensure that the union has met their obligations under section 226A of the 1992 Act in respect of the sample voting materials for any contingency methods that might later need to be used.

Political Fund / Resolution Ballots

165. If a union has a branch or section in Northern Ireland, they must use the postal method.
166. If a union does not have a branch or section in Northern Ireland, they are permitted to use postal, hybrid or electronic balloting methods for political fund ballots.

Compliance and enforcement

Scrutineer reporting obligations

167. The independent scrutineer must publish a report on the statutory ballot following its completion. The specific requirements of each report are detailed in the following provisions of the 1992 Act:
- a. union election ballots – Section 52 of the 1992 Act,
 - b. political fund / resolution ballots – Section 78 and 72O of the 1992 Act,
 - c. union merger ballots – Section 100E of the 1992 Act
 - d. industrial action ballots – Section 231B of the 1992 Act
168. There are new reporting requirements that have been included in the 1992 Act in connection with permitting electronic and workplace voting methods. Reporting requirements will vary based on the voting methods used.

Annex A – Glossary of terms

1. This code uses the following terms which are defined as follows:

- a. Assistive technology – means hardware or software which enables persons with disabilities to interact with, or assists such persons with interacting with, content on the internet.
- b. Audit log(s) – has the meaning detailed in Schedule A1A – Part 1 – paragraph 9 “Audit Logs” of the 1992 Act.
- c. Ballot method / balloting method – refers to the means of voting. Depending on the context, it could mean any of the following permissible methods to which this code relates:
 - i. Electronic voting
 - ii. Hybrid voting
 - iii. Workplace voting
 - iv. Postal voting
- d. Cyber Essentials Plus certificate – means a certificate awarded in accordance with Cyber Essentials Plus Test Specification v3.2, or a later version of that document, published by the Government Communications Headquarters (GCHQ).
- e. Electronic balloting methods – refers to the electronic methods of voting which are permitted for use in certain circumstances when conducting statutory ballots under the 1992 Act. The two electronic methods are ‘electronic voting’ and ‘hybrid voting’.
 - i. Electronic voting – refers to the permitted method of voting described in the 1992 Act that enables an independent scrutineer to distribute the voting access method to voters electronically. The voter can then use the voting access method to access the electronic voting form and cast their vote electronically.
 - ii. Hybrid voting – refers to the permitted method of voting described in the 1992 Act that enables an independent scrutineer to send a physical voting paper and a voting access method to the voter’s home address by post. The voter can cast their vote by returning a marked voting paper by post or by submitting an electronic voting form accessed with their voting access method.
- f. Electronic voting system – means
 - i. The electronic voting platform
 - ii. The electronic voting form

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- iii. The databases that the scrutineer must maintain under the 1992 Act for a ballot being conducted with electronic voting or hybrid voting.
- iv. Any other software which the scrutineer intends to use for the purpose of carrying out the ballot
- g. Electronic voting form – means the electronic equivalent of the voting paper(s) as specified in the 1992 Act, through which the voter can view the voting options available to them, and cast their vote(s) electronically.
- h. Electronic voting materials – means the voting access method, and the electronic voting instructions. For an election, it also includes a list of the candidates at the election.
- i. Electronic voting platform – means the website or software, operated by the independent scrutineer, through which the electronic voting form can be accessed by voters using their voting access method.
- j. Hierarchy Statement – means where a person has been provided with multiple methods for returning a vote (e.g. hybrid voting contains an electronic and postal return option) the voter receives a statement that only one vote will be counted and explaining that if they try to cast multiple votes via different methods, which vote will be counted. Where a voter has more than 2 ways of returning a vote, this might involve the statement setting out a hierarchy ranking the different voting methods.
- k. Permitted means of voting – means the balloting method permitted under the 1992 Act for that election or ballot. For example, for industrial action ballots, the permitted means of voting are postal, electronic, hybrid, and workplace voting.
- l. Multi-factor authentication – means an electronic authentication method in which a user is granted access to a database or application only after successfully presenting two or more types of evidence of identity.
- m. Qualifying internet messaging service – means an internet messaging service:
 - i. Which requires a unique telephone number for registration, and
 - ii. For which the means of sending a messaging using the service is to send the message to the unique telephone number associated with a particular account.
- n. Qualifying ballot box – means a box used for storing marked voting papers which
 - i. Is possessed solely by the scrutineer throughout the ballot, and
 - ii. Is secured with a seal which remains unbroken until the ballot is complete.
- o. Relevant Personal Information – means

- i. Name
 - ii. Email address
 - iii. Mobile telephone number
 - iv. Home address
 - v. Any other personal information provided to the scrutineer by the trade union.
- p. Responsible person – refers to the person who is responsible for determining which balloting method is to be used to conduct a statutory ballot.
- q. Scrutineer's report – means a report about a ballot or election, produced by the scrutineer of that ballot or election in accordance with the relevant provisions of the 1992 act.
- r. Selected permissible means of voting – means in relation to a ballot or election, a permissible means of voting which is
 - i. The means of voting by which the responsible person has determined the ballot or election is to be conducted, or
 - ii. One of the means of voting by which the responsible person has determined the ballot or election is to be conducted.
- s. Statutory union ballots – refer to the elections and ballots held by trade unions as set out under the 1992 Act that have specific requirements attached to their operation. These are:
 - i. Industrial action ballots – as set out in Part V of the 1992 Act
 - ii. Political fund / resolution ballots – as set out in Part 1, Chapter VI of the 1992 Act
 - iii. Union merger ballots – as set out in Part 1, Chapter VII of the 1992 Act
 - iv. Union elections – as set out in Part 1, Chapter IV of the 1992 Act
- t. Unique identifier– is an identifier used by the scrutineer and allocated to each individual voter for the purpose of internal handling of voting information to ensure that personal information is not associated with votes cast.
- u. Unique telephone number – means a telephone number which is not associated with any other account registered with the internet messaging service.
- v. User database – means the database that holds the unique identifier and such of the relevant personal information as is necessary for administering the ballot.

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- w. Voting access method – means a code, password, link, or other method which allows a person to access the electronic voting platform, access their electronic voting form, and cast their vote(s).
- x. Voting access method information – means, in relation to persons in receipt of an electronic or hybrid vote method,
 - i. The voting access method
 - ii. Whether a person received their voting access method by email, message, or post.
- y. Voter database – means the database that holds the unique identifier, such of the voting information as the scrutineer possesses, and such of the voting access method information as the scrutineer possesses.
- z. Voting Information – means
 - i. Votes cast in the election/ballot
 - ii. Timestamps showing when each electronic voting form was submitted
 - iii. IP addresses from which electronic voting forms have been submitted
 - iv. Whether a person cast their vote by returning a voting paper or submitting an electronic voting form.
- aa. Voting materials – means any of the following:
 - i. Voting papers
 - ii. Voting access methods.
- bb. Voting station – means an area:
 - i. In a qualifying location where a person who is eligible to vote by workplace voting can do so in accordance with the requirements of the legislation, and;
 - ii. There is one or more qualifying ballot box.
- cc. Workplace installation – means a vehicle or structure which
 - i. is controlled by the scrutineer,
 - ii. is placed in the workplace of those who are eligible to vote by workplace voting during the ballot, and
 - iii. is provided at the cost of the trade union.
- dd. Workplace location – means a location in the workplace of those who are eligible to vote by workplace voting, which is not a workplace installation.

- ee. Workplace voting – refers to the permitted method of balloting described in the 1992 Act that enables an industrial action ballot to be held in person, at a location within the workplace, or at a location near to the workplace premises.

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