

EXPLANATORY MEMORANDUM TO

CODE OF PRACTICE ON ELECTRONIC AND WORKPLACE BALLOTS FOR

STATUTORY TRADE UNION BALLOTS

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Kate Dearden MP, Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.
- 2.2 James Silcox, Deputy Director for Trade Union and Collective Rights, at the Department for Business and Trade confirms that this explanatory memorandum meets the required standard.

3. Contact

- 3.1 Henry Pattison Hudd at the Department for Business and Trade can be contacted by email at the following address with any queries regarding the Code of Practice tradeunionpolicy@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Code of Practice

4. Overview of the Code of Practice

What does the legislation do?

- 4.1 The Secretary of State proposes to issue a Code of Practice on electronic and workplace balloting for statutory trade union ballots (“the code”) to support the introduction of new balloting methods by the Trade Unions (Permissible Means of Voting) And Employment Rights (Unfair Dismissal) (Amendment) Order 2026 (“the order”).
- 4.2 The Secretary of State may issue codes of practice under section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) to promote desirable practices in relation to the conduct by trade unions of ballots and elections.

Where does the legislation extend to and apply?

- 4.3 The extent of this code (that is, the jurisdiction(s) which the code forms part of the law of) is England and Wales and Scotland.
- 4.4 The territorial application of this code (that is, where the code produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

- 5.1 The 1992 Act sets out the legislative requirements for statutory trade union ballots. These include ballots for industrial action, political fund resolutions, union amalgamations and transfers, and union elections.

- 5.2 Prior to the changes that will be made to the 1992 Act by the order, these statutory ballots must be held by postal ballot. The Government considers this is outdated, creates significant bureaucracy and results in ballots that are exceedingly expensive to run. The Government therefore is introducing electronic and workplace voting methods for statutory trade union ballots. It considers that this change will increase democratic participation and ensure that the decisions taken following ballots are more representative of members' views.
- 5.3 The order will amend the 1992 Act to provide for the following voting methods:
- **Postal Voting** – *(as is already permitted under the 1992 Act)*.
 - **Electronic Voting** – (where the voter is sent their voting materials electronically, and can cast their vote electronically) - for industrial action, political fund resolution, union amalgamations and transfers, and union elections.
 - **Hybrid Electronic Voting** – (where the voter is sent their voting materials by post, and can cast their vote either by post or electronically) - for industrial action, political fund resolution, union amalgamations and transfers, and union elections.
 - **Workplace Voting** – (where the voter votes in person by placing their voting paper into a ballot box at a location in or near their workplace) – for industrial action ballots only.
- 5.4 The Secretary of State is therefore introducing a new Code of Practice on electronic and workplace balloting in statutory trade union ballots. This code will explain how the balloting method should be determined before a ballot is conducted and will therefore also be relevant to trade unions considering conducting a ballot by post.
- 5.5 The code is necessary to support the understanding and use of these new permitted methods for statutory trade union ballots, as this is the first time these new methods will be permitted.
- 5.6 The code sets out the roles of relevant parties and the technical and process requirements for electronic and workplace balloting. The code is intended to support understanding of the underlying legislation and enable relevant parties to confidently undertake ballots via these new permitted methods.
- What was the previous policy, how is this different?*
- 5.7 Under the 1992 Act, postal voting is the only permitted method for most statutory trade union ballots and elections, with a physical voting paper sent by post to an eligible voter's home address. Postal voting is expensive, bureaucratic, and takes a long time to conduct. This voting method was implemented as a way of assuring that ballots are held in secret.
- 5.8 The Government made clear in the Plan to Make Work Pay that it would allow modern, secure, electronic balloting and workplace ballots, as political parties and listed companies use, while ensuring the maintenance of high standards of engagement and participation.
- 5.9 Therefore, following the commencement of the order, new electronic and workplace voting methods will be permitted for certain statutory trade union ballots. The code will support the introduction of these new methods.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Under section 203 of 1992 Act, the Secretary of State may issue a Code of Practice containing practical guidance, as they think fit, for the purpose of promoting the improvement of industrial relations and promoting desirable practices in relation to the conduct by trade unions of ballots and elections.
- 6.2 The order introducing the new voting methods will make a number of changes to the requirements for conducting ballots and elections under the 1992 Act. The code provides practical advice to trade unions, independent scrutineers, and employers to promote good practice in the conduct of ballots and elections by the new electronic and workplace voting means. In particular, the order provides that, before a ballot or election takes place, the “Responsible Person” must determine the voting method or methods to be used in accordance with the factors and criteria set out in the legislation. The code sets out further detail about undertaking this determination.
- 6.3 If the draft code is approved by Parliament, the Secretary of State will issue the code and make an order under section 204(3) of the 1992 Act appointing the day upon which the code is to come into effect.

Why was this approach taken to change the law?

- 6.4 Issuing a code enables the Secretary of State to provide important practical guidance that has legal effect. Under section 207 of the 1992 Act a failure to comply with a Code of Practice does not render a person liable to any proceedings. However, in any proceedings before a court or employment tribunal, the code will be admissible in evidence and any provision of the code which appears to the court or tribunal to be relevant to the proceedings, must be taken into account.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 The Department for Business and Trade consulted on the draft Code of Practice between the 19 of November 2025 and the 28 of January 2026. During the development of the Code of Practice multiple meetings were held with Business Representative Organisations, Trade Unions, Independent Scrutineers, and Cyber Security experts. Ongoing engagement throughout the consultation period consisted of virtual meetings with interested parties and engagement via email.
- 7.2 The consultation received 69 responses from a range of stakeholders including Academics, Business Representative Organisations, Employers, Independent Scrutineers, Individuals, Legal Representatives, Local Government Bodies, Trade Unions, and others. There were varying views throughout the consultation responses, with a mixture of support, opposition, and proposed changes.
- 7.3 Having considered the responses received from the consultation the Government has made changes to the Code of Practice to reflect points raised and is satisfied that it is appropriate to proceed with the Code of Practice on electronic and workplace balloting for statutory trade union ballots.
- 7.4 More information and the Government’s response to the consultation is available on Gov.uk at: <https://www.gov.uk/government/consultations/make-work-pay-draft-code-of-practice-on-electronic-and-workplace-balloting-for-statutory-union-ballots>

8. Applicable Guidance

- 8.1 The Code of Practice on electronic and workplace balloting for statutory trade union ballots is itself guidance.
- 8.2 Should the parliamentary process be successfully completed, the Secretary of State proposes to publish the code on the gov.uk website.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for the draft code. A De Minimis Assessment (DMA) has been prepared for The Trade Unions (Permissible Means of Voting) and Employment Rights (Unfair Dismissal) (Amendment) Order 2026, which this code supports and which has been laid at the same time. That DMA has been published alongside the Code of Practice on the gov.uk website.¹

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on businesses, charities or voluntary bodies because the code itself only sets out practical guidance on complying with legal obligations. It does not itself impose legal obligations on these parties.
- 9.3 The code does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector because the code does not impose new obligations on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to the monitoring of the code is to consider how effectively it sets out the requirements and standards relevant parties should adhere to when conducting statutory trade union ballots. This review will involve relevant parties that are likely to be the main users of this code, namely: trade unions, employers and independent scrutineers (electoral service providers). The review process will be conducted periodically, particularly when adjustments to this Code of Practice are necessitated by developments in intersecting policy areas and changes to the legislation. For example, the Government has already set out that it plans to extend e-balloting to statutory recognition and derecognition ballots in 2027
- 10.2 The Code of Practice does not include a statutory review clause.

¹ <https://www.gov.uk/government/consultations/make-work-pay-draft-code-of-practice-on-electronic-and-workplace-balloting-for-statutory-union-ballots>

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade has made the following statement regarding Human Rights: “In my view the provisions of the Code of Practice: Electronic and Workplace Balloting For Statutory Trade Union Ballots are compatible with the Convention rights”.

13. The Relevant European Union Acts

13.1 This Code of Practice is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).