EXPLANATORY MEMORANDUM TO

THE CODE OF PRACTICE (ELECTRONIC AND WORKPLACE BALLOTING FOR STATUTORY TRADE UNION BALLOTS) ORDER 2026

2026 No. 880

1. Introduction

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

2. Declaration

2.1 Jonathan Reynolds MP, Secretary of State for Business, Innovation, Science 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, Innovation, Science and Trade confirms that this explanatory memorandum meets the required standard.

3. Contact

3.1 Henry Pattison-Hudd at the Department for Business, Innovation, Science 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 Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Order is made under section 204(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). Its purpose is to bring into effect the Code of Practice on Electronic and Workplace Balloting for Statutory Trade Union Ballots ("the Code") on the 25 August 2026.

4.2 The Code was laid in draft before both Houses of Parliament on 22 June 2026 and approved by a resolution of the House of Commons on 15 July 2026 and by a resolution of the House of Lords on 22 July 2026. The Code provides practical guidance for the purpose of promoting the improvement of industrial relations and desirable practices where a union is seeking to use electronic, hybrid, or workplace voting for the conduct of certain ballots and elections.

Where does the legislation extend to, and apply?

4.3 The extent of this Order and the Code (that is, the jurisdiction(s) where the Order and Code have effect) is Great Britain.

4.4 The territorial application of this Order and the Code (that is, where the Order and Code produces a practical effect) is Great Britain.

5. Policy Context

What is being done and why?

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

5.2 Prior to the changes made to the 1992 Act by The Trade Unions (Permissible Means of Voting) and Employment Rights (Unfair Dismissal) (Amendment) Order 2026 ("the Means of Voting Order"), these statutory ballots had to 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 certain 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 Means of Voting Order has amended the 1992 Act to provide for the following voting methods:

- **Postal Voting –** (as was 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 At present, there is no code of practice in force to provide guidance on the new voting methods. The Order will bring the Code into force.

6. Legislative and Legal Context

How has the law changed?

6.1 Part 2 of the Means of Voting Order made a number of changes to the requirements for conducting ballots and elections under the 1992 Act in order to provide for new voting methods.

6.2 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 methods. This Order will bring the Code into effect on the same day that Part 2 of the Means of Voting Order comes into force. This Order also makes transitional provision so that where the Means of Voting Order does not apply to a ballot or election, the Code also will not apply to that ballot or election.

6.3 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.

6.4 Under section 203(1) of the 1992 Act, the Secretary of State may issue codes of practice containing such practical guidance as he thinks fit for the purposes of promoting the improvement of industrial relations and of promoting what appear to him to be desirable practices in relation to the conduct by trade unions of ballots and elections.

6.5 Under section 204(1) of the 1992 Act, the Secretary of State, after consultation with the Advisory, Conciliation and Arbitration Service, prepared and published a draft of the Code.

6.6 The public consultation on the draft code was launched on 19 November 2025 and ran to 28 January 2026. After considering the representations, the draft of the Code was modified accordingly. A response to the consultation was published by the Government on 22 June 2026 and is available on the gov.uk website.[1]

6.7 Under section 204(2) of the 1992 Act, the Secretary of State laid the draft Code before both Houses of Parliament. The draft was approved by resolution of each House of Parliament and the Secretary of State is issuing the Code in the form of that draft.

6.8 The Secretary of State makes this Order under section 204(3) of the 1992 Act to appoint 25 August 2026 as the day on which the Code comes into effect.

Why was this approach taken to change the law?

6.9 This is the only possible way to bring the Code into effect.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department for Business, Innovation, Science and Trade consulted on the draft Code between the 19 November 2025 and the 28 January 2026. During the development of the Code 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

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

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 made changes to the draft Code 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 the gov.uk website.[2]

8. Applicable Guidance

8.1 There is no guidance in respect of the Order. The Code of Practice on Electronic and Workplace Balloting for Statutory Trade Union Ballots is itself guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument or the Code it commences. The impacts of the new voting methods on trade unions and other bodies have been considered in the De Minimis Assessment (DMA) prepared for the Means of Voting Order, which the Code supports. That DMA has been published alongside the Code on the gov.uk website.[3]

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the Code this Order commences only sets out practical guidance on complying with legal obligations.

9.3 There is no, or no significant, impact on small or micro businesses for the same reasons.

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 the Code are necessitated by developments in intersecting policy areas and changes to the legislation.

10.2 The Order and the Code do not include a statutory review clause.

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

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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 As this instrument is subject to the negative procedure and does not amend primary legislation, therefore no statement is required.

13. The Relevant European Union Acts

13.1 This instrument 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").