Draft Order laid before Parliament under section 54(9) of the Employment Relations Act 2004 (c. 24) and sections 154(4) and 156(6)(a) of the Employment Rights Act 2025 (c. 36) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2026 No. ****

TRADE UNIONS

TERMS AND CONDITIONS OF EMPLOYMENT

The Trade Unions (Permissible Means of Voting) and Employment Rights (Unfair Dismissal) (Amendment) Order 2026

Made - - - - ***

Coming into force in accordance with article 1(2), (3) and (4)

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The Secretary of State makes this Order in exercise of the powers conferred by section 54 of the Employment Relations Act 2004(**a**) and sections 154(1) and (2) and 156(3)(b) of the Employment Rights Act 2025(**b**).

In relation to Part 2, the Secretary of State considers that the conditions in subsection (10) of section 54 of the Employment Relations Act 2004 are satisfied and, in specifying the factors to be taken into account and criteria to be applied by the responsible person, the Secretary of State has had regard to the required standard(**c**) in accordance with subsection (11) of that section.

In accordance with section 54(9) of the Employment Relations Act 2004 and sections 154(4) and 156(6)(a) of the Employment Rights Act 2025, a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament.

PART 1

Introductory

Citation, commencement, extent and interpretation

1.—(1) This Order may be cited as the Trade Unions (Permissible Means of Voting) and Employment Rights (Unfair Dismissal) (Amendment) Order 2026.

(2) Parts 1 and 3 come into force on the day after the day on which this Order is made.

(3) Subject to paragraph (4), Part 2 comes into force on the 28th day after the day on which this Order is made.

(4) Article 7(12)(b) comes into force on the date on which section 68(3)(c) of the Employment Rights Act 2025(**d**) comes into force.

(5) This Order extends to England and Wales and Scotland.

(6) In this Order, "the 1992 Act" means the Trade Union and Labour Relations (Consolidation) Act 1992(**e**).

PART 2

Amendment of the 1992 Act

Amendment of the 1992 Act

2. The 1992 Act is amended in accordance with this Part.

(**a**) 2004 c. 24.
(**b**) 2025 c. 36.
(**c**) See section 54(12) of the Employment Relations Act 2004 for the meaning of "the required standard".
(**d**) Under section 159(3) of the Employment Rights Act 2025 (c. 36), section 68 comes into force in accordance with regulations made by the Secretary of State.
(**e**) 1992 c. 52.

Amendment of Chapter 4 of Part 1

3.—(1) Chapter 4 of Part 1 (elections for certain positions)(**a**) is amended as follows.

(2) In section 46 (duty to hold elections for certain positions)—

(a) in subsections (1)(a), (5A) and (5B) for "requirements of this Chapter" substitute "relevant requirements";

(b) in subsection (5B)—

(i) after "are" insert ", so far as applicable,";

(ii) for "47" substitute "46A";

(iii) at the end insert "and Schedule A1A";

(c) in subsection (6)—

(i) after "the provisions of this Chapter", in the first place it occurs, insert "including, so far as applicable, Schedule A1A";

(ii) for "the provisions of this Chapter", in the second place it occurs, substitute "such provisions".

(3) After section 46 insert—

"Determination of means of voting

46A Responsible person's determination of means of voting

(1) Before the election is held, the responsible person for the election must make a determination about the means of voting at the election.

(2) The determination must set out which one or more of the permissible means of voting is available for the election.

(3) Where the determination provides that more than one permissible means of voting is available for the election, the determination must also set out—

(a) that each of those means is available for each person who is entitled to vote at the election, or

(b) which one or more of those means is available for one or more of the following—

(i) particular persons who are entitled to vote at the election;

(ii) particular descriptions of persons who are entitled to vote at the election.

(4) Where the determination includes provision under subsection (3)(b), the determination must be such that at least one permissible means of voting is available for each person who is entitled to vote at the election.

(5) Where the determination provides—

(a) that more than one permissible means of voting is available for a particular person or description of persons, or

(b) that hybrid voting is available for an election,

(**a**) Section 46 was amended by section 52 of, and paragraph 1 of Schedule 2 to, the Employment Relations Act 2004 ("the 2004 Act"). Section 49 was amended by section 1(1) of, and paragraph 46 of Schedule 8 to, the Trade Union Reform and Employment Rights Act 1993 (c. 19) ("the 1993 Act"). Section 51A was inserted by section 2(1) of the 1993 Act. Section 52 was amended by sections 1(2), 2(2) of, and paragraph 1 of Schedule 10 to, the 1993 Act. There are other amendments to Chapter IV of Part I which are not relevant.

the determination must include provision setting out which vote is to be counted in a case where a person casts more than one vote (and section 51ZA(4) applies for the purposes of construing the number of votes cast by a person).

(6) Schedule ZA1 sets out further requirements in relation to a determination by the responsible person.

(7) The responsible person for an election under section 46(1)(a) is the trade union to which the election relates.

(8) The permissible means of voting for an election under section 46(1)(a) are—

(a) postal voting;

(b) hybrid voting;

(c) electronic voting.

(9) In this Chapter—

(a) "selected means of voting" means, in relation to an election, a permissible means of voting that is available for the election as a result of a determination under this section;

(b) a person is "eligible to vote" at an election by a particular means of voting if the determination under this section for the election sets out that that means is available for the person (see subsection (3)).".

(4) In section 48 (election addresses), in subsection (1)(b)—

(a) omit "by post";

(b) after "voting papers" insert "or voting access methods".

(5) In section 49 (appointment of independent scrutineer)—

(a) in subsection (2)—

(i) omit the "and" after paragraph (a);

(ii) after paragraph (b) insert "; and

(c) in the case of an election for which electronic voting or hybrid voting is a selected means of voting, the computer networks and systems which the person intends to use for conducting the election are covered by one or more qualifying Cyber Essentials Plus certificates awarded to the person.";

(b) after subsection (2) insert—

"(2A) For the purposes of subsection (2)—

(a) "Cyber Essentials Plus certificate" means a certificate awarded in accordance with Cyber Essentials Plus Test Specification v3.2(**a**), or a later version of that document, published by the Government Communications Headquarters;

(b) a Cyber Essentials Plus certificate awarded to a person is a "qualifying Cyber Essentials Plus certificate" if its expiry date is such that the certificate will remain valid for the duration of the election for which the person is appointed.";

(c) in subsection (3)—

(i) for paragraph (a) substitute—

(**a**) Cyber Essentials Plus Test Specification v3.2 can be accessed at https://www.ncsc.gov.uk/files/cyber-essentials-plus-test-specification-v3-2.pdf. A physical copy can be inspected at the Department for Business and Trade, Old Admiralty Building, Admiralty Place, London SW1A 2DY.

"(a) in relation to voting papers sent, or to be sent, in accordance with section 51ZC (postal voting: voting paper and method of voting)—

(i) where someone other than the scrutineer is appointed under section 51A, to supervise the production and distribution of the voting papers;

(ii) otherwise, to supervise the production of the voting papers, undertake the distribution of the voting papers and be the person to whom the voting papers are returned;

(aza) in relation to voting papers sent or to be sent in accordance with paragraph 14(1) of Schedule A1A (hybrid voting), to supervise the production of the voting papers, undertake the distribution of the voting papers and be the person to whom the voting papers are returned;

(azb) where electronic voting forms are to be used for the election—

(i) to generate and distribute voting access methods,

(ii) to maintain the electronic voting system,

(iii) to maintain the audit logs, and

(iv) to appropriately retain relevant personal information, voting information, voting access method information and the audit logs;";

(ii) in paragraph (c), for "the last date for the return of voting papers" substitute "the last voting day";

(d) after subsection (7) insert—

"(7A) The trade union must, so far as reasonably practicable, send to the scrutineer at least one of the following in respect of each person who is eligible to vote by electronic voting—

(a) an email address which meets the requirements in subsection (7B);

(b) a mobile telephone number which meets the requirements in subsection (7B).

(7B) The requirements are that the email address or mobile telephone number—

(a) was not provided to the person by and is not controlled by—

(i) the person's employer in their capacity as the person's employer, or

(ii) the trade union,

(b) has not been provided to the scrutineer in respect of any other person for the purposes of the election, and

(c) has been provided by the person to the trade union for the purpose of communication between the person and the trade union.";

(e) for subsection (8), substitute—

"(8) In this section—

"last voting day" means the later of the following days, so far as applicable—

(a) the last day for the return of voting papers;

(b) the last day for submission of electronic voting forms;

"the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the election by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting materials are distributed for the purposes of the election;

"voting materials" means either or both of the following, as applicable—

(a) voting access methods;

(b) voting papers.".

(6) In section 51 (voting)—

(a) omit subsections (1) and (2);

(b) omit subsection (4)(a) and the "and" after it;

(c) in subsection (4)(b), omit "by post".

(7) After section 51 insert—

"51ZA Counting of votes where multiple votes cast by same person

(1) This section applies where the responsible person for the election has determined that a person is eligible to vote at the election by more than one means of voting, or that a person is eligible to vote at the election by hybrid voting.

(2) Where this section applies—

(a) only one vote cast by the person is to be counted,

(b) the vote which is to be counted is to be determined in accordance with provision in the determination made by virtue of section 46A(5), and

(c) that provision and an explanation of its effect must be sent to the person along with the voting materials for the election.

(3) In this section—

"responsible person" is to be interpreted in accordance with section 46A;

"voting materials" means—

(a) voting papers, and

(b) voting access methods.

(4) For the purposes of this section, each of the following is to be treated as casting a separate vote—

(a) returning a voting paper which was sent in accordance with paragraph 14(1) of Schedule A1A;

(b) submitting an electronic voting form where the voting access method used to access the electronic voting form was sent in accordance with paragraph 14(1) of Schedule A1A.

Postal voting

51ZB Postal voting

Where postal voting is a selected means of voting for an election, the requirements in sections 51ZC and 51A apply in relation to postal voting at the election.

51ZC Postal voting: voting paper and method of voting

(1) So far as is reasonably practicable, every person who is eligible to vote by postal voting must have sent to them by post, at their home address or another address which they have requested the trade union in writing to treat as their postal address, a voting paper which either lists the candidates at the election or is accompanied by a separate list of those candidates.

(2) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,

(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the election, and

(c) be marked with its number.

(3) Where a person chooses to vote by postal voting, the person votes by marking the voting paper sent to them.".

(8) In section 51A (counting of votes etc. by independent person) for the heading substitute "Postal voting: counting of votes etc. by independent person".

(9) After section 51A insert—

"Electronic voting

51B Electronic voting

Where electronic voting is a selected means of voting for an election, Parts 1 and 2 of Schedule A1A apply in relation to electronic voting at the election (and Part 4 of that Schedule applies for the purposes of Parts 1 and 2).

Hybrid voting

51C Hybrid voting

Where hybrid voting is a selected means of voting for an election, Parts 1 and 3 of Schedule A1A apply in relation to hybrid voting at the election (and Part 4 of that Schedule applies for the purposes of Parts 1 and 3).

Elections: further provision".

(10) In section 52 (scrutineer's report)—

(a) in subsection (1)—

(i) in the words before paragraph (a), after "state" insert ", so far as relevant";

(ii) omit paragraph (a);

(iii) after paragraph (a) insert—

"(aa) the means of voting by which votes have been cast at the election,

(ab) the number of persons who were entitled to vote at the election,";

(iv) after paragraph (b) insert—

"(ba) the number of electronic voting forms submitted,";

(v) in paragraph (d), at the end insert "and electronic voting forms submitted";

(vi) omit the "and" after paragraph (d);

(vii) after paragraph (e) insert—

"(f) the number of submitted electronic voting forms which were discounted by the scrutineer following a request from the person who submitted the electronic voting form, and

(g) the changes made to permissions to access and edit the electronic voting system during the election.";

(b) in subsection (2)(b), for the words from "the production" to the end substitute "the following matters, so far as relevant, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur—

(i) the production, storage, distribution, return or other handling of the voting papers used at the election;

(ii) the production, distribution and storage of voting access methods and the maintenance of the electronic voting system;

(iii) the counting of the votes,".

(11) After section 53 insert—

"53A Small accidental failures in relation to electronic voting to be disregarded

(1) If—

(a) in relation to an election there is a failure (or there are failures) to comply with a provision mentioned in subsection (2) or with more than one of those provisions, and

(b) the failure is accidental and on a scale which is unlikely to affect the result of the election or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the election,

the failure (or failures), in so far as they relate to electronic voting, are to be disregarded for all purposes.

(2) The provisions are—

(a) section 48(1)(b) (requirement to distribute election addresses);

(b) section 49(7A) (requirement to send contact information to scrutineer);

(c) section 51(4)(b) (requirement to provide a convenient opportunity to vote);

(d) section 51ZA(2)(c) (requirement to send provision concerning how votes are counted where a person casts multiple votes);

(e) paragraph 12(1) of Schedule A1A (requirement to send electronic voting materials);

(f) paragraph 12(4) of Schedule A1A (requirement to use contact information provided by trade union).".

(12) In section 60 (overseas members), in subsection (3), for the words from ", section 51" to the end substitute "—

(a) the following provisions, so far as applicable, apply in relation to the member—

(i) section 46A (responsible person's determination of means of voting);

(ii) section 51 (voting);

(iii) section 51ZA (counting of votes where multiple votes cast by same person);

(iv) section 51ZB (postal voting);

(v) section 51ZC (postal voting: voting paper and method of voting);

(vi) section 51B (electronic voting);

(vii) section 51C (hybrid voting);

(viii) Schedule A1A (certain requirements relating to electronic voting and hybrid voting);

(b) nothing in section 47 (candidates) or section 50 (entitlement to vote) applies in relation to an overseas member or in relation to a vote cast by such a member.".

Amendment of Chapter 6 of Part 1

4.—(1) Chapter 6 of Part 1 (application of funds for political objects)(**a**) is amended as follows.

(2) After section 72A insert—

"Trade union without a branch or section in Northern Ireland: political resolution

72B Application of sections 72C to 72P

Sections 72C to 72P apply in relation to a trade union which does not have a branch or section in Northern Ireland.

72C Passing and effect of political resolution

(1) A political resolution must be passed by a majority of those voting on a ballot of the members of the trade union held in accordance with, so far as applicable, sections 72D to 72P and Schedule A1A.

(2) A political resolution so passed has effect as if it were a rule of the union and may be rescinded in the same manner and subject to the same provisions as such a rule.

(3) Where a political resolution ("the old resolution") is in force and a ballot is held on a new political resolution, then—

(a) if the new resolution is passed, the old resolution is to be treated as rescinded, and

(b) if it is not passed, the old resolution ceases to have effect at the end of the period of two weeks beginning with the date of the ballot.

72D Approval of political ballot rules

(1) A ballot on a political resolution must be held in accordance with rules of the trade union (its "political ballot rules") approved by the Certification Officer.

(2) Fresh approval is required for the purposes of each ballot which it is proposed to hold, notwithstanding that the rules have been approved for the purposes of an earlier ballot.

(3) The Certification Officer must not approve a union's political ballot rules unless the Certification Officer is satisfied that the requirements, so far as applicable, set out in sections 72E to 72P and Schedule A1A, would be satisfied in relation to a ballot held by the union in accordance with the rules.

(**a**) Section 73 was amended by section 61 of the Employment Rights Act 2025. Section 74 was amended by paragraph 1 of Schedule 1 to, and paragraph 1 of Schedule 10 to, the Trade Union Reform and Employment Rights Act 1993 ("the 1993 Act"). Section 75 was amended by paragraph 2 of Schedule 1 to the 1993 Act. Section 77A was inserted by paragraph 3 of Schedule 1 to the 1993 Act. Section 78 was amended by paragraph 4 of Schedule 1 to, and paragraph 1 of Schedule 10 to, the 1993 Act. There are other amendments to Chapter VI of Part I which are not relevant.

72E Responsible person's determination of means of voting

(1) Before the ballot is held, the responsible person for the ballot must make a determination about the means of voting in the ballot.

(2) The determination must set out which one or more of the permissible means of voting is available for the ballot.

(3) Where the determination provides that more than one permissible means of voting is available for the ballot, the determination must also set out—

(a) that each of those means is available for each person who is entitled to vote in the ballot, or

(b) which one or more of those means is available for one or more of the following—

(i) particular persons who are entitled to vote in the ballot;

(ii) particular descriptions of persons who are entitled to vote in the ballot.

(4) Where the determination includes provision under subsection (3)(b), the determination must be such that at least one permissible means of voting is available for each person who is entitled to vote in the ballot.

(5) Where the determination provides—

(a) that more than one permissible means of voting is available for a particular person or description of persons, or

(b) that hybrid voting is available for a ballot,

the determination must include provision setting out which vote is to be counted in a case where a person casts more than one vote (and section 72I(4) applies for the purposes of construing the number of votes cast by a person).

(6) Schedule ZA1 sets out further requirements in relation to a determination by the responsible person.

(7) The responsible person for a ballot under section 72C(1) is the trade union to which the ballot relates.

(8) The permissible means of voting for a ballot under section 72C(1) are—

(a) postal voting;

(b) hybrid voting;

(c) electronic voting.

(9) In this Chapter—

(a) "selected means of voting" means, in relation to a ballot, a permissible means of voting that is available for the ballot as a result of a determination under this section;

(b) a person is "eligible to vote" in a ballot by a particular means of voting if the determination under this section for the ballot sets out that that means is available for the person (see subsection (3)).

72F Appointment of independent scrutineer

(1) The trade union must, before the ballot is held, appoint a qualified independent person ("the scrutineer") to carry out—

(a) the functions in relation to the ballot which are required under this section to be contained in the scrutineer's appointment, and

(b) such additional functions in relation to the ballot as may be specified in the scrutineer's appointment.

(2) A person ("P") is a qualified independent person in relation to a ballot if—

(a) P satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or P is so specified,

(b) the trade union has no grounds for believing either that P will carry out any functions conferred on P in relation to the ballot otherwise than competently or that P's independence in relation to the union, or in relation to the ballot, might reasonably be called into question, and

(c) in the case of a ballot for which electronic voting or hybrid voting is a selected means of voting, the computer networks and systems which P intends to use for conducting the ballot are covered by one or more qualifying Cyber Essentials Plus certificates awarded to P.

The power to make an order under paragraph (a) is exercisable by statutory instrument and such an instrument is subject to annulment in pursuance of a resolution of either House of Parliament.

(3) For the purposes of subsection (2)—

(a) "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;

(b) a Cyber Essentials Plus certificate awarded to a person is a "qualifying Cyber Essentials Plus certificate" if its expiry date is such that the certificate will remain valid for the duration of the ballot for which the person is appointed.

(4) The scrutineer's appointment must require the scrutineer—

(a) in relation to voting papers sent or to be sent in accordance with section 72K (postal voting: voting paper and method of voting)—

(i) where someone other than the scrutineer is appointed under section 72L, to supervise the production and distribution of the voting papers;

(ii) otherwise, to supervise the production of the voting papers, undertake the distribution of the voting papers and be the person to whom the voting papers are returned;

(b) in relation to voting papers sent or to be sent in accordance with paragraph 14(1) of Schedule A1A (hybrid voting), to supervise the production of the voting papers, undertake the distribution of the voting papers and be the person to whom the voting papers are returned;

(c) where electronic voting forms are to be used for the ballot—

(i) to generate and distribute voting access methods;

(ii) to maintain the electronic voting system;

(iii) to maintain the audit logs;

(iv) to appropriately retain relevant personal information, voting information, voting access method information and the audit logs;

(d) to—

(i) inspect the register of names and addresses of the members of the trade union, or

(ii) examine the copy of the register as at the relevant date which is supplied to the scrutineer in accordance with subsection (10)(a),

whenever it appears to the scrutineer appropriate to do so and, in particular, when the conditions specified in subsection (5) are satisfied;

(e) to take such steps as appear to the scrutineer to be appropriate for the purpose of enabling the scrutineer to make the report (see section 72O);

(f) to make the report to the trade union as soon as reasonably practicable after the last voting day;

(g) to retain custody of all voting papers returned for the purposes of the ballot and the copy of the register supplied to the scrutineer in accordance with subsection (10)(a)—

(i) until the end of the period of one year beginning with the announcement by the union of the result of the ballot, and

(ii) if within that period an application is made under section 79 (complaint of failure to comply with ballot rules), until the Certification Officer or the court authorises the scrutineer to dispose of the papers or copy.

(5) The conditions referred to in subsection (4)(d) are—

(a) that a request that the scrutineer inspect the register or examine the copy is made to the scrutineer during the appropriate period by a member of the trade union who suspects that the register is not, or at the relevant date was not, accurate and up-to-date, and

(b) that the scrutineer does not consider that the member's suspicion is ill-founded.

(6) In subsection (5) "the appropriate period" means the period—

(a) beginning with the day on which the scrutineer is appointed, and

(b) ending with the day before the day on which the scrutineer makes the scrutineer's report to the trade union.

(7) The duty of confidentiality as respects the register is incorporated in the scrutineer's appointment.

(8) The trade union must ensure that nothing in the terms of the scrutineer's appointment (including any additional functions specified in the appointment) is such as to make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(9) The trade union must, before the scrutineer begins to carry out the scrutineer's functions, either—

(a) send a notice stating the name of the scrutineer to every member of the union to whom it is reasonably practicable to send such a notice, or

(b) take all such other steps for notifying members of the name of the scrutineer as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(10) The trade union must—

(a) supply to the scrutineer as soon as is reasonably practicable after the relevant date a copy of the register of names and addresses of its members as at that date, and

(b) comply with any request made by the scrutineer to inspect the register.

(11) Where the register is kept by means of a computer the duty imposed on the trade union by subsection (10)(a) is either to supply a legible printed copy or (if the scrutineer prefers) to supply a copy of the computer data and allow the scrutineer use of the computer to read it at any time during the period when the scrutineer is required to retain custody of the copy.

(12) The trade union must ensure that the scrutineer duly carries out the scrutineer's functions and that there is no interference with the scrutineer's carrying out of those functions which would make it reasonable for any person to call the scrutineer's independence in relation to the union into question.

(13) The trade union must comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of the scrutineer's functions.

(14) The trade union must, so far as reasonably practicable, send to the scrutineer at least one of the following in respect of each person who is eligible to vote by electronic voting—

(a) an email address which meets the requirements in subsection (15);

(b) a mobile telephone number which meets the requirements in subsection (15).

(15) The requirements are that the email address or mobile telephone number—

(a) was not provided to the person by and is not controlled by—

(i) the person's employer in their capacity as the person's employer, or

(ii) the trade union,

(b) has not been provided to the scrutineer in respect of any other person for the purposes of the ballot, and

(c) has been provided by the person to the trade union for the purpose of communication between the person and the trade union.

(16) In this section—

"last voting day" means the later of the following days, so far as applicable—

(a) the last day for the return of voting papers;

(b) the last day for submission of electronic voting forms;

"the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting materials are distributed for the purposes of the ballot;

"voting materials" means either or both of the following, as applicable—

(a) voting access methods;

(b) voting papers.

72G Entitlement to vote

Entitlement to vote in the ballot must be accorded equally to all members of the trade union.

72H Voting

(1) Every person who is entitled to vote in the ballot must—

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to themselves.

(2) So far as is reasonably practicable, every person who is entitled to vote in the ballot must be given a convenient opportunity to vote.

(3) The ballot must be conducted so as to secure that—

(a) so far as is reasonably practicable, those voting do so in secret, and

(b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting must be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

72I Counting of votes where multiple votes cast by same person

(1) This section applies where the responsible person for the ballot has determined that a person is eligible to vote in the ballot by more than one means of voting, or that a person is eligible to vote in the ballot by hybrid voting.

(2) Where this section applies—

(a) only one vote cast by the person is to be counted,

(b) the vote which is to be counted is to be determined in accordance with provision in the determination made by virtue of section 72E(5), and

(c) that provision and an explanation of its effect must be sent to the person along with the voting materials for the ballot.

(3) In this section—

"responsible person" is to be interpreted in accordance with section 72E;

"voting materials" means—

(a) voting papers, and

(b) voting access methods.

(4) For the purposes of this section, each of the following is to be treated as casting a separate vote—

(a) returning a voting paper which was sent in accordance with paragraph 14(1) of Schedule A1A;

(b) submitting an electronic voting form where the voting access method used to access the electronic voting form was sent in accordance with paragraph 14(1) of Schedule A1A.

72J Postal voting

Where postal voting is a selected means of voting for a ballot, sections 72K and 72L apply in relation to postal voting in the ballot.

72K Postal voting (voting paper and method of voting)

(1) So far as is reasonably practicable, every person who is eligible to vote by postal voting must have a voting paper sent to them by post at their home address or another address which they have requested the trade union in writing to treat as their postal address.

(2) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,

(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(c) be marked with its number.

(3) Where a person chooses to vote by postal voting, the person votes by marking the voting paper sent to them.

72L Postal voting (counting of votes etc. by independent person)

(1) The trade union must ensure that—

(a) the storage and distribution of the voting papers for the purposes of the ballot, and

(b) the counting of the votes cast in the ballot,

are undertaken by one or more independent persons appointed by the union.

(2) A person appointed by the union ("P") is an independent person in relation to a ballot if—

(a) P is the scrutineer, or

(b) P is a person other than the scrutineer and the trade union has no grounds for believing either that P will carry out any functions conferred on P in relation to the ballot otherwise than competently or that P's independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

(3) An appointment under this section must require P to carry out P's functions so as to minimise the risk of any contravention of requirements imposed by or under any enactment or the occurrence of any unfairness or malpractice.

(4) The duty of confidentiality as respects the register is incorporated in an appointment under this section.

(5) Where P is not the scrutineer, the appointment must require P to send the voting papers back to the scrutineer as soon as reasonably practicable after the counting has been completed.

(6) The trade union—

(a) must ensure that nothing in the terms of an appointment under this section is such as to make it reasonable for any person to call into question P's independence in relation to the union,

(b) must ensure that P duly carries out P's functions and that there is no interference with P's carrying out of those functions which would make it reasonable for any person to call into question P's independence in relation to the union, and

(c) must comply with all reasonable requests made by P for the purposes of, or in connection with, the carrying out of P's functions.

72M Electronic voting

Where electronic voting is a selected means of voting for a ballot, Parts 1 and 2 of Schedule A1A apply in relation to electronic voting in the ballot (and Part 4 of that Schedule applies for the purposes of Parts 1 and 2).

72N Hybrid voting

Where hybrid voting is a selected means of voting for a ballot, Parts 1 and 3 of Schedule A1A apply in relation to hybrid voting in the ballot (and Part 4 of that Schedule applies for the purposes of Parts 1 and 3).

72O Scrutineer's report

(1) The scrutineer's report on the ballot must state, so far as relevant—

(a) the means of voting by which votes have been cast in the ballot,

(b) the number of persons who were entitled to vote in the ballot,

(c) the number of voting papers returned to the scrutineer,

(d) the number of electronic voting forms submitted,

(e) the number of valid votes cast in the ballot for and against the resolution,

(f) the number of spoiled or otherwise invalid voting papers returned and electronic voting forms submitted,

(g) the name of the person (or of each of the persons) appointed under section 72L or, if no person was so appointed, that fact,

(h) the number of submitted electronic voting forms which were discounted by the scrutineer following a request from the person who submitted the electronic voting form, and

(i) the changes made to permissions to access and edit the electronic voting system during the ballot.

(2) The report must also state whether the scrutineer is satisfied—

(a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,

(b) that the arrangements made (whether by the scrutineer or by any other person) with respect to the following matters, so far as relevant, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur—

(i) the production, storage, distribution, return or other handling of the voting papers used in the ballot,

(ii) the production, distribution and storage of voting access methods and the maintenance of the electronic voting system,

(iii) the counting of the votes, and

(c) that the scrutineer has been able to carry out the scrutineer's functions without such interference as would make it reasonable for any person to call the scrutineer's independence in relation to the union into question,

and if the scrutineer is not satisfied as to any of those matters, the report must give particulars of the scrutineer's reasons for not being satisfied as to that matter.

(3) The report must also state—

(a) whether the scrutineer—

(i) has inspected the register of names and addresses of the members of the trade union, or

(ii) has examined the copy of the register as at the relevant date which is supplied to the scrutineer in accordance with section 72F(10)(a),

(b) if the scrutineer has, whether in the case of each inspection or examination the scrutineer was acting on a request by a member of the trade union or at the scrutineer's own instance,

(c) whether the scrutineer declined to act on any such request, and

(d) whether any inspection of the register, or any examination of the copy of the register, has revealed any matter which the scrutineer considers should be drawn to the attention of the trade union in order to assist it in securing that the register is accurate and up-to-date,

but must not state the name of any member who has requested such an inspection or examination.

(4) Where one or more persons other than the scrutineer are appointed under section 72L, the statement included in the scrutineer's report in accordance with subsection (2)(b) must also indicate—

(a) whether the scrutineer is satisfied with the performance of the person, or each of the persons, so appointed, and

(b) if the scrutineer is not satisfied with the performance of the person, or any of them, particulars of the reasons for not being so satisfied.

(5) The trade union must not publish the result of the ballot until it has received the scrutineer's report.

(6) The trade union must within the period of three months after it receives the report—

(a) send a copy of the report to every member of the union to whom it is reasonably practicable to send such a copy, or

(b) take all such other steps for notifying the contents of the report to the members of the union (whether by publishing the report or otherwise) as it is the practice of the union to take when matters of general interest to all its members need to be brought to their attention.

(7) Any such copy or notification must be accompanied by a statement that the union will, on request, supply any member of the union with a copy of the report, either free of charge or on payment of such reasonable fee as may be specified in the notification.

(8) The trade union must so supply any member of the union who makes such a request and pays the fee (if any) notified to the member.

72P Small accidental failures in relation to electronic voting to be disregarded

(1) If—

(a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in subsection (2) or with more than one of those provisions, and

(b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,

the failure (or failures), in so far as they relate to electronic voting, are to be disregarded for all purposes.

(2) The provisions are—

(a) section 72F(14) (requirement to send contact information to scrutineer);

(b) section 72H(2) (requirement to provide a convenient opportunity to vote);

(c) section 72I(2)(c) (requirement to send provision concerning how votes are counted where a person casts multiple votes);

(d) paragraph 12(1) of Schedule A1A (requirement to send electronic voting materials);

(e) paragraph 12(4) of Schedule A1A (requirement to use contact information provided by trade union).".

(3) In the italic heading before section 73, at the beginning insert "Trade union with a branch or section in Northern Ireland:".

(4) Before section 73 (but after the italic heading before that section) insert—

"72Q Application of sections 73 to 78

Sections 73 to 78 apply in relation to a trade union with a branch or section in Northern Ireland where the head or main office of the trade union is outside Northern Ireland.".

(5) In section 73(1) (as it extends to England and Wales and Scotland), for "this Chapter" substitute "sections 73 to 78".

(6) After section 78 insert—

"Failure to comply with ballot rules".

(7) In section 84A (opt-out information notices), in subsection (1)(a)—

(a) after "under" insert "section 72C (trade union without a branch or section in Northern Ireland: passing and effect of political resolution) or";

(b) after "section 73" insert "(trade union with a branch or section in Northern Ireland: passing and effect of political resolution)".

(8) In section 94 (overseas members of trade union), in subsection (1)(a)—

(a) after "complying with" insert "section 72D (trade union without a branch or section in Northern Ireland: political ballot rules) or";

(b) before "political ballot rules" insert "trade union with a branch or section in Northern Ireland:".

Amendment of Chapter 7 of Part 1

5.—(1) Chapter 7 of Part 1 (amalgamations and similar matters)(**a**) is amended as follows.

(2) In section 97 (amalgamation or transfer of engagements), in subsections (1)(b) and (2)(b), omit "held in accordance with sections 100A to 100E".

(3) In section 99 (notice to be given to members)—

(a) in subsection (1)—

(i) for "every voting paper" substitute "voting materials";

(ii) for "is", in both places it occurs, substitute "are";

(b) after subsection (5) insert—

"(6) In this section "voting materials" means either or both of the following—

(a) voting papers;

(b) voting access methods.".

(4) In section 100 (requirement of ballot on resolution), in subsection (1)—

(a) after "in accordance with" insert ", so far as applicable,";

(b) for "100A to 100E" substitute "100ZA to 100F and Schedule A1A".

(5) After section 100 insert—

"Determination of means of voting

100ZA Responsible person's determination of means of voting

(1) Before the ballot is held, the responsible person for the ballot must make a determination about the means of voting in the ballot.

(2) The determination must set out which one or more of the permissible means of voting is available for the ballot.

(3) Where the determination provides that more than one permissible means of voting is available for the ballot, the determination must also set out—

(a) that each of those means is available for each person who is entitled to vote in the ballot, or

(b) which one or more of those means is available for one or more of the following—

(i) particular persons who are entitled to vote in the ballot;

(ii) particular descriptions of persons who are entitled to vote in the ballot.

(4) Where the determination includes provision under subsection (3)(b), the determination must be such that at least one permissible means of voting is available for each person who is entitled to vote in the ballot.

(5) Where the determination provides—

(a) that more than one permissible means of voting is available for a particular person or description of persons, or

(b) that hybrid voting is available for the ballot,

(**a**) Section 97 was amended by paragraph 52 of Schedule 8 to the Trade Union Reform and Employment Rights Act 1993 ("the 1993 Act"). Section 99 was amended by section 5 of, and paragraph 54 of Schedule 8 to, the 1993 Act. Sections 100 to 100E were substituted by section 4 of the 1993 Act. There are other amendments to Chapter VII of Part I which are not relevant.

the determination must include provision setting out which vote is to be counted in a case where a person casts more than one vote (and section 100CA(4) applies for the purposes of construing the number of votes cast by a person).

(6) Schedule ZA1 sets out further requirements in relation to a determination by the responsible person.

(7) In the case of a ballot under section 97(1)(b) (amalgamation) which is carried out by a trade union which is a party to the proposed amalgamation, the responsible person is the trade union.

(8) In the case of a ballot under section 97(2)(b) (transfer of engagements), the responsible person is the transferor union.

(9) The permissible means of voting for a ballot under section 97(1)(b) or (2)(b) are—

(a) postal voting;

(b) electronic voting;

(c) hybrid voting.

(10) In this Chapter—

(a) "selected means of voting" means, in relation to a ballot, a permissible means of voting that is available for the ballot as a result of a determination under this section;

(b) a person is "eligible to vote" in a ballot by a particular means of voting if the determination under this section for the ballot sets out that that means is available for the person (see subsection (3)).".

(6) In section 100A (appointment of independent scrutineer)—

(a) in subsection (2)—

(i) omit the "and" after paragraph (a);

(ii) after paragraph (b) insert "; and

(c) in the case of a ballot for which electronic voting or hybrid voting is a selected means of voting, the computer networks and systems which the person intends to use for conducting the ballot are covered by one or more qualifying Cyber Essentials Plus certificates awarded to the person.";

(b) after subsection (2) insert—

"(2A) For the purposes of subsection (2)—

(a) "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;

(b) a Cyber Essentials Plus certificate awarded to a person is a "qualifying Cyber Essentials Plus certificate" if its expiry date is such that the certificate will remain valid for the duration of the ballot for which the person is appointed.";

(c) in subsection (3)—

(i) for paragraph (a) substitute—

"(a) in relation to voting papers sent or to be sent in accordance with section 100CC (postal voting: voting paper and method of voting)—

(i) where someone other than the scrutineer is appointed under section 100D, to supervise the production and distribution of the voting papers;

(ii) otherwise, to supervise the production of the voting papers, undertake the distribution of the voting papers and be the person to whom the voting papers are returned;

(aza) in relation to voting papers sent or to be sent in accordance with paragraph 14(1) of Schedule A1A (hybrid voting), to supervise the production of the voting papers, undertake the distribution of the voting papers and be the person to whom the voting papers are returned;

(azb) where electronic voting forms are to be used for the ballot—

(i) to generate and distribute voting access methods;

(ii) to maintain the electronic voting system;

(iii) to maintain the audit logs;

(iv) to appropriately retain relevant personal information, voting information, voting access method information and the audit logs;";

(ii) in paragraph (d), for "the last date for the return of voting papers" substitute "the last voting day";

(d) after subsection (12) insert—

"(12A) The trade union must, so far as reasonably practicable, send to the scrutineer at least one of the following in respect of each person who is eligible to vote by electronic voting—

(a) an email address which meets the requirements in subsection (12B);

(b) a mobile telephone number which meets the requirements in subsection (12B).

(12B) The requirements are that the email address or mobile telephone number—

(a) was not provided to the person by and is not controlled by—

(i) the person's employer in their capacity as the person's employer, or

(ii) the trade union,

(b) has not been provided to the scrutineer in respect of any other person for the purposes of the ballot, and

(c) has been provided by the person to the trade union for the purpose of communication between the person and the trade union.";

(e) for subsection (13) substitute—

"(13) In this section—

"last voting day" means the later of the following days, so far as applicable—

(a) the last day for the return of voting papers;

(b) the last day for submission of electronic voting forms;

"the relevant date" means—

(a) where the trade union has rules determining who is entitled to vote in the ballot by reference to membership on a particular date, that date, and

(b) otherwise, the date, or the last date, on which voting materials are distributed for the purposes of the ballot;

"voting materials" means either or both of the following, as applicable—

(a) voting access methods;

(b) voting papers.".

(7) In section 100C (voting)—

(a) omit subsections (1) and (2);

(b) omit subsection (4)(a) and the "and" after it;

(c) in subsection (4)(b) omit "by post";

(d) omit subsection (5).

(8) After section 100C insert—

"100CA Counting of votes where multiple votes cast by same person

(1) This section applies where the responsible person for the ballot has determined that a person is eligible to vote in the ballot by more than one means of voting, or that a person is eligible to vote in the ballot by hybrid voting.

(2) Where this section applies—

(a) only one vote cast by the person is to be counted,

(b) the vote which is to be counted is to be determined in accordance with provision in the determination made by virtue of section 100ZA(5), and

(c) that provision and an explanation of its effect must be sent to the person along with the voting materials for the ballot.

(3) In this section—

"responsible person" is to be interpreted in accordance with section 100ZA;

"voting materials" means—

(a) voting papers, and

(b) voting access methods.

(4) For the purposes of this section, each of the following is to be treated as casting a separate vote—

(a) returning a voting paper which was sent in accordance with paragraph 14(1) of Schedule A1A;

(b) submitting an electronic voting form where the voting access method used to access the electronic voting form was sent in accordance with paragraph 14(1) of Schedule A1A.

Postal voting

100CB Postal voting

Where postal voting is a selected means of voting for a ballot, sections 100CC and 100D apply in relation to postal voting in the ballot.

100CC Postal voting: voting paper and method of voting

(1) So far as is reasonably practicable, every person who is eligible to vote by postal voting must have a voting paper sent to them by post at their home address or another address which they have requested the trade union in writing to treat as their postal address.

(2) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,

(b) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(c) be marked with its number.

(3) Where a person chooses to vote by postal voting, the person votes by marking the voting paper sent to them.

(4) A voting paper which is sent or otherwise provided to a person for voting must not have enclosed with it any other document except—

(a) the notice which, under section 99(1), is to accompany the voting paper,

(b) an addressed envelope,

(c) a document containing instructions for the return of the voting paper, and

(d) the provision required to be sent with the voting materials under section 100CA(2)(c),

without any other statement.".

(9) In section 100D (counting of votes etc. by independent person), for the heading substitute "Postal voting: counting of votes etc. by independent person".

(10) After section 100D insert—

"Electronic voting

100DA Electronic voting

Where electronic voting is a selected means of voting for a ballot, Parts 1 and 2 of Schedule A1A apply in relation to electronic voting in the ballot (and Part 4 of that Schedule applies for the purposes of Parts 1 and 2).

Hybrid voting

100DB Hybrid voting

Where hybrid voting is a selected means of voting for a ballot, Parts 1 and 3 of Schedule A1A apply in relation to hybrid voting in the ballot (and Part 4 of that Schedule applies for the purposes of Parts 1 and 3).

Ballots: further provision".

(11) In section 100E (scrutineer's report)—

(a) in subsection (1)—

(i) in the words before paragraph (a), after "state" insert ", so far as relevant";

(ii) omit paragraph (a);

(iii) after paragraph (a) insert—

"(aa) the means of voting by which votes have been cast in the ballot,

(ab) the number of persons who were entitled to vote in the ballot,";

(iv) after paragraph (b) insert—

"(ba) the number of electronic voting forms submitted,";

(v) in paragraph (d), at the end insert "and electronic voting forms submitted";

(vi) omit the "and" after paragraph (d);

(vii) after paragraph (e) insert—

"(f) the number of submitted electronic voting forms which were discounted by the scrutineer following a request from the person who submitted the electronic voting form, and

(g) the changes made to permissions to access and edit the electronic voting system during the ballot.";

(b) in subsection (2)(b), for the words from "the production" to the end substitute "the following matters, so far as relevant, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur—

(i) the production, storage, distribution, return or other handling of the voting papers used in the ballot;

(ii) the production, distribution and storage of voting access methods and the maintenance of the electronic voting system;

(iii) the counting of the votes,".

(12) After section 100E insert—

"100F Small accidental failures in relation to electronic voting to be disregarded

(1) If—

(a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in subsection (2) or with more than one of those provisions, and

(b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,

the failure (or failures), in so far as they relate to electronic voting, are to be disregarded for all purposes.

(2) The provisions are—

(a) section 99(1) (notice to be given to members);

(b) section 100A(12A) (requirement to send contact information to scrutineer);

(c) section 100C(4)(b) (requirement to provide a convenient opportunity to vote);

(d) section 100CA(2)(c) (requirement to send provision concerning how votes are counted where a person casts multiple votes);

(e) paragraph 12(1) of Schedule A1A (requirement to send electronic voting materials);

(f) paragraph 12(4) of Schedule A1A (requirement to use contact information provided by trade union).".

(13) In section 103 (powers of Certification Officer as regards passing of resolution), in subsection (1)(a), for "requirements of sections 99 to 100E" substitute "requirements, so far as applicable, of sections 99 to 100F and Schedule A1A".

(14) In section 106 (amalgamation or transfer involving Northern Ireland union), in subsection (2)—

(a) after "The requirements" insert ", so far as applicable,";

(b) for "100E" substitute "100F";

(c) after "101(3)" insert "and Schedule A1A".

Amendment of Part 2

6.—(1) Part 2 (employers' associations)(**a**) is amended as follows.

(2) In section 132 (application of funds for political objects), in subsection (2)(a), after "section 72A" insert "to section 72Q".

(3) In section 133 (amalgamations and transfers of engagements), in subsection (2)—

(a) in paragraph (a), for "that every" substitute "that voting materials";

(b) in paragraph (b)—

(i) for "100A to 100E" substitute "100ZA to 100F";

(ii) for "and 100C(1) and (3)(a)" substitute ", 100C(3)(a) and 100CC(1)";

(c) after paragraph (b) insert—

"(bza) as if in section 100CC(1), for "eligible to vote by postal voting" there were substituted "entitled to vote",".

Amendment of Part 5

7.—(1) Part 5 (industrial action)(**b**) is amended as follows.

(2) In section 226 (requirement of ballot before action by trade union), in subsection (2)(a)—

(a) before sub-paragraph (i) insert—

"(ai) in relation to which the requirements of section 226ZA were satisfied,";

(b) in sub-paragraph (ii), after "231" insert "and Schedule A1A, so far as applicable".

(3) After section 226 insert—

"Determination of means of voting

226ZA Responsible person's determination of means of voting

(1) Before the ballot is held, the responsible person for the ballot must make a determination about the means of voting in the ballot.

(2) The determination must set out which one or more of the permissible means of voting is available for the ballot.

(**a**) Section 132 was amended by paragraphs 1 and 20 of Schedule 6 to the Employment Relations Act 1999 (c. 26). Section 133 was substituted by paragraph 65 of Schedule 8 to the Trade Union Reform and Employment Rights Act 1993 and amended by paragraphs 1 and 21 of Schedule 6 to the Employment Relations Act 1999 and section 50(3) of the Employment Relations Act 2004.

(**b**) Section 226 was amended by section 18(1) of, and paragraph 73 of Schedule 8 to, the Trade Union Reform and Employment Rights Act 1993 ("the 1993 Act"), paragraph 2(2) of Schedule 3 to the Employment Relations Act 1999 ("the 1999 Act"), section 2(1) of, and paragraph 12 of Schedule 4 to, the Trade Union Act 2016 (c. 15) ("the 2016 Act") and section 69(2) of the Employment Rights Act 2025 ("the 2025 Act"). Section 226A was inserted by section 18(2) of the 1993 Act and amended by section 22 of, and paragraph 1 of Schedule 2 to, the Employment Relations Act 2004 and section 70 of the 2025 Act. Section 226B was inserted by section 20(1) of the 1993 Act. Section 226C was inserted by section 20(4) of the 1993 Act. Section 229 was amended by section 20(2) of, and paragraph 25 of Schedule 7 to, the 1993 Act, paragraph 6(2) and (3) of Schedule 3 to the 1999 Act and sections 71(1) and 77(2) of the 2025 Act. Section 230 was amended by section 17 of the 1993 Act and paragraph 7 of Schedule 3 to the 1999 Act. Section 231 was amended by section 6(1) of the 2016 Act and section 69(3) of the 2025 Act. Section 231B was inserted by section 20(3) of the 1993 Act. Section 232 was amended by paragraph 74 of Schedule 8 to the 1993 Act. Section 232B was inserted by paragraph 9 of Schedule 3 to the 1999 Act and amended by section 24(1) of the Employment Relations Act 2004. Section 233 was amended by paragraph 13 of Schedule 4 to the 2016 Act. There are other amendments to Part V which are not relevant.

(3) Where the determination provides that more than one permissible means of voting is available for the ballot, the determination must also set out—

(a) that each of those means is available for each person who is entitled to vote in the ballot, or

(b) which one or more of those means is available for one or more of the following—

(i) particular persons who are entitled to vote in the ballot;

(ii) particular descriptions of persons who are entitled to vote in the ballot.

(4) Where the determination includes provision under subsection (3)(b), the determination must be such that at least one permissible means of voting is available for each person who is entitled to vote in the ballot.

(5) A determination under this section must be such that merchant seamen and offshore workers are not eligible to vote by workplace voting.

(6) In subsection (5), "merchant seaman" and "offshore worker" have the meanings given in section 232(3) (balloting of overseas members).

(7) Where the determination provides—

(a) that more than one permissible means of voting is available for a particular person or description of persons, or

(b) that hybrid voting is available for the ballot,

the determination must include provision setting out which vote is to be counted in a case where a person casts more than one vote (and section 228C(4) applies for the purposes of construing the number of votes cast by a person).

(8) Schedule ZA1 sets out further requirements in relation to a determination by the responsible person.

(9) The responsible person for a ballot under section 226(1)(a) is the trade union to which the ballot relates.

(10) The permissible means of voting for a ballot under section 226(1)(a) are—

(a) postal voting;

(b) electronic voting;

(c) hybrid voting;

(d) workplace voting.

(11) In this Part—

(a) "selected means of voting" means, in relation to a ballot, a permissible means of voting that is available for the ballot as a result of a determination under this section;

(b) a person is "eligible to vote" in a ballot by a particular means of voting if the determination under this section for the ballot sets out that that means is available for the person (see subsection (3)).".

(4) In section 226A (notice of ballot and sample voting paper for employers)—

(a) in the heading, for "voting paper" substitute "voting materials";

(b) in subsection (1)(b), for "voting paper" substitute "voting materials";

(c) in subsection (2F)—

(i) in the words before paragraph (a), for "voting paper" substitute "voting materials";

(ii) in the words before paragraph (a), for "is" substitute "are";

(iii) for paragraph (a) substitute—

"(a) a sample of the form of either or both of the following, as applicable—

(i) the voting paper which is to be sent or otherwise provided to the employees concerned;

(ii) the electronic voting form which is to be used for the ballot, or";

(iv) in paragraph (b), after "to be sent", in the first place it occurs, insert "or otherwise provided with";

(v) in paragraph (b), for "voting paper", in both places it occurs, substitute "voting materials";

(vi) in paragraph (b), after "to be sent", in the second place it occurs, substitute "or otherwise provided";

(d) in subsection (4), for the words from "the first day" to the end substitute "the earlier of the following, so far as applicable—

(a) the first day when a voting paper is sent or otherwise provided to any person entitled to vote in the ballot;

(b) the first day when a voting access method is sent to any person entitled to vote in the ballot.";

(e) omit subsection (5).

(5) In section 226B (appointment of scrutineer)—

(a) in subsection (1), before paragraph (a) insert—

"(za) in relation to voting papers sent or to be sent in accordance with paragraph 14(1) of Schedule A1A or provided in accordance with paragraph 16(5)(a) of that Schedule, supervising the production of the voting papers, undertaking the distribution of the voting papers and being the person to whom the voting papers are returned;

(zb) where electronic voting forms are to be used for the ballot—

(i) generating and distributing the voting access methods;

(ii) maintaining the electronic voting system;

(iii) maintaining the audit logs;

(iv) appropriately retaining relevant personal information, voting information, voting access method information and the audit logs;

(zc) in the case of a ballot for which workplace voting is a selected means of voting—

(i) supervising the production of the voting papers;

(ii) sending notice of the ballot in accordance with section 230D;

(iii) providing voting papers to persons entitled to vote in the ballot;

(iv) setting up and maintaining voting stations (within the meaning of section 230E(3));

(v) counting the votes cast by the return of voting papers at voting stations;";

(b) in subsection (2)—

(i) omit the "and" after paragraph (a);

(ii) after paragraph (b) insert ", and

(c) in the case of a ballot for which electronic voting or hybrid voting is a selected means of voting, the computer networks and systems which the person intends to use for conducting the ballot are covered by one or more qualifying Cyber Essentials Plus certificates awarded to the person.";

(c) after subsection (2) insert—

"(2A) For the purposes of subsection (2)—

(a) "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;

(b) a Cyber Essentials Plus certificate awarded to a person is a "qualifying Cyber Essentials Plus certificate" if its expiry date is such that the certificate will remain valid for the duration of the ballot for which the person is appointed.";

(d) after subsection (4) insert—

"(5) The trade union must, so far as reasonably practicable, send to the scrutineer at least one of the following in respect of each person who is eligible to vote by electronic voting—

(a) an email address which meets the requirements in subsection (6);

(b) a mobile telephone number which meets the requirements in subsection (6).

(6) The requirements are that the email address or mobile telephone number—

(a) was not provided to the person by and is not controlled by—

(i) the person's employer in their capacity as the person's employer, or

(ii) the trade union,

(b) has not been provided to the scrutineer in respect of any other person for the purposes of the ballot, and

(c) has been provided by the person to the trade union for the purpose of communication between the person and the trade union.

(7) Where workplace voting is a selected means of voting for a ballot, the trade union must send to the scrutineer a list of the names of the persons eligible to vote by workplace voting.".

(6) In section 226C (exclusion for small ballots), at the beginning insert "In the case of a ballot for which postal voting is the only selected means of voting,".

(7) After section 228A insert—

"228B Conduct of ballot

(1) Every person who is entitled to vote in the ballot must—

(a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and

(b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to themselves.

(2) Subsection (1)(b) does not apply in relation to voting at an off-site location (within the meaning of section 230F(6)).

(3) So far as is reasonably practicable, every person who is entitled to vote in the ballot must be given a convenient opportunity to vote.

(4) A ballot must be conducted so as to secure that—

(a) so far as is reasonably practicable, those voting do so in secret, and

(b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting must be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

228C Counting of votes where multiple votes cast by same person

(1) This section applies where the responsible person for the ballot has determined that a person is eligible to vote in the ballot by more than one means of voting, or that a person is eligible to vote in the ballot by hybrid voting.

(2) Where this section applies—

(a) only one vote cast by the person is to be counted,

(b) the vote which is to be counted is to be determined in accordance with provision in the determination made by virtue of section 226ZA(7),

(c) that provision and an explanation of its effect must be sent to the person along with the voting materials for the ballot, and

(d) where the person is eligible to vote by workplace voting, the provision mentioned in paragraph (b) and an explanation of its effect must also be sent along with the notice mentioned in section 230D.

(3) In this section—

"responsible person" is to be interpreted in accordance with section 226ZA;

"voting materials" means—

(a) voting papers, and

(b) voting access methods.

(4) For the purposes of this section, each of the following is to be treated as casting a separate vote—

(a) returning a voting paper which was sent in accordance with paragraph 14(1) of Schedule A1A or provided in accordance with paragraph 16(5)(a) of that Schedule;

(b) submitting an electronic voting form where the voting access method used to access the electronic voting form was sent in accordance with paragraph 14(1) of Schedule A1A or provided in accordance with paragraph 16(5)(a) of that Schedule.

Postal voting and workplace voting".

(8) In section 229 (voting paper)—

(a) for the heading substitute "Postal voting and workplace voting: voting paper";

(b) before subsection (1) insert—

"(A1) This section sets out requirements that apply in relation to the voting paper for a ballot for which either or both of the following are selected means of voting—

(a) postal voting;

(b) workplace voting.";

(c) omit subsection (1);

(d) in subsection (1A)(b), at the beginning insert "where it is produced for the purpose of voting in accordance with section 230 (postal voting: conduct of ballot),".

(9) After section 229 insert—

"Postal voting".

(10) In section 230 (conduct of ballot)—

(a) for the heading substitute "Postal voting: additional requirements for conduct of ballot";

(b) before subsection (1) insert—

"(A1) Where postal voting is a selected means of voting for a ballot, this section applies in relation to postal voting in the ballot.

(A2) Where a person chooses to vote by postal voting, the method of voting is by the marking of a voting paper by the person voting.";

(c) omit subsection (1);

(d) omit the "and" after subsection (2)(a);

(e) omit subsection (2)(b);

(f) omit subsection (4).

(11) After section 230 insert—

"Electronic voting

230A Electronic voting

Where electronic voting is a selected means of voting for a ballot, Parts 1 and 2 of Schedule A1A apply in relation to electronic voting in the ballot (and Part 4 of that Schedule applies for the purposes of Parts 1 and 2).

Hybrid voting

230B Hybrid voting

Where hybrid voting is a selected means of voting for a ballot, Parts 1 and 3 of Schedule A1A apply in relation to hybrid voting in the ballot (and Part 4 of that Schedule applies for the purposes of Parts 1 and 3).

Workplace voting

230C Workplace voting

Where workplace voting is a selected means of voting for a ballot, sections 230D to 230H apply in relation to workplace voting in the ballot.

230D Workplace voting: notice of ballot

Every person eligible to vote by workplace voting must be sent a notice stating—

(a) the location they need to attend to cast their vote;

(b) the operating hours and duration of the ballot;

(c) the times at which the employer of the persons eligible to vote by workplace voting will permit those persons to vote;

(d) the questions which will be included on the voting paper in accordance with section 229(2).

230E Workplace voting: additional requirements for conduct of ballot

(1) So far as is reasonably practicable, there must be as many voting stations as is necessary to give every person who is eligible to vote by workplace voting a convenient opportunity to vote.

(2) In the case of a ballot which is held for more than one workplace, a voting station may serve more than one workplace only where the voting station is near all of the workplaces it serves.

(3) In subsections (1) and (2), "voting station" means an area—

(a) in a qualifying location, and

(b) where—

(i) a person who is eligible to vote by workplace voting can do so in accordance with subsections (4) to (6), and

(ii) there is one or more qualifying ballot box.

(4) In order to vote, a person must—

(a) attend the qualifying location for a ballot,

(b) provide the scrutineer with their name and a form of identification which the scrutineer considers acceptable,

(c) be provided with a voting paper in accordance with subsection (6),

(d) mark the voting paper, and

(e) place the marked voting paper in a qualifying ballot box.

(5) When a person attends the qualifying location and provides the scrutineer with their name and identification, the scrutineer must ascertain—

(a) whether the person's name is on the workplace voting list, and

(b) whether the person's identification is acceptable.

(6) The scrutineer must provide a person with a voting paper where the scrutineer finds that—

(a) the person's name is on the workplace voting list, and

(b) the person's identification is acceptable.

(7) If a voting paper is, after having been provided in accordance with subsection (6), removed from the qualifying location before being placed in the qualifying ballot box, it becomes invalid.

(8) The scrutineer must ensure that the workplace voting list is not seen by anyone who is not involved in administering the ballot.

(9) In this section—

"qualifying ballot box" means a box, used for storing marked voting papers, which—

(a) is possessed solely by the scrutineer throughout the ballot, and

(b) is secured with a seal which remains unbroken until the ballot is complete;

"qualifying location" is to be interpreted in accordance with section 230F;

"workplace voting list" means the list of the names of the persons eligible to vote by workplace voting sent in accordance with section 226B(7).

230F Workplace voting: qualifying location

(1) A qualifying location is a location that satisfies the following requirements—

(a) it is a location which the employer of the persons who are eligible to vote by workplace voting has agreed may be used for the purposes of the ballot;

(b) it is capable of being secured against unauthorised entry of persons;

(c) so far as reasonably practicable, it is not monitored by the employer during the carrying out of the ballot;

(d) it is a suitable location or environment for the purposes of enabling the carrying out of the ballot.

(2) The qualifying location must be a workplace location unless it is not possible to secure a workplace location for the ballot.

(3) If it is not possible to secure a workplace location for the ballot, the qualifying location must be a workplace installation, unless it is not possible to secure a workplace installation for the ballot.

(4) If it is not possible to secure a workplace location or a workplace installation for the ballot, the qualifying location must be an off-site location.

(5) Subsections (2) to (4) do not apply in relation to a voting station which is to serve more than one workplace.

(6) In this section—

"off-site location" means a location which is near the workplace of those who are eligible to vote by workplace voting;

"workplace installation" means a vehicle or structure which is—

(a) controlled by the scrutineer,

(b) placed in the workplace of those who are eligible to vote by workplace voting during the ballot, and

(c) provided at the cost of the trade union;

"workplace location" means a location in the workplace of those who are eligible to vote by workplace voting which is not a workplace installation.

230G Workplace voting: agreement with employer

(1) Before the ballot takes place, an agreement in writing must be made between the trade union and the employer of persons eligible to vote by workplace voting.

(2) The agreement must include provision about the following matters—

(a) the qualifying location at which the ballot will be conducted;

(b) access by the scrutineer to the workplace of persons eligible to vote by workplace voting, 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 eligible to vote by workplace voting will permit those persons to vote.

(3) The agreement must include the following provisions—

(a) the employer must not unreasonably prevent persons who are eligible to vote by workplace voting from voting by this means;

(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.

(4) 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.

(5) Where provision under subsection (4) requires the employer to pay costs, it must require the employer to pay the trade union directly.

(6) In this section "qualifying location" is to be interpreted in accordance with section 230F.

230H Workplace voting: counting of votes

The counting of the votes must not be carried out in the workplace.".

(12) In section 231 (information as to result of ballot)—

(a) in paragraph (e) (before its amendment by section 68 of the Employment Rights Act 2025), at the end insert "and electronic voting forms submitted";

(b) in paragraph (e) (as amended by section 68 of the Employment Rights Act 2025), after "voting papers" insert "and electronic voting forms".

(13) In section 231B (scrutineer's report)—

(a) in subsection (1)(b), for the words from "the production" to the end substitute "the following matters, so far as relevant, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur—

(i) the production, storage, distribution, return or other handling of the voting papers used in the ballot;

(ii) the production, distribution and storage of voting access methods and the maintenance of the electronic voting system;

(iii) the counting of the votes,";

(b) after subsection (1) insert—

"(1A) The scrutineer's report must also include, so far as relevant—

(a) the means of voting by which votes have been cast in the ballot,

(b) the number of individuals who were entitled to vote in the ballot,

(c) the number of voting papers returned to the scrutineer by post,

(d) the number of electronic voting forms submitted,

(e) the number of voting papers returned in accordance with section 230E,

(f) the number of individuals answering "Yes" to the question, or as the case may be, to each question,

(g) the number of individuals answering "No" to the question, or as the case may be, to each question,

(h) the number of spoiled or otherwise invalid voting papers returned and electronic voting forms submitted,

(i) the number of submitted electronic voting forms which were discounted by the scrutineer following a request from the person who submitted the electronic voting form, and

(j) a description of any changes made to permissions to access and edit the electronic voting system during the ballot.".

(14) In section 232 (balloting of overseas members), in subsection (1), for "section 226B to 230 and 231B" substitute "sections 226ZA, 226B to 230H, 231B and 232B".

(15) In section 232B (small accidental failures to be disregarded), for subsection (2) substitute—

"(2) The provisions are—

(a) section 226B(5) (requirement to send contact information to scrutineer);

(b) section 227(1) (entitlement to vote in ballot);

(c) section 228B(3) (requirement to provide a convenient opportunity to vote);

(d) section 228C(2)(c) (requirement to send provision concerning how votes are counted where a person casts multiple votes with voting materials);

(e) section 228C(2)(d) (requirement to send provision concerning how votes are counted where a person casts multiple votes with workplace voting notice);

(f) section 230(2) (requirement to send voting paper);

(g) section 230(2B) (requirement to make voting paper available to merchant seaman);

(h) section 230D (requirement to send workplace voting notice);

(i) section 230E(1) (requirement to set up voting stations);

(j) section 230E(2) (requirement for voting station to be near workplaces it serves);

(k) section 230E(4)(c) (requirement to provide voting papers for workplace voting);

(l) paragraph 12(1) of Schedule A1A (requirement to send electronic voting materials);

(m) paragraph 12(4) of Schedule A1A (requirement to use contact information provided by trade union);

(n) paragraph 14(1) of Schedule A1A (requirement to send hybrid voting materials);

(o) paragraph 16(5) of Schedule A1A (requirement to make hybrid voting materials available to merchant seaman).".

(16) In section 233 (calling of industrial action with support of ballot)—

(a) in subsection (1)(a)—

(i) for "the voting paper" substitute "all of the voting materials";

(ii) after "section 229(3)" insert "or paragraph 3(4) or 16(2) of Schedule A1A";

(b) after subsection (4) insert—

"(5) In this section "voting materials" means such of the following as are relevant—

(a) voting papers;

(b) electronic voting forms.".

Amendment of Part 7

8.—(1) Part 7 (miscellaneous and general) is amended as follows.

(2) In section 297A (meaning of "voting")(**a**), after "ballot papers" insert "(whether by post or otherwise) or submit electronic voting forms".

(3) After section 298 insert—

"298A Definitions relating to means of voting

In this Act—

"audit logs" has the meaning given in paragraph 9(1) of Schedule A1A;

"electronic voting" means submitting an electronic voting form where the voting access method used to access the electronic voting form was sent under paragraph 12(1) of Schedule A1A;

"electronic voting form" has the meaning given in paragraph 3(1) of Schedule A1A;

"electronic voting instructions" has the meaning given in paragraph 2(3) of Schedule A1A;

"electronic voting system" has the meaning given in paragraph 6(7) of Schedule A1A;

"eligible to vote" is to be interpreted in accordance with—

(a) in relation to an election under section 46(1)(a) (elections for certain positions), section 46A(9)(b);

(b) in relation to a ballot under section 72C(1) (political resolution), section 72E(9)(b);

(c) in relation to a ballot under section 97(1)(b) (amalgamation) or section 97(2)(b) (transfer of engagements), section 100ZA(10)(b);

(d) in relation to a ballot under section 226(1)(a) (industrial action), section 226ZA(11)(b);

"hybrid voting" means—

(a) in relation to a ballot under section 226(1)(a) (industrial action)—

(i) returning a voting paper which was sent under paragraph 14(1) of Schedule A1A or provided under paragraph 16(5)(a) of that Schedule, or

(ii) submitting an electronic voting form where the voting access method used to access the electronic voting form was sent under paragraph 14(1) of Schedule A1A or provided under paragraph 16(5)(a) of that Schedule;

(b) in the case of any other ballot or election—

(i) returning a voting paper which was sent under paragraph 14(1) of Schedule A1A, or

(ii) submitting an electronic voting form where the voting access method used to access the electronic voting form was sent under paragraph 14(1) of Schedule A1A;

"permissible means of voting" is to be interpreted in accordance with—

(a) in relation to an election under section 46(1)(a) (elections for certain positions), section 46A(8);

(**a**) Section 297A was inserted by paragraph 17 of Schedule 4 to the Trade Union Act 2016.

(b) in relation to a ballot under section 72C(1) (political resolution), section 72E(8);

(c) in relation to a ballot under section 97(1)(b) (amalgamation) or section 97(2)(b) (transfer of engagements), section 100ZA(9);

(d) in relation to a ballot under section 226(1)(a) (industrial action), section 226ZA(10);

"postal voting" means returning a voting paper sent or otherwise provided under—

(a) in relation to an election under section 46(1)(a) (elections for certain positions), section 51ZC(1);

(b) in relation to a ballot under section 72C(1) (political resolution), section 72K(1);

(c) in relation to a ballot under section 97(1)(b) (amalgamation) or section 97(2)(b) (transfer of engagements), section 100CC(1);

(d) in relation to a ballot under section 226(1)(a) (industrial action), section 230(2)(a) (voting paper sent to address) or section 230(2B)(a) (voting paper made available on ship);

"relevant personal information" has the meaning given in paragraph 8(5) of Schedule A1A;

"voting access method" has the meaning given in paragraph 2(5) of Schedule A1A;

"voting access method information" has the meaning given in paragraph 8(5) of Schedule A1A;

"voting information" has the meaning given in paragraph 8(5) of Schedule A1A;

"workplace voting" means returning a voting paper provided under section 230E(6).".

(4) In section 299 (index of definitions)(**a**), at the appropriate places insert—

"audit logs	section 298A";
"electronic voting	section 298A";
"electronic voting form	section 298A";
"electronic voting instructions	section 298A";
"electronic voting system	section 298A";
"eligible to vote	section 298A";
"hybrid voting	section 298A";

(**a**) Section 299 was amended by S.I. 1995/2587, section 50(5) of the Employment Relations Act 2004, S.I. 2010/93 and paragraph 19 of Schedule 4 to the Trade Union Act 2016. There are other amendments but none is relevant.

"permissible means of voting	section 298A";
"postal voting	section 298A";
"relevant personal information	section 298A";
"voting access method	section 298A";
"voting access method information	section 298A";
"voting information	section 298A";
"workplace voting	section 298A".

Insertion of Schedules ZA1 and A1A

9.—(1) Schedule 1 to this Order inserts a new Schedule ZA1 before Schedule A1(**a**).

(2) Schedule 2 to this Order inserts a new Schedule A1A after Schedule A1.

Savings

10. This Part does not apply in relation to—

(a) a ballot or election in relation to which, before the date referred to in article 1(3), a scrutineer has been appointed;

(b) a ballot held under section 73(1) (political resolution) of the 1992 Act in relation to which, before the date referred to in article 1(3), political ballot rules have been submitted to the Certification Officer for approval in accordance with section 74(1) of that Act;

(c) a ballot held under section 97(1)(b) (amalgamation) or section 97(2)(b) (transfer of engagements) of the 1992 Act in relation to which, before the date referred to in article 1(3), the instrument of amalgamation or transfer has been submitted to the Certification Officer for approval in accordance with section 98(1) of that Act;

(d) a ballot held under section 226(1)(a) (industrial action) of the 1992 Act in relation to which, before the date referred to in article 1(3), the trade union has given the employer notice in accordance with section 226A(1) of that Act.

Review

11.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in this Part,

(b) set out the conclusions of the review in a report, and

(**a**) Schedule A1 was inserted by paragraph 1 of Schedule 1 to the Employment Relations Act 1999.

(c) publish the report.

(2) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(**a**) requires that the report must in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate, and, if so, the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(3) The first report must be published before the end of the period of five years beginning with the date referred to in article 1(3).

(4) Subsequent reports must be published at intervals not exceeding five years.

(5) In this article, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

PART 3

Amendment of the Employment Rights Act 1996

Amendment of the Employment Rights Act 1996

12. In section 105 of the Employment Rights Act 1996(**b**) (unfair dismissal: redundancy), in subsection (7C), omit paragraph (b) and the "and" before it.

Transitional provision

13.—(1) Article 12 does not apply to protected industrial action taken by an employee where the employee started to take the action before 18th February 2026.

(2) In this article—

"employee" has the same meaning as in section 295(1) of the 1992 Act;

"protected industrial action" has the same meaning as in section 238A(1) of the 1992 Act(**c**).

Name
Title
Department for Business and Trade

(**a**) 2015 c. 26.
(**b**) 1996 c. 18. Section 105(7C) was inserted by paragraph 5(3) of Schedule 5 to the Employment Relations Act 1999.
(**c**) Section 238A was inserted by paragraph 3 of Schedule 5 to the Employment Relations Act 1999 and amended by sections 77(3) and 78(2) of the Employment Rights Act 2025.

SCHEDULES

SCHEDULE 1

Article 9(1)

Insertion of Schedule ZA1

Before Schedule A1 insert—

"SCHEDULE ZA1 Sections 46A, 72E, 100ZA and 226ZA

FURTHER REQUIREMENTS RELATING TO THE RESPONSIBLE PERSON'S DETERMINATION

1 This Schedule applies in relation to a determination under any of sections 46A, 72E, 100ZA and 226ZA.

2 (1) In making a determination to which this Schedule applies, 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 responsible person considers appropriate.

(2) The responsible person must take the following additional factors into account when making a determination that electronic voting, hybrid voting or workplace voting is available for a ballot or election—

(a) the level of security risk of 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 a ballot under section 226(1)(a) (industrial action), 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 permissible means of voting.

(3) In making a determination to which this Schedule applies, the responsible person must apply the following criteria—

(a) 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) the responsible person must not be aware of any reason why it would not be possible to satisfy the requirements of this Act which relate to the means of voting which are to be available for the ballot or election.

(4) The criterion in sub-paragraph (3)(a) is considered to be satisfied in relation to a determination that—

(a) postal voting is the only permissible means of voting available for a ballot or election, or

(b) more than one means of voting is available for a ballot or election and postal voting is available for each person who is entitled to vote in the ballot or election.

(5) In this paragraph—

"electronic voting platform" means the website or software through which the electronic voting form is accessed;

"responsible person", in relation to a ballot or election, has the meaning given by whichever of the following provisions is applicable—

(a) section 46A;

(b) section 72E;

(c) section 100ZA;

(d) section 226ZA;

"scrutineer's report" means a report produced in accordance with whichever of the following provisions is applicable to the ballot or election in question—

(a) section 52;

(b) section 72O;

(c) section 100E;

(d) section 231B.".

SCHEDULE 2

Article 9(2)

Insertion of Schedule A1A

After Schedule A1 insert—

"SCHEDULE A1A

Sections 51B, 51C, 72M, 72N, 100DA, 100DB, 230A and 230B

CERTAIN REQUIREMENTS RELATING TO ELECTRONIC VOTING AND HYBRID VOTING

PART 1

ELECTRONIC VOTING AND HYBRID VOTING

Application

1 This Part sets out requirements that apply in relation to electronic voting and hybrid voting in relation to a particular ballot.

Voting access method and electronic voting instructions

2 (1) One or more voting access methods must be generated for each relevant person.

(2) A voting access method must—

(a) be unique,

(b) be designed in a way which is resistant to attempts to infer or create other voting access methods,

(c) be capable of being re-issued, and

(d) become ineffective—

(i) once the person to whom it was issued has submitted an electronic voting form for the ballot, or

(ii) if the person does not vote, at the closure of the ballot.

(3) Instructions for how to submit a vote on the electronic voting platform using the voting access method ("electronic voting instructions") must be produced.

(4) The electronic voting instructions must—

(a) state the name of the scrutineer for the ballot, and

(b) specify the date by which the electronic voting form must be submitted.

(5) In this paragraph, "voting access method" means a code, password or other method which allows a person to access the electronic voting platform.

Electronic voting form

3 (1) A voting form which is accessed through the electronic voting platform using the voting access method ("electronic voting form") must be produced.

(2) The electronic voting form must allow the person voting to spoil the form by registering a vote for none of the candidates or, as the case may be, options.

(3) The electronic voting form must—

(a) state the name of the scrutineer for the ballot, and

(b) specify the date by which the form must be submitted.

(4) In the case of a ballot under section 226(1)(a) (industrial action), subsections (2) to (4) of section 229 (voting paper) apply to the electronic voting form as if for "voting paper" there were substituted "electronic voting form".

(5) Where a person is—

(a) eligible to vote in a ballot by electronic voting and another means of voting, or

(b) eligible to vote in a ballot by hybrid voting,

the person's electronic voting form must include the provision which was required to be sent with the voting materials under section 51ZA(2)(c), section 72I(2)(c), section 100CA(2)(c) or section 228C(2)(c).

(6) The electronic voting form and electronic voting platform must be designed so that data transmitted by submission of an electronic voting form is encrypted before being transmitted and is decrypted only once received by the scrutineer.

(7) The electronic voting platform must, when an electronic voting form has been submitted, display to the person who submitted it a message confirming that the vote has been successfully submitted.

Unique identifier

4 A unique identifier must be—

(a) generated for each relevant person;

(b) designed in such a way that by itself it does not enable the identification of the person with whom it is associated.

Electronic voting platform

5 (1) The electronic voting platform used for the ballot must be compatible with assistive technologies.

(2) In this paragraph "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.

Requirements relating to security

6 (1) In relation to the electronic voting system, the scrutineer must—

(a) ensure that the system complies with the security requirements, and

(b) take such measures as are appropriate for achieving the security standards.

(2) The security requirements are—

(a) that a person cannot access—

(i) the electronic voting platform without a voting access method or the scrutineer's authorisation;

(ii) any other aspect of the electronic voting system without the scrutineer's authorisation;

(b) that 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;

(c) that a person cannot modify data stored as part of the electronic voting system without the scrutineer's authorisation;

(d) that copies of the data stored as part of the electronic voting system are regularly made.

(3) 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.

(4) Throughout the duration of the ballot—

(a) the scrutineer must ensure that the electronic voting system is monitored for instances of—

(i) unauthorised access;

(ii) unauthorised modification of data;

(iii) unusual voting patterns;

(iv) other security compromises, and

(b) any such instances must be recorded by the scrutineer.

(5) The scrutineer must ensure that the following requirements are satisfied in relation to the server which hosts the electronic voting platform—

(a) the server must be protected at all times by physical security;

(b) a person must not be able to access the server without the authorisation of the owner of the server;

(c) there must be a timestamped record of physical and digital attempts to access the server.

(6) The scrutineer must, throughout the duration of the ballot, ensure that support in relation to the operation of the electronic voting platform is made available for persons who are entitled to vote in the ballot.

(7) In this paragraph—

"electronic voting system" means—

(a) the electronic voting platform,

(b) the databases referred to in paragraph 8(3), and

(c) any other software which the scrutineer intends to use for the purpose of carrying out the ballot;

"malware" means software designed to disrupt, damage, or gain unauthorised access to computer networks and systems.

Counting of votes

7 The trade union must ensure that the scrutineer counts the votes cast in the ballot by—

(a) submission of an electronic voting form, or

(b) marking of a voting paper which was sent to the person in accordance with paragraph 14(1).

Processing of information relating to a ballot

8 (1) The scrutineer must store such of the information specified in sub-paragraph (2) as the scrutineer possesses—

(a) in secure databases, and

(b) in a manner which enables the accurate counting of votes and the calculation of the result of the ballot.

(2) The information is—

(a) the unique identifiers generated in accordance with paragraph 4,

(b) relevant personal information,

(c) voting information, and

(d) voting access method information.

(3) The scrutineer must maintain two separate databases as follows—

(a) a database which contains—

(i) the unique identifiers generated in accordance with paragraph 4, and

(ii) such of the relevant personal information as is necessary for administering the ballot;

(b) a database which contains—

(i) the unique identifiers generated in accordance with paragraph 4,

(ii) such of the voting information as the scrutineer possesses, and

(iii) such of the voting access method information as the scrutineer possesses.

(4) The scrutineer must not store relevant personal information and voting information together in one database, except where—

(a) necessary in response to a request for support under paragraph 6(6);

(b) required by a court order;

(c) required for the purposes of the investigation of crime or criminal proceedings;

(d) required under a request or order made by the Certification Officer;

(e) required under another enactment.

(5) In this paragraph—

"multi-factor authentication" means a method of electronic authentication in which a person is granted access to a database or application only after successfully presenting two or more distinct types of evidence of identity;

"personal information" means information relating to a person whose identity—

(a) is specified in the information, or

(b) can be deduced from it;

"relevant personal information" means, in relation to relevant persons—

(a) names;

(b) email addresses;

(c) mobile telephone numbers;

(d) home addresses;

(e) any other personal information provided to the scrutineer by the trade union;

"secure database" means a database—

(a) access to which requires multi-factor authentication, and

(b) all data stored in which is encrypted to a standard which provides a reasonable level of protection to ensure its confidentiality, integrity, and availability;

"voting access method information" means, in relation to relevant persons—

(a) voting access methods;

(b) whether a person received their voting access method by email, mobile telephone message, internet message via a qualifying internet messaging service or post;

"voting information" means, in relation to relevant persons—

(a) votes cast in the ballot;

(b) timestamps showing when each electronic voting form was submitted;

(c) IP addresses from which electronic voting forms have been submitted;

(d) whether a person cast their vote by returning a voting paper or submitting an electronic voting form.

Audit logs

9 (1) Logs ("audit logs") must be maintained in relation to the ballot and must include—

(a) a description of the process of setting up the electronic voting platform;

(b) a description of the process by which the unique identifiers and voting access methods for the ballot were generated;

(c) a description of any instance where a voting access method was re-issued;

(d) the electronic voting form;

(e) the electronic voting instructions;

(f) a description of any alteration made to the electronic voting form or the electronic voting instructions during the ballot;

(g) records relating to compliance with the requirements set out in paragraph 6;

(h) the duration of the ballot;

(i) a description of complaints made by voters to the scrutineer;

(j) the IP address associated with each electronic voting form submitted;

(k) the number of people who voted in the ballot;

(l) a record of authorised access to the voting platform (including access by means of a voting access method);

(m) a description of changes made to permissions to access the databases which the scrutineer is required to maintain under paragraph 8(3);

(n) a description of the process by which the result of the ballot was calculated;

(o) 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;

(p) a description of security events;

(q) a description of attempts to access and edit the audit logs;

(r) any other information which the scrutineer considers is relevant to the integrity, confidentiality and accessibility of the ballot.

(2) The audit logs must be maintained during the period beginning when the electronic voting platform is set up and ending when the scrutineer sends the scrutineer's report to the trade union.

(3) In this paragraph—

"scrutineer's report" means a report produced in accordance with whichever of the following provisions is applicable to the ballot or election in question—

(a) section 52;

(b) section 72O;

(c) section 100E;

(d) section 231B;

"security event" means—

(a) an attempt by a person to gain unauthorised access to the electronic voting platform;

(b) a cyber attack or suspected cyber attack which affects or could have affected the electronic voting platform;

(c) other events which have the effect of overwhelming or causing a failure or requiring a shutdown of the electronic voting platform.

Retention of audit logs and data

10 The scrutineer must retain the audit logs and data in the databases which the scrutineer is required to maintain under paragraph 8(3)—

(a) until the end of the period of one year beginning with the day on which the result of the ballot is announced by the trade union, and

(b) if, within that period, any complaint or claim is made in relation to the ballot, until—

(i) the Certification Officer or court authorises the scrutineer to dispose of the audit logs and data in those databases, or

(ii) the matter is otherwise concluded.

PART 2

ELECTRONIC VOTING

Application

11 This Part sets out requirements that apply in relation to electronic voting in relation to a particular ballot.

Voting

12 (1) The electronic voting materials must be sent to every person who is eligible to vote by electronic voting, by at least one of the following—

(a) mobile telephone message;

(b) email;

(c) internet message via a qualifying internet messaging service.

(2) The requirement in sub-paragraph (1), so far as it relates to the electronic voting instructions, may be satisfied by sending a link to the instructions.

(3) In the case of a ballot held under section 97(1)(b) (amalgamation) or section 97(2)(b) (transfer of engagements), nothing else is to be included with the message or email sent in accordance with sub-paragraph (1) except—

(a) the notice sent under section 99(1), and

(b) the provision required to be sent with the voting materials under section 100CA(2)(c).

(4) The mobile telephone number or email address to which a voting access method is sent must be one which was provided to the scrutineer under whichever of the following provisions is applicable to the ballot in question—

(a) section 49(7A);

(b) section 72F(14);

(c) section 100A(12A);

(d) section 226B(5).

(5) Where a person chooses to vote by electronic voting, the person votes by submitting the electronic voting form which they have accessed using the voting access method sent to them.

(6) In this paragraph, "electronic voting materials" means—

(a) the voting access method,

(b) the electronic voting instructions, and

(c) in the case of an election held under section 46(1)(a) (elections for certain positions), a list of the candidates at the election.

PART 3

HYBRID VOTING

Application

13 This Part sets out requirements that apply in relation to hybrid voting in relation to a particular ballot.

Voting: general requirements

14 (1) The hybrid voting materials must be sent, by post, to the relevant address of every person who is eligible to vote by hybrid voting.

(2) Where a person chooses to vote by hybrid voting, the person votes by one of the following—

(a) marking the voting paper sent to them;

(b) submitting the electronic voting form which they have accessed using the voting access method sent to them.

(3) Each voting paper must—

(a) state the name of the independent scrutineer and clearly specify the address to which, and the date by which, it is to be returned,

(b) be given one of a series of consecutive whole numbers, every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and

(c) be marked with its number.

(4) Voting papers which have been returned to the scrutineer must be stored securely.

(5) In this paragraph, "relevant address" means, in respect of a person, their home address or another address which they have requested the trade union in writing to treat as their postal address.

Ballots held under section 97(1)(b) or section 97(2)(b): additional requirements

15 In the case of a ballot held under section 97(1)(b) (amalgamation) or section 97(2)(b) (transfer of engagements), the only documents which may be enclosed with the hybrid voting materials are—

(a) the notice which, under section 99(1), is to accompany these, and

(b) the provision required to be sent with the voting materials under section 100CA(2)(c).

Ballots held under section 226(1)(a): additional requirements

16 (1) This paragraph applies in relation to a ballot held under section 226(1)(a) (industrial action).

(2) The voting paper must comply with section 229(2) to (4).

(3) This sub-paragraph applies to a merchant seaman if the trade union reasonably believes that—

(a) the merchant seaman will be employed in a ship either at sea or at a place outside Great Britain at some time in the period during which votes may be cast, and

(b) it will be convenient for the merchant seaman to receive the hybrid voting materials and, in relation to the voting paper, to vote while on the ship or while at a place where the ship is rather than in accordance with paragraph 14(1).

(4) In the case of a ballot in which merchant seamen to whom sub-paragraph (3) applies are entitled to vote, paragraph 14(3)(a) is to be read as if, for "the address to which, and the date by which, it is to be returned" there were substituted "the address to which it is to be returned or, as appropriate, the ship to which the seamen belong, and the date by which it is to be returned".

(5) A merchant seaman to whom sub-paragraph (3) applies must, if it is reasonably practicable—

(a) have the hybrid voting materials made available to them while on the ship or while at a place where the ship is, and

(b) in relation to the voting paper, be given an opportunity to vote while on the ship or while at a place where the ship is.

(6) In this paragraph, "merchant seaman" has the meaning given in section 232(3).

Interpretation

17 In this Part, "hybrid voting materials" means—

(a) a voting paper which complies with the requirements of this Part,

(b) instructions for the return of the voting paper,

(c) a voting access method,

(d) electronic voting instructions, and

(e) in the case of an election held under section 46(1)(a) (elections for certain positions), a list of the candidates at the election.

PART 4

INTERPRETATION

18 In this Schedule—

"ballot" includes an election;

"electronic voting platform" means the website or software through which the electronic voting form is accessed;

"mobile telephone message" means a message comprised of text or media sent via a mobile messaging protocol to a telephone number allocated in accordance with a national or international numbering plan;

"qualifying internet messaging service" means an internet messaging service—

(a) which requires a unique telephone number for registration, and

(b) for which the means of sending a message using the service is to send the message to the unique telephone number associated with a particular account;

"relevant person" means a person who is eligible to vote by either or both of the following means of voting—

(a) electronic voting;

(b) hybrid voting;

"unique telephone number" means, in relation to a qualifying internet messaging service, a telephone number which is not associated with any other account registered with the service.".

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") and the Employment Rights Act 1996.

Part 2 of this Order amends the 1992 Act to provide that, before certain ballots and elections under that Act take place, the responsible person must determine the means of voting by which the ballot or election is to be conducted.

Schedule 1 to this Order inserts Schedule ZA1 into the 1992 Act. Schedule ZA1 sets out further requirements relating to the determination.

The means of voting specified are postal voting, electronic voting, hybrid voting and workplace voting. Part 2 of this Order amends the 1992 Act to provide for the requirements which apply where the responsible person determines that a ballot or election is to be conducted by these means of voting.

Schedule 2 to this Order inserts Schedule A1A into the 1992 Act. Schedule A1A sets out certain requirements which relate to electronic voting and hybrid voting. Provisions inserted into the body of the Act apply the requirements in Schedule A1A where relevant.

Part 3 of this Order makes an amendment to section 105 of the Employment Rights Act 1996 (unfair dismissal: redundancy) which is consequential on section 77 of the Employment Rights Act 2025 (c. 36) (protection against dismissal for taking industrial action). Article 13 makes transitional provision for that amendment.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. A de minimis assessment has been produced and is available from the Department for Business and Trade, Old Admiralty Building, London, SW1A 2PA.

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