EXPLANATORY MEMORANDUM TO

THE TRADE UNIONS (PERMISSIBLE MEANS OF VOTING) AND EMPLOYMENT RIGHTS (UNFAIR DISMISSAL) (AMENDMENT) ORDER 2026

2026 No. [XXXX]

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

2.1 Kate Dearden, Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 James Silcox, Deputy Director for Trade Union and Collective rights, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

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

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Parts 1 and 2 of this Order expand the voting methods permitted for certain statutory trade union elections and ballots conducted under the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). In addition to the existing option of postal balloting, this Order will allow electronic voting methods ballots relating to industrial action, political fund resolutions, union elections, and union mergers, and workplace voting for industrial action ballots.

4.2 Part 3 of the Order makes an amendment to section 105 of the Employment Rights Act 1996 ("the 1996 Act") which is consequential on the provision made by section 77 (protection against dismissal for taking industrial action) in Part 4 of the Employment Rights Act 2025 ("the 2025 Act").

Where does the legislation extend to and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, and Scotland.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Scotland.

5. Policy Context

What is being done and why?

5.1 The Plan to Make Work Pay set out a government commitment to allow trade unions to use modern and secure electronic and workplace balloting for statutory union ballots, aligning trade union participation with modern voting practices that political parties and listed companies already use. Allowing these additional methods could increase participation, make it easier for members to have their voices heard, and support stronger democratic mandates.

5.2 The policy aims to increase accessibility and remove unnecessary barriers to participation in statutory union ballots, particularly for members who may face practical difficulties returning postal ballots, such as disabled people or those who do not have easy access to postal services. Enabling electronic and workplace balloting is intended to support greater engagement in statutory union ballots, reduce administrative burdens for unions, and provide members with flexibility in how they vote, while maintaining the security, secrecy and integrity of the ballot.

5.3 To achieve this, the instrument permits electronic voting and workplace voting to be used alongside postal voting for specified statutory ballots, provided that they meet the requirements inserted into the 1992 Act, which are designed to safeguard the secrecy, security and integrity of the ballot.

5.4 This Order introduces a new role in the conduct of statutory trade union ballots: the "Responsible Person" ("RP"). Section 54 of the Employment Relations Act 2004 ("the 2004 Act"), requires that the voting method or methods to be used for a statutory trade union ballot are determined by the RP. Under this Order, the RP will be the trade union.

5.5 In exercising this RP role, the trade union is required to apply a structured decision-making framework set out in this Order before determining which voting method(s) are to be used for a particular ballot or election.

5.6 The RP must take into account particular factors and apply two criteria when making a determination on the voting method or methods to be used. These factors include considerations relating to the security of the ballot, potential risks associated with particular voting methods, voter preferences and whether the availability of alternative voting methods would benefit voters. The criteria also require the RP's determination to ensure, so far as reasonably practicable, that all those entitled to vote have the opportunity to do so and the RP must not be aware of any reason why the statutory requirements applicable to the chosen voting method could not be satisfied.

5.7 This Order introduces three new voting methods that may be used individually or in combination with each other:

- Electronic voting (fully digital), where the distribution of voting materials and the casting and return of votes take place entirely by electronic means. This may involve the voter receiving an email with a link to an online portal administered by the scrutineer, where the voter can cast their vote by submitting a completed electronic voting form. This may be used for industrial action ballots, political fund ballots, union elections, and union merger ballots.
- 'Hybrid' voting, where voting materials are distributed by post but votes may be returned either by post or electronically (by submitting an electronic voting form). This may also be used for industrial action ballots, political fund ballots, union elections and union merger ballots.

- Workplace voting – where members cast their vote in person at the workplace using a physical ballot box and voting paper, or at an off-site location if required. All arrangements must be agreed in advance and in writing between the union and employer which must cover specified matters (e.g. operating hours and duration of the ballot, times when workers are permitted to vote, exact location of the ballot in the workplace, etc.). Workplace voting will only be permitted with the consent of the employer. Workplace balloting may be used only for industrial action ballots, as internal union ballots do not involve employers.

5.8 Those affected by this instrument include trade unions, their members, independent scrutineers responsible for overseeing ballots, and employers where workplace balloting takes place on their premises. Legislation is necessary because the previous restriction to postal balloting was set in primary legislation and new methods could therefore only be permitted by further legislation.

Part 3 of the Order

5.9 Part 3 of this Order ensures that the statutory framework governing protection from unfair dismissal operates coherently following changes to protections from dismissal for employees taking industrial action.

5.10 Section 105 of the 1996 Act provides that it is automatically unfair for an employee to be selected for redundancy for certain specified reasons, including participation in official industrial action. As currently drafted, that protection is subject to conditions which include features of the previous statutory framework for protection from dismissal relating to industrial action which no longer apply.

5.11 Changes made by the 2025 Act removed certain conditional elements from the statutory dismissal protection regime. Without amendment, section 105 would continue to apply certain criteria that no longer reflect the policy or legal position. This Order removes those criteria so that redundancy protections align with the reformed approach.

What was the previous policy, how is this different?

5.12 At present, statutory trade union ballots conducted under the 1992 Act in relation to industrial action, political fund resolutions, union elections, and union mergers can only be conducted by post. This limited the ability of trade unions to use other voting methods, even where these methods could meet the equivalent standards of security and secrecy as post.

5.13 For many years, trade unions called for statutory ballots to be permitted to take place by electronic means rather than being restricted to postal voting. These calls led to the publication in 2017 of an independent review by Sir Ken Knight into electronic balloting for industrial action ballots. The review was commissioned pursuant to section 4 of the Trade Union Act 2016 ("the 2016 Act"). The review considered the security and integrity of electronic voting and recommended that electronic balloting should be piloted before it was permitted for industrial action ballots. The Government did not publish a formal response to the review. Section 4 of the 2016 Act was repealed by section 73 of the 2025 Act, removing the statutory duty to publish and lay a response to the Knight Review before Parliament.

5.14 While some stakeholders have also previously called for pilot schemes, the Government does not consider them necessary. The methods that we intend to permit for electronic balloting are already in use for political party leadership elections, and

other national Annual General Meeting (AGM) ballots, and are considered capable of meeting appropriate standards of security and integrity.

5.15 The Government's policy is to modernise statutory trade union voting practices and bring them in line with voting methods that are already used by political parties and listed companies. This instrument implements that policy by permitting the use of electronic voting and workplace voting as lawful voting methods for the specified statutory ballots.

5.16 In practice, this means that trade unions will be able to choose from a wider range of voting methods for conducting statutory ballots. According to the determination made by the RP, unions may conduct ballots electronically or in the workplace, either alongside or instead of postal voting, rather than being restricted to postal ballots alone.

5.17 The requirement for the RP to make a determination and to consider the factors and criteria applies in all cases, including where the RP determines that a ballot or election is to be conducted only by postal voting. This ensures that the use of postal voting continues to be considered alongside the other permissible voting methods.

Part 3 of the Order

5.18 Under the previous statutory framework, protection from dismissal for employees taking part in official industrial action was subject to conditions linked to the duration of that action. Those conditions were reflected both in the provisions governing protection from dismissal and in section 105 of the 1996 Act, which made automatic unfair dismissal for redundancy conditional on the application of specific statutory criteria.

5.19 The 2025 Act removed that conditional approach, so that protection from dismissal for taking industrial action is no longer dependent on cessation of the action within a specified period. This instrument makes a consequential amendment to reflect that change by removing reference to conditions that no longer form part of the wider statutory framework.

6. Legislative and Legal Context

How has the law changed?

6.1 Statutory trade union ballots conducted under the 1992 Act are subject to a number of requirements. These include requirements that ballots are conducted in secret and that ballots are normally conducted under the supervision of an independent scrutineer (with the exemption of small industrial action ballots of fewer than 50 people) who meets the conditions set out in the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993.

6.2 Prior to this Order, postal voting was the only permitted voting method for the majority of statutory ballots conducted under the 1992 Act.

6.3 This Order makes substantive amendments to the 1992 Act to permit additional voting methods for specified statutory trade union ballots. In particular, it inserts a new Schedule ZA1, which sets out the factors and criteria that the RP must take into account when determining the voting method(s) to be used for a particular ballot or election. The RP's determination can result in voters being eligible to vote by more than one voting method. For example, the RP might determine that the ballot will be conducted by electronic and hybrid voting and determine that all voters will be

eligible to vote by these methods, which will result in voters receiving voting materials by post and by email or mobile phone message.

6.4 The Order then amends the relevant provisions of the 1992 Act to set out the detailed requirements that apply to each voting method. These amendments are made to Chapter 4 (trade union elections), Chapter 6 (political fund ballots), and Chapter 7 (union mergers and transfers) of Part 1 of the 1992 Act, and to Part 5 (industrial action ballots) of the 1992 Act.

6.5 The Order also inserts a new Schedule A1A into the 1992 Act, which sets out the requirements that apply where electronic and hybrid voting methods are used.

6.6 The power to make these changes is conferred by section 54 of the 2004 Act. That provision enables the Secretary of State to permit additional voting methods for trade union ballots conducted under the 1992 Act, provided that the Secretary of State considers those methods would enable a ballot to meet the standard set out in section 54(12). This standard requires that those entitled to vote have the opportunity to do so, that votes are cast in secret, and that the risk of unfairness or malpractice is minimised. This is the first Order to be made using this power.

Part 3 of the Order

6.7 Recent changes to the statutory framework for protection from dismissal removed conditions that previously limited that protection by reference to the duration of industrial action. As a result, certain provisions that were previously relied on by section 105 of the 1996 Act no longer have effect.

6.8 This instrument amends section 105 to remove reference to those provisions, ensuring that it operates within the current legal framework. This amendment to section 105 of the 1996 Act was omitted from the 2025 Act in error.

Why was this approach taken to change the law?

6.9 This is the only possible approach to make the necessary changes without new primary legislation.

6.10 With respect to Part 3 of this Order, this instrument was assessed as the most appropriate legislative vehicle to make a consequential amendment to section 105 of the 1996 Act, correcting the omission of this amendment from the 2025 Act.

7. Consultation

Summary of consultation outcome and methodology

7.1 Policy development for this statutory instrument was informed through extensive direct engagement with key stakeholders in 2025. This included discussions with trade unions, employer and business representatives, and independent scrutineers to understand practical considerations, risks and safeguards associated with electronic and workplace balloting. These conversations helped shape the approach taken in this instrument.

7.2 The Government also engaged with other government departments and expert bodies as part of policy development. This included working closely with the National Cyber Security Centre (NCSC) to inform the cyber security requirements and standards applicable to electronic balloting and ensure that the permitted methods are adequately robust and secure.

7.3 A public consultation was undertaken on the draft Code of Practice that will accompany this instrument and support the use of electronic and workplace balloting for union ballots. That consultation focused on the draft code, rather than on the legal framework established by this Order.[1]

8. Applicable Guidance

8.1 The Government intends to publish a code of practice relating to the use of electronic and workplace balloting for statutory trade union ballots.

8.2 A draft of this code of practice is laid alongside this Order, under section 204(2) of the 1992 Act.

8.3 Should the parliamentary process be successfully completed, the Secretary of State proposes to publish the code of practice on GOV.UK.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A De Minimis Assessment is available and published on gov.uk.[2]

9.2 The analysis indicates that the policy is expected to deliver net benefits overall, primarily through reduced costs to trade unions from the use of electronic balloting compared to postal methods. Estimated annual savings range from around £2.0 million to £8.2 million, depending on the level of take-up, with a net present social value (NPSV) of between £17.6 million and £70.3 million over the appraisal period. Workplace balloting is expected to be used only in limited circumstances due to higher costs, and its impacts have not been monetised.

9.3 The analysis also finds that electronic balloting is likely to improve accessibility and convenience for union members, which may increase participation in statutory ballots, although the scale of this effect is uncertain. Benefits are expected to be greatest for groups who face barriers to postal voting, such as mobile and offshore workers, renters who move frequently, and disabled workers.

9.4 The wider impacts of the policy are assessed as broadly neutral to positive. There is no expected impact on international trade or investment, while environmental impacts are expected to be positive due to reduced paper use and postal activity.

9.5 Overall, the Impact Assessment concludes that the policy will modernise the balloting framework, reduce costs for trade unions, and may improve participation and the representativeness of ballot outcomes.

Impact on businesses, charities and voluntary bodies

9.6 There is no, or no significant, impact on business or charities because this Order primarily imposes obligations on trade unions.

9.7 The impact on voluntary bodies, specifically trade unions, is estimated to range from an NPSV of £17.3m to £70.3m, based on the estimated reduced costs from using electronic balloting methods, depending on the extent to which trade unions utilise these methods.

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

9.8 The legislation does impact small or micro businesses, but these impacts are not significant. Employers, who may be small or micro businesses, are affected by this Order only where they agree to a workplace ballot taking place. In such cases, the employer will agree certain matters in advance with the trade union.

9.9 Electoral service providers who may act as independent scrutineers in statutory trade union ballots may be small or micro businesses and they will need to comply with additional requirements if they offer their services in relation to electronic or workplace ballots. This includes, for example, the requirement for the systems and networks used by independent scrutineers for an electronic ballot to have been successfully audited and certified which may incur costs for scrutineers.

9.10 There is no, or no significant, impact on the public sector because this Order primarily affects the permitted methods by which trade unions conduct statutory ballots, rather than imposing new duties, costs or operational requirements on public sector bodies. The changes do not have direct implications for public sector finances, staffing, or service delivery.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through ongoing engagement with key stakeholders and existing informal oversight mechanisms. This includes information from scrutineer reports, and stakeholder feedback from trade unions and expert bodies, such as the National Cyber Security Centre, on the operation of electronic and workplace balloting.

10.2 Monitoring of the use and effects of non-postal balloting will also contribute to the Government's wider consideration of participation in industrial action ballots. Section 159(5) and (6) of the 2025 Act requires the Secretary of State to lay a statement before Parliament setting out how they have had regard to the impact of non-postal balloting on voter participation in industrial action ballots before repealing the 50% turnout threshold for those ballots by means of section 68 of the 2025 Act (industrial action ballots: turnout threshold). Information arising from the implementation of this instrument will inform that consideration, alongside other relevant evidence.

10.3 A statutory review clause is included in the instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 The following matters are brought to the attention of the Committees.

11.2 The provision made by the SI is almost entirely made by amending primary legislation. Section 54(7)(a) of the 2004 Act provides that an order under that section may modify provisions of the 1992 Act. This power is relied upon to make textual amendments to the 1992 Act. This is the first order to be made under section 54, which has been in force since 31 December 2004.

11.3 Part 2 of the Order inserts new requirements into the 1992 Act that trade unions will need to meet when conducting elections and ballots using the new permitted voting methods. The enforcement mechanisms for these new requirements are found in the 1992 Act as follows:

- In relation to the conduct of union elections, section 54 enables a trade union member or candidate in the election to apply to the Certification Officer or the court for a declaration that the union has failed to comply with the ballot requirements.
- In relation to the conduct of political fund ballots, section 79 enables a trade union member to apply to the Certification Officer or the court for a declaration that the ballot has been held otherwise than in accordance with approved political ballot rules (which under section 74(3) will need to satisfy the new applicable requirements).
- In relation to the conduct of amalgamation and transfer ballots, section 103 enables a trade union member to complain to the Certification Officer that the union has failed to comply with the ballot requirements.
- In relation to industrial action ballots, court proceedings can be brought by trade union members to assert their right to a ballot before industrial action under section 62. Other parties, for example employers and businesses may also be able to bring court proceedings in relation to industrial action that did not have the support of a ballot meeting the requirements of the 1992 Act.

11.4 The territorial extent of section 54 of the 2004 Act is Great Britain. The territorial extent of the provision made by the 1992 Act in relation to the relevant trade union ballots is also Great Britain with the exception of the provision made in Chapter 6 (political fund ballots) of Part 1, which also extends to Northern Ireland for the purposes of trade unions having their head or main office outside Northern Ireland. For this reason, the changes made by the Order to permit the use of electronic voting methods for political fund ballots will only apply to trade unions that do not have a branch or section in Northern Ireland. Those trade unions that do, will need to continue to conduct political fund ballots by post.

11.5 A draft of the accompanying code of practice is being laid at the same time as this Instrument. The code will be issued under section 203 of the 1992 Act which enables the Secretary of State to issue codes containing practical guidance for the purpose of promoting the improvement of industrial relations and promoting desirable practices in relation to the conduct by trade unions of ballots and elections. The code will set out practical guidance for trade unions and independent scrutineers on conducting elections and ballots using different voting methods.

11.6 Part 3 of the Order amends the 1996 Act. This amendment is made under section 154 of the 2025 Act and subsection (2) makes express provision enabling the power to be exercised to make amendments to primary legislation passed before that Act.

11.7 Part 3 of the Order comes into force on the day after the day the Order is made. This immediate commencement will ensure an error in the 1996 Act is rectified as soon as possible. Those affected will not need a period of time to adapt before Part 3 comes into force because the amendment it makes only removes references to already repealed provisions. The Department has consulted the SI Registrar and decided not to apply the procedure for free issue, on the basis that the majority of the Order's provisions are not corrections.

12. European Convention on Human Rights

12.1 The Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade has made the following statement regarding Human Rights: "In my view the provisions of The Trade Unions

(Permissible Means of Voting) and Employment Rights (Unfair Dismissal) (Amendment) Order 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

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