EXPLANATORY MEMORANDUM TO THE EMPLOYMENT CODE OF PRACTICE (INDUSTRIAL ACTION BALLOTS AND NOTICE TO EMPLOYERS) ORDER 2005

2005 No. 2420

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order, 2005 No. [], brings into force, on 1st October 2005, the revised Code of Practice on Industrial Action Ballots and Notice to Employers ("the Code"), which is issued by the Secretary of State under section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

2.2 The 1992 Act imposes a number of requirements on trade unions intending to take industrial action. Compliance with these requirements protects unions from liability to which they would otherwise be subject under the common law. Under these conditions a union proposing industrial action is required to hold a secret ballot of those of its members that it is likely to induce to take part in such action. Further, it must give employers concerned advance notice in writing of the ballot ("a ballot notice") and the industrial action ("an industrial action notice"). The Employment Relations Act 2004 ("the 2004 Act") amended the provisions of the 1992 Act relating to those entitled to vote in a ballot and to the information to be provided in a ballot notice and an industrial action notice. The revised Code provides practical guidance on these requirements.

2.3 This Order contains transitional provisions

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Sections 226 to 235 of the 1992 Act impose requirements relating to industrial action ballots, the ballot, and industrial action notices that unions are required to give to employers. Section 203(1)(a) of the 1992 Act gives a general power to the Secretary of State to issue codes of practice containing practical guidance for the purpose of promoting the improvement of industrial relations. The Code is made under these powers. It provides practical guidance to trade unions and employers in applying the law on industrial action ballots and

notices. The Code does not impose legal obligations and failure to observe it does not render anyone liable to proceedings. However, section 207 of the 1992 Act provides that any provisions of the Code are admissible in evidence and are to be taken into account in any proceedings before any court, tribunal or Committee where they consider them relevant.

4.2 Section 204 of the 1992 Act provides the procedure for the issue of a new or revised code by the Secretary of State. Under section 204(2) of the 1992 Act the Secretary of State must lay any draft code before both Houses of Parliament and, if it is approved by resolution of each House, issue the Code in the form of the draft. The Code was laid in draft before both Houses of Parliament on 18 July 2005, the Code was debated and approved, by a resolution of the House of Commons. The Code was also debated, and approved by a resolution of the House of Lords on 19 July 2005. During the Parliamentary debates, overwhelming support was given to the Code, and the provisions of the Employment Relations Act 2004 which underpin them. . Prior to these Parliamentary debates, a copy of the Code and an accompanying Explanatory Memorandum were sent to the Joint Committee on Statutory Instruments and to the Merits Committee for their consideration. The Secretary of State is therefore now proceeding to make this Order to bring the Code into effect.

5. Extent

5.1 The Order applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 This Code provides practical guidance to trade unions, employers and others in understanding and applying industrial action law. The Government's principal objective in revising the previous Code was to ensure that it reflects changes made in this area by the 2004 Act. The changes made mainly affect the law governing the issuing by unions of notices to employers in advance of industrial action ballots and in advance of any subsequent industrial action.

7.2 The Government issued a public consultation on a draft of the Code in Spring 2005. In response to the views expressed by consultees, the Government made changes to several aspects of the draft Code, in order to ensure that the description of the relevant law is complete and accessible to all stakeholders. In particular, these changes included providing a fuller description of the new requirements concerning information "in the possession" of the union,

clarifying the description of the law on aggregated ballots, and highlighting the role which Acas can play in helping to resolve disputes.

7.3 The provisions of the 2004 Act (sections 22 and 25), which are associated with the Code, and which change the law on industrial action notices, are also due to be bought into force on 1 October 2005.

8. Impact

8.1 The Code of Practice has been amended to reflect various provisions within the 2004 Act. The Regulatory Impact Assessment on the 2004 Act assesses the impact of those provisions. In contrast, the Code of Practice does not impose of itself any regulatory requirements on either unions or employers. Its aim is to assist parties in applying the law in practice. There is therefore no requirement to provide a separate Regulatory Impact Assessment on the Code.

9. Contact

9.1 Bernard Carter at the Department of Trade and Industry (Tel: 020 7215 2760 or e-mail: Bernard.Carter@dti.gsi.gov.uk) can answer any queries regarding the instrument.