



CODE OF PRACTICE

Industrial action ballots and
notice to employers

PL962 (REV2)



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CODE OF PRACTICE

INDUSTRIAL ACTION BALLOTS AND NOTICE TO EMPLOYERS

This Code is issued under the power given to the Secretary of State by section 203 of the Trade Union and Labour Relations (Consolidation) Act 1992, with the authority of Parliament (resolutions passed on 18 July 2005 by the House of Commons and on 19 July 2005 by the House of Lords). It comes into effect, by order of the Secretary of State, on 1 October 2005.

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PREAMBLE

This document revises and supersedes the Code of Practice on Industrial Action Ballots and Notice to Employers [PL962 (Rev1)], which came into effect on 18 September 2000. Pursuant to section 208(2) of the Trade Union and Labour Relations (Consolidation) Act 1992, that Code shall cease to have effect on the date on which this Code of Practice comes in force.

The legal framework for the operation of this Code is explained in Annex 1 and in its main text. While every effort has been made to ensure that explanations included in the Code are accurate, only the courts can give authoritative interpretations of the law.

The Code's provisions apply equally to men and to women, but for simplicity the masculine pronoun is used throughout. Wherever it appears in the Code the word "court" is used to mean the High Court in England and Wales and the Court of Session in Scotland, but without prejudice to the Code's relevance to any proceedings before any other court.

Passages in this Code which are printed in *italic* are re-statements of provisions in primary legislation.

SECTION A

INTRODUCTION

1. This Code provides practical guidance to trade unions and employers to promote the improvement of industrial relations and good practice in the conduct of trade union industrial action ballots.

2. A union is legally responsible for organising industrial action only if it "authorises or endorses" the action. Authorisation would take place before the industrial action starts, and endorsement after it has previously started as unofficial action¹.

3. Apart from certain small accidental failures that are unlikely to affect the result, a failure to satisfy the statutory requirements² relating to the ballot or giving employers notice of industrial action will give grounds for proceedings against a union by an employer, a customer or supplier of an employer, or an individual member of the public claiming that an effect or likely effect of the industrial action would be to prevent or delay the supply of goods or services to him or to reduce the quality of goods or services so supplied. With the exception of failures to comply with the requirements to give notice to employers, these will also give grounds for action by the union's members.

¹ A note on trade union legal liability for the organisation of industrial action is set out in Annex 1 to this Code.

² Set out in sections 226-232A and section 234A of the Trade Union and Labour Relations (Consolidation) Act 1992 as amended by the Trade Union Reform and Employment Rights Act 1993, the Employment Relations Act 1999 and the Employment Relations Act 2004.

4. The Code does not deal with other matters which may affect a union's liability in respect of industrial action. For example, the law will give no protection against proceedings to a union which organises secondary action, intimidatory or violent picketing, industrial action which is not "in contemplation or furtherance of a trade dispute"³, industrial action to establish or maintain any closed shop practice or in support of a worker dismissed while taking part in unofficial industrial action. Nor does it apply to union election ballots, ballots on union political funds or ballots on union recognition or derecognition arranged for by the Central Arbitration Committee under section 70A of and Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act")⁴. These are subject to separate statutory requirements.

Legal status

5. *The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But section 207 of the 1992 Act provides that any provisions of the Code are to be admissible in evidence and are to be taken into account in proceedings before any court where it considers them relevant.*

³ The term "trade dispute" is defined in section 244 of the 1992 Act.

⁴ Inserted by the Employment Relations Act 1999.

SECTION B

WHETHER A BALLOT IS APPROPRIATE

Observing procedural agreements

6. An industrial action ballot should not take place until any agreed procedures, whether formal or otherwise, which might lead to the resolution of a dispute without the need for industrial action have been completed and consideration has been given to resolving the dispute by other means, including seeking assistance from Acas⁵. A union should hold a ballot on industrial action only if it is contemplating the organisation of industrial action.

Balloting by more than one union

7. Where more than one union decides that it wishes to ballot members working for the same employer in connection with the same dispute, the arrangements for the different ballots should be co-ordinated so that, as far as practicable, they are held at the same time and the results are announced simultaneously.

⁵ Acas can provide assistance after the ballot stage as well. Parties should therefore consider using its services at other times during the course of a dispute to avoid industrial action altogether or to bring that action to an end through a negotiated resolution of the issues at dispute.

SECTION C

PREPARING FOR AN INDUSTRIAL ACTION BALLOT

Arranging for independent scrutiny of the ballot

8. *For a ballot where more than 50 members are given entitlement to vote (see paragraph 21 below), the union must appoint a qualified person as the scrutineer of the ballot⁶. For a person to be qualified for appointment as scrutineer of an industrial action ballot, he must be among those specified in an order made by the Secretary of State⁷ and the union must not have grounds for believing that he will carry out the functions which the law requires other than competently or that his independence in relation to the union might reasonably be called into question.*

9. *The scrutineer's terms of appointment must require him to take such steps as appear appropriate to him for the purpose of enabling him to make a report to the union as soon as reasonably practicable after the date of the ballot (i.e. the last day on which votes may be cast, if they may be cast on more than one day), and in any event not later than four weeks after that date.*

⁶ Where separate workplace ballots are required, the scrutiny procedures must be followed in respect of each separate ballot if the number of members given entitlement to vote aggregated across all of the ballots is more than 50.

⁷ In broad terms, the current order (SI 1993 No. 1909) covers practising solicitors, qualified accountants and four named bodies (Election.com Limited; Electoral Reform (Ballot Services) Limited; The Involvement and Participation Association; and Popularis Limited).

10. *The union must ensure that the scrutineer carries out the functions required to be part of his terms of appointment, and that there is no interference with this from the union, or any of its members, officials or employees; and comply with all reasonable requests made by the scrutineer for the purpose of carrying out those functions.*

11. It may be desirable to appoint the scrutineer before steps are taken to satisfy any of the other requirements of the law to make it easier for the scrutineer to satisfy himself whether what is done conforms to the legal requirements.

12. In some circumstances, it may help ensure adequate standards for the conduct of the ballot or simplify the balloting process if a union gives the scrutineer additional tasks to carry out on the union's behalf, such as:-

- supervising the production and distribution of voting papers;
- being the person to whom the voting papers are returned by those voting in the ballot; and
- retaining custody of all returned voting papers for a set period after the ballot.

13. Although the scrutiny requirement does not apply to ballots where 50 or fewer members are entitled to vote, a union may want to consider whether the appointment of a scrutineer would still be of benefit in enabling it to demonstrate compliance with the statutory requirements more easily.

Providing ballot notice to employers

14. *The union must take such steps as are reasonably necessary to ensure that any employer who it is reasonable for the union to believe will be the employer of any of its members who will be given entitlement to vote receives written notice of the ballot not later than the seventh day before the intended opening day of the ballot (i.e. the first day on which a voting paper is sent to any person entitled to vote). That notice must:-*

- *state that the union intends to hold the ballot;*
- *specify the date which the union reasonably believes will be the opening day of the ballot; and*
- *contain either:*

(a) a list of the categories of employee to which the employees concerned belong, a list of the workplaces at which they work and figures (together with an explanation of how they were arrived at) showing the total number of employees concerned, the number of them in each of the categories listed and the number of them that work at each of the workplaces listed; or

(b) where some or all of the employees concerned are employees from whose wages the employer makes deductions representing payments to the union, a practice commonly known as "check off" or "DOCAS", other alternatives apply. In such circumstances, the notice must contain either :

- i) those same lists, figures and explanations as set out in (a); or*
- ii) such information as will enable the employer to readily deduce the total number of employees concerned, the categories of employee to which they belong, the number of employees concerned in each of those categories, the workplaces at which the employees concerned work and the number of them at each of these workplaces.*

Where only some of the employees concerned pay their union contributions by the "check off", the union's notice may include both types of information. That is, the lists, figures and explanations should be provided for those who do not pay their subscriptions through the check off whilst information relating to check off payments may suffice for those who do.

The "employees concerned" are those whom the union reasonably believes will be entitled to vote in the ballot.

The lists and figures or information supplied should be as accurate as is reasonably practicable in the light of the information in the union's possession at the time when it complied with subsection 226A(1)(a). Information is "in the union's possession" provided it is held for union purposes in a document (either in electronic or other form) and provided it is in the possession or under the control of an

officer or employee of the union.

Dependent on the precise status of the individuals concerned, information held by shop stewards or other lay representatives would probably not qualify for these purposes as being “in the union’s possession”.

But a notice will not fail to satisfy the requirements simply because it does not name any employees.

15. There are many ways to categorise a group of employees. When deciding which categories it should list in the notice, the union should consider choosing a categorisation which relates to the nature of the employees’ work. For example, the appropriate categorisation might be based on the occupation, grade or pay band of the employees involved. The decision might also be informed by the categorisations of the employees typically used by the employer in his dealings with the union. The availability of data to the union is also a legitimate factor in determining the union’s choice.

16. When providing an explanation of how the figures in the written notice were arrived at, unions should consider describing the sources of the data used (for example, membership lists held centrally or information held at regional offices, or data collected from surveys or other sources). It is not reasonable to expect union records to be perfectly accurate and to contain detailed information on all members. Where the

union’s data are known to be incomplete or to contain other inaccuracies, it is a desirable practice for unions to describe in the notices the main deficiencies. In some cases, the figures will be estimates based on assumptions and the notice should therefore describe the main assumptions used when making estimates.

17. To reduce the risk of legal action, the union should allow sufficient time for delivery, use a suitable means of transmission (such as first class post, courier, fax, email or hand delivery) and consider obtaining confirmation that the employer has received the notice, by using recorded delivery or otherwise.

18. It may also reduce the risk of litigation for a union to check that an employer accepts that the information provided complies with the requirements of section 226A(2)(c) of the 1992 Act. Similarly, it would be in the interests of good industrial relations for an employer who believes the notice he has received does not contain sufficient information to comply with the statutory requirements to raise that with the union promptly before pursuing the matter in the court.

Providing sample voting paper(s) to employers

19. *The union must take such steps as are reasonably necessary to ensure that any employer who it is reasonable for the union to believe will be the employer of any of its members who will be given entitlement to*

vote receives a sample voting paper (and a sample of any variant of that voting paper) not later than the third day before the opening day of the ballot. Where more than one employer's workers are being balloted, it is sufficient to send each employer only the voting paper or papers which will be sent to his employees.

20. If the sample voting paper is available in time, the union may wish to include it with the notice of intention to ballot. As with the ballot notice, the risk of non-compliance can be reduced by allowing enough time, using appropriate means of transmission and, possibly, by obtaining confirmation of receipt.

Establishing entitlement to vote (the "balloting constituency")

21. *Entitlement to vote in the ballot must be given to all the union's members who it is reasonable at the time of the ballot for the union to believe will be induced by the union (whether that inducement will be successful or not) to take part in or continue with the industrial action, and to no other members*⁸.

⁸ The union may choose whether or not to give a vote to any "overseas member", ie any member (other than a merchant seaman or offshore worker) who is outside Great Britain for the whole of the voting period. However, members who may be called upon to take part in or continue with the industrial action, and will be in Northern Ireland for the whole of the voting period, must be given entitlement to vote in a ballot where: (i) the ballot is a workplace ballot at their workplace in Great Britain; or (ii) they work in Northern Ireland but it is intended that they should be called upon to take part in the industrial action alongside their counterparts in Britain, and the ballot is a general ballot covering places of work in both Northern Ireland and Great Britain.

22. *The validity of the ballot will not however be affected if the union subsequently induces members to take part in or continue with industrial action who at the time of the ballot:-*

- *were not members or*
- *were members but who it was not reasonable to expect would be induced to take action (for example because they changed jobs after the ballot).*

23. *It should also be noted that accidental failures to comply with the requirements on:*

- *in particular, who is given entitlement to vote;*
- *the dispatch of voting papers;*
- *giving members the opportunity to vote conveniently by post, and*
- *balloting merchant seamen employed in a ship at sea or outside Great Britain at some time during the voting period will be disregarded if, taken together, they are on a scale unlikely to affect the ballot's result.*

Balloting members at more than one workplace

24. *Where the members of a union with different workplaces are to be balloted, a separate ballot will be necessary for each workplace unless one of the conditions set out below is met. Where separate ballots are held, it will be unlawful for the union to organise industrial action at any such workplace where a majority of those voting*

in the ballot for that workplace have not voted "Yes" in response to the relevant required question (or questions) (see paragraph 30 below). (If an employee works at or from a single set of premises, his workplace is those premises. If not, it is the premises with which his employment has the closest connection.)

25. *In summary, the conditions for holding a single ballot for more than one workplace are:-*

- *at each of the workplaces covered by the single ballot there is at least one member of the union affected⁹ by the dispute; or*
- *entitlement to vote in the single ballot is given, and limited, to all of a union's members who, according to the union's reasonable belief, are employed in a particular occupation or occupations by one employer or any of a number of employers with whom the union is in dispute; or*
- *entitlement to vote in the single ballot is given, and limited, to all of a union's members who are employed by a particular employer or any of a number of employers with whom the union is in dispute.*

Where a single ballot across a number of workplaces is held and the majority is in favour of industrial action, it is lawful for the union to organise industrial action at any such workplace.

⁹ Section 228A(5) of the 1992 Act defines for this purpose which members are affected by a dispute.

It is possible for a union to hold more than one ballot on a dispute at a single workplace. If the conditions above are met, some or all of those ballots may also cover members in other workplaces.

The balloting method

26. *Votes must be recorded by the individual voter marking a voting paper. Voting papers must be sent out by post and members must be enabled conveniently to return them by post at no direct expense to themselves¹⁰. In practice, this means that those properly entitled to vote should be supplied with pre-paid reply envelopes in which to return the voting paper.*

27. The period between sending out voting papers (i.e. the opening day of the ballot) and the date by which completed voting papers should be returned should be long enough for the voting papers to be distributed and returned and for the members concerned to consider their vote. The appropriate period may vary according to such factors as the geographical dispersion of the workforce, their familiarity or otherwise with the issues in the dispute, the class of post used and whether the ballot is being held at a time of year when members are more than usually likely to be

¹⁰ *There is a limited exception for the balloting of union members who are merchant seamen, where the union reasonably believes that they will be employed in a ship at sea (or outside Great Britain) at some time in the period during which votes may be cast and that it will be convenient for them to vote while on the ship or where the ship is. So far as reasonably practicable, the union must ensure that, in these circumstances, those members get a voting paper while on board ship (or at the place where the ship is located), and an opportunity to vote on board ship (or at that place). The recommendations in this Code should be applied to such ballots, however, save to the extent that they are irrelevant because the dispatch of voting papers is not by post.*

away from home or the workplace, for example during the summer holidays. Generally, seven days should be the minimum period where voting papers are sent out and returned by first class post and fourteen days where second class post is used, although – very exceptionally – shorter periods may be possible for ballots with very small, concentrated constituencies who can be expected to be familiar with the terms of the dispute.

28. In order to reduce the likelihood of dispute over whether or not sufficient time has been allowed, the union may wish to consider obtaining one or more certificates of posting to confirm the date when voting papers were actually put into the post, and the number sent out.

Voting papers

29. *The voting paper must:-*

- *where applicable, state the name of the independent scrutineer;*
- *clearly specify the address to which, and the date by which, it is to be returned;*
- *be marked with a number, which is one of series of consecutive numbers used to give a different number to each voting paper;*
- *make clear whether voters are being asked if they are prepared to take part in, or to continue to take part in, industrial action which consists of a strike, or in industrial action short of a strike, which for this purpose includes overtime bans and call-out bans; and*

- *specify the person or persons (and/or class or classes of person/s) who the union intends to have authority to make the first call for industrial action to which the ballot relates, in the event of a vote in favour of industrial action¹¹.*

30. *While the question (or questions) may be framed in different ways, the voter must be asked to say by answering “Yes” or “No” whether he is willing to take part in or continue with the industrial action. If the union has not decided whether the industrial action would consist of a strike or action short of a strike (including overtime bans or call-out bans), separate questions in respect of each type of action must appear on the voting paper.*

31. The relevant required question (or questions) should be simply expressed. Neither they, nor anything else which appears on the voting paper, should be presented in such a way as to encourage a voter to answer one way rather than another as a result of that presentation. It is not in general good practice for the union to include additional questions on the voting paper (for example, asking if voters agree with the union’s opinion on the merits of the dispute or are prepared to “support” industrial action), but if it chooses to do so they should be clearly separate from the required question(s).

¹¹ Where a person who has not been specified on the voting paper calls industrial action before it is first called by a specified person, then – in order to be certain that the ballot will give protection against legal proceedings – the union should if possible ensure that the call by the unspecified person is effectively repudiated.

32. *The following words must appear on every voting paper:-*

“If you take part in a strike or other industrial action, you may be in breach of your contract of employment. However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than twelve weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.”

This statement must not be qualified or commented upon by anything else on the voting paper.

33. An example voting paper containing the information required by law and other useful information is set out in Annex 2 to this Code. Factual information as indicated would appear in the square brackets and either or both questions could be used as appropriate.

Printing and distribution of the voting papers

34. The union will wish to ensure that arrangements for producing and distributing voting papers will prevent mistakes which might invalidate the ballot. If in doubt, the independent scrutineer may be able to provide useful advice.

35. If there is no independent scrutineer, or if a union decides that it cannot follow the advice offered by the scrutineer, it should consider:-

- printing the voting papers on a security background to prevent duplication;
- whether the arrangements proposed for printing (or otherwise producing) the voting papers, and for their distribution to those entitled to vote in the ballot, offer all concerned sufficient assurance of security.

Communication with members

36. A union should give relevant information to its members entitled to vote in the ballot, including (so far as practicable):-

- the background to the ballot and the issues to which the dispute relates;
- the nature and timing of the industrial action the union proposes to organise if a majority vote “Yes”;
- any considerations in respect of turnout or size of the majority vote in the ballot that will be taken into account in deciding whether to call for industrial action; and
- the possible consequences for workers if they take industrial action.

In doing so, the union should ensure that any information it gives to members in connection with the ballot is accurate and not misleading.

SECTION D

HOLDING AN INDUSTRIAL ACTION BALLOT

37. *In an industrial action ballot:-*

- *every person entitled to vote must be allowed to do so without interference from, or constraint imposed by, the union or any of its members, officials or employees;*
- *as far as reasonably practicable, every person entitled to vote must be:-*
 - *sent a voting paper by post to his home address, or another address which he has asked the union (in writing) to treat as his postal address;*
 - *given a convenient opportunity to vote by post; and*
 - *allowed to do so without incurring any direct cost to himself (see also paragraph 26); and*
- *as far as reasonably practicable, the ballot must be conducted in such a way as to ensure that those voting do so in secret.*

Checks on number of voting papers for return

38. In order to reduce the risk of failures to satisfy the statutory requirements and invalidating the ballot, the union should establish an appropriate checking system so that:-

- no-one properly entitled to vote is accidentally disenfranchised, for example through the use of an out of date or otherwise inaccurate membership list; and
- votes from anyone not properly entitled to vote are excluded.

The independent scrutineer may provide advice on this.

Ensuring secrecy of voting

39. Any list of those entitled to vote should be compiled, and the voting papers themselves handled, so as to preserve the anonymity of the voter so far as this is consistent with the proper conduct of the ballot.

40. Steps should be taken to ensure that a voter's anonymity is preserved when a voting paper is returned. This means, for example, that:-

- envelopes in which voting papers are to be posted should have no distinguishing marks from which the identity of the voter could be established; and
- the procedures for counting voting papers should not prejudice the statutory requirement for secret voting.

SECTION E

FOLLOWING AN INDUSTRIAL ACTION BALLOT

41. *The union must:-*

- *ensure that the votes given in an industrial action ballot are fairly and accurately counted;*
- *observe its obligations in connection with the notification of details of the result of an industrial action ballot to all those entitled to vote in the ballot and their employers; and*
- *provide a copy of the scrutineer's report on the ballot to anyone entitled to receive it.*

An inaccuracy in the counting of the votes is to be disregarded if it is both accidental and on a scale which could not affect the result of the ballot. Whether an accidental inaccuracy meets this test in practice will depend on the closeness of the ballot result.

Counting votes accurately and fairly

42. Where the union itself is conducting the ballot, it may wish to apply some or all of the following procedures to secure that the statutory requirements have been complied with:

- ensuring all unused or unissued voting papers are retained only for so long as is necessary after the time allowed for voting has passed to allow the necessary information for checking the

number of voting papers issued and used to be prepared, and that a record is kept of such voting papers when they are destroyed;

- rejection of completed voting papers received after the official close of voting or the time set for receipt of voting papers;
- settlement well in advance of the actual ballot of the organisational arrangements for conducting the count of votes cast, and making available equipment or facilities needed in the conduct of the count to those concerned;
- storage of all voting papers received at the counting location under secure conditions from when they arrive until they are counted;
- setting clear criteria to enable those counting the votes to decide which voting papers are to be rejected as "spoiled", and designating someone who is neither directly affected by the dispute to which the ballot relates nor a union official who regularly represents any of those entitled to vote in the ballot to adjudicate on any borderline cases;
- locking and securing the counting room during the period during which votes are to be counted whenever counting staff are not actually at work; and
- storage of voting papers, once counted, under secure conditions (i.e. so that they cannot be tampered with in any way and are available for checking if necessary) for at least 6 months after the ballot.

The union may wish to consider putting the counting exercise as a whole into the hands of the independent scrutineer.

Announcing details of the result of a ballot

43. *A union must, as soon as reasonably practicable after holding an industrial action ballot, take steps to inform all those entitled to vote¹², and their employer(s), of the number of:-*

- *votes cast in the ballot;*
- *individuals answering “Yes” to the required question (or questions);*
- *individuals answering “No” to the required question (or questions); and*
- *spoiled voting papers.*

Where separate workplace ballots are required (see paragraphs 24 and 25 above), these details must be notified separately for each such workplace to those entitled to vote there.

44. To help ensure that its result can be notified as required, the union may wish to consider, for example:-

- designating a “Returning Officer” for the centralised count of votes cast in the ballot (or separate “Returning Officers” for counts conducted at

different locations) to whom the results will be notified in the form required prior to their announcement;

- organising the counting of votes in such a way that the information required to satisfy the relevant statutory requirements can be easily obtained after the counting process is over;
- using its own journals, local communications news-sheets, company or union branch notice boards to publicise the details of the ballot result to its members; and
- checking with relevant employers that the ballot result details notified to them have arrived.

45. *Before giving the seven-day notice to employers of intended industrial action, the union must have taken the required steps to notify the relevant employer(s) of the ballot result details. Where the employees of more than one employer have been balloted, a failure to provide the required ballot result details to a particular employer or employers will mean that if the union organises industrial action by the workers of that employer or those employers it will not have the support of a ballot. In cases where it is lawful to hold a single ballot across the workplaces of several or many employers (see paragraph 25 above), the “ballot result” refers to the result aggregated across all the employers and workplaces involved.*

46. *If the inducement of industrial action to which the ballot relates is to be capable of being protected by the law, some part of the action must be induced and start to take*

¹² *If overseas members of a trade union have been given entitlement to vote in an industrial action ballot the detailed information about its result need not be sent to them, but the information supplied to non-overseas members in accordance with the statutory requirements must distinguish between votes cast, individuals voting, and spoiled ballot papers to show which details relate to overseas, and which to non-overseas, members. (For these purposes members in Northern Ireland given entitlement to vote do not count as “overseas” members.)*

place within four weeks from the date of the ballot (i.e. the last day on which votes may be cast in the ballot) or such longer period not exceeding eight weeks as the union and employer may agree¹³. (To reduce the risk of misunderstanding, both parties may find it helpful for such agreements to be in writing.) If a ballot results in a “Yes” vote for both a strike and action short of a strike and action short of a strike is induced and starts to take place within the relevant period, the ballot would also continue to protect strike action subsequently, and vice versa.

Obtaining, and providing copies of, the scrutineer’s report

47. Where more than 50 members are given entitlement to vote, a union must appoint an independent scrutineer, whose terms of appointment must include the production of a report on the conduct of the ballot. This report must be produced as soon as reasonably practicable after the date of the ballot, and in any event not later than four weeks after that date.

¹³ A union may be allowed to make its first call for industrial action more than four weeks after the date of the ballot if either (a) the employer and union agree on an extension, for example to enable talks which are making progress to continue, of up to eight weeks after the date of the ballot or (b) an injunction granted by a court or an undertaking given by the union to the court prohibits the union from calling for industrial action during some part, or the whole, of the four weeks following the date of the ballot, and the injunction subsequently lapses or is set aside or the union is released from its undertaking. In the latter case, a union may forthwith apply to the court for an order which, if granted, would provide that the period during which the prohibition had effect would not count towards the four week period for which ballots are normally effective. However, if the court believes that the result of a ballot no longer represents the views of union members, or that something has happened or is likely to happen which would result in union members voting against taking, or continuing with, action if there were a fresh ballot, it may not make such an order. In any case, a ballot can never be effective if a union’s first call for industrial action is made more than twelve weeks after the date of the ballot.

48. The union must provide a copy of the scrutineer’s report to any union member who was entitled to vote in the ballot, or any employer of such a member, who requests one within six months of the date of the ballot. The copy must be supplied as soon as reasonably practicable, and free of charge (or on payment of a reasonable fee specified by the union).

49. In order to reduce the risk of challenge to a ballot’s compliance with the statutory requirements, a union may wish to delay any call for industrial action, following a ballot, until it has obtained the scrutineer’s report on the ballot.

If the union decides to authorise or endorse industrial action

50. If the union decides to authorise or endorse industrial action following a ballot, it must take such steps as are reasonably necessary to ensure that any employer who it is reasonable for the union to believe employs workers who will be, or have been, called upon to take part in the action receives no less than seven days before the day specified in the notice as the date on which workers are intended to begin to take part in continuous action or as the first date on which they are intended to take part in discontinuous action a written notice from the union which:-

- is given by any officer, official or committee of the union for whose act of inducing industrial action the union is responsible in law (an indication of

whom this might cover is given in Annex 1 to this Code);

- specifies: (i) whether the union intends the action to be “continuous” or “discontinuous”¹⁴; and (ii) the date on which any of the affected employees are intended to begin to take part in the action (where it is continuous action), or all the dates on which any of them are intended to take part (where it is discontinuous action);
- states that it is a notice given for the purposes of section 234A of the 1992 Act; and
- contains either

(a) a list of the categories of employee to which the affected employees belong, a list of the workplaces at which they work and figures (together with an explanation of how they were arrived at) showing the total number of affected employees, the number of them in each of the categories listed and the number of them that work at each of the workplaces listed; or

(b) where some or all of the employees are employees from whose wages the employer makes deductions representing payments to the union, a practice commonly known as “check off” or “DOCAS”, other alternatives apply. In such circumstances the notice must contain either :

¹⁴ For these purposes, industrial action is “discontinuous” if it is to involve action other than on all the days when action might be taken by those concerned. An indefinite strike would, therefore, be “continuous”; an overtime ban might be “continuous” or “discontinuous”, depending on whether the ban applied to overtime working on all the days on which overtime would otherwise be worked or to overtime working on only some of those days.

- (i) those same lists, figures and explanations as set out in (a); or
- (ii) such information as will enable the employer to readily deduce the total number of affected employees, the categories of employee to which they belong, the number of employees concerned in each of those categories, the workplaces at which the affected employees work and the number of them at each of these workplaces.

Where only some of the affected employees pay their union contributions by the “check off”, the union’s notice may include both types of information. That is, the lists, figures and explanations should be provided for those who do not pay their subscriptions through the check off whilst information relating to check off payments may suffice for those who do.

The “affected employees” are those whom the union reasonably believes will be induced by the union or have been so induced to take part in or continue to take part in the industrial action.

The lists and figures or information supplied should be as accurate as is reasonably practicable in the light of the information in the union’s possession at the time when it complied with subsection 234A(1). Information is “in the union’s possession” if it is held for union purposes in a document (either in electronic or other

form) and it is in the possession or under the control of an officer or employee of the union. Dependent on the precise status of the individuals concerned, information held by shop stewards or other lay representatives would probably not qualify for these purposes as being "in the union's possession".

But a notice will not fail to satisfy the requirements simply because it does not name any employees.

Changes in the union's intentions, for example as to the dates on which action is to be taken, require further notices to be given accordingly.

51. With the exception of the requirements relating to continuous and discontinuous action and to the need to give further notices in the event of changes in the union's intentions, the statutory requirements applying to notice of industrial action are for the most part the same as those applying to notice of industrial action ballots and the guidance in paragraphs 15-18 will be of relevance, taking account of the different circumstances.

52. *Where continuous industrial action is suspended, for example for further negotiations between the employer and union, the union must normally give the employer a further notice as in paragraphs 50 and 51 above before resuming the action. There is an exception to this requirement to give further notice, however, where the union agrees with the*

employer that the industrial action will cease to be authorised or endorsed with effect from a date specified in the agreement but may be authorised or endorsed again on or after another date specified in the agreement and the union:-

- *ceases to authorise or endorse the action with effect from the specified date; and*
- *subsequently re-authorises or re-endorses the action from a date on or after the originally specified date or such later date as may be agreed with the employer.*

For this exception to apply, the resumed industrial action must be of the same kind as covered in the original notice. That will not be so if, for example, the later action is taken by different or additional descriptions of workers. In order to avoid misunderstanding, both parties may find it helpful for such agreements to be in writing.

Seeking union members' views after a union has authorised or endorsed industrial action

53. There is no statutory obligation on a union to ballot, or otherwise consult, its members before it decides to call off industrial action. However, if a union decides to seek its members' views about continuing with industrial action, it may wish to apply the same standards to the process of seeking their views as are set out in this Code.

TRADE UNION LIABILITY

1. *Section 20 of the Trade Union and Labour Relations (Consolidation) Act 1992 lays down when a union is to be held responsible for the act of inducing, or threatening, a breach or interference with a contract in circumstances where there is no immunity. The union will be held liable for any such act which is done, authorised or endorsed by:-*

- *its Executive Committee, General Secretary, President;*
- *any person given power under the union's rules to do, authorise or endorse acts of the kind in question; or*
- *any committee or official of the union (whether employed by it or not).*

A union will be held responsible for such an act by such a body or person regardless of any term or condition to the contrary in its own rules, or in any other contractual provision or rule of law.

2. *For these purposes:-*

- *a "committee of the union" is any group of persons constituted in accordance with the rules of the union;*
- *an "official of the union" is any person who is an officer of the union or of a branch or section of the union or any*

person who is elected or appointed in accordance with the union's own rules to be a representative of its members, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, he is elected to represent (e.g. a shop steward); and

- *an act will be treated to have been done (or authorised or endorsed) by an official if it was so done (or authorised or endorsed) by a group of persons, or any member of a group, to which an official belonged at the relevant time if the group's purposes included organising or co-ordinating industrial action.*

3. *A union will not be held liable for such an act of any of its committees or officials, however, if its Executive Committee, President or General Secretary repudiates the act as soon as reasonably practicable after it has come to the attention of any of them, and the union takes the steps which the law requires to make that repudiation effective. But the union will not be considered to have "effectively repudiated" an act if the Executive Committee, President or General Secretary subsequently behave in a manner which is inconsistent with the repudiation.*

4. *The fact that a union is responsible for organising industrial action to which immunity does not apply does not prevent legal action also being taken against the individual organisers of that action.*

“Immunity”

5. A trade union which organises (i.e. authorises or endorses) industrial action without satisfying the requirements of section 226 (for balloting on industrial action), or 234A (for notice to employers of official industrial action), of the 1992 Act will have no “immunity”. Without immunity the trade union will be at risk of legal action by (i) an employer (and/or a customer or supplier of such an employer) who suffers (or may suffer) damage as a consequence of the trade union’s unlawful inducement to his workers to break or interfere with the performance of contracts; and/or (ii) any individual who is (or is likely to be) deprived of goods or services because of the industrial action. Such legal proceedings might result in a court order requiring the trade union not to proceed with, and/or desist from, the unlawful inducement of its members to take part or continue with the action, and that no member does anything after the order is made as a result of unlawful inducement prior to the making of the order.

6. Under section 62 of the 1992 Act, a member of a trade union who claims that members of the union, including himself, are likely to be or have been induced by the union to take industrial action which does not have the support of a ballot may apply to the court for an order, which may require the trade union to take steps to ensure that there is no, or no further,

unlawful inducement to members to take part or continue to take part in the action, and that no member does anything after the order is made as a result of unlawful inducement prior to the making of the order.

Contempt and other proceedings

7. If a court order issued following legal proceedings as described in paragraphs 5 and 6 above is not obeyed, anyone who sought it can go back to court and ask that those concerned be declared in contempt of court. A union found in contempt of court may face heavy fines, or other penalties which the court may consider appropriate.

8. In addition, any member of the union may have grounds for legal action against the union’s trustees if they have caused or permitted the unlawful application of union funds or property.

ANNEX 2

EXAMPLE OF VOTING PAPER FOR BALLOT ON TAKING INDUSTRIAL ACTION

[VOTING PAPER NUMBER]

[NAME OF THE TRADE UNION]

ARE YOU PREPARED TO TAKE PART IN INDUSTRIAL ACTION CONSISTING OF A STRIKE?¹⁵

YES

NO

ARE YOU PREPARED TO TAKE PART IN INDUSTRIAL ACTION SHORT OF A STRIKE (which for this purpose is defined to include overtime and call-out bans)?¹⁵

YES

NO

Your union intends the following to have authority to make the call for industrial action to which this ballot relates:
[DETAILS OF RELEVANT PERSON, PERSONS, AND/OR CLASS OR CLASSES OF PERSONS]

If your vote is to count, this voting paper must be returned to *[FULL ADDRESS OF LOCATION TO WHICH THE VOTING PAPER IS TO BE RETURNED]* by *[FULL DATE AND TIME AS APPROPRIATE]*. Please use the enclosed pre-paid envelope provided for this purpose.

The independent scrutineer for this ballot is *[DETAILS OF RELEVANT PERSON]*.

The law requires your union to ensure that your vote is accurately and fairly counted and that you are able to vote without interference from the union or any of its members, officials or employees and, so far as is reasonably practicable, in secret.

If you take part in a strike or other industrial action, you may be in breach of your contract of employment. However, if you are dismissed for taking part in a strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than twelve weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.

¹⁵ Either question or both should be included as appropriate

ANNEX 3

INFORMATION TO BE GIVEN TO EMPLOYERS

The following paragraphs of the Code deal with requirements to provide information to employers:-

	Paragraphs
Ballot notice	14-18
Sample voting papers	19-20
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Notice of intention to authorise or endorse industrial action or resume suspended industrial action	50-51



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