



Changing the world
of work for good

Draft Code of Practice on Electronic and Workplace Balloting

**Trades Union Congress response to
Department for Business and Trade
Consultation. January 2026**

Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together the 5.3 million working people who make up our 47 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

The TUC strongly welcomes these long overdue measures to allow electronic balloting and extend the use of workplace balloting in statutory ballots. It has been a longstanding demand of the trade union movement that the government remove restrictions preventing unions using electronic and workplace balloting for all votes and elections. These measures are a significant step forward in achieving a transformation in the way that members engage with their unions.

Members are familiar with electronic communication in many aspects of their lives. Organisations from the National Trust to political parties have successfully used online balloting in their governance.

Allowing online and workplace balloting could potentially widen participation. The current reliance on postal voting disadvantages some disabled members and can disenfranchise members, notably younger members, who move home frequently. Many workers have jobs that take them away from home for long periods.

Many trade unions already use electronic balloting in non-statutory areas, such as determining member views on pay offers. Such unions have experienced increased member turnout. Meanwhile, workplace ballots are already used for recognition ballots.

A greater range of voting methods will offer members greater speed, convenience and ease of access in ballots. They should also save unions money given the large and rising cost of postal ballots.

Trade unions are extremely positive about the potential for electronic and workplace balloting to boost member engagement in their democratic processes.

Need for a clear and rapid timetable for full implementation

The TUC welcomes the efforts in the draft code of practice to facilitate electronic balloting, in particular. However, the TUC regrets that the decision of the Department for Business and Trade to pursue change using powers under existing legislation, rather than using primary legislation to implement the reforms, has led to limitations in the initial implementation of these measures. This includes not permitting electronic ballots to be distributed to workplace or union-provided email addresses. Because workplace balloting is limited to industrial action ballots and only in circumstances where employers agree, it is unlikely the new right will be used extensively.

There is therefore some way to go before unions have the full ability to utilise the balloting methods most appropriate for their membership.

It is extremely positive that the government has made it clear that there will be further phases to implementation, including extending electronic balloting to recognition ballots. We urge rapid completion of the phases and for the government to commit to a clear timetable for these changes.

However, we call on the government to be more specific about the aims of phase 3 of roll-out, including extending distribution via workplace and union-provided email addresses. There should also be a specific commitment within phase 3 to giving unions a right to hold industrial action ballots in the workplace and to expand the types of ballots that can be run in the workplace.

More comprehensive legislation is required to ensure that workers can be reassured that ballots will be free from employer interference.

The current rules require employer agreement for workplace ballots. This is likely to severely limit the circumstances in which they are used. The TUC urges the government to ensure that after future phases, there is an enforcement regime in place to ensure that unions can demand a workplace ballot. We also urge the government to ensure that this system permits the use of electronic forms of balloting at a workplace as well as paper ballots.

Code should be less prescriptive

The TUC assesses that, taken as a whole, the code of practice in many areas goes well beyond the requirements of legislation and seeks to impose obligations on trade unions that are unnecessary and could lead to conflict with employers. For example, the draft codes requires that a union *ensure* that there are no workplace email addresses among those they send ballots to, mandates a spoiled ballot option and requires that a ballot be discontinued if a database has been accessed. Unions are democratic organisations accountable to their members who are best placed to understand the arrangements that are most appropriate for their workplaces. While it is appropriate for the government to indicate what its view of best practice is, in too many areas this slips into phrasing that suggests these are requirements.

We fear that enormous obligations are being placed on trade unions due to fear of employer interference. In fact, the greatest danger to trade union democracy is that employers use stringent requirements in this code to block union business.

These changes could be hugely beneficial in encouraging members to participate in their unions' democratic processes. But if requirements in the code make voting more arduous, then there is also a risk that the potential benefits could be undermined.

Regulation to make the process safe from interference needs to be balanced with giving union members the opportunity to shape what unions are doing. If the government is concerned about the potential for employer intrusion or disruption of trade unions' democratic processes, it should place obligations on employers, not on unions and their members.

We note that in relation to postal voting section 232B of the Trade Union and Labour Relations (Consolidation) Act 1992 makes it clear that small accidental failures are to be disregarded. We urge the government to replicate this position in either primary legislation or within the code, with respect to electronic and workplace balloting.

Future-proofing

The TUC is concerned by the use of the term "SMS" throughout the code as a synonym for mobile phone number. SMS is already regarded by many as an outdated standard. Indeed, similar technologies such as RCS and MMS, would be suited to this purpose due to higher security levels or the ability to include supporting material. The TUC strongly believes that it would be better to use a broader and more future-proof term such as "mobile messaging ID". If this was not possible, then it should be clear that technologies such as RCS or MMS are permitted to reduce the risk of a challenge to a ballot distributed using those technologies.

Terminology

Questions 1 and 2

The TUC has concerns about paragraph 17e (i) of the code.

The two channels permitted under this clause are email or message to a mobile telephone number. However, paragraph 57 also permits a third channel: a “virtual internet message system”. This should be made explicit in this paragraph.

As we set out below in relation to paragraph 57, the TUC also urges the government to remove the requirement for any internet message system to be associated with a mobile telephone number.

Removing this requirement would make it more likely that this element of the code wouldn't become a hindrance to electronic voting, for instance, if future messaging apps relied on a personal ID or username instead of being linked to a mobile phone number.

Responsible Person

Question 3

The TUC's position is that the responsible person for all ballots, other than recognition, must be the trade union.

In paragraph 23(c), the code states that for statutory recognition and derecognition ballots, and Part III ballots, the “responsible person” is the CAC panel who determines the balloting method to be used for the specific ballot. In practice, under the current balloting regime, the CAC currently determines balloting arrangements after liaising with unions and employers. This code should indicate that the CAC should consult with both employer and union(s) before determining the balloting method.

Trade Unions

Question 4

In seeking to protect union members from employer interference with electronic and workplace ballots, the government must ensure that it doesn't inadvertently hand the employer additional ammunition for disputing ballots. It should also avoid placing excessive demands on unions and members such that the transformative potential of these changes is undermined.

In paragraph 28 (a), the code states that, as best practice, unions check with members they are willing to receive and return a ballot in non-postal form. This is an unnecessary element. It isn't clear how unions are to carry out such a check. It assumes that members already know that postal balloting is the current system and that they will be surprised by the change. Indeed, explaining the counterintuitive use of postal balloting

to members who expect this online can be one of the hardest aspects of a campaign. Such as recommendation, while only stated as best practice, could still give employers grounds for disputing the legitimacy of electronic ballots.

We are concerned that the current wording of paragraph 28 (b) risks undermining confidence in a ballot because it suggests that unions recommend to voters that they do not undertake an electronic ballot while physically present at their workplace, connected to workplace wi-fi, or on a workplace device. It is also inconsistent with paragraph 37 which states that, in the case of seafarers, an employer should not prevent the use of any employer-provided internet during a statutory ballot. A strengthening of paragraph 36 from stating that an employer “should” not take any action that may hinder the ability workers to participate in a ballot to “must” not take that action would provide some reassurance to workers. This would also mean that paragraph 28 (b) was unnecessary. It should be made clear in the code that employers must not use the electronic balloting process to determine whether their workers are union members or to disrupt a process to block union ballots on their network. There should be a general obligation on employers to facilitate electronic (and workplace) ballots taking place.

As we set out in more detail below, the TUC is concerned by the requirement associated with paragraph 30 that requires the union to “ensure” that the distribution list for electronic ballots does not contain workplace email addresses. This is unreasonable when a ballot for a union election could involve workers at many different employers, including some where there might just be a single member, whose email handle would not be immediately identifiable to the union.

Also, with respect to paragraph 30, we set out elsewhere in this response our concerns about stating the need to use SMS and urge the use of a broader term. As set out above, we also disagree with requiring mobile messaging accounts to be associated with a mobile phone number due to the risk of the code preventing unions keeping up with technological advances.

In relation to paragraph 30 (g), if the process for workplace balloting will continue, as in the current draft, to require employer consent, it should be added that where an employer withdraws consent after agreement then it should cover the costs already incurred in preparing for the ballot.

Question 5

We are strongly of the view that a priority for drafting the code should be to limit the burden placed on trade unions in order to facilitate the take-up of eballoting or workplace balloting. So we would be concerned about any additional responsibilities being placed on unions.

Scrutineers

Question 6

Paragraph 34 (h) (iii) and I (ii) insist on retention of audit logs and ballot papers for 12 months. It appears that the former is due to a requirement in the SI. It is not clear if the latter is. We don't believe such prescription and an arbitrary deadline is necessary given that it is not currently a requirement under the industrial action code of practice. Including these requirements could add cost and bureaucracy to the process.

Paragraph 11 in the introduction states that "This code and the [Future SI] may require periodical updates to reflect advancements in technology and/or cybersecurity". This is expanded in Par 13 to reflect potential grounds for update. This could prove a huge burden on scrutineers if it is interpreted as meaning that scrutineers must make specific changes to rework their systems on a regular basis, to align with future specification changes in this code of practice. Scrutineers already keeping their systems up to date for all other forms of election could find their development roadmaps and update processes impacted for just a small proportion of their client base (trade unions) because of this legislation. This might prompt some to exit this part of the market or put up charges, making eballoting prohibitively expensive for unions. We think it would be proportionate to limit the number of such updates, to specify equivalence for any changes, to introduce them in consultation with registered scrutineers, and to provide for transition periods (so unions and scrutineers can budget and implement any change safely).

Central Arbitration Committee (CAC)

Question 10

The TUC recommends that the code state that best practice would be for the CAC to liaise with the relevant trade union to determine the best balloting method.

Voter Access and Distribution: Pure electronic balloting

The TUC urges the government to make it clearer in this code that unions can use a mixture of balloting methods in a ballot. This might include, for example, sending electronic ballots to those for whom they have personal addresses and posting ballots to those for whom they only have a postal address.

Question 13

Paragraph 57c: The TUC strongly urges the government not to require an association between an internet messaging system and a mobile phone number. This would risk

limiting messaging systems to WhatsApp but fail to allow technological development that is likely to see people rely on individual identifications that are not linked to their phone number. The union may not know if a member's virtual internet message system is associated with their mobile number. The member may tell the union their messaging ID, but it could be registered with another mobile number that the member owns, or registered to an email address rather than a mobile number. This paragraph should instead specify that the internet message system ID should be provided by the member for the purposes of communication with the union and held uniquely in the database against the record for that member.

Par 58 requires the electronic ballot access method to be distributed to a unique contact method. This should be a matter of good practice, not requirement. As it stands, there is no issue if two postal ballots are sent to the same postal address. For workers living in shared accommodation or for family members living and working together, this can be a common occurrence.

Paragraph 59 and paragraph 166 state that unions must *ensure* there are no workplace or union provided email addresses or (to the extent that they can) phone numbers among those used to distribute ballots. This is unreasonably strict. There will be situations, such as where a worker is both employed by a communications company and uses their service for their private email account, where it will be very hard to distinguish between private and workplace email addresses. It should also be clarified that a "workplace provided email addresses" means one used for work purposes. It is very likely that many workers for communications companies will use for personal purposes an account that is operated by their employer. There is no risk of interference in these circumstances. In other situations, for instance a general secretary or executive committee ballot, a union might be expected to know the workplace email domains of thousands of employers, including those where a union doesn't have recognition and might have as few as a single member. This is completely unreasonable. It would be more appropriate for a union to make its *best efforts* to ensure that there are no workplace or union email addresses included.

In cases of union workplace reps or lay leaders within their democratic structures, a union may provide an email address. Those activists are likely to register that address with the union instead of a work or personal one. The TUC believes that there is less likelihood of manipulation when using a union email address than when using an employer one, so these should be permitted. In any case, there is a roadmap towards including employer-provided email, but not currently one for union-provided email.

In relation to paragraph 61, the TUC agrees that it is helpful to make it explicit that a mixture of methods can be used. This should be emphasised in this code.

We believe that paragraph 62 is unnecessarily prescriptive. As it stands, there is no requirement for action to be taken in relation to undelivered postal ballots, and there is ultimately no way for a union or scrutineer to tell whether posted ballot papers have been delivered or not. It is therefore excessively onerous to effectively put a requirement on unions and scrutineers to monitor undelivered emails or electronic

messages. There are several different categories of email bouncebacks and these might occur immediately or after delay, further complicating the trade union response situation. This should be highlighted merely as a matter of best practice.

Paragraph 63 is unreasonable. It states that if a ballot is accidentally issued to a workplace email or phone number, the ballot must be reissued to the voter using a permitted distribution method. This could allow an employer to challenge the legitimacy of a ballot due to an inadvertent error.

We urge the government to either remove or provide more clarity as to what constitutes a UK-based operator in relation to paragraph 64.

Ballot requirements

Question 15

Paragraph 76 states that a scrutineer *must* provide the opportunity to spoil a ballot. If this is the government's view of best practice, then it should state this. But it is inappropriate for the state to manage to this level of detail. It should be a matter for the union and scrutineer alone. We note that there is no "spoil ballot" box on postal ballot papers.

Electronic Balloting Platform Requirements, and Cybersecurity: Voter Platform Requirements

Question 16

Paragraph 79 is another example where the code goes too far in providing prescriptive rules for the operation of the ballot that is likely to lead to disputes. In this case the requirement to provide separate instructions is too detailed. How the instructions are provided should be a matter for the union and scrutineer. For example, requiring "instructions" for a hybrid ballot to be a physical copy could create disputes about the extent of the instructions required to be in the envelope and what could be provided on a web link. We also think it is unnecessary to state that in the case of a pure electronic ballot this may be an attachment to an email, or a link to a web page. A union and scrutineer might determine that these are better provided in the body of an email, for example.

Question 20

We are concerned by the recommendation in paragraph 90 that as best practice that the scrutineer and union use two-factor authentication, such as by using digits or parts of a post code or codes which might be sent via different means. This could erect a further barrier to voting and could mean that the impact of this policy change is muted.

We note that it is already extremely common for people to protect access to their phones, computers and email accounts with passwords and other security measures.

Ballot Access Vote Requirements

Question 21

We are concerned that the requirement for the display of an additional unique reference number after voting, which is set out in paragraph 94 is unnecessary and might limit the market for trade union balloting services. It is not something that scrutineers currently offer in ballots for any other clients. Whilst it is technically possible to do, this would involve scrutineers creating a special product solely for union elections, which may not be viable for smaller scrutineers to do. The number is stated as being for a voter to subsequently seek technical support. But this is redundant as the scrutineer can already identify the vote in question by using the unique code sent to the voter prior to voting. That would be enough to verify that the person contacting support was indeed the voter, as they had access to the communication method used to send the ballot. We believe the specification of this additional reference number should be removed from this paragraph.

Electronic Balloting System Security

Question 23

It is too prescriptive for Par 110 (a) to mandate that a ballot must be discontinued if a database has been accessed. The scrutineer should have a responsibility to report this to the union, but the resulting course of action should be in the judgement of the union and scrutineer who are responsible for the ballot.

Scrutineer Standards

Question 27

The TUC is disappointed by the extremely limited scope of the provisions for workplace balloting. We see no reason for it to be restricted to industrial action or subject to an employer veto. We urge the government to commit to a swift timetable for full reform that allows a union to use workplace balloting when it determines it is appropriate, alongside sufficient safeguards to prevent employer interference.

We also note that requiring employer consent for a ballot, as in paragraph 129, makes it extremely unlikely that many such ballots will take place. It is handing an employer a veto over a trade union process at a low point in worker/employer relations.

Paragraph 131 should be reworded. It states that: "The union should consider the state of their relationship with the employer before making a request for a workplace ballot. The employer should consider any request with an open mind, and if turning down the request, explain the reasons for doing so." This is strangely one-sided. If a union should consider the state of its relationship before making a request, the employer should be required to consider its future relationship when considering whether to give assent. The TUC strongly recommends that the code states that an employer should grant access for workplace balloting except if it has most compelling reasons not to, and that any such reason should be explained to the union and to any regulator for the ballot.

Site Requirements

Question 32

Paragraphs 148 and 149 assert that a trade union must pay for a balloting venue. This is an unnecessary stipulation. That should be a matter of negotiation between union and employer, though we accept that it is likely that a union will tend to fund such premises.

Workplace Balloting Requirements

Question 34

We see no reason to mandate that counting take place off-site, as set out in paragraph 160. We understand that the requirement is designed to protect the ballot from employer interference. However, this should be a matter for the union and scrutineer. They can ensure that appropriate safeguards are put in place.

Factors and Criteria for Each Ballot Method

Question 36

Paragraph 166 (a) (ii) should be amended to read: "Are there any countries that the independent scrutineer should / **should not** block access to the e-balloting platform from?". This would allow unions to highlight instances where workers are likely to be overseas during a ballot. If there are known locations that members are likely to be present at, the union could highlight that IP addresses from this country should not be blocked