



UK Government

DRAFT CODE OF PRACTICE ON ELECTRONIC AND WORKPLACE BALLOTING FOR STATUTORY UNION BALLOTS

DRAFT - Subject to Consultation

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Introduction

1. This code provides practical guidance to named independent scrutineers,¹ trade unions, and the Central Arbitration Committee (CAC) for the use of electronic and workplace balloting methods which are permitted in certain circumstances by [Future SI]. It aims to promote the improvement of industrial relations and good practice in the conduct of union statutory ballots and elections by electronic, or workplace means.
2. This code has no bearing on workplace balloting as conducted by the CAC, which is addressed in Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992.
3. This code also provides information relevant to employers, independent scrutineers, and union members to support their understanding and participation with electronic and workplace balloting. While every effort has been made to ensure that the code accurately explains the law, only the courts can give authoritative interpretations of the law.
4. This code does not deal with other matters which may impact a union's liability in relation to any statutory union ballots. For the statutory ballots to which this code applies, there may be legal obligations with which the parties must comply, but which are not referred to in this code. In addition, while some wider legal obligations are pointed out, the code does not give guidance on how to comply with those obligations. This code is not the only source of information to be considered in the conduct of statutory ballots and solely supports understanding and delivery in relation to the use of the electronic and workplace balloting methods provided for under [Future SI].
5. Nothing in this code changes the existing statutory requirements that must be met for statutory union ballots. The code provides no practical guidance in relation to postal balloting requirements and makes no changes to the existing legislative requirements around the use of postal ballots. This code does not change the existing complaint or enforcement routes for individual statutory union ballots.
6. This code applies to the use of electronic balloting for
 - a. industrial action ballots,
 - b. union election ballots,
 - c. ballots on union political funds,
 - d. ballots on mergers and amalgamations of unions, and
 - e. ballots on union recognition and / or derecognition and / or Part III ballots (changes affecting the bargaining unit) arranged by the CAC.

¹ As named as the specific bodies (persons specified by name) qualified under the amended trade union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993. For the avoidance of doubt, any Scrutineer that is not specifically named in the amended order, is not permitted to provide electronic or workplace balloting for statutory union ballots.

7. This code applies to the use of workplace balloting for industrial action ballots.
8. Other codes of practice may apply to ballots to which this code applies. Where this is the case, parties should familiarise themselves with the codes of practice that have been issued for the relevant individual statutory ballot type.

Background to the code

9. Trade union statutory ballots have specific requirements set upon them under the 1992 Act. Principally, (except for CAC-run statutory recognition ballots – where workplace balloting is also permitted), until the [Future SI] comes into effect, statutory trade union ballots are only permitted to be conducted by post under the 1992 Act.²
10. The [Future SI] expands the range of permitted balloting methods to include the use of electronic balloting and workplace balloting as options when conducting specific statutory ballots under the 1992 Act. The use of these methods will be subject to meeting specific criteria as set out in the [Future SI] and this code.
11. This code and the [Future SI] may require periodical updates to reflect advancements in technology and/or cybersecurity.

Legal status under section 204 of the 1992 act

12. The code is produced under section 204 of the 1992 Act. The code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. However, section 207 of the 1992 Act provides that any provisions of this code are to be admissible in evidence in proceedings before a court, tribunal, or the Central Arbitration Committee and are to be taken into account in any proceedings by the court, tribunal, or committee where it considers them relevant.

Updates to the code

13. The government intends to review and update the code of practice periodically and in response to the identification of new threats and vulnerabilities to the use of electronic balloting. Proposed updates are likely to be as a result of:
 - a. Security advice provided to the government by the National Cyber Security Centre (NCSC) that sets out where new threats and vulnerabilities lie, based on its analysis and intelligence
 - b. Technological advancements that require standards to be upgraded
 - c. Any evidence provided by independent scrutineers of new vulnerabilities uncovered throughout the operation of the electronic balloting methods

² This code has no bearing on workplace balloting as conducted by the CAC, which is addressed in the 1992 Act.

Must and should distinction

14. Where the term '**must**' is used in the code of practice, it indicates a legal requirement which **must** be complied with.
15. Where the term '**should**' is used in the code of practice, it indicates something that is recommended to be done by the Secretary of State, but there is no legal requirement to do so. However, the recommendation **is** intended to be admissible in evidence or taken into account as described in paragraph 12.
16. Where '**best practice**' is used, it indicates that something is considered a matter of best practice by the Secretary of State, but there is no legal requirement to do so, and it is not included under the 'should' distinction above.

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Terminology

17. This code uses the following terms which are defined below:

- a. **Ballot method / balloting method** – refers to the permissible ballot methods provided under the [Future SI]. Depending on the context, it could mean any of the following ballot methods to which this code relates:
 - i. Pure Electronic balloting
 - ii. Hybrid Electronic balloting
 - iii. Workplace balloting
- b. **CAC ballots** - refer to the statutory recognition and / or derecognition and / or Part III ballots as called by the CAC as set out under Schedule A1 of the 1992 Act that have specific requirements attached to their operation.
- c. **CAC Panel** – refers to the panel of three people who decide each application to the CAC. Each panel consists of a Deputy Chair, one Employer Member and one Worker Member.³
- d. **Commissioning party** – refers to the organisation which is calling the ballot and may be the CAC or a union.
- e. **E-balloting** – refers to the electronic methods of balloting which are, by virtue of the [Future SI], permitted for use in certain circumstances when conducting statutory ballots which are required under the 1992 Act. The two electronic methods are ‘pure e-balloting’ and ‘hybrid e-balloting’.
 - i. **‘Pure’ e-balloting** – refers to the permitted method of electronic balloting described in the [Future SI] that enables an independent scrutineer to distribute the access method to voters electronically. This could be done by sending information about the ballot access method either in an email to a personal email address or in a message to a personal mobile telephone number belonging to the voter. The voter can then use the access method to access the ballot virtually and exercise their vote virtually.
 - ii. **Hybrid e-balloting** – refers to the permitted method of balloting described in [Future SI] that enables an independent scrutineer to distribute a physical paper ballot to the voter which contains an option for the voter to execute their vote electronically and information about the ballot access method which they should use if they wish to do so. The physical paper ballot must be sent by the independent scrutineer to the voter by post and it must also contain the option to execute the vote by the traditional postal voting method.
- f. **Electronic ballot access method / ballot access method / access method** – is the method through which a voter voting electronically can access the

³ <https://www.gov.uk/government/organisations/central-arbitration-committee/about/membership>

electronic version of their ballot paper for their participation in a statutory ballot and return their vote electronically via the voting platform operated by the independent scrutineer. It could be a link, login code, user and password, or other access method.

- g. **Electronic balloting system** – means the process through which the independent scrutineer provides for the electronic ballot to be conducted. It encapsulates the voting platform, the user database, and the voter database to make up the process through which electronic balloting is delivered.
- h. **Independent scrutineer** – refers either to:
 - i. a person named in article 7 of the trade union Ballots and Elections (independent scrutineer Qualifications) Order 1993 (as amended from time to time) who has been instructed by the responsible person to conduct a statutory ballot
 - or
 - ii. in the case of CAC statutory ballots, a person named in article 4 of the Recognition and Derecognition Ballots (Qualified Persons) Order 2000 (as amended from time to time) who has been instructed by the responsible person to conduct a statutory ballot
- i. **Responsible Person** – refers to the person who is responsible for determining which balloting method is to be used to conduct a statutory ballot as determined in accordance with the [Future SI].
- j. **Statutory union ballots** – refer to the statutory ballots held by trade unions as set out under the 1992 Act that have specific requirements attached to their operation. These are:
 - i. Industrial action ballots – as set out in Part V of the 1992 Act
 - ii. Political fund / resolution ballots – as set out in Part 1, Chapter VI of the 1992 Act
 - iii. Union merger / amalgamation ballots – as set out in Part 1, Chapter VII of the 1992 Act
 - iv. Union elections – as set out in Part 1, Chapter IV of the 1992 Act
- k. **The 1992 Act** – refers to the [Trade Union and Labour Relations \(Consolidation\) Act 1992](#).
- l. **Unique identifying number** – is the unique ID method created by the independent scrutineer and allocated to a voter for the purpose of internal handling of votes by the independent scrutineer and ensuring that personal information is not associated with votes cast and that votes can be cast secretly.
- m. **User Database** – is the electronic database in which, when using electronic balloting methods, the personal information of those eligible to

vote (e.g. email, phone number, address) is stored together with their unique identifying number.

- n. **Voter database** – is the electronic database in which, when using electronic balloting methods, the information relating to votes cast electronically via the voting platform together with the unique identifier number are stored.
- o. **Voting platform** – is the website, app, platform, or other online location operated by the independent scrutineer which can be used by voters, using the ballot access method provided by the independent scrutineer to view their ballot paper electronically and cast their vote(s) electronically.
- p. **Workplace balloting** – refers to the permitted method of balloting described in [Future SI] that enables an industrial action ballot to be held in person, at a location within the workplace, or at a location near to the workplace premises of the employer.

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Applicability to statutory ballots under the 1992 Act

18. The [Future SI] sets out clearly which ballot methods are permitted for individual ballot types. Subject to that, any combination of permitted ballot methods can be used for a ballot.
19. This code applies to the use of ‘pure electronic balloting’ as a balloting method permitted in relation to:
- a. industrial action ballots
 - b. political fund / resolution ballots
 - c. union election ballots
 - d. union merger ballots⁴
20. This code applies to the use of ‘hybrid electronic balloting’ as a balloting method permitted in relation to:
- a. industrial action ballots
 - b. political fund / resolution ballots
 - c. union election ballots
 - d. union merger ballots
 - e. CAC statutory recognition and derecognition ballots, and part III ballots under Schedule A1
21. This code applies to the use of ‘workplace balloting’ as a balloting method permitted in relation to industrial action ballots.⁵

⁴ Merger Ballots mean transfer ballots and amalgamation ballots as set out in Chapter VII of the 1992 Act.

⁵ Workplace balloting is also permitted for CAC run statutory recognition and derecognition ballots under the 1992 Act. However, CAC workplace balloting has no link to the [Future SI] and is permitted under Schedule A1 of the 1992 Act and therefore is not relevant to this guidance.

Responsibilities and requirements

22. This section explains the key responsibilities of certain parties during ballots to which this code applies. It does not provide an exhaustive list of their responsibilities. Further information as to what the responsible person must consider is in the section of this code titled *Responsible Person – Factors and Criteria*. Further information as to the requirements of the Scrutineer, union, and CAC are detailed in the sections *Electronic Balloting Requirements*, and *Workplace Balloting Requirements*.

Responsible person

23. As set out in the [Future SI], the “responsible person” is the person who is to decide which method or combination of methods will be used to conduct a statutory ballot or a CAC ballot. The responsible person must be:

- a. For industrial action, political fund, and union election ballots:
 - i. the General Secretary, or equivalent, of the union, who is permitted to delegate their responsibility as the “responsible person” to a suitable official within their organisation in accordance with the [Future SI].
- b. For merger ballots
 - i. Transfer ballots:
 - 1. The General Secretary, or equivalent, of the union that is transferring, who is permitted to delegate their responsibility as the “responsible person” to a suitable official within their organisation in accordance with the [Future SI].
 - ii. For Amalgamation ballots:
 - 1. The General Secretary, or equivalent, of each union being merged / amalgamated must agree who will act as the responsible person. If they cannot all agree, the newly permitted methods provided in the SI must not be used.
- c. For statutory recognition and derecognition ballots, and Part III ballots:
 - i. The CAC panel who determines the balloting method to be used for the specific ballot.

24. In the case of a union election ballot, the “responsible person” must be an individual who is not standing in the election.

25. The responsible person **must apply the criteria and consider the factors as specified in the [Future SI] and set out in the section of this code titled ‘Responsible Person – Factors and Criteria’** when determining the method or combination of methods to be used to conduct a ballot.

26. The responsible person may wish to work with an independent scrutineer and/or other technical experts to assess the factors and criteria that the responsible person must consider in selecting a ballot method and designing the ballot.

Trade unions

27. In the case of statutory union ballots, there are a number of responsibilities that will fall to the union.

28. As best practice, they are recommended to:

- a. In respect of electronic balloting, check with their members that they are willing to receive and return a ballot in a format other than by post before using an electronic ballot method.
- b. Recommend to voters to not undertake an electronic ballot while physically present at their workplace, connected to workplace wi-fi, or on a workplace device (such as a phone, laptop, tablet, etc), as an unscrupulous employer may seek to identify how or whether they have voted.
- c. Inform voters that completing an electronic ballot in the workplace could inadvertently identify them as a union member to an employer or colleagues, as an unscrupulous employer may seek to use an electronic ballot as an opportunity to identify union members.
- d. Recommend to voters that best practice would be to return their electronic ballot from their home or another location outside of the workplace, using a personal device.

29. They should:

- a. In respect of electronic balloting, maintain an up-to-date list of compliant contact methods (compliant methods are detailed in the section '*Voter access and distribution*' for electronic balloting) for their members.
- b. In respect of workplace balloting, ensure union staff (unless they are an eligible voter) refrain from accessing the specific ballot location (ballot location is detailed in the workplace balloting '*Site requirements*') for workplace balloting for the duration of the ballot.

30. They must:

- a. Ensure that the ballot method or combination of ballot methods they are seeking to use are permitted by law for the statutory ballot that they intend to conduct.
- b. Appoint an independent scrutineer that is permitted to run an electronic or workplace ballot.

- c. Ensure that the ballot is operated in a way which meets all the requirements of the chosen method as described in the [Future SI]. Further information about the requirements of the methods is below.
 - d. In respect of electronic balloting, ensure that the email addresses, and/or SMS numbers and/or internet message contact information used for the distribution of an electronic ballot meet the requirements as described in the [Future SI] and as specified in the section *Voter access and distribution* for electronic balloting.
 - e. Provide any information required by the independent scrutineer to enable them to conduct the ballot.
 - f. Ensure that any members' personal information provided to the independent scrutineer is done so in a manner compliant with General Data Protection Regulations (GDPR) and other data protection legislation.
 - g. Meet the cost of the ballot (except in the case of CAC ballots where there is an existing process for cost sharing between the union and employer).
31. In the case of CAC ballots, there are unfair practice requirements that parties must adhere to that are set out in Schedule A1 of the 1992 Act and the code of practice on access and unfair practices during recognition and derecognition ballots.

Scrutineers

32. In the case of conducting a ballot using electronic or workplace ballot methods, there are a number of responsibilities that will fall to the independent scrutineer.

33. They should:

- a. work with the commissioning party if requested to support the “responsible person” in making a determination about the type of ballot method to be used.⁶
- b. Allow the commissioning party to specify the exact nature of any additional requirements for the independent scrutineer to meet so long as these do not conflict with the requirements of the ballot method specified in the [Future SI].

34. They must:

- a. Ensure that they meet the eligibility requirements of a scrutineer as specified in the [Future SI] for the purposes of conducting electronic and/or workplace balloting, and ensure they continue to do so for the duration of any such ballot they are instructed to conduct.

⁶ In the case of ballots called by the CAC, the decision on the ballot is made solely by the CAC panel.

- b. Ensure that the ballot method provided by the independent scrutineer is compliant with the requirements under the 1992 Act and the [Future SI].
- c. Produce all the ballot papers, unique identifying numbers, and or electronic ballot access methods used. Further information is set out in the sections of this code titled *Electronic balloting requirements* and *Workplace balloting requirements*.
- d. Control and distribute all ballot papers and ballot access methods by appropriate permitted distribution methods.
- e. Store and count the votes in accordance with the requirements specified in the 1992 Act and the [Future SI].
- f. Produce a report on the ballot in accordance with the requirements of the 1992 Act, and provide that report to the relevant parties.⁷
- g. Provide any technical support required by voters to support the conduct of the electronic or workplace ballot for the duration of the ballot.
- h. In the case of electronic balloting
 - i. Hold a valid Cyber Essentials Plus certification or equivalent that is valid for the duration of the ballot.⁸
 - ii. Set up and operate the entirety of the electronic ballot independently of the commissioning party in compliance with the requirements for the electronic balloting method as set out in the [Future SI].
 - iii. Create and retain custody of the audit logs as required by the [Future SI] for a period of 12 months (or longer if a complaint about the conduct of the ballot is made).
 - iv. Ensure that only the independent scrutineer can access the voter database and see how or whether a ballot has been cast, unless the independent scrutineer is directed to provide this information to a relevant court or enforcement body (such as the CAC or Certification Officer).
- i. In the case of hybrid electronic balloting
 - i. Meet the requirements above for electronic balloting.
 - ii. Retain custody of all returned physical ballot papers that have been returned by post for a period of 12 months (or longer if a complaint about the conduct of the ballot is made).⁹

⁷ The relevant content of the Scrutineers report is detailed in the 1992 Act, this code, and any relevant code or guidance issued for individual statutory ballot types.

⁸ <https://www.ncsc.gov.uk/cyberessentials/overview>

⁹ Except in the case of CAC ballots whereby enforcement, unfair practices, and complaints processes are provided for under Schedule A1 of the 1992 Act

- iii. Agree with the commissioning party the priority of ballot method in the case of a ballot that is returned by both post and electronic means.
- j. In the case of workplace balloting
 - i. Retain custody of all produced ballot papers, and returned ballot papers, and a copy of the voluntary access agreement between the union, the independent scrutineer and the employer, for a period of 12 months or longer if the subject of a complaint about the conduct of the ballot is made.

Employers

- 35. The employer will have **no involvement** in electronic balloting.
- 36. However, the employer should not take any action that may hinder the ability of their workers who are eligible voters to cast their ballot freely, fairly, and in secret. This includes but is not limited to:
 - a. Seeking to determine whether voters using workplace wi-fi, or on a workplace device (phone, laptop, tablet, etc) are participating in an electronic ballot.
 - b. Seeking to identify union members participating in an electronic ballot if they do so in the workplace.
- 37. In the case of seafarers, the employer and/or owner of the vessel on which the eligible voters work, should not prevent the use of any employer provided internet during a statutory union ballot for the purpose of casting a ballot electronically.
- 38. In the case of workplace ballots that the employer has consented to, the employer must agree with the union the terms upon which workplace access will be granted to the independent scrutineer to enable them to conduct a workplace ballot. The terms of the agreement must comply with the requirements set out in the [Future SI], which are explained in detail at paragraph 143 below. The employer should not seek to unfairly influence the outcome of any ballot held under the workplace balloting provisions of the [Future SI] and should refrain from accessing the ballot location (ballot location is detailed in the workplace balloting 'Site Requirements') for the duration of the ballot.
- 39. In the case of CAC ballots, there are unfair practice requirements that parties must adhere to that are set out in Schedule A1 of the 1992 Act and the code of practice on access and unfair practices during recognition and derecognition ballots.

Central Arbitration Committee (CAC)

- 40. The role of the CAC is already set out in Schedule A1 of the 1992 Act. Nothing in this code or the [Future SI] will impact upon the powers of the CAC or the manner

in which the CAC operates its postal or workplace ballots outside the scope of this code.

41. In respect of the CAC, this code only relates to the use of hybrid electronic balloting.

42. Where the CAC panel decides to use the hybrid electronic method for a ballot, there are a number of responsibilities that will fall to the CAC panel.

43. They must:

- a. Consider the factors and criteria pertinent to hybrid electronic balloting if they wish to use it.
- b. Appoint an independent scrutineer that is permitted to run an electronic ballot as specified under the [Future SI].
- c. Ensure that all information required by the independent scrutineer and provided by the employer to the CAC is provided to the independent scrutineer for the conduct of the ballot.
- d. Ensure that any information relating to voters' personal information that is provided to the independent scrutineer is done so in a manner compliant with the relevant GDPR and data protection legislation.
- e. Work with the independent scrutineer to ensure that all electronic ballots meet the statutory requirements of Schedule A1 of the 1992 Act and [Future SI].

Electronic balloting requirements

Explanation of method

44. Nothing in this code places any requirement on the unions or the CAC to use a particular brand or product of electronic balloting created by a specific independent scrutineer. Any eligible independent scrutineer may offer any electronic ballot process for the conduct of a statutory ballot, provided that the electronic ballot process complies with the legislative requirements as detailed in [Future SI].
45. [Future SI] provides for two types of Electronic Balloting.
- a. Hybrid Electronic Balloting
 - i. where a physical ballot paper is distributed by post to eligible voters, which can be returned either electronically (using the ‘pure’ e-balloting return method), or by post.
 - b. Pure Electronic Balloting
 - i. where a ballot access method is distributed electronically via a personal email address, SMS message or internet-based message, which can be returned electronically via accessing an online voting platform / portal / website¹⁰ provided by the Scrutineer.
46. The ballots for which each method can be used are detailed in the section of this code titled: *Applicability to statutory ballots under the 1992 Act*.

Scrutineer standards

47. The only independent scrutineers permitted to conduct a statutory union ballot using electronic balloting are those named at Article 4 of the Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993, as amended. The only independent scrutineers permitted to conduct a CAC ballot using (hybrid only) electronic balloting are those named under Article 7 of the Recognition and Derecognition Ballots (Qualified Persons) Order 2000, as amended.
48. Unless an independent scrutineer is expressly named in either the 1993 Order or the 2000 Order, they will not meet the requirements of the [Future SI] and so cannot conduct a statutory ballot using electronic or workplace balloting as provided under [Future SI].
49. The independent scrutineer must also be compliant with the other requirements of [Future SI]. They must be successfully independently audited against the Cyber Essentials Plus standard (or an equivalent standard) before they can provide electronic balloting for statutory union or CAC ballots. The independent audit must be repeated on an annual basis, and the independent scrutineer is

¹⁰ This code does not limit the return mechanism to a process defined as a portal / website / platform – it intends to allow for any pure electronic balloting method that meets the requirements of [Future SI]. The code uses these terms as a way of covering a range of potential options for ballot return.

required to have a valid, in date Cyber Essentials Plus certification (or certification from an equivalent standard) for the duration of any statutory ballot they are instructed on.

50. Independent scrutineers must have in place the following technical controls to be permitted to conduct electronic balloting. Where definitions of technical controls are required to support understanding, the controls have the same meaning as specified in the Cyber Essentials Plus standard:

- a. Firewalls – scrutineers must have in place boundary controls to protect their networks. Scrutineers must ensure that only safe and necessary network services are exposed to the internet and boundary controls prevent unauthorised access.
- b. Secure Configuration – all systems owned and operated by or on the behalf of scrutineers must be configured to reduce vulnerabilities and tailored to their intended use. Any unnecessary features, functions, services, features, or software must be removed or disabled.
- c. User Access Control – only authorised individuals (as detailed in the section of this code *Database integrity and access controls*) are permitted to have access to systems and data. Role-based access controls must be in place and with individual authentication methods. Users must have only the minimum level of access required for their roles.
- d. Malware Protection – anti-malware measures, must be in place to protect against intrusion, infection, malicious code, or other interference. Measures must be in place to detect and prevent malicious activity and software.
- e. Patch Management – software and devices must be kept up to date with timely updates of the latest security patches.

51. Independent scrutineers must also have in place the following process controls: to be permitted to conduct electronic balloting:

- a. Service Protection Policies, Processes, and Procedures - the independent scrutineer must
 - i. define (set out in writing)
 - ii. implement (set in place internal processes, policies, and procedures)
 - iii. communicate (ensure staff internally understand the requirements)
 - iv. enforce (ensure compliance with) policies, processes and procedures that codify their overall approach to securing systems and data that support the operation of essential functions
- b. Identity and Access Controls - the independent scrutineer must understand, document and manage access to networks and information systems supporting the operation of electronic balloting systems. Users (or

automated functions) that can access data or services must be appropriately verified, authenticated and authorised.

- c. Data Security Standards - Data stored or transmitted electronically must be protected from actions such as unauthorised access, modification, or deletion that may cause an adverse impact on essential functions. Such protection must extend to the means by which authorised users, devices and systems access critical data necessary for the operation of electronic balloting. It must also cover information that would assist an attacker, such as design details of networks and information systems.
- d. Risk Management Processes - the independent scrutineer must take steps to identify, assess and understand security risks to network and information systems supporting the operation of essential functions. This includes an overall organisational approach to risk management.

52. As best practice, the independent scrutineer may wish to work with the independent assessor for Cyber Essentials Plus to seek to ensure that wherever possible the assessment for Cyber Essentials Plus includes the hardware, processes, and policies in place for the electronic balloting methods.

Voter access and distribution

53. The commissioning party should ensure that the period between sending out or issuing physical ballot papers and / or ballot access methods, and the date on which the ballot closes is long enough for the eligible voters to consider and return their vote.

54. Nothing will prevent having different start and end dates in respect of different ballot methods, where a combination of balloting methods are being used for the conduct of a ballot.

55. However, the ballot must continue to have a single overall opening and closing date irrespective of ballot method(s) used. For example, a ballot that is open for 4 weeks and is conducted via multiple permitted balloting methods, could include use of a workplace ballot for a number of days within that 4 week period, alongside use of a hybrid-electronic ballot method that was open for the full 4 weeks.

56. The appropriate period may vary according to factors, including, but not limited to:

- a. the geographical dispersion of the voters (in the case of hybrid electronic balloting)
- b. the voter's familiarity or otherwise with the question(s) or issue in the ballot
- c. the method or combination of methods used to conduct the ballot
- d. whether the ballot period will fall over a time when members are more likely to be away from home or work

- e. and in the case of the hybrid method, the class of post used

Pure electronic balloting distribution methods – statutory union ballots

57. The electronic ballot access method must be distributed by the independent scrutineer using one or more of the following methods:

- a. A personal (private) email address provided to the union by a voter for the purposes of communication from the union.
 - i. The email address must not be an email provided, controlled or accessible by an employer, or a union.
- b. An SMS number provided to the union as a 'personal number' by a voter for the purposes of communication from the union.
 - i. If the SMS number is provided as a 'work number' or the union is aware that the SMS number is an employer provided number, then it must not be used.
- c. A virtual internet message system associated to the same SMS number provided to the union by a voter for the purposes of communication from the union.

58. The electronic ballot access method must be distributed to a unique contact method.

- a. Only one ballot access method can be issued to a unique email address, SMS number, or internet messaging number that is linked to a named individual and provided to the union for the purposes of communication.
- b. This means if two individuals put down the same contact information, the contact information cannot be used to issue an electronic ballot access method to.
- c. Use of shared email inboxes, or shared SMS numbers are not permitted as it could enable multiple ballots to be cast by one individual, potentially denying eligible voters the opportunity to vote.

59. Before the contact information of eligible voters is provided by the union to the Scrutineer, the union must review the information to ensure that there are no duplicate email addresses or SMS numbers included. They must also ensure that there are no workplace or union provided email addresses or (to the extent that they can) phone numbers. Where there are duplicates, or workplace or union contact information provided, the union must seek updated information for the voter which complies with the requirements or revert to a method of balloting that ensures the individual receiving the ballot is the one who is eligible to vote. This may require a postal or hybrid electronic ballot to be used.

60. Once a union provides the contact information to the independent scrutineer, the independent scrutineer must also review the information to ensure that there are no duplicate email addresses or SMS phone numbers included, and that there

are no workplace or union provided email addresses or (to the extent that they can) phone numbers included. Where there are duplicates, the independent scrutineer must inform the union. If no alternative contact method is available that meets the requirements of the [Future SI], the pure electronic method cannot be used for that eligible voter.

61. The scrutineer and the responsible person may need to consider combining other permissible methods of conducting the statutory ballot so that all eligible voters have the chance to take part. This may include hybrid electronic balloting, workplace (if an IA ballot) balloting, or postal balloting.¹¹ This does not require the entire ballot method to change, but only the ballot method to be used for those in relation to whom the union does not have contact information which complies with the requirements of the pure electronic balloting as permitted by [Future SI].
62. If, after attempting to contact eligible voters using the contact information provided the independent scrutineer finds that the contact information no longer works (for example if they received a bounce back from an email, or a report that an SMS is undelivered) the independent scrutineer and the responsible person will need to consider combining other permissible methods of conducting the statutory ballot so that all eligible voters have the chance to take part.
63. 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.
64. Where the distribution method used is SMS, it is recommended that the provider of SMS messaging is a UK-based provider. It is also recommended that the independent scrutineer consider any guidance issued by the National Cyber Security Centre for SMS and telephone best practice in business communication.

Hybrid electronic balloting – statutory union ballots and CAC ballots

65. The hybrid electronic ballot must be distributed by the independent scrutineer via a physical ballot being posted to the home address (or other address that the union member has requested to be treated as their postal address – as per the 1992 Act) provided to the trade union by the eligible union member for the purpose of communication with that union and shared with the independent scrutineer by the union.
66. In the case of a CAC ballot the postal address will be the home address provided by the employer to the CAC.
67. The requirements of issuing and returning a hybrid electronic ballot using the postal system are the same as those prescribed in relation to a postal vote under the 1992 Act.
68. The independent scrutineer must ensure that the physical ballot distributed to the home address must include details of an electronic ballot access method in the case that the voter wishes to return their vote electronically instead of via the postal system.

¹¹ Nothing in this code prevents the issuing of ballot papers to a shared physical address.

Electronic ballot requirements

69. The commissioning party must assure themselves that the independent scrutineer meets the requirements to provide electronic balloting before appointing them for the ballot, and appoint a permitted Scrutineer to conduct the electronic ballot.
70. As best practice, the commissioning party may want to appoint a Scrutineer as the first step of calling a ballot. This may make it easier for the commissioning party, responsible person, and Scrutineer to consider the factors and criteria as required to be considered by the responsible person in their selection of a ballot method. It may also make it easier for the independent scrutineer to satisfy themselves that all the required steps and legislative obligations are complied with.
71. In deciding on a ballot method, the responsible person must consider the detailed factors and criteria as set out in the *Responsible person – factors and criteria* section of this code and the underlying legislation. In the case of a CAC ballot, the CAC Panel must also consider the requirements of Schedule A1 and the 1992 Act.
72. When using the pure electronic balloting method, as a matter of best practice the union may wish to confirm with eligible voters that the email, and/or SMS number is suitable to issue electronic ballots to, and that the voter retains access to this method and is content to receive their ballot access method in this way.
73. The union and independent scrutineer must ensure that all statutory ballot access methods, and ballot papers, irrespective of ballot method, continue to meet the ballot paper requirements of the 1992 Act as amended by the [Future SI], and should consider any associated guidance as set out for each individual ballot type. For example, industrial action ballots must meet all the requirements of Section 229 of the 1992 Act as amended, and merger ballots must meet the requirements of Section 100C and continue to be approved by the Certification Officer.
74. In the case of electronic ballots, the independent scrutineer must ensure that the ballot access method enables an individual voter to access an electronic voting platform for the purposes of casting their votes(s) in the statutory ballot.
75. The voter must be presented with all the information as required by the 1992 Act for the ballot in which they are engaging, alongside the option(s) for casting their vote(s).
76. The independent scrutineer must also provide the option to “spoil” the ballot (as a way of showing dissent or opposition to all options available for a question) for each question in the ballot for voters to select if they so choose.

Electronic voting platform requirements, and cybersecurity

Voting platform requirements

77. The independent scrutineer must ensure that the electronic balloting system¹² used for electronic balloting is compliant with all existing requirements under existing data protection and computer security legislation, wherever relevant.
78. The voting platform provided by the independent scrutineer for electronic balloting must be perceivable, operable, understandable and robust for any user to utilise. Best practice would be for any platform to be operated to the latest Web Content Accessibility Guidelines.
79. The voting platform used for e-balloting must have a plain English description of the platform, and instructions on how to use the voting platform must be provided to eligible voters alongside their ballot access method. In the case of a hybrid electronic ballot, the instructions will need to be a physical copy which is included in the envelope the ballot is distributed in. In the case of a pure electronic ballot this may be an attachment to an email, or a link to a web page.
80. The electronic balloting system operated by the independent scrutineer must ensure that all data is encrypted at transmission and at rest, with end-to-end encryption used for any electronic ballot vote transmission from the eligible voter to any vote storage database. The voter platform must be encrypted to a secure standard that ensures a level of security appropriate to the risk posed and assures the confidentiality and integrity of the ballot. Encryption should be to the AES256 standard, or a suitable higher standard as identified by the independent scrutineer to assure the security of the ballot.
81. The independent scrutineer should consider whether to restrict access to the electronic balloting system from IP addresses located outside of the UK, or IP addresses known to be used by hostile actors.
82. Independent scrutineers may wish to consider seeking advice from the National Cyber Security Centre to support the security of their electronic balloting system as a matter of best practice.

Ballot access method requirements

83. Each eligible voter must be assigned a randomly generated “unique identifying number” for internal Scrutineer handling. This number must be used for all handling purposes when referring to individual voters and the contact information used to distribute any ballot papers and/or ballot access methods should not be used to identify voters after that point.
84. The unique identifying number must be associated and stored with both the user data and the voter data, which must be stored separately. i.e.:

¹² Where this code refers to an electronic balloting system it does not tie the independent scrutineer to a specific process or technology, and the independent scrutineer is permitted to develop and use any ‘system’ for electronic balloting that meets the requirements of the [Future SI].

- a. Database one (the user database) – will hold the unique identifying number, and the personal information of the voter. It may be desirable to hold this database “off-line” once established and ballots are issued.
 - b. Database two (the voter database) – will hold the unique identifying number, the unique individual ballot access method(s) assigned to each identifying number, and the details of the submitted vote.
85. The purpose of the unique identifying number is to ensure that when a voter submits their vote via the voting platform, and their vote is stored in the voter database, any unauthorized access to the voter database will not enable identification of who has voted, or how they have voted. This will ensure voter identify is stored separately from the ballot returns. This process will continue to permit an independent scrutineer to authenticate the validity of votes and ensure that they can also provide support to individual voters in the case of technical issues, by comparing the unique identifying number with the user database to identify an individual voter where required.
86. Each eligible voter must be provided an electronic ballot access method by the independent scrutineer to enable them to access the voting platform for the statutory ballot in which they are eligible to vote. This ballot access method must be linked by the independent scrutineer, to the individual eligible voter through the unique identifying number.
87. The ballot access method must be generated by the independent scrutineer in a fashion that ensures no two voters shall ever be issued the same ballot access method.
88. The process of generating the ballot access method must be produced in a way which resists code prediction or reverse engineering. It must also be resistant to cryptanalytic and ‘brute force’ style access attacks. The independent scrutineer may wish to make the ballot access method ‘single use’ as a matter of best practice, to ensure that it is immediately apparent if an unauthorised individual has accessed a ballot.
89. Examples of possible ballot access methods are, but are not limited to:
- a. login codes – whereby an eligible voter is provided with a code or combination of codes that they can use to access the voting platform.
 - b. usernames and passwords – whereby the eligible voter with a username and password that they can use to access the balloting platform.
90. The independent scrutineer and commissioning party, as best practice, may wish to further assure the security of the ballot by requiring two factor authentication (2FA) of voting platforms, whereby an individual with a ballot access method must also use another piece of data to confirm their identity to the independent scrutineer. This could be by multiple contact methods, for example the issuing of a ballot access method to an email address, and a secondary authentication code to an SMS. Or it could be by requiring the voter to enter certain digits of a post code, or phone number as part of a 2FA layer of security.

Ballot Access Vote requirements

91. The ballot access method(s) provided by the independent scrutineer to the voter must only enable an individual to vote once on the voting platform. Where an independent scrutineer distributes an access method to the voter via multiple methods, the voter accessing the voting platform and casting a vote via one access method must result in any other access methods being deactivated to prevent multiple votes by the same person. For example, if the voter can access the voting platform via SMS, email, and post, and chooses to access the platform via their email, the access by SMS and post must be deactivated. All ballot access methods must also be deactivated at the close of the ballot.
92. The ballot access method must only permit eligible individuals to vote in ballots to which they are eligible to vote.
93. The ballot access method must have the ability to be re-issued by the independent scrutineer in case of need to issue new access methods. This may be due to technical issues, security breaches, or other reasons.
94. Once an individual has voted using the voting platform, they must be displayed a message on their screen confirming that their vote has been received, with a unique reference number that they can note down and/or screenshot if they choose to in case of technical support requirements. This message must not show how the voter has voted, and the voter must not receive an email confirming whether they have voted.
95. The independent scrutineer must ensure that every vote cast by electronic means is stored exactly as cast, without modification, and with a record of the time and date of voting, to ensure that there are clear records of a ballot being cast.¹³

Database integrity and access controls

96. The electronic balloting system must be designed and operated so that it is not possible for anyone external to the independent scrutineer to access vote data, or to identify how or whether a voter has voted.
97. The independent scrutineer must ensure that the electronic balloting system, and the databases used for the operation of electronic balloting:
 - a. Ensure all voter information, the voting platform, votes, user database, voter database, and any relevant information to the conduct of the ballot are encrypted to a secure standard that ensures a level of security appropriate to the risk posed, and assures the confidentiality and integrity of the ballot. Encryption should be to the AES256 standard or a suitable higher standard as identified by the independent scrutineer to assure the security of the ballot.
 - b. The underlying database(s) and/or cloud infrastructure on which the electronic balloting system is hosted must be in a secure location and:

¹³ Immutable in this case refers to time stamping via secure, tamper proof methods.

- i. Have 24/7 physical security and access controls with timestamped logs of access attempts whether successful or not.
 - ii. Have 24/7 digital monitoring, security and access controls with timestamped logs of access attempts whether successful or not.
 - iii. Be located in a GDPR compliant country (or equivalent).
98. If using cloud infrastructure, as best practice, the independent scrutineer may wish to ensure that the ballot is not in relation to industrial action at an organisation owned by the provider of the servers upon which the database and/or electronic balloting system is hosted.
99. Access to the user database, voter database, and administration of the voting platform before, during, and after the electronic ballot operation must be strictly controlled by the independent scrutineer. Only named individuals under direction of the independent scrutineer, with unique multi factor authentication methods tied to each named individual, may be permitted to access any data related to the ballot.
100. The independent scrutineer must also:
- a. Have in place role-based access controls for the user database, and voter database.
 - b. Protect digital and physical access to any data relating to the ballot using multi factor authentication.
 - c. Report any changes to the electronic balloting system or administration of the electronic voting platform that would enable editing of live vote data throughout the period in which a ballot is 'active', in the independent scrutineer report. The active period is from when the ballot has 'gone live' and ballot access methods have been generated, to when the ballot is closed and ballot access methods have been deactivated.
 - d. Report any access to the electronic balloting system that would enable the changing or deleting of already cast votes throughout the operation of the balloting in the independent scrutineer report and justify the access.

Electronic balloting system security

101. The independent scrutineer must ensure that the electronic balloting system has in place controls to ensure that the voting platform is available for the entire duration of the ballot.
102. The commissioning party and the independent scrutineer should agree contingency plans in advance of an electronic ballot commencing, to agree arrangements for any interruptions to the statutory ballot that include:
- a. How long the ballot may be extended in the event of an outage¹⁴

¹⁴ The entire ballot must be extended if required. Individual ballot methods cannot be individually extended.

- b. Whether the ballot would be continued via another method
 - c. Any other plans that the commissioning party considers necessary.
103. The independent scrutineer must have in place procedures that ensure an electronic ballot can continue in the case of interference, power outages, data failure, data corruption, or other issue that delays or interrupts the ballot.
104. The independent scrutineer must take appropriate and proportionate measures to prevent and minimise the impact of incidents affecting the security of the network and information systems used for the provision of an electronic balloting system, with a view to ensuring the continuity of the balloting service. The electronic balloting system must be designed so that there is no single point of failure.
105. The independent scrutineer must have security information and event management (SIEM) tools in place to continually monitor the electronic balloting system and alert them to any unauthorised intrusion. Logs from this monitoring must be reviewed to detect anomalies or security threats in real time.
106. The independent scrutineer must, in relation to the electronic balloting system, have clear, defined, and audited back up procedures in place to ensure continuity and recovery of data.
107. The independent scrutineer must have methods in place to monitor and flag suspicious activity including but not limited to any voting patterns, voting times, and voting IP addresses that cause suspicion.
- a. Capturing the IP address associated with a vote is expressly permitted by the [Future SI] and is required for audit and investigation purposes and must be held by the independent scrutineer in line with all relevant associated data protection controls.
 - b. The independent scrutineer must regularly back up the voting platform and voter database throughout the operation of the ballot with both full and incremental backups stored securely.
108. The independent scrutineer may also wish to test the security of the electronic balloting system as a matter of best practice, and retain details of that test before they commence the ballot, to ensure that they can demonstrate the platform was secure.
109. As a matter of best practice, and to assure the security of the electronic balloting system, independent scrutineers may wish to arrange for their electronic balloting system to undergo CHECK penetration testing under the National Cyber Security CHECK scheme.
110. In the case of a union ballot
- a. Any access to the voter or user databases by an individual, organisation, or party unauthorised to access the voting data, whether an employee of the independent scrutineer or external, must be reported by the independent scrutineer to all involved parties, and any relevant enforcement body. **It will invalidate the ballot and require the ballot**

process to be restarted with all existing ballots discarded. It would be best practice for the commissioning party and Scrutineer to have in place a contingency plan for this circumstance ahead of ballot commencement.

111. In the case of a CAC ballot

- a. Any access to the voter or user database by an individual, organisation, or party unauthorised to access the voting data, whether an employee of the independent scrutineer or external, must be reported by the independent scrutineer to the CAC who will make a determination on the continuation of the ballot. It would be best practice for the commissioning party and Scrutineer to have in place a contingency plan for this circumstance ahead of ballot commencement.

112. If the unauthorised access is suspected to be by hostile actors, the independent scrutineer should consider making the NCSC and relevant law enforcement aware.

Audit trail and data retention

113. Nothing in this code or the [Future SI] requires the audit trail for electronic balloting to be a single document, or a single unified 'trail'. It is at the discretion of the independent scrutineer as to how their audit is conducted and log(s) generated / stored.

114. However, the independent scrutineer must, when operating an electronic ballot, gather, record, and securely retain the audit information as required under [Future SI] for the purposes of ensuring a disputed ballot can be audited by an independent third party or enforcement body or court and a ballot result verified. The audit information must be collected throughout the entire balloting process, from provision of contact information by the commissioning party to the independent scrutineer, to the closure of the ballot and distribution of the ballot result. The independent scrutineer is free to adapt the audit process to their method of balloting so long as they gather the information required by the [Future SI].

115. The audit log(s) gathered are the property of the independent scrutineer and do not require routine publishing.

116. The [Future SI] deliberately does not define the audit requirements beyond the level of information provided in this code of practice. This ensures flexibility to enable differing technical methods and processes offered by independent scrutineers to be provided, while also permitting independent scrutineers to utilise their expertise in determining how to collect the required audit data against the criteria set out below.

117. The independent scrutineer must take steps to ensure that the audit logs are not unjustifiably amended throughout the ballot process, and are a true reflection of the ballot process, conduct, and operation.

118. The audit logs must include information at minimum that covers:

- a. **Administration of the electronic balloting system – which must include at minimum:**
- a. Creation and configuration of each ballot, including a description of setting up the ballot, processes for creating the system, the numbers of voters, and any amendments to the configuration of the ballot after launch (issuing of ballot methods).
 - b. Any permission and access changes to who can access the electronic balloting system following the launch of the ballot (issuing of ballot access methods).
 - c. Details of ballot parameters including:
 - i. The duration of the ballot and any changes to the duration.
 - ii. The question / questions asked on the ballot paper and any changes to the question(s) asked following the launch (issuing of ballot access methods) of the ballot.
 - d. Generation and delivery of the unique identifier numbers and access methods including any reissue, reset, editing or allocation of unique identifier numbers and access methods.
 - e. Record the downloading of individual votes of the ballot, and the combining of voters from different voting methods to generate the final result of the ballot.
 - f. Record of the availability of the whole system for the duration of the ballot, including periods of uptime and downtime.
- b. **Voting**
- a. All complaints lodged by voters to the scrutineer.
 - b. All voting failures and retry attempts.
 - c. Every access attempt to the voting platform using a voting credential (ballot access method).
 - d. The IP address associated with each cast vote / ballot.
- c. **Development and security of the electronic balloting system.**
- a. Any access to audit logs.
 - b. Any attempts to edit audit logs.
 - c. All developer, administrative, or other user access to the live voter database.

- d. Record of security events including failed attempts to log on to the voting platform, suspected cyber-attacks or other security events which have the effect of overwhelming or causing a failure or requiring a shutdown of the electronic balloting system, and details of any unplanned instances where the electronic balloting system is not operational during the ballot.
 - d. **Any other information that the independent scrutineer considers would be useful to assure an enforcement body or court of the integrity, confidentiality, and accessibility of the ballot.**
119. At the close of the ballot, the electronic balloting system, and all audit logs created, and any other information that the independent scrutineer considers would enable an independent third party to verify a ballot outcome (in case of legal challenge) must be backed up, encrypted, and stored securely for a period of 12 months by the independent scrutineer following the closure of the ballot, and made available upon request by a relevant enforcement body or court.¹⁵
- a. After 12 months the personal information in the backed-up user database should be deleted. The independent scrutineer may determine whether to retain the remaining audit logs for longer than 12 months.¹⁶ However, the audit logs (including the personal information) may be required to be held for a longer period if the subject of an ongoing complaint to an enforcement body about the conduct of the ballot is made.¹⁷
120. To ensure best practice and a highly detailed audit trail that ensures verification of a ballot, a commissioning party may wish to require a Scrutineer to gather detailed audit logs of an electronic ballot that go above and beyond the requirements of [Future SI] to assure the integrity of a ballot in case of challenge.

Counting of the ballot

121. The independent scrutineer must ensure they keep a record of the counting of the votes and combining of any ballot results from different sources such as

¹⁵ Except in the case of CAC ballots whereby enforcement, unfair practices, and complaints processes are provided for under Schedule A1 of the 1992 Act and retention periods may be agreed with the CAC

¹⁶ Personal Information means: Name of voter, contact email address, contact SMS number, IP Address associated with the voter, and or physical address of the voter.

¹⁷ Political Fund ballots, and trade union Executive Election ballots already require the independent scrutineer to retain custody of all returned ballot papers, and the copy of the register with which the union has supplied him for a period of one year following the announcement of the result of the ballot or, if a complaint is made about the conduct of the ballot, for any longer period that the Certification Officer or a court may require.

In the case of CAC ballots, the retention periods will be determined by the CAC as enforcement, unfair practices, and complaints processes are already provided for under Schedule A1 of the 1992 Act in relation to CAC ballots

post, hybrid, and electronic. As best practice, the independent scrutineer may wish to consider measures to assure confidence in the count and record the verifiability of the final numbers in case of dispute.

Technical support

122. Any technical support required by voters using the electronic voting platform to cast a ballot or utilise the voting platform must be provided solely by the independent scrutineer conducting the ballot. Unions should pass any information they receive from voters regarding missing or un-received ballots to the scrutineer.
123. If the union or employer (in the case of a CAC ballot), receives a request from a voter for technical support / assistance in relation to a statutory ballot, they must direct the member to the relevant independent scrutineer for support.
124. The ballot must allow votes to be cast in secret. The independent scrutineer should **never** confirm whether, or how, an individual has cast their ballot to anyone unless ordered by a court or relevant enforcement body. This includes if an individual has cast a ballot and then contacts an independent scrutineer seeking to confirm their ballot was cast as preferred.
125. If an independent scrutineer is contacted by an individual who has received their ballot access method and the voter claims that it shows their vote has already been cast, the independent scrutineer is permitted to enable the individual to cast a fresh vote themselves, and discount any previous vote.¹⁸ However, this must be reported in the independent scrutineers post ballot report and the commissioning party and independent scrutineer should agree what level of identification is required from an individual before an independent scrutineer “discounts” a previously cast vote. The scrutineer may also want to investigate whether there is any wider risk to the electronic balloting system.

¹⁸ As the electronic balloting method will require secure, tamper proof voter logs, the independent scrutineer is anticipated to be unable to directly ‘delete’ or ‘reset’ a ballot – therefore in this case the independent scrutineer would be expected to need to re issue a ballot access method to the individual to enable them to vote, and to factor removal of the individuals ‘incorrect ballot’ when compiling / counting the outcome of the ballot.

Workplace balloting requirements

Explanation of method

126. This section of the code of practice does not apply to CAC workplace balloting. CAC workplace balloting is provided for in Schedule A1 of the 1992 Act. This section of the code applies to workplace balloting for statutory industrial action ballots only. Workplace balloting for statutory industrial ballots is only permitted with the consent of the employer.
127. Any eligible independent scrutineer may offer any workplace ballot process for the conduct of a statutory ballot, provided that the method contains the required elements detailed in [Future SI].
128. Workplace balloting is an in-person ballot, conducted on or near to the site of the employer for which the industrial action ballot is being held.
129. The consent of the employer is mandatory before workplace balloting can be used for industrial action ballots.
130. Workplace balloting requires the voter to be at the vote location at which the ballot is to take place and provide a form of identification as specified by the independent scrutineer. The independent scrutineer confirms the individual's eligibility to vote by checking a register and provides a paper ballot to the voter to be marked by the voter and dropped into a tamper evident ballot box.¹⁹ The entire process must be operated by the independent scrutineer.
131. 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.

Scrutineer standards

132. For workplace ballots, the only independent scrutineers permitted to provide this ballot method for statutory union ballots are those named as the specific bodies (persons specified by name) qualified under the amended Trade Union Ballots and Elections (Independent Scrutineer Qualifications) Order 1993.

Ballot requirements

133. The union must assure themselves that the independent scrutineer meets the requirements to provide workplace balloting before appointing them to conduct the ballot.

¹⁹ A tamper evident ballot box is a ballot box that is sealed with a single use seal that makes it clear if the ballot box has been opened. If the seal on the ballot box is broken on site of the ballot location, the ballot is invalidated and must be re-run.

134. The union must also confirm that they have the voluntary consent of the employer to conduct a workplace ballot, before they appoint an independent scrutineer.²⁰
135. The union may wish to appoint an independent scrutineer once they have an initial agreement from the employer for a workplace ballot. This may make it easier for the union, responsible person, and independent scrutineer to consider the voluntary access agreement requirements, and the factors and criteria as required to be considered by the responsible person in their selection of a ballot method. It may also make it easier for the independent scrutineer to satisfy themselves that all the required steps and legislative obligations are complied with.
136. In deciding on a ballot method, the responsible person must consider the detailed factors and criteria as set out in the *Responsible Person – Factors and Criteria* section of this code and the underlying legislation.
137. The union may wish to ensure that arrangements with the independent scrutineer for producing and distributing physical ballot papers will prevent mistakes which might invalidate the ballot.
138. The union and independent scrutineer must ensure that all statutory ballots continue to meet the requirements of the 1992 Act as set out for each individual ballot type. For example, industrial action ballots must meet all the requirements of Section 229 of the 1992 Act.
139. The independent scrutineer must:
- a. Produce all the ballot papers used in the ballot.
 - b. Supervise the distribution of the ballot papers used in the ballot.
 - c. Maintain possession of all the unmarked ballots other than when providing a ballot to an eligible voter to cast their vote.
 - d. Be the person to whom the ballot papers are returned by the voters who take part in the ballot.
 - e. Inspect the register of eligible voters provided to them by the union for the purpose of the ballot and confirm that the individuals receiving the ballot are listed on said register.
 - f. Take whatever steps they consider necessary to enable them to produce a report on the conduct of the ballot in accordance with the requirements of the 1992 Act.

Voluntary access agreement and contingency planning

140. The independent scrutineer, union, and employer must agree the process of the ballot and terms of access for the ballot to be conducted.

²⁰ This does not require a completed Voluntary Access Agreement, but the union and employer should have agreed the principle of a workplace ballot before a scrutineer is appointed.

141. The voluntary access agreement must be written, and signed and dated by the employer, the scrutineer, and the union.
142. The signed completed agreement must be shared with the employer, union, and independent scrutineer and should be saved.
143. The agreement must include at minimum:
- a. Access to the workplace by the independent scrutineer (if applicable)
 - b. Operating hours for the ballot and duration of the ballot.
 - c. Emergency arrangements regarding access to the voting room if held on site of the employer.
 - d. Voting times for staff - whether the employer will permit workers specific time off to vote or whether votes must be done at lunch or before/after shifts.
 - e. The location of the ballot.
 - f. Agreement from the employer to not unreasonably withhold staff from voting. The union and employer should agree what would be considered to be 'unreasonable'.
 - g. Agreement from the employer to not monitor the balloting location via CCTV or other methods.
 - h. Agreement from the employer to engage in good faith and not withdraw consent unreasonably.
 - i. Contingency agreements – there must be an agreement in place before the ballot commences in case the employer withdraws access consent after during the ballot. The agreement must include at minimum:
 - i. Who pays for the independent scrutineer to return (If the employer agrees to be liable for the cost – they must reimburse the union, not pay the independent scrutineer directly.)
 - ii. What happens to the remainder of the ballot. Best practice is that if a ballot is ended early via withdrawn consent due to a breakdown of the employer / union relationship – the ballot is continued via an alternative method.
 - iii. Whether the ballot is continued via another suitable method
 - iv. Whether the ballot duration is extended
 - v. What happens with votes already cast
 - j. Anything else reasonable that the Employer, union, or independent scrutineer agree should be considered before a ballot is conducted.

Voter access and identification

144. Those eligible to vote in an industrial action ballot, who are seeking to do so by workplace means must bring a form of identification as specified by the independent scrutineer to enable them to identify themselves and participate in the workplace ballot. The identification must be one that the independent scrutineer considers suitable to verify the in-person identity of an individual.

Site requirements

145. Workplace balloting may only be conducted at three possible balloting locations:

- a. A location within the workplace of the employees being balloted as agreed with the employer for example an office, a meeting room, a portacabin, or other location within the workplace that meets the requirements in paragraph 147.
- b. A controlled environment (such as a portacabin, or vehicle, or other movable environment) placed at the employer's site (for example in a car park, or outside space) as agreed with the employer that meets the requirements in paragraph 148.
- c. An off-site location near to the employer and agreed between the independent scrutineer, union, and employer, that meets the requirements in paragraph 149.

146. Each location must meet specific requirements as set out below.

147. A location within the workplace of the employees being balloted:

- a. Should be, wherever possible, located out of the direct sight of management and/or team leaders.
- b. Must be, securable by the independent scrutineer to the exclusion of all persons whenever the independent scrutineer is not present.
- c. Should not, wherever possible, be actively monitored by the employer via CCTV or other methods.
- d. Must be a location that enables an eligible voter to mark and submit their ballot without their marking of the ballot paper being observed by anyone other than the independent scrutineer.
- e. Must be accessible to all voters eligible to vote.

148. A controlled environment placed at the employer's location, must:

- a. Also meet all the same requirements of '*a location within the workplace of the employees being balloted*' at paragraph 147.
- b. Be funded by the union via the independent scrutineer.

- c. Be provided by the independent scrutineer and placed on site by or on behalf of the scrutineer.
 - d. Be a temporary structure such as (but not limited to), a vehicle, portacabin, or other removable private structure controlled by the scrutineer.
149. An off-site location near to the employer must:
- a. Also meet all the same requirements of '*a location within the workplace of the employees being balloted*' at paragraph 147.
 - b. Be a nearby location.
 - i. within a reasonable distance of the relevant employers working location that the employees work at,
 - ii. that the employer has agreed is suitable as to not cause significant disruption to the working day,
 - iii. that can be accessed by those who are eligible to vote.
 - c. Be funded / hired by the union via the independent scrutineer.
150. For the avoidance of doubt, the 'ballot location' does not mean the entirety of the employer's work location, it means the room, controlled environment, or other specific location within which votes are marked and cast, and those not voting are excluded from gaining access.

Voting requirements

151. Only those persons eligible to vote in the ballot are permitted to access the ballot location while the independent scrutineer is on site conducting the ballot, for the duration of the ballot period.
152. Employers and union members who are not physically participating in the ballot should not access the ballot location.
153. The ballot location is defined in paragraph 150.
154. The workplace balloting method must entail
- a. A physical ballot paper that meets the requirements of the 1992 Act.
 - b. Provided to an eligible voter by an independent scrutineer on the site of the ballot location.
 - c. Marked by the eligible voter on the site of the ballot location and placed into a tamper evident ballot box at the ballot location. The ballot box(es) must be under the control and possession of the independent scrutineer at all times.
155. The voter must mark their ballot in the balloting location, removal of the ballot paper from the balloting location by the voter will render that ballot as 'spoiled'.

156. The independent scrutineer must remain in possession of the ballot box(es) throughout the entirety of the ballot process. At no point must a ballot box be left unattended at the ballot location.

Ballot handling

157. All ballot papers must continue to meet the requirements of the 1992 Act as set out for industrial action ballots.
158. Following the closure of the industrial action ballot, the ballot papers produced by the independent scrutineer (whether used or unused), and any other information that the independent scrutineer considers would enable an independent third party to verify a ballot outcome (in case of legal challenge), must be held by the independent scrutineer for a period of 12 months and may be required to be held for a longer period if a complaint about the conduct of the ballot is made.²¹

Counting of the ballot

159. The independent scrutineer must ensure they keep a record of the counting of the ballots and combining of any ballot results from different sources such as post, hybrid, and electronic. The independent scrutineer may want to consider measures to assure confidence in the count in case of dispute.
160. The count of the ballot must be held off-site from the ballot location. Best practice would be for the count to take place at a Scrutineers office or other neutral ground.

²¹ Political Fund ballots, and trade union Executive Election ballots already require the independent scrutineer to retain custody of all returned ballot papers, and the copy of the register with which the union has supplied him for a period of one year following the announcement of the result of the ballot or, if a complaint is made about the conduct of the ballot, for any longer period that the Certification Officer or a court may require.

Responsible person - factors and criteria

Explanation

161. It is for the “Responsible Person” to determine, in relation to a particular ballot or election, which of the permitted electronic or workplace voting methods or combination of methods are most appropriate to be used. This does not include postal balloting, which is already provided for under the 1992 Act, and which will continue to be available without any required considerations from a Responsible Person.
162. The method(s) used are permitted to be different for different voters in order to take account of the varying circumstances that may apply in relation to different groups of voters.
163. When making a decision regarding the method or combination of methods to be used to when holding a statutory ballot or election certain factors and criteria must be applied by the Responsible Person.
- a. **Factors** should be taken account of by the Responsible Person and may be discounted by the Responsible Person in selecting a ballot method.
 - b. **Criteria** must be applied by the Responsible Person. If the Responsible Person is unable to answer all the specified criteria for a ballot method in the affirmative, then use of that ballot method is not permitted to be used for the ballot type.
164. If the Responsible Person fails to take account of the factors or apply the criteria specified in the [Future SI], the responsible person will not be able to make a determination that a ballot can be conducted using the permitted methods, and instead the default postal balloting method must be used. The Responsible Person may wish to record their considerations of the factors and criteria in writing in case of challenge.
165. The Responsible Person must be able to answer in the affirmative to each of the Criteria questions applicable to a method of balloting, to be permitted to use that method of balloting.

Factors and criteria for each ballot method

166. Pure Electronic balloting

- a. Factors
 - i. Do you consider that pure electronic balloting is a secure method for this ballot?
 - ii. Are there any countries that the independent scrutineer should block access to the e-balloting platform from?²²

²² Scrutineers should as best practice block access to ballots from IP addresses external to the UK unless requested otherwise by the commissioning party.

- iii. Have you agreed contingency arrangements in the case of an outage of the voting platform? Will the ballot be extended?

b. Criteria

- i. Does the independent scrutineer hold an in-date Cyber Essentials Plus certification or an equivalent certification, that will be valid for the duration of the ballot?
- ii. In the case of statutory union ballots is the independent scrutineer named in Article 7 of the Trade Union Ballots and Elections (independent scrutineer Qualifications) Order 1993
- iii. Does this ballot method, or combination of this method with other ballot method options, ensure that everyone eligible to vote is provided the opportunity to do so?
 - 1. Only if you are distributing the ballots by email:
 - a. Do you hold personal e-mail addresses that cover the section of the voter base you intend to provide the ballot to?
 - b. Have you checked to ensure no email addresses are workplace emails or union emails?
 - 2. Only if you are distributing the ballots by SMS / Internet message:
 - a. Do you hold SMS numbers that are provided to you as personal numbers, and cover the section of the voter base you intend to provide the ballot to by this method?
 - 3. When considering 1a, and 2a, can you confirm that everyone who is eligible to vote will have the opportunity to do so? If you can not, then the pure electronic balloting method can only be used in combination with other permitted methods which together will ensure that everyone eligible has the opportunity to vote.
- iv. Have you ensured there are no duplicate emails / phone numbers provided against multiple members?
- v. Have you confirmed with the independent scrutineer that the balloting method that will be used, meets the detailed requirements of the [Future SI] and the 1992 Act and is a permitted method for your statutory ballot?

167. Hybrid Electronic balloting

a. Factors

- i. Do you consider that hybrid electronic balloting is a secure method for this ballot?
- ii. Are there any countries that the independent scrutineer should block access to the e-balloting platform from?
- iii. Have you agreed contingency arrangements in the case of an outage of the voting platform? Will the ballot be extended?

b. Criteria

- i. Does the independent scrutineer hold an in date Cyber Essentials Plus certification, or an equivalent certification, that will be valid for the duration of the ballot?
- ii. In the case of statutory union ballots - Is the independent scrutineer named in article 7 of the trade union Ballots and Elections (independent scrutineer Qualifications) Order 1993
- iii. In the case of CAC ballots - Is the independent scrutineer named in article 4 of the Recognition and Derecognition Ballots (Qualified Persons) Order 2000
- iv. Does this method, or combination of this method with other ballot methods ensure that everyone eligible to vote is provided the opportunity to do so?
- v. Have you agreed what ballot method takes priority in the event of a ballot returned by both post and electronic means?
- vi. Have you confirmed with the independent scrutineer that the method that will be used, meets the detailed standards of [Future SI] and the 1992 Act and is a permitted method for your statutory ballot?

168. Workplace balloting ²³

a. Factors

- i. Do you consider that workplace balloting is appropriate for this industrial action ballot?
- ii. Do you consider that workplace balloting is a secure method for this ballot?

²³ These factors and criteria do not apply to workplace balloting as conducted by the Central Arbitration Committee – this code has no bearing on the requirements that the CAC considers in selecting a workplace ballot method.

b. Criteria

- i. Is the independent scrutineer named in article 7 of the trade union Ballots and Elections (independent scrutineer Qualifications) Order 1993?
- ii. Does this method, or combination of this method with other ballot options ensure that everyone eligible to vote is provided the opportunity to do so?
- iii. Have you confirmed with the independent scrutineer that the method that will be used, meets the standards of Section 54(12) and the [Future SI]?
- iv. Is the ballot you are conducting using this method an industrial action ballot under S230 of the 1992 Act?
- v. Have you agreed voluntary terms of access between the independent scrutineer and the employer that cover the core criteria as set out in the [Future SI]?
- vi. Have you agreed contingency arrangements for the conduct of the statutory ballot in case of last-minute revocation of access agreement?

National Sensitivity and Interference Risk

169. In the case of any statutory ballot being conducted that may attract attempted interference from hostile actors, as best practice, the responsible person may wish to consider any potential security trade-offs that different balloting methods may have. Hostile actors could include but are not limited to nation states and hacking groups.
170. This may be the case if the responsible person considers that a ballot is any combination of; significant in size, sensitive, or relates to a ballot with regards critical national infrastructure or public services.
171. The responsible person and their independent scrutineer may want to consider seeking best practice advice from the National Cyber Security Centre in this case to assure the confidentiality, integrity, and availability of their chosen ballot method, and to assure confidence in the outcome of their ballot.

Compliance and enforcement

Scrutineer reporting obligations

172. The independent scrutineer must publish a report on the statutory ballot. The specific requirements of each report are detailed in the 1992 Act. However, the [Future SI] requires that further specific information is to also be provided in the report for each of the following ballots.

- a. Union election ballots – Section 52 of the 1992 Act, **and**;
- b. Political fund / resolution ballots – Section 78 of the 1992 Act, **and**;
- c. Union merger ballots – Section 100E of the 1992 Act
 - i. The report will also require the independent scrutineer to confirm:
 - 1. The method or combination of methods used for the ballot
 - 2. The number of votes cast by each method
 - 3. The number of yes / no / spoil ballots by each method
 - 4. If electronic balloting has been used
 - a. A statement from the independent scrutineer confirming that to the best of their knowledge the ballot was conducted to the required standard, i.e. the ballot was compliant with the requirements of the legislation, those entitled to vote could do so, the votes were done in secret, and the risk of unfairness or malpractice was minimised.
 - b. A statement confirming how many (if any) votes were 'deleted' or 'reset' by the independent scrutineer to enable an individual who was unable to access their ballot to re-cast their ballot.
 - c. Any changes to the electronic balloting system/or administration of the voting platform throughout the period in which the ballot is 'active', that would enable editing of live vote data must be reported in the independent scrutineer report.
- d. Industrial Action Ballots – Section 231/B of the 1992 Act
 - i. The report will also require the independent scrutineer to confirm:
 - 1. The method or combination of methods used for the ballot
 - 2. The number of votes cast by each method
 - 3. The number of yes / no / spoil by each method

4. If electronic balloting has been used

- a. A statement from the independent scrutineer confirming that to the best of their knowledge the ballot was conducted to the required standard, i.e. the ballot was compliant with the requirements of the legislation, those entitled to vote could do so, there votes were done in secret, and the risk of unfairness or malpractice was minimised.
- b. A statement confirming how many (if any) votes were 'discounted by the independent scrutineer to enable an individual who was unable to access their ballot to re-cast their ballot.
- c. Any changes to the electronic balloting system and/or administration of the voting platform throughout the period in which the ballot is 'active', that would enable editing of live vote data must be reported in the independent scrutineer report.

5. If the ballot has been a workplace ballot

- a. The independent scrutineer must report on any behaviour they consider would constitute coercion or intimidation or reported to the independent scrutineer by persons present.
 - 1. Or provide a statement confirming that they have no reason to believe any coercion or intimidation took place throughout the workplace ballot.
- b. The independent scrutineer must report on any individuals turned away from voting, and the reason for this (i.e. no suitable ID, vote already cast etc)

173. There are no requirements in the 1992 Act for the independent person or independent scrutineer to provide a report to the CAC. However, the independent scrutineer and CAC should agree the content of any report required by the CAC.

Who can complain?

174. The 1992 Act sets out who can bring a complaint in the case of an alleged failure of compliance with each ballot method and the requirements of each ballot, and to whom they can complain.

- a. Union election ballots – complaints can be made by an affected union member to the Certification Officer or the court.

- b. Political fund / resolution ballots – complaints can be made by an affected union member to the Certification Officer or the court.
- c. Union merger ballots – complaints can be made by an affected union member to the Certification Officer or the court.
- d. Industrial action ballots – complaints can be made to the court.
- e. Statutory recognition and derecognition ballots, and Part III ballots – complaints can be made to the Central Arbitration Committee.

DRAFT - Subject to Consultation