

## **CONSULTATION DOCUMENT ON CODE OF PRACTICE ON INDUSTRIAL ACTION BALLOTS AND NOTICE TO EMPLOYERS**

The Department of Trade and Industry following consultation, has revised the 1995 Great Britain Code of Practice on Industrial Action Ballots and Notice to Employers, in the light of amendments to primary legislation made by the Employment Relations Act 1999. The Great Britain Code came into effect on 18 September 2000.

Northern Ireland does not have a Code of Practice corresponding to the 1995 GB Code. However, the Employment Relations (Northern Ireland) Order 1999 ("the 1999 Order") amends the law in Northern Ireland in the same way as the equivalent Act in Great Britain, and the Department has prepared and now is issuing for consultation a separate but similar Code to that which came into effect on 18 September 2000.

The changes to the provisions on ballots and notices are made by Article 6 of, and Schedule 3 to, the 1999 Order. Copies of guidance on the 1999 Order may be obtained free of charge from the Department by telephoning 028 90 257678.

Under existing legislation, the Department may, after consultation with the Labour Relations Agency, "issue Codes of Practice containing such practical guidance as the Department thinks fit for the purpose of promoting what appears to it to be desirable practices in relation to the conduct by trade unions of ballots and elections".

Such Codes impose no legal obligations in themselves, and failure to observe them does not by itself render anyone liable to proceedings, but their provisions are admissible in evidence and are to be taken into account in proceedings before any court where it considers them relevant.

The Department has consulted with the Labour Relations Agency in the preparation of this Code, and is publishing it now in the form of a draft. Views and comments are invited from interested individuals and organisations.

Responses should be sent by post, fax or e-mail to the following address to arrive by 3 November 2000:

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Please note that it will be assumed unless you express wishes to the contrary that you do not mind your response and the name of your organisation (or your own name if you are responding as an individual) being made public.

Additional copies of this consultative document may be obtained from the above address or from the following website:

[www.nics.gov.uk/mainhfe.htm](http://www.nics.gov.uk/mainhfe.htm)

**DRAFT CODE OF PRACTICE ON  
INDUSTRIAL ACTION BALLOTS AND  
NOTICE TO EMPLOYERS**

**PUBLIC CONSULTATION**

**September 2000**

# DRAFT CODE OF PRACTICE ON INDUSTRIAL ACTION BALLOTS AND NOTICE TO EMPLOYERS

## PREAMBLE

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

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

Passages in this Code which are printed in bold are re-statements of provisions in primary legislation

## SECTION A

### INTRODUCTION

1. This Code provides practical guidance to trade unions and employers to promote the improvement of industrial relations and good practice in the conduct of trade union industrial action ballots.
2. A union is legally responsible for organising industrial action only if it "authorises or endorses" the action. Authorisation would take place before the industrial action starts, and endorsement after it has previously started as unofficial action<sup>1</sup>.
3. Apart from certain small accidental failures that are unlikely to affect the result, a failure to satisfy the statutory requirements<sup>2</sup> relating to the ballot or giving employers notice of industrial action will give grounds for proceedings against a union by an employer, a customer or supplier of an employer, or an individual member of the public claiming that an effect or likely effect of the industrial action would be to prevent or delay the supply of goods or services to him or to reduce the quality of goods or services so supplied. With the exception of failures to comply with the requirements to give notice to employers, these will also give grounds for action by the union's members.

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

<sup>2</sup> (set out in Article 115B of the 1995 Order).

4. The Code does not deal with other matters which may affect a union's liability in respect of industrial action. For example, the law will give no protection against proceedings to a union which organises secondary action, intimidatory or violent picketing, industrial action which is not "in contemplation or furtherance of a trade dispute"<sup>3</sup>, industrial action to establish or maintain any closed shop practice or in support of a worker dismissed while taking part in unofficial industrial action. Nor does it apply to union election ballots, ballots on union political funds or ballots on union recognition or derecognition arranged for by the Industrial Court under 44A of, and Schedule 1A to the 1995 Order, as inserted by the Employment Relations (Northern Ireland) Order 1999. These are subject to separate statutory requirements.

#### ***Legal status***

5. **The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But Article 95(13) of the Industrial Relations (Northern Ireland) Order 1992 provides that any provisions of the Code are to be admissible in evidence and are to be taken into account in proceedings before any court where it considers them relevant.**

## **SECTION B**

### **WHETHER A BALLOT IS APPROPRIATE**

#### ***Observing procedural agreements***

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

#### ***Balloting by more than one union***

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

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<sup>3</sup>The term "trade union" is defined in Article 127 of the 1995 Order.

## SECTION C

### PREPARING FOR AN INDUSTRIAL ACTION BALLOT

#### *Arranging for independent scrutiny of the ballot*

8. For a ballot where more than 50 members are given entitlement to vote (see paragraph 21 below), the union must appoint a qualified person as the scrutineer of the ballot<sup>4</sup>. For a person to be qualified for appointment as scrutineer of an industrial action ballot, he must be among those specified in an order made by the Department<sup>5</sup> and the union must not have grounds for believing that he will carry out the functions which the law requires other than competently or that his independence in relation to the union might reasonably be called into question.

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

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

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

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

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

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<sup>4</sup> Where separate workplace ballots are required, *the scrutiny procedures must be followed in respect of each separate ballot, if the number of members given entitlement to vote, aggregated across all of the ballots, is more than 50.*

<sup>5</sup> *In broad terms, the current order (S.R. No. 241 1992) covers practicing solicitors, qualified accountants and three named bodies (Electoral Reform Ballot Services Limited; The Industrial Society; and Unity Security Balloting Services Limited now called Election.Com Limited).*

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

***Providing ballot notice to employers***

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

- **state that the union intends to hold the ballot;**
- **specify the date which the union reasonably believes will be the opening day of the ballot; and**
- **contain such information in the union's possession as would help the employer to make plans (for example, as appropriate to enable him to warn his customers of the possibility of disruption so that they can make alternative arrangements or to take steps to ensure the health and safety of his employees or the public or to safeguard equipment which might otherwise suffer damage from being shut down or left without supervision) and bring information to the attention of those of his employees who it is reasonable for the union to believe (at that time) will be entitled to vote. In particular, the union must provide as a minimum any information which it possesses as to the number, category or workplace of the employees concerned. But a notice will not fail to satisfy the requirements simply because it does not name any employees.**

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

16. It may also reduce the risk of litigation for a union to check that an employer accepts that the information provided complies with the requirements of Article 105 (2)(c) of the 1995 Order. Similarly, it would be in the interests of good industrial relations for an employer who believes the notice he has received does not contain sufficient information to comply with the statutory requirements to raise that with the union promptly before pursuing the matter in the court.

17. It is for the union to satisfy the requirement to provide sufficient notice. In reaching a decision on what information needs to be provided, the union may find it helpful to consider what information an employer is likely to have available, apart from that in the notice itself, which could help it make plans and bring information to those entitled to vote. Depending on the circumstances, factors such as the size and turnover rate of the employer's workforce, the variety of work done for the employer, the number of locations at which it is carried out, and any previous experience of ballot notifications concerning the same employer may be relevant to a decision about how much detail needs to be included.

18. In some circumstances the requirement is likely to be satisfied by indicating to the employer that entitlement to vote will be given to all of the union's members engaged on, for example, a specified kind of work activity, or in a certain grade, or at a particular location. In some cases, if the employer would otherwise be left in doubt, more specific information, such as a combination of these items of information, may be needed, but in no case will a union be required to give employees' names. Ultimately, it will always be a question on the facts of a particular case whether the notice gives an employer the required details.

#### ***Providing sample voting paper(s) to employers***

**19. The union must take such steps as are reasonably necessary to ensure that any employer who it is reasonable for the union to believe will be the employer of any of its members who will be given entitlement to vote receives a sample voting paper (and a sample of any variant of that voting paper) not later than the third day before the opening day of the ballot. Where more than one employer's workers are being balloted, it is sufficient to send each employer only the voting paper or papers which will be sent to his employees.**

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

#### ***Establishment entitlement to vote (the "balloting constituency")***

**21. Entitlement to vote in the ballot must be given to all the union's members who it is reasonable at the time of the ballot for the union to believe will be induced (whether that inducement will be successful or not) to take part in or continue with the industrial action, and to no other members<sup>6</sup>.**

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<sup>6</sup>The union may choose whether or not to give a vote to any "overseas member", i.e. any member (other than a merchant seaman or offshore worker) who is outside Northern Ireland for the whole of the voting period. However, members who may be called upon to take part in or continue with the industrial action, and will be in Great Britain for the whole of the voting period, must be given entitlement to vote in a ballot where: (i) the ballot is a workplace ballot at their workplace in Northern Ireland; or (ii) they work in Great Britain but it is intended that they should be called upon to take part in the industrial action alongside their counterparts in Northern Ireland, and the ballot is a general ballot covering places of work in both Great Britain and Northern Ireland.

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

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

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

- **who is given entitlement to vote;**
- **the dispatch of voting papers;**
- **giving members the opportunity to vote conveniently by post; and**
- **balloting merchant seamen employed in a ship at sea or outside Northern Ireland at some time during the voting period,**

**will be disregarded if, taken together, they are on a scale unlikely to affect the ballot's result.**

***Balloting members at more than one workplace***

**24. Where the members of a union with different workplaces are to be balloted, a separate ballot will be necessary for each workplace unless one of the conditions set out below is met. It will be unlawful for the union to organise industrial action at any such workplace where a majority of those voting in the ballot for that workplace have not voted "yes" in response to the relevant required question (or questions) (see paragraph 30 below). (If an employee works at or from a single set of premises, his workplace is those premises. If not, it is the premises with which his employment has the closest connection.)**

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

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

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

### ***The balloting method***

**26. Votes must be recorded by the individual voter marking a voting paper. Voting papers must be sent out by post and members must be enabled conveniently to return them by post at no direct expense to themselves<sup>7</sup>.** In practice, this means that those properly entitled to vote should be supplied with pre-paid reply envelopes in which to return the voting paper.

27. The period between sending out voting papers (i.e. the opening day of the ballot) and the date by which completed voting papers should be returned should be long enough for the voting papers to be distributed and returned and for the members concerned to consider their vote. The appropriate period may vary according to such factors as the geographical dispersion of the workforce, their familiarity or otherwise with the issues in the dispute and the class of post used and whether the ballot is being held at a time of year when members are more than usually likely to be away from home or the workplace, for example, during the summer holidays. Generally, seven days should be the minimum period where voting papers are sent out and returned by first class post and fourteen days where second class post is used, although – very exceptionally – shorter periods may be possible for ballots with very small, concentrated constituencies who can be expected to be familiar with the terms of the dispute.

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

### ***Voting papers***

**29. The voting paper must:-**

- **where applicable, state the name of the independent scrutineer;**
- **clearly specify the address to which, and the date by which it is to be returned;**
- **be marked with a number, which is one of series of consecutive numbers used to give a different number to each voting paper;**

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<sup>7</sup>*There is a limited exception for the balloting of union members who are merchant seamen, where the union reasonably believes that they will be employed in a ship at sea (or outside Northern Ireland) at some time in the period during which votes may be cast and that it will be convenient for them to vote while on the ship or where the ship is. So far as reasonably practicable, the union must ensure that, in these circumstances, those members get a voting paper while on board ship (or at the place where the ship is located), and an opportunity to vote on board ship (or at that place). The recommendations in this Code should be applied to such ballots, however, save to the extent that they are irrelevant because the dispatch of voting papers is not by post.*

- **make clear whether voters are being asked if they are prepared to take part in industrial action which consists of a strike, or in industrial action short of a strike, which for this purpose includes overtime bans and call-out bans; and**
- **specify the person or persons (and/or class or classes of person(s)) who the union intends to have authority to make the first call for industrial action to which the ballot relates, in the event of a vote in favour of industrial action<sup>8</sup>.**

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

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

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

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

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

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

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<sup>8</sup> *Where a person who has not been specified on the voting paper calls industrial action before it is first called by a specified person, then – in order to be certain that the ballot will give protection against legal proceedings – the union should if possible ensure that the call by the unspecified person is effectively repudiated.*

### ***Printing and distribution of the voting papers***

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

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

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

### ***Communication with members***

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

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

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

## SECTION D

### HOLDING AN INDUSTRIAL ACTION BALLOT

37. In an industrial action ballot:-

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

#### *Checks on number of voting papers for return.*

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

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

The independent scrutineer may provide advice on this.

#### *Ensuring secrecy of voting*

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

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

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

## SECTION E

### FOLLOWING AN INDUSTRIAL ACTION BALLOT

**41. The union must:-**

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

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

***Counting votes accurately and fairly***

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

- ensuring all unused or unissued voting papers are retained only for so long as is necessary after the time allowed for voting has passed to allow the necessary information for checking the number of voting papers issued and used to be prepared and that a record is kept of such voting papers when they are destroyed;
- rejection of completed voting papers received after the official close of voting or the time set for receipt of voting papers;
- settlement well in advance of the actual ballot of the organisational arrangements for conducting the count of votes cast, and making available equipment or facilities needed in the conduct of the count to those concerned;
- storage of all voting papers received at the counting location under secure conditions from when they arrive until they are counted;
- setting clear criteria to enable those counting the votes to decide which voting papers are to be rejected as "spoiled", and designating someone who is neither directly affected by the dispute to which the ballot relates nor a union official who regularly represents any of those entitled to vote in the ballot to adjudicate on any borderline cases;

- locking and securing the counting room during the period during which votes are to be counted whenever counting staff are not actually at work; and
- storage of voting papers, once counted, under secure conditions (ie. so that they cannot be tampered with in any way and are available for checking if necessary)for at least 6 months after the ballot.

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

***Announcing details of the result of a ballot***

**43. A union must, as soon as reasonably practicable after holding an industrial action ballot, take steps to inform all those entitled to vote<sup>10</sup>, and their employer(s), of the number of:-**

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

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

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

- designating a “Returning Officer” for the centralised count of votes cast in the ballot (or separate “Returning Officers” for counts conducted at different locations to whom the results will be notified in the form required prior to their announcement;
- organising the counting of votes in such a way that the information required to satisfy the relevant statutory requirements can be easily obtained after the counting process is over;
- using its own journals, local communications news-sheets, company or union branch notice boards to publicise the details of the ballot result to its members; and

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<sup>10</sup>*If overseas members of a trade union have been given entitlement to vote in an industrial action ballot the detailed information about its result need not be sent to them, but the information supplied to non-overseas members in accordance with the statutory requirements must distinguish between votes cast, individuals voting, and spoiled ballot papers to show which details relate to overseas, and which to non-overseas, members. (For these purposes members in Great Britain given entitlement to vote do not count as “overseas” members.)*

- checking with relevant employers that the ballot result details notified to them have arrived.

**45. Before giving the seven-day notice to employers of intended industrial action, the union must have taken the required steps to notify the relevant employer(s) of the ballot result details. Where the employees of more than one employer have been balloted, a failure to provide the required ballot result details to a particular employer or employers will mean that if the union organises industrial action by the workers of that employer or those employers it will not have the support of a ballot.**

**46. If the inducement of industrial action to which the ballot relates is to be capable of being protected by the law, some part of the action must be induced and start to take place within four weeks the date of the ballot (ie. the last day on which votes may be cast in the ballot) or such longer period not exceeding eight weeks as the union and employer may agree<sup>11</sup>. (To reduce the risk of misunderstanding, both parties may find it helpful for such agreements to be in writing.) If a ballot results in a “Yes” vote for both a strike and action short of a strike and action short of a strike is induced and starts to take place within the relevant period, the ballot would also continue to protect strike action subsequently, and vice versa.**

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

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

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

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<sup>11</sup> *A union may be allowed to make its first call for industrial action more than four weeks after the date of the ballot if either (a) the employer and union agree on an extension, for example, to enable talks including any held under the auspices of the Labour Relations Agency which are making progress to continue, of up to eight weeks after the date of the ballot or (b) an injunction granted by a court or an undertaking given by the union to the court prohibits the union from calling for industrial action during some part, or the whole of the four weeks following the date of the ballot, and the injunction subsequently lapses or is set aside or the union is released from its undertaking. In the latter case, a union may forthwith apply to the court for an order which, if granted, would provide that the period during which the prohibition had effect would not count towards the four week period for which ballots are normally effective. However, if the court believes that the result of a ballot no longer represents the views of union members, or that something has happened or is likely to happen which would result in union members voting against taking, or continuing with, action if there were a fresh ballot, it may not make such an order. In any case, a ballot can never be effective if a union’s first call for industrial action is made more than twelve weeks after the date of the ballot.*

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

***If the union decides to authorise or endorse industrial action***

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

- is given by any officer, official or committee of the union for whose act of inducing industrial action the union is responsible in law (an indication of who this might cover is given in the **Annex 1** to this Code);
- specifies: (i) whether the union intends the action to be “continuous” or “discontinuous”<sup>12</sup> and (ii) the date on which any of the workers concerned are intended to begin to take part in the action (where it is continuous action), or all the dates on which any of them are intended to take part (where it is discontinuous action);
- contains such information in the union's possession as would help the employer to make plans and bring information to the attention of those of his employees who the union intends should take part in the action;
- states that it is a notice given for the purposes of Article 118 of the 1995 Order; and

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

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

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<sup>12</sup>*For these purposes, industrial action is “discontinuous” if it is to involve action other than on all the days when action might be taken by those concerned. An indefinite strike would, therefore, be “continuous”, an overtime ban might be “continuous” or “discontinuous”, depending on whether the ban applied to overtime working on all the days on which overtime would otherwise be worked or to overtime working on only some of those days.*

**52. Where continuous industrial action is suspended, for example, for further negotiations between the employer and union, or to seek assistance from the Labour Relations Agency, the union must normally give the employer a further notice as in paragraph 50 and 51 above before resuming the action. There is an exception to this requirement to give further notice, however, where the union agrees with the employer that the industrial action will cease to be authorised or endorsed or endorsed again on or after another date specified in the agreement and the union:-**

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

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

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

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

## ANNEX 1

### TRADE UNION LIABILITY

1. **Article 21 of the Industrial Relations (Northern Ireland) 1992 lays down when a union is to be held responsible for the act of inducing, or threatening, a breach or interference with a contract when there is no immunity. The union will be held liable for any such act which is done, authorised or endorsed by:-**

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

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

2. **For these purposes:-**

- **“committee of the union” is any group of persons constituted in accordance with the rules of the union; and**
- **an “official of the union” is any person who is an officer of the union or of a branch or section of the union or any person who is elected or appointed in accordance with the union's own rules to be a representative of its members, including any person so elected or appointed who is an employee of the same employer as the members, or one or more of the members, he is elected to represent (eg. a shop steward); and**
- **an act will be treated to have been done (or authorised or endorsed) by an official if it was so done (or authorised or endorsed) by a group of persons, or any member of a group, to which an official belonged at the relevant time if the group's purposes included organising or co-ordinating industrial action.**

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

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

### ***“Immunity”***

5. A trade union which organises (ie. authorises or endorses) industrial action without satisfying the requirements of Article 104 (for balloting on industrial action), or 118 (for notice to employers of official industrial action), of the 1995 Order will have no “immunity”. Without immunity the trade union will be at risk of legal action by (i) an employer (and/or a customer or supplier of such an employer) who suffers (or may suffer) damage as a consequence of the trade union’s unlawful inducement to his workers to break or interfere with the performance of contracts; and/or (ii) any individual who is (or is likely to be) deprived of goods or services because of the industrial action. Such legal proceedings might result in a court order requiring the trade union not to proceed with, and/or desist from, the unlawful inducement of its members to take part or continue with the action, and that no member does anything after the order is made as a result of unlawful inducement prior to the making of the order.

6. Under Article 29 of the 1995 Order, a member of a trade union who claims that members of the union, including himself, are likely to be or have been induced by the union to take industrial action which does not have the support of a ballot may apply to the court for an order, which may require the trade union to take steps to ensure that there is no, or no further, unlawful inducement to members to take part or continue to take part in the action, and that no member does anything after the order is made as a result of unlawful inducement prior to the making of the order.

### ***Contempt and other proceedings***

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

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

**ANNEX 2**

**EXAMPLE OF VOTING PAPER FOR BALLOT ON TAKING INDUSTRIAL ACTION**

**[VOTING PAPER NUMBER]**

**[NAME OF THE TRADE UNION]**

**ARE YOU PREPARED TO TAKE PART IN INDUSTRIAL ACTION CONSISTING OF A STRIKE?<sup>9</sup>**

**YES**

**NO**

**ARE YOU PREPARED TO TAKE PART IN INDUSTRIAL ACTION SHORT OF A STRIKE (which for this purpose is defined to include overtime and call-out bans)?<sup>9</sup>**

**YES**

**NO**

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

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

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

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

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

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<sup>9</sup> *Either question or both should be included as appropriate.*

## ANNEX 3

### INFORMATION TO BE GIVEN TO EMPLOYERS

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

	Paragraphs
<b>Ballot notice</b>	14-81
<b>Sample voting paper</b>	19-20
<b>Results of the ballot</b>	43-45
<b>Scrutineer's report on the conduct of the ballot</b>	48
<b>Notice of intention to authorise or endorse industrial action or resume suspended industrial action</b>	50-51