



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART V

#### INDUSTRIAL ACTION

##### *Requirement of ballot before action by trade union*

#### **226 Requirement of ballot before action by trade union.**

(1) An act done by a trade union to induce a person to take part, or continue to take part, in industrial action <sup>[F1]</sup>

- (a) is not protected unless the industrial action has the support of a ballot, and
- (b) where section 226A falls to be complied with in relation to the person's employer, is not protected as respects the employer unless the trade union has complied with section 226A in relation to him.]

<sup>[F2]</sup>In this section "the relevant time", in relation to an act by a trade union to induce a person to take part, or continue to take part, in industrial action, means the time at which proceedings are commenced in respect of the act.]

(2) Industrial action shall be regarded as having the support of a ballot only if—

- <sup>[F3F4]</sup>(a) the union has held a ballot in respect of the action—
  - (i) in relation to which the requirements of section 226B so far as applicable before and during the holding of the ballot were satisfied,
  - (ii) in relation to which the requirements of sections 227 to <sup>[F5]</sup>231] were satisfied, and
  - (iii) in which the majority voting in the ballot answered "Yes" to the question applicable in accordance with section 229(2) to industrial action of the kind to which the act of inducement relates;
- (b) such of the requirements of the following sections as have fallen to be satisfied at the relevant time have been satisfied, namely—

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- (i) section 226B so far as applicable after the holding of the ballot, and
- (ii) section 231B; [<sup>F6</sup>. . .]
- [<sup>F3</sup>(bb) section 232A does not prevent the industrial action from being regarded as having the support of the ballot; and]
- (c) the requirements of section 233 (calling of industrial action with support of ballot) are satisfied.

Any reference in this subsection to a requirement of a provision which is disapplied or modified by section 232 has effect subject to that section.

- (3) Where separate workplace ballots are held by virtue of [<sup>F7</sup>section 228(1)—
  - (a) industrial action shall be regarded as having the support of a ballot if the conditions specified in subsection (2) are satisfied, and
  - (b) the trade union shall be taken to have complied with the requirements relating to a ballot imposed by section 226A if those requirements are complied with, in relation] to the ballot for the place of work of the person induced to take part, or continue to take part, in the industrial action.
- [<sup>F8</sup>(3A) If the requirements of section 231A fall to be satisfied in relation to an employer, as respects that employer industrial action shall not be regarded as having the support of a ballot unless those requirements are satisfied in relation to that employer.]
- (4) For the purposes of this section an inducement, in relation to a person, includes an inducement which is or would be ineffective, whether because of his unwillingness to be influenced by it or for any other reason.

#### Textual Amendments

- F1** S. 226(1)(a)(b) substituted (30.8.1993) for words by 1993 c. 19, s. 18(1); S.I. 1993/1908, art. 2(1), **Sch. 1**
- F2** Words in s. 226(1) inserted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F3** S. 226(2)(bb) inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **2(1)(2)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in s. 4)
- F4** S. 226(2)(a)-(c) and proviso substituted (30.8.1993) for s. 226(2)(a)-(c) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F5** Words in s. 226(2)(a)(ii) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, **2(1)(2)**; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)
- F6** Words in s. 226(2)(b) omitted (18.9.2000 and repealed *prosp.*) by virtue of 1999 c. 26, **ss. 4, 44, 45(1)**, Sch. 3 paras. 1, **2(1)(2)**, Sch. 9(1); S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)
- F7** Words in s. 226(3) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 73(c)**; S.I. 1993/1908, art. 2(1), **Sch. 1**
- F8** S. 226(3A) inserted (18.9.2000) by 1999 c. 26, **ss. 4, Sch. 3 paras. 1, 2(1)(3)** (with transitional provisions in art. 4)

#### Modifications etc. (not altering text)

- C1** S. 226 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

#### [<sup>F9</sup>226A Notice of ballot and sample voting paper for employers.

- (1) The trade union must take such steps as are reasonably necessary to ensure that—

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- (a) not later than the seventh day before the opening day of the ballot, the notice specified in subsection (2), and
  - (b) not later than the third day before the opening day of the ballot, the sample voting paper specified in [<sup>F10</sup>subsection (2F)],
- is received by every person who it is reasonable for the union to believe (at the latest time when steps could be taken to comply with paragraph (a)) will be the employer of persons who will be entitled to vote in the ballot.
- (2) The notice referred to in paragraph (a) of subsection (1) is a notice in writing—
- (a) stating that the union intends to hold the ballot,
  - (b) specifying the date which the union reasonably believes will be the opening day of the ballot, and
  - [<sup>F11</sup>(c) containing—
    - (i) the lists mentioned in subsection (2A) and the figures mentioned in subsection (2B), together with an explanation of how those figures were arrived at, or
    - (ii) where some or all of the employees concerned are employees from whose wages the employer makes deductions representing payments to the union, either those lists and figures and that explanation or the information mentioned in subsection (2C).]
- [ The lists are—
- <sup>F12</sup>(2A) (a) a list of the categories of employee to which the employees concerned belong, and
- (b) a list of the workplaces at which the employees concerned work.
- (2B) The figures are—
- (a) the total number of employees concerned,
  - (b) the number of the employees concerned in each of the categories in the list mentioned in subsection (2A)(a), and
  - (c) the number of the employees concerned who work at each workplace in the list mentioned in subsection (2A)(b).
- (2C) The information referred to in subsection (2)(c)(ii) is such information as will enable the employer readily to deduce—
- (a) the total number of employees concerned,
  - (b) the categories of employee to which the employees concerned belong and the number of the employees concerned in each of those categories, and
  - (c) the workplaces at which the employees concerned work and the number of them who work at each of those workplaces.
- (2D) The lists and figures supplied under this section, or the information mentioned in subsection (2C) that is so supplied, must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies with subsection (1)(a).
- (2E) For the purposes of subsection (2D) information is in the possession of the union if it is held, for union purposes—
- (a) in a document, whether in electronic form or any other form, and
  - (b) in the possession or under the control of an officer or employee of the union.
- (2F) The sample voting paper referred to in paragraph (b) of subsection (1) is—

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- (a) a sample of the form of voting paper which is to be sent to the employees concerned, or
  - (b) where the employees concerned are not all to be sent the same form of voting paper, a sample of each form of voting paper which is to be sent to any of them.
- (2G) Nothing in this section requires a union to supply an employer with the names of the employees concerned.
- (2H) In this section references to the “employees concerned” are references to those employees of the employer in question who the union reasonably believes will be entitled to vote in the ballot.
- (2I) For the purposes of this section, the workplace at which an employee works is—
- (a) in relation to an employee who works at or from a single set of premises, those premises, and
  - (b) in relation to any other employee, the premises with which his employment has the closest connection.]
- (3) <sup>F13</sup> .....
- (3A) <sup>F13</sup> .....
- (3B) <sup>F13</sup> .....
- (4) In this section references to the opening day of the ballot are references to the first day when a voting paper is sent to any person entitled to vote in the ballot.
- (5) This section, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution in [<sup>F14</sup>subsection (2F)], for references to the voting paper which is to be sent to the employees, of references to the voting paper which is to be sent or otherwise provided to them.]

#### Textual Amendments

- F9** S. 226A inserted (30.8.1993) by 1993 c. 19, s. 18(2); S.I. 1993/1908, art. 2(1), Sch. 1
- F10** Words in s. 226A(1)(b) substituted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 22(2), 59(2)-(4); S.I. 2005/2419, art. 3(a) (with arts. 5-7)
- F11** S. 226A(2)(c) substituted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 22(3), 59(2)-(4); S.I. 2005/2419, art. 3(a) (with arts. 5-7)
- F12** S. 226A(2A)-(2I) inserted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 22(4), 59(2)-(4); S.I. 2005/2419, art. 3(a) (with arts. 5-7)
- F13** S. 226A(3)-(3B) repealed (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 22(5), 57(2), 59(2)-(4), Sch. 2; S.I. 2005/2419, art. 3(a)(c) (with arts. 5-7)
- F14** Words in s. 226A(5) substituted (1.10.2005) by Employment Relations Act 2004 (c. 24), ss. 22(6), 59(2)-(4); S.I. 2005/2419, art. 3(a) (with arts. 5-7)

#### Modifications etc. (not altering text)

- C2** S. 226A applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

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**[226B** <sup>F15</sup>**Appointment of scrutineer.**

- (1) The trade union shall, before the ballot in respect of the industrial action is held, appoint a qualified person (“the scrutineer”) whose terms of appointment shall require him to carry out in relation to the ballot the functions of—
  - (a) taking such steps as appear to him to be appropriate for the purpose of enabling him to make a report to the trade union (see section 231B); and
  - (b) making the report as soon as reasonably practicable after the date of the ballot and, in any event, not later than the end of the period of four weeks beginning with that date.
- (2) A person is a qualified person in relation to a ballot if—
  - (a) he satisfies such conditions as may be specified for the purposes of this section by order of the Secretary of State or is himself so specified; and
  - (b) the trade union has no grounds for believing either that he will carry out the functions conferred on him under subsection (1) otherwise than competently or that his independence in relation to the union, or in relation to the ballot, might reasonably be called into question.

An order under paragraph (a) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The trade union shall ensure that the scrutineer duly carries out the functions conferred on him under subsection (1) and that there is no interference with the carrying out of those functions from the union or any of its members, officials or employees.
- (4) The trade union shall comply with all reasonable requests made by the scrutineer for the purposes of, or in connection with, the carrying out of those functions.]

**Textual Amendments**

**F15** S. 226B inserted (30.8.1993) by 1993 c. 19, s. 20(1); S.I. 1993/1908, art. 2(1), Sch. 1

**Modifications etc. (not altering text)**

**C3** S. 226B applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

**[<sup>F16</sup>226C Exclusion for small ballots.**

Nothing in section 226B, section 229(1A)(a) or section 231B shall impose a requirement on a trade union unless—

- (a) the number of members entitled to vote in the ballot, or
- (b) where separate workplace ballots are held in accordance with section 228(1), the aggregate of the number of members entitled to vote in each of them, exceeds 50.]

**Textual Amendments**

**F16** S. 226C inserted (30.8.1993) by 1993 c. 19, s. 20(4); S.I. 1993/1908, art. 2(1), Sch. 1

**Modifications etc. (not altering text)**

**C4** S. 226C applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

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## 227 Entitlement to vote in ballot.

- (1) Entitlement to vote in the ballot must be accorded equally to all the members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced [<sup>F17</sup>by the union] to take part or, as the case may be, to continue to take part in the industrial action in question, and to no others.
- [<sup>F18</sup>(2) The requirement in subsection (1) shall be taken not to have been satisfied if any person who was a member of the trade union at the time when the ballot was held and was denied entitlement to vote in the ballot is induced by the union to take part or, as the case may be, to continue to take part in the industrial action].

### Textual Amendments

- F17** Words in s. 227(1) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 23**, 59(2)-(4); [S.I. 2005/872](#), **art. 4**, Sch. (with [arts. 6-21](#))
- F18** [S. 227\(2\)](#) omitted (18.9.2000 and repealed *prosp.*) by virtue of [1999 c. 26](#), **ss. 4**, 44, 45, [Sch. 3 paras. 1, 4](#), **Sch. 9(1)**; [S.I. 2000/2242](#), **art. 2(2)** (with transitional provisions in [art. 4](#))

### Modifications etc. (not altering text)

- C5** [S. 227](#) applied by [S.I. 2000/1828](#), **art. 2(5)(b)**

## [<sup>F19</sup>228 Separate workplace ballots.

- (1) Subject to subsection (2), this section applies if the members entitled to vote in a ballot by virtue of section 227 do not all have the same workplace.
- (2) This section does not apply if the union reasonably believes that all those members have the same workplace.
- (3) Subject to section 228A, a separate ballot shall be held for each workplace; and entitlement to vote in each ballot shall be accorded equally to, and restricted to, members of the union who—
- are entitled to vote by virtue of section 227, and
  - have that workplace.
- (4) In this section and section 228A “workplace” in relation to a person who is employed means—
- if the person works at or from a single set of premises, those premises, and
  - in any other case, the premises with which the person’s employment has the closest connection.]

### Textual Amendments

- F19** [Ss. 228, 228A](#) substituted for [s. 228](#) (18.9.2000) by [1999 c. 26](#), **s. 4**, [Sch. 3 paras. 1, 5](#); [S.I. 2000/2242](#), **art. 2(2)** (with transitional provisions in [art. 4](#))

### Modifications etc. (not altering text)

- C6** [S. 228](#) applied (14.8.2000) by [S.I. 2000/1828](#), **art. 2(5)**

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**[<sup>F20</sup>228A Separate workplaces: single and aggregate ballots.**

- (1) Where section 228(3) would require separate ballots to be held for each workplace, a ballot may be held in place of some or all of the separate ballots if one of subsections (2) to (4) is satisfied in relation to it.
- (2) This subsection is satisfied in relation to a ballot if the workplace of each member entitled to vote in the ballot is the workplace of at least one member of the union who is affected by the dispute.
- (3) This subsection is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who—
  - (a) according to the union’s reasonable belief have an occupation of a particular kind or have any of a number of particular kinds of occupation, and
  - (b) are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.
- (4) This subsection is satisfied in relation to a ballot if entitlement to vote is accorded to, and limited to, all the members of the union who are employed by a particular employer, or by any of a number of particular employers, with whom the union is in dispute.
- (5) For the purposes of subsection (2) the following are members of the union affected by a dispute—
  - (a) if the dispute relates (wholly or partly) to a decision which the union reasonably believes the employer has made or will make concerning a matter specified in subsection (1)(a), (b) or (c) of section 244 (meaning of “trade dispute”), members whom the decision directly affects,
  - (b) if the dispute relates (wholly or partly) to a matter specified in subsection (1) (d) of that section, members whom the matter directly affects,
  - (c) if the dispute relates (wholly or partly) to a matter specified in subsection (1) (e) of that section, persons whose membership or non-membership is in dispute,
  - (d) if the dispute relates (wholly or partly) to a matter specified in subsection (1)(f) of that section, officials of the union who have used or would use the facilities concerned in the dispute.]

**Textual Amendments**

**F20** Ss. 228, 228A substituted for 228 (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 5; S.I. 2000/2242, art. 2 (with transitional provisions in art. 4)

**Modifications etc. (not altering text)**

**C7** s. 228A applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(C)

**229 Voting paper.**

- (1) The method of voting in a ballot must be by the marking of a voting paper by the person voting.

**[<sup>F21</sup>(1A) Each voting paper must—**

- (a) state the name of the independent scrutineer,

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- (b) clearly specify the address to which, and the date by which, it is to be returned,
- (c) be given one of a series of consecutive whole numbers every one of which is used in giving a different number in that series to each voting paper printed or otherwise produced for the purposes of the ballot, and
- (d) be marked with its number.

This subsection, in its application to a ballot in which merchant seamen to whom section 230(2A) applies are entitled to vote, shall have effect with the substitution, for the reference to the address to which the voting paper is to be returned, of a reference to the ship to which the seamen belong.]

- (2) The voting paper must contain at least one of the following questions—
  - (a) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in a strike;
  - (b) a question (however framed) which requires the person answering it to say, by answering “Yes” or “No”, whether he is prepared to take part or, as the case may be, to continue to take part in industrial action short of a strike.

[<sup>F22</sup>(2A) For the purposes of subsection (2) an overtime ban and a call-out ban constitute industrial action short of a strike.]

- (3) The voting paper must specify who, in the event of a vote in favour of industrial action, is authorised for the purposes of section 233 to call upon members to take part or continue to take part in the industrial action.

The person or description of persons so specified need not be authorised under the rules of the union but must be within section [<sup>F23</sup>20(2)] (persons for whose acts the union is taken to be responsible).

- (4) The following statement must (without being qualified or commented upon by anything else on the voting paper) 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.”

[<sup>F24</sup>However, if you are dismissed for taking part in strike or other industrial action which is called officially and is otherwise lawful, the dismissal will be unfair if it takes place fewer than [<sup>F25</sup>twelve] weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.]

#### Textual Amendments

- F21** S. 229(1A) inserted (30.8.1993) by 1993 c. 19, s. 20(2); S.I. 1993/1908, art. 2(1), Sch. 1
- F22** S. 229(2A) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 6(1)(2); S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)
- F23** Words in s. 229(3) substituted (30.8.1993) by 1993 c. 19, s. 49(1), Sch. 7 para. 25; S.I. 1993/1908, art. 2(1), Sch. 1
- F24** Words in s. 229(4) inserted (18.9.2000) by 1999 c. 26, ss. 4, 45, Sch. 3 paras. 1, 6(1)(3); S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)
- F25** Word in s. 229(4) substituted (6.4.2005) by Employment Relations Act 2004 (c. 24), ss. 57(1), 59(2)-(4), Sch. 1 para. 13; S.I. 2005/872, art. 4, Sch. (with arts. 6-21)



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**Modifications etc. (not altering text)**

**C8** S. 229 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(a)**

**230 Conduct of ballot.**

- (1) Every person who is entitled to vote in the ballot must—
- (a) be allowed to vote without interference from, or constraint imposed by, the union or any of its members, officials or employees, and
  - (b) so far as is reasonably practicable, be enabled to do so without incurring any direct cost to himself.

- [<sup>F26F27</sup>(2) Except as regards persons falling within subsection (2A), so far as is reasonably practicable, every person who is entitled to vote in the ballot must—
- (a) have a voting paper sent to him by post at his home address or any other address which he has requested the trade union in writing to treat as his postal address; and
  - (b) be given a convenient opportunity to vote by post.

[ Subsection (2B) applies to a merchant seaman if the trade union reasonably believes <sup>F26</sup>(2A) that—

- (a) he will be employed in a ship either at sea or at a place outside Great Britain at some time in the period during which votes may be cast, and
- (b) it will be convenient for him to receive a voting paper and to vote while on the ship or while at a place where the ship is rather than in accordance with subsection (2).

<sup>F26</sup>(2B) Where this subsection applies to a merchant seaman he shall, if it is reasonably practicable—

- (a) have a voting paper made available to him while on the ship or while at a place where the ship is, and
- (b) be given an opportunity to vote while on the ship or while at a place where the ship is.]]

(2C) In subsections (2A) and (2B) “merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships.

- (4) A ballot shall be conducted so as to secure that—
- (a) so far as is reasonably practicable, those voting do so in secret, and
  - (b) the votes given in the ballot are fairly and accurately counted.

For the purposes of paragraph (b) an inaccuracy in counting shall be disregarded if it is accidental and on a scale which could not affect the result of the ballot.

**Textual Amendments**

**F26** S. 230(2A)(2B) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 7; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in **art. 4**)

**F27** S. 230(2)(2A)-(2C) substituted (30.8.1993) for s. 230(2)(3) by 1993 c. 19, s. 17; S.I. 1993/1908, **art. 2(1), Sch. 1**

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**Modifications etc. (not altering text)**

**C9** S. 230 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

**231 Information as to result of ballot.**

As soon as is reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that all persons entitled to vote in the ballot are informed of the number of—

- (a) votes cast in the ballot,
- (b) individuals answering “Yes” to the question, or as the case may be, to each question,
- (c) individuals answering “No” to the question, or, as the case may be, to each question, and
- (d) spoiled voting papers.

**Modifications etc. (not altering text)**

**C10** S. 231 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

**[<sup>F28</sup>231A Employers to be informed of ballot result.**

- (1) As soon as reasonably practicable after the holding of the ballot, the trade union shall take such steps as are reasonably necessary to ensure that every relevant employer is informed of the matters mentioned in section 231.
- (2) In subsection (1) “relevant employer” means a person who it is reasonable for the trade union to believe (at the time when the steps are taken) was at the time of the ballot the employer of any persons entitled to vote.]

**Textual Amendments**

**F28** S. 231A inserted (30.8.1993) by 1993 c. 19, s.19; S.I. 1993/1908, art. 2(1), Sch.1

**Modifications etc. (not altering text)**

**C11** S. 231A applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

**[<sup>F29</sup>231B Scrutineer’s report.**

- (1) The scrutineer’s report on the ballot shall state whether the scrutineer is satisfied—
  - (a) that there are no reasonable grounds for believing that there was any contravention of a requirement imposed by or under any enactment in relation to the ballot,
  - (b) that the arrangements made with respect to the production, storage, distribution, return or other handling of the voting papers used in the ballot, and the arrangements for the counting of the votes, included all such security arrangements as were reasonably practicable for the purpose of minimising the risk that any unfairness or malpractice might occur, and

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- (c) that he has been able to carry out the functions conferred on him under section 226B(1) without any interference from the trade union or any of its members, officials or employees;
- and if he is not satisfied as to any of those matters, the report shall give particulars of his reason for not being satisfied as to that matter.
- (2) If at any time within six months from the date of the ballot—
- (a) any person entitled to vote in the ballot, or
- (b) the employer of any such person,
- requests a copy of the scrutineer’s report, the trade union must, as soon as practicable, provide him with one either free of charge or on payment of such reasonable fee as may be specified by the trade union.]

#### Textual Amendments

**F29** S. 231B inserted (30.8.1993) by 1993 c. 19, s. 20(3); S.I. 1993/1908, art. 2(1), Sch.1

#### Modifications etc. (not altering text)

**C12** S. 231B applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

## 232 Balloting of overseas members.

- (1) A trade union which has overseas members may choose whether or not to accord any of those members entitlement to vote in a ballot; and nothing in section [F30]226B to 230 and 231B] applies in relation to an overseas member or a vote cast by such a member.
- [F31](2) Where overseas members have voted in the ballot—
- (a) the references in sections 231 and 231A to persons entitled to vote in the ballot do not include overseas members, and
- (b) those sections shall be read as requiring the information mentioned in section 231 to distinguish between overseas members and other members.]
- (3) An “overseas member” of a trade union means a member (other than a merchant seaman or offshore worker) who is outside Great Britain throughout the period during which votes may be cast.

For this purpose—

“merchant seaman” means a person whose employment, or the greater part of it, is carried out on board sea-going ships; and

“offshore worker” means a person in offshore employment, other than one who is in such employment in an area where the law of Northern Ireland applies.

- (4) A member who throughout the period during which votes may be cast is in Northern Ireland shall not be treated as an overseas member—
- (a) where the ballot is one to which section 228(1) or (2) applies (workplace ballots) and his place of work is in Great Britain, or
- (b) where the ballot is one to which section 228(3) applies (general ballots) and relates to industrial action involving members both in Great Britain and in Northern Ireland.

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- (5) In relation to offshore employment the references in subsection (4) to Northern Ireland include any area where the law of Northern Ireland applies and the references to Great Britain include any area where the law of England and Wales or Scotland applies.

#### Textual Amendments

**F30** Words in s. 232(1) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 74(a)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

**F31** S. 232(2) substituted (30.8.1993) by 1993 c. 19, s. 49(2), **Sch. 8 para. 74(b)**; S.I. 1993/1908, art. 2(1), **Sch. 1**

#### Modifications etc. (not altering text)

**C13** S. 232 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

### [<sup>F32</sup>232A] **Inducement of member denied entitlement to vote.**

Industrial action shall not be regarded as having the support of a ballot if the following conditions apply in the case of any person—

- (a) he was a member of the trade union at the time when the ballot was held,
- (b) it was reasonable at that time for the trade union to believe he would be induced to take part or, as the case may be, to continue to take part in the industrial action,
- (c) he was not accorded entitlement to vote in the ballot, and
- (d) he was induced by the trade union to take part or, as the case may be, to continue to take part in the industrial action.]

#### Textual Amendments

**F32** S. 232A inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 8; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

### [<sup>F33</sup>232B] **Small accidental failures to be disregarded.**

(1) If—

- (a) in relation to a ballot there is a failure (or there are failures) to comply with a provision mentioned in subsection (2) or with more than one of those provisions, and
- (b) the failure is accidental and on a scale which is unlikely to affect the result of the ballot or, as the case may be, the failures are accidental and taken together are on a scale which is unlikely to affect the result of the ballot,

the failure (or failures) shall be disregarded [<sup>F34</sup>for all purposes (including, in particular, those of section 232A(c))].

(2) The provisions are section 227(1), section 230(2) and section [<sup>F35</sup>230(2B)].

#### Textual Amendments

**F33** S. 232B inserted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 9; S.I. 2000/2242, **art. 2(2)** (with transitional provisions in art. 4)

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- F34** Words in s. 232B(1) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 24(1)(a)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)
- F35** Words in s. 232B(2) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 24(1)(b)**, 59(2)-(4); S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

### **233 Calling of industrial action with support of ballot.**

- (1) Industrial action shall not be regarded as having the support of a ballot unless it is called by a specified person and the conditions specified below are satisfied.
- (2) A “specified person” means a person specified or of a description specified in the voting paper for the ballot in accordance with section 229(3).
- (3) The conditions are that—
  - (a) there must have been no call by the trade union to take part or continue to take part in industrial action to which the ballot relates, or any authorisation or endorsement by the union of any such industrial action, before the date of the ballot;
  - (b) there must be a call for industrial action by a specified person, and industrial action to which it relates must [<sup>F36</sup>begin], before the ballot ceases to be effective in accordance with section 234.
- (4) For the purposes of this section a call shall be taken to have been made by a trade union if it was authorised or endorsed by the union; and the provisions of section 20(2) to (4) apply for the purpose of determining whether a call, or industrial action, is to be taken to have been so authorised or endorsed.

#### **Textual Amendments**

- F36** Words in s. 233(3)(b) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 57(1)**, 59(2)-(4), **Sch. 1 para. 14**; S.I. 2005/872, **art. 4**, Sch. (with arts. 6-21)

#### **Modifications etc. (not altering text)**

- C14** s. 233 applied (14.8.2000) by S.I. 2000/1828, **art. 2(5)(c)**

### **234 Period after which ballot ceases to be effective.**

- [<sup>F37</sup>(1) Subject to the following provisions, a ballot ceases to be effective for the purposes of section 233(3)(b) in relation to industrial action by members of a trade union at the end of the period, beginning with the date of the ballot—
- (a) of four weeks, or
  - (b) of such longer duration not exceeding eight weeks as is agreed between the union and the members’ employer.]
- (2) Where for the whole or part of that period the calling or organising of industrial action is prohibited—
- (a) by virtue of a court order which subsequently lapses or is discharged, recalled or set aside, or
  - (b) by virtue of an undertaking given to a court by any person from which he is subsequently released or by which he ceases to be bound,

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the trade union may apply to the court for an order that the period during which the prohibition had effect shall not count towards the period referred to in subsection (1).

- (3) The application must be made forthwith upon the prohibition ceasing to have effect—
- (a) to the court by virtue of whose decision it ceases to have effect, or
  - (b) where an order lapses or an undertaking ceases to bind without any such decision, to the court by which the order was made or to which the undertaking was given;

and no application may be made after the end of the period of eight weeks beginning with the date of the ballot.

- (4) The court shall not make an order if it appears to the court—
- (a) that the result of the ballot no longer represents the views of the union members concerned, or
  - (b) that an event is likely to occur as a result of which those members would vote against industrial action if another ballot were to be held.

- (5) No appeal lies from the decision of the court to make or refuse an order under this section.

- (6) The period between the making of an application under this section and its determination does not count towards the period referred to in subsection (1).

But a ballot shall not by virtue of this subsection (together with any order of the court) be regarded as effective for the purposes of section 233(3)(b) after the end of the period of twelve weeks beginning with the date of the ballot.

#### **Textual Amendments**

**F37** S. 234(1) substituted (18.9.2000) by 1999 c. 26, s. 4, Sch. 3 paras. 1, 10; S.I. 2000/2242, art. 2(2) (with transitional provisions in art. 4)

#### **Modifications etc. (not altering text)**

**C15** S. 234 applied (14.8.2000) by S.I. 2000/1828, art. 2(5)(c)

**Status:**

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**Changes to legislation:**

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