
Changes to legislation: There are currently no known outstanding effects for the Employment Relations Act 1999, SCHEDULE 3. (See end of Document for details)

SCHEDULES

SCHEDULE 3

Section 4.

BALLOTS AND NOTICES

Introduction

- 1 The Trade Union and Labour Relations (Consolidation) Act 1992 shall be amended as provided by this Schedule.

Support of ballot

- 2 (1) Section 226 (requirement of ballot before action by trade union) shall be amended as follows.
- (2) In subsection (2) (industrial action to be regarded as having support of ballot only if certain conditions are fulfilled) in paragraph (a)(ii) for “231A” substitute “ 231 ”, omit the word “and” at the end of paragraph (b), and after paragraph (b) insert—
- “(bb) section 232A does not prevent the industrial action from being regarded as having the support of the ballot; and”.
- (3) After subsection (3) insert—
- “(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.”

Documents for employers

- 3 (1) Section 226A (notice of ballot and sample voting paper for employers) shall be amended as follows.
- (2) In subsection (2)(c) (notice of ballot must describe employees entitled to vote) for “describing (so that he can readily ascertain them) the employees of the employer” substitute “ containing 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 ”.
- (3) After subsection (3) insert—
- “(3A) These rules apply for the purposes of paragraph (c) of subsection (2)—
- (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);
 - (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with paragraph (c) of subsection (2).

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(3B) In subsection (3) references to employees are to employees of the employer concerned.”

Entitlement to vote

4 In section 227 (entitlement to vote in ballot) subsection (2) (position where member is denied entitlement to vote) shall be omitted.

Separate workplace ballots

5 The following shall be substituted for section 228 (separate workplace ballots)—

“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—
 - (a) are entitled to vote by virtue of section 227, and
 - (b) have that workplace.
- (4) In this section and section 228A “workplace” in relation to a person who is employed means—
 - (a) if the person works at or from a single set of premises, those premises, and
 - (b) in any other case, the premises with which the person’s employment has the closest connection.

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

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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.”

Voting paper

- 6 (1) Section 229 (voting paper) shall be amended as follows.
- (2) After subsection (2) (voting paper must ask whether voter is prepared to take part in a strike or industrial action short of a strike) insert—
- “(2A) For the purposes of subsection (2) an overtime ban and a call-out ban constitute industrial action short of a strike.”
- (3) At the end of the statement in subsection (4) (statement that industrial action may be a breach of employment contract to be set out on every voting paper) insert—
- “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 eight weeks after you started taking part in the action, and depending on the circumstances may be unfair if it takes place later.”
- (4) In the definition of “strike” in section 246 (interpretation) after “means” there shall be inserted “ (except for the purposes of section 229(2)) ”.

Conduct of ballot: merchant seamen

- 7 In section 230 (conduct of ballot) for subsections (2A) and (2B) there shall be substituted—
- “(2A) Subsection (2B) applies to a merchant seaman if the trade union reasonably believes 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

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- (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).
- (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.”

Inducement

8 After section 232 insert—

“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.”

Disregard of certain failures

9 After section 232A there shall be inserted—

“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.

- (2) The provisions are section 227(1), section 230(2) and section 230(2A).”

Period of ballot’s effectiveness

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Textual Amendments

- F1** Sch. 3 para. 10 omitted (1.4.2022) by virtue of Trade Union Act 2016 (c. 15), s. 25(1), Sch. 4 para. 21(b); S.I. 2021/1373, reg. 4(e)

Notice of industrial action

- 11 (1) Section 234A (notice to employers of industrial action) shall be amended as follows.
- (2) In subsection (3)(a) (notice relating to industrial action must describe employees intended to take part in industrial action) for “describes (so that he can readily ascertain them) the employees of the employer who” substitute “ 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 whom ”.
- (3) After subsection (5) insert—
- “(5A) These rules apply for the purposes of paragraph (a) of subsection (3)—
- (a) if the union possesses information as to the number, category or work-place of the employees concerned, a notice must contain that information (at least);
- (b) if a notice does not name any employees, that fact shall not be a ground for holding that it does not comply with paragraph (a) of subsection (3).”
- (4) In subsection (7)—
- (a) insert at the beginning the words “ Subject to subsections (7A) and (7B), ”, and
- (b) in paragraph (a) the words “otherwise than to enable the union to comply with a court order or an undertaking given to a court” shall cease to have effect.
- (5) After subsection (7) insert—
- “(7A) Subsection (7) shall not apply where industrial action ceases to be authorised or endorsed in order to enable the union to comply with a court order or an undertaking given to a court.
- (7B) Subsection (7) shall not apply where—
- (a) a union agrees with an employer, before industrial action ceases to be authorised or endorsed, that it will cease to be authorised or endorsed with effect from a date specified in the agreement (“the suspension date”) and that it may again be authorised or endorsed with effect from a date not earlier than a date specified in the agreement (“the resumption date”),
- (b) the action ceases to be authorised or endorsed with effect from the suspension date, and
- (c) the action is again authorised or endorsed with effect from a date which is not earlier than the resumption date or such later date as may be agreed between the union and the employer.”
- (6) In subsection (9) for “subsection (7)” substitute “ subsections (7) to (7B) ”.

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