

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Three: Rights of Trade Union Members, Workers and Employees

New section 145F

217. New section 145F contains interpretative and other supplementary provisions, and is modelled on section 151 of the 1992 Act as amended by sections 30 and 31 of the Act. Subsection (1) provides that references to “being or becoming a member of a trade union” include references to being or becoming a member of a particular branch or section of that union or of one of a number of particular branches or sections of the union.
218. Subsection (2) ensures, consistently with subsection (1), that references to “taking part in the activities of a trade union” and to “services made available by a trade union by virtue of membership of the union” include taking part in the activities of and the services made available by a particular branch or section of the union or one of a number of particular branches or sections. This ensures that the rights conferred by new section 145A apply where it is a branch of the union that is involved rather than the union itself.
219. Subsection (3) defines the meaning of “worker” and “employer” for the purposes of sections 145A to 145E. “Worker” is defined as an individual who works or normally works:
- under a contract of employment; or
 - under any other contract whereby he undertakes to do or perform personally any work or services for another party to the contract who is not a professional client; or
 - in employment under or for the purposes of a government department (except the armed forces) where the employment is not under a contract mentioned in above.

Sections 145A to 145E are drafted so that a worker who has a right conferred on him by section 145A or 145B can bring a complaint in respect of a breach of that right even if he does not bring it while he is still a worker. “Employer” is defined as the person for whom the worker works, or, in the case of a former worker, the person for whom he worked.

220. Subsection (4) provides that the remedy for an infringement of the rights conferred on an individual by sections 145A to 145E is by way of a complaint to an employment tribunal in accordance with Part III of the 1992 Act, and not otherwise.