

# EMPLOYMENT RELATIONS ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY

#### Part Two: Industrial Action Law

##### Information about employees to be balloted on industrial action

138. *Section 22* amends section 226A of the 1992 Act, which specifies the information required to be contained in a “ballot notice”.
139. Section 226A currently requires a union conducting an industrial action ballot to provide each employer the union reasonably believes to employ members who will be entitled to vote with a notice stating that it intends to hold a ballot and the starting date of the ballot. As the section is at present, the notice is also required to contain information in the union’s possession that would help the employer to make plans and bring information to the attention of the employees the union intends to ballot, and has to include information, if the union has it, as to the number of employees involved, their category of work and workplace. The notice must be received by the employer at least 7 days before the starting date of the ballot.
140. Additionally, the union has to ensure that each employer concerned receives a sample voting paper at least 3 days before the starting date of the ballot.
141. *Section 22* simplifies the requirements of section 226A by making changes to the information the union is required to supply. The changes make it desirable, in the interests of clarity, to restructure the provisions of the section and the section therefore does so.
142. *Subsection (2)* contains an amendment that is consequential on section 226A(2F), which is inserted by subsection (4). The new subsection (2F) relates to the requirement to provide an employer concerned with a sample voting paper and makes no substantive legal change to the requirement.
143. *Subsection (3)* replaces the current subsection (2)(c) of section 226A. New subsection (2)(c)(i) has the effect that the information unions are required to include in the notice must contain the lists and figures mentioned, respectively, in new subsections (2A) and (2B) inserted into section 226A by subsection (4), and an explanation of how the figures were arrived at. New subsection (2)(c)(ii) provides that where some or all of the affected employees are employees from whose wages the employer makes deductions representing payments to the union, then the notices must contain either the lists, figures and explanation mentioned in subsection (2)(c)(i) or the information mentioned in new subsection (2C). The intention is to reduce the uncertainty currently present in section 226A by making the information that the union must supply specific and removing the need for the union to determine what information has to be given by reference to what would help the employer to make plans and bring information to the attention of those to be balloted. The provisions also allow unions to meet their obligations under section 226A by referring in the notice to union members who pay their union subscription through deductions from pay (a practice known as “check-off”).

*These notes refer to the Employment Relations Act 2004  
(c.24) which received Royal Assent on 16 September 2004*

144. *Subsection (4)* adds new subsections (2A) to (2I) to section 226A. New subsections (2A) and (2B), taken with the new subsection (2)(c), change the information required to be given by the current subsections (2)(c) and (3A) of section 226A.
145. The effect of new subsection (2A) is that the notice must contain a list of the categories to which the “employees concerned” (that is to say, the employees of the employer who the union reasonably believes will be entitled to vote in the ballot) belong and a list of the workplaces at which they work.
146. The effect of new subsection (2B) is that the notice must contain figures showing the total number of the employees concerned, the number of them in each category in the list of categories given in accordance with the new section (2A), and the number of them that work at each workplace in the list of workplaces given in accordance with the new subsection (2A).
147. New subsection (2C) contains the requirements that must be met if the notice, as permitted by subsection (2)(c)(ii), provides information in relation to employees from whose wages the employer makes deductions representing payments to the union. The effect is that the information so provided must enable the employer readily to deduce the total number of the employees concerned, the categories of employee to which the employees concerned belong and the number of them in each of those categories, and the workplaces at which the employees concerned work and the number of them who work at each of these workplaces.
148. New subsection (2D) contains a new requirement that the lists and figures the union supplies are to be as accurate as reasonably practicable in the light of the information in the possession of the union.
149. New subsection (2E) has the effect that for this purpose information is regarded as being in the possession of the union only if it is held, for union purposes, in a document (including an electronic document) and is in the possession or under the control of a union officer or an employee of the union. The effect is that information held only by branch officials or other lay representatives of the union is not in the union’s possession for the purpose of subsection (2D).
150. New subsection (2G) repeats the substance of the current subsection (3A)(b) of section 226A by ensuring that the section does not require the notice to name the employees concerned.
151. New subsection (2H) defines the term “employees concerned” to mean those employees who the union reasonably believes will be entitled to vote in the ballot.
152. New subsection (2I) defines the term “workplace” in relation to an employee, so making section 226A more precise.
153. *Subsection (5)* omits the current subsections of section 226A that are superseded by the section, while *subsection (6)* makes a change to a reference in section 226A(5) that is consequential on the insertion of new subsections (2A) to (2I).