

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Two: Industrial Action Law

Inducement of members not accorded entitlement to vote

155. *Section 24* amends section 232B of the 1992 Act and inserts a new provision into section 62 of that Act.
156. The organisation of an industrial action ballot can be complicated and can sometimes involve many thousands of people. Under the 1992 Act as it stood before the changes made by the 1999 Act, the whole ballot could be invalidated if a union committed minor errors in determining who was eligible to vote, or failed to send ballot papers to *all* those required to be given an entitlement to vote.
157. The 1999 Act inserted section 232B, which provides that such errors are to be disregarded as long as they are accidental and on a scale unlikely to affect the outcome of the ballot. The 1999 Act also inserted section 232A, which defines the circumstances in which a union that induces members to take industrial action who should have been given an entitlement to vote but were not, loses its protection against legal liability. The dispensation for accidental failures in section 232B does not presently refer expressly to the purpose of section 232A but in *P (a minor) v National Association of Schoolmasters/ Union of Women Teachers* [2003] 2 AC 663, the House of Lords nevertheless held on the facts of the case that it did apply indirectly.
158. *Section 24(1)(a)* amends section 232B to ensure, in the interests of clarity, that where a union's failure to comply with the requirements of the 1992 Act is currently covered by the dispensation for accidental failures, and that failure would otherwise result in a failure to comply with section 232A, the latter failure is also to be disregarded. The main effect is that where a union accidentally fails to ballot an insignificant number of those it intends to induce to take part in industrial action, the union will not lose its protections against legal action because it induces them to take part in the action. The amendment confirms the judgment of the House of Lords in *P v NASUWT* (see above at paragraph 157) by making the position clear on the face of the legislation.
159. *Section 24(1)(b)* corrects a drafting error in section 232B. Section 230(2B) has the effect that where merchant seamen are entitled to vote in an industrial action ballot and are on a ship or outside Great Britain, special arrangements for enabling them to vote apply. Section 232B should have referred to section 230(2B) but refers instead to section 230(2A). The error was identified in *P v NASUWT*.
160. *Section 24(2)* inserts a new paragraph into section 62(2) of the 1992 Act. Section 62 of the 1992 Act gives union members a right to take legal action against their union if they are likely to be or have been induced to take part in industrial action and certain of the balloting requirements contained in sections 226 to 234 of the 1992 Act have been contravened. The effect of the new subsection is to include section 232A in the

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

list of requirements contravention of which gives union members the right to take such legal action.