

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Two: Industrial Action Law

Information about employees to be contained in notice of industrial action

161. *Section 25* amends section 234A of the 1992 Act, which specifies the information required to be contained in an “industrial action notice”.
162. Section 234A currently requires a union to provide each employer the union reasonably believes to employ members who will be induced to take part in the proposed industrial action with a notice. The notice must state whether the action is intended to be continuous or discontinuous and give, in the first case, the date on which it is intended to start and, in the second, the dates on which it is intended to take place.
163. 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 induce 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 first date on which the industrial action is intended to take place.
164. *Section 25* simplifies the requirements of section 234A by making changes to the information the union is required to supply. The changes, which are similar to those made by section 22 in relation to the requirement to give employers a ballot notice, make it desirable, in the interests of clarity, to restructure the provisions of the section and the section therefore does so.
165. *Subsection (2)* replaces the current subsection (3)(a) of section 234A. New subsection (3)(a)(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 (3A) and (3B) inserted into section 234A by subsection (3). It also provides that the notice must contain an explanation of how the figures are arrived at. New subsection (3)(a)(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 (3)(a)(i) or the information mentioned in new subsection (3C). The intention is to reduce the uncertainty currently present in section 234A 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 the union intends to induce to take part in the industrial action. The provisions also allow for unions to meet their obligations under section 234A by referring in the notice to union members through deductions from pay (a practice known as “check-off”).
166. *Subsection (3)* adds new subsections (3A) to (3F) to section 234A. New subsections (3A) and (3B), taken with the new subsection (2)(a), change the information required

to be given by the current subsections (3)(a) and (5A) of section 234A. The effect of new subsection (3A) is that the notice must contain a list of the categories to which the “affected employees” (that is to say, the employees of the employer who the union reasonably believes will be induced to take part in the industrial action) belong and a list of the workplaces at which they work. The effect of new subsection (3B) is that the notice must contain figures showing the total number of the affected employees, the number of them in each category in the list of categories given in accordance with the new subsection (3A), and the number of them that work at each workplace in the list of workplaces given in accordance with that subsection.

167. New subsection (3C) contains the requirements that must be met if the notice, as permitted by subsection (3)(c)(ii), refers to affected employees that are employees from whose wages the employer makes deductions representing payments to the union, as permitted in subsection (3)(a)(ii). The effect is that the information provided in this way must enable the employer readily to deduce the total number of the affected employees, the categories of employee to which the affected employees belong and the number of the affected employees in each of those categories, and the workplaces at which the affected employees work and the number of them who work at each of these workplaces.
168. New subsection (3D) 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.
169. New subsection (3E) 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 (3C).
170. New subsection (3F) repeats the substance of the current subsection (5A)(b) of section 234A and ensures that the section does not require the notice to name the affected employees.
171. *Subsection (4)* amends subsection (5) of section 234A. This subsection defines which employees are covered in principle by the notice and sets out the circumstances in which their inducement by the union to take part in industrial action is covered by the notice. At present the employees covered are the “affected employees” but this term relies on the reasonable belief of the union as to those who will be induced and its use in subsection (5) therefore leads to an imprecise result. Subsection (4) has the effect that the employees covered will be those falling within a category and employed at a workplace specified in the notice. This test is clear and objective.
172. *Subsection (5)* substitutes for the present subsection (5A) of section 234A new subsections (5B), (5C) and (5D).
173. New subsection (5B) defines a “notified category of employee” and a “notified workplace” for the purpose of the notice. A notified category of employee means a category of employee that is listed in the notice or, where the notice contains the information mentioned in subsection (3C), a category of employee that the employer can readily deduce from the notice is a category of employee to which some or all of the affected employees belong, at the time the employer receives the notice. A notified workplace means a workplace that is listed in the notice or, where the notice contains the information mentioned in subsection (3C), a workplace that the employer can readily deduce from the notice is the workplace at which some or all of the affected employees work, at the time the employer receives the notice.
174. New subsection (5C) defines the term “affected employees” to mean those employees who the union reasonably believes will be induced to take part in the industrial action.

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

175. New subsection (5D) defines the term “workplace” in relation to an employee, so making section 234A more precise.
176. *Subsection (6)* contains a consequential amendment to a reference in section 234A(8).