

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

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Two: Industrial Action Law

Ballots and Notices

135. Sections 226 to 235 of the 1992 Act contain provisions relating to industrial action ballots and the ballot and industrial action notices that unions are required to give to employers. The Government introduced a number of changes to the provisions, including sections 226A and 234A dealing with notices, in the 1999 Act.
136. A trade union that organises industrial action would, in the absence of statutory provision to the contrary, be liable under the common law for the civil wrong of inducing a breach of contract. However, the 1992 Act protects unions from the legal liability that would otherwise result if certain conditions are satisfied. One of these is that before inducing its members to take part in industrial action, the union must have held a properly conducted secret ballot of the members it is likely to induce to take part. Other conditions are that the union must give the employers concerned advance notice in writing of the ballot and of the industrial action. Generally, the “ballot notice” has to describe which employees the union believes will be entitled to vote in the ballot, and the “industrial action notice” has to describe which employees the union intends to induce to take part in the industrial action.
137. The review of the 1999 Act and consultation process found that, following the amendments, these provisions of the 1992 Act were generally working well. However, the judgment in the case of *National Union of Rail, Maritime and Transport Workers v London Underground Limited* [2001] IRLR 228 highlighted a difficulty with the way in which information required to be given in ballot and industrial action notices should be presented. Further, the case of *National Union of Rail, Maritime and Transport Workers v Midland Mainline Ltd* [2001] IRLR 813 revealed that there was a lack of clarity as to the union members to whom the union was required to give an entitlement to vote in an industrial action ballot. Sections 22, 23 and 25 address these matters.