

Chapter 6

The role of the State in employment relations

LEARNING OUTCOMES



After studying this chapter you should be able to:

- ✓ **define** the State and its role in employment relations
- ✓ **describe** the different political philosophies associated with legal intervention by the State in employment relations
- ✓ **critically evaluate** the changing nature of State intervention in British employment relations
- ✓ **analyse** how employment legislation can influence one or more of the parties to an employment relationship
- ✓ **explain** the roles of the major State institutions of employment regulation in Great Britain, including the effects of the European Union.

Introduction

Managers and employees (and their collective associations), who were discussed respectively in the previous two chapters, are the parties that interact directly in employment relations. There is also a third important player, *the State*. However, one very important caveat is that the term ‘the State’ can be somewhat misleading. Images of the government of the day and the laws it passes

often spring to mind when considering the role of the State in employment relations. The State is not, strictly speaking, a single actor but is comprised of many different agencies, each of which has its own discrete purpose and function. Therefore the separation of political, economic and judicial roles can be somewhat arbitrary. In reality, the State is very much an ‘open system’ rather than a single or uniform party (Hyman, 2009). Nonetheless, as these are all very powerful actors, the expression ‘the State’ is acceptable shorthand to capture the interactions of all the institutions and agencies which carry out the will of the government of the day, including the civil service, the police, the judiciary, the military and various employment institutions such as the Advisory, Conciliation and Arbitration Service (ACAS), among others. Despite globalisation and the spread of international business, employment relations systems are usually deeply embedded in national rather than global institutions. Governments of all nation-states pass laws that influence how managers, workers and unions interact with each another, and in so doing shape the ‘rules of the game’.

It is important to understand why the State feels compelled to become involved in employment relations in this way, and how this impacts on the behaviour of employees and managers, and the chapter starts by defining the State and outlines its means of intervention. This is followed by a section that examines the changing roles played by governments of different political persuasions in Great Britain, where it will be seen that enacting legislation – sometimes by transposing European regulations – has become the main vehicle of State intervention. This is followed by an outline scheme that explains how these rules and regulations influence one or more aspects of the employment relationship, and the chapter closes with an explanation of how the law operates in practice.

The role of the State in employment relations

The State defined

As noted in the introduction, the State can be difficult to define because it encompasses more than a single actor, and many different institutions and government departments can influence employment relations outcomes in various ways. For example, the army and police have been deployed during particular strikes, and the courts have passed judgments which have changed the day-to-day relationships between managers, employees and unions. In addition, the government also confers extensive powers on some of its institutions, such as the Low Pay Commission (LPC), employment tribunals and ACAS. Given the extent of political influence and power, one

of the earliest descriptions of the State described it as ‘all government institutions which hold a monopoly on the legitimate use of force’ (Weber, 1919). These days, however, more explicit definitions are used, and in employment relations terms, ‘the State’ is normally taken to mean the elected government of the day, together with all other agencies that carry out the will of government and implement its policies and legislation (Gospel and Palmer, 1993).

the State

The elected government of the day, together with all other agencies that carry out its will and implement its policies and legislation.

Pause for reflection

You may recall that, in Chapter 3, a traditional view of British employment relations describes it as ‘voluntarist’. Given this, would you say the State in Great Britain adopts a low or high interventionist approach to employment relations matters?

Until the 1950s there was probably no other industrialised country in the world where the State was less interventionist in terms of its employment relations laws than Britain (Kahn-Freund, 1965). However, the pace of State intervention has accelerated significantly since the end of the Second World War, first during the 1960s and 1970s and then again in the 1980s; further interventions by the State during the new millennium have altered the employment relations landscape in Britain even more. As a result, it is now probably fair to say that individual employment laws, rather than voluntary collective bargaining agreements, regulate working conditions in Britain (Ewing, 2003), which has had a huge impact on the behaviour of managers, trade unions and employees.

The objectives of the State in employment relations

In broad terms, it is often reasoned that the State's objective in intervening in employment relations is to achieve economic and social goals for the nation as a whole. One of the prime tasks of government is to manage the economy so that it is prosperous, and this means it has to try to achieve four broad economic policy objectives, each one of which can easily conflict with the others:

- 1 To maintain high levels of employment
- 2 To ensure price stability
- 3 To maintain a balance of payment surplus
- 4 To protect the exchange rate.

While the actual government of the day is, by definition, a transient body, the above objectives are broadly similar for most political parties. However, each of the main political parties tends to have very different views about the most appropriate ways of achieving these aims, and these views reflect distinctly different philosophies about the way in which society should be ordered. For this reason, a government's objective for employment relations is not only directed at the economic and social ends it seeks to achieve; it is also an expression of its political ideology about the desirable nature of society.

In Britain there has long been an affinity between the trade union movement and the *Labour Party*, who at one time saw themselves as two different wings (industrial and political) of the same working-class movement. Thus, organised labour traditionally had a voice in formulating Labour Party policy, even though it was rarely a decisive one. In contrast, the British *Conservative Party* sees itself as the champion of free enterprise and the market economy, and it has equally strong ties with private business. These connections usually take place through strong personal and business networks, which deliver a considerable amount of financial support to the party. Many of these donations are hard to identify, and tend to be channelled via groups such as the Centre for Policy Studies or the Economic League, which are known to be conduits for private industry contributions to the Conservative Party (LRD, 1985a). Although the third force in British politics, the *Liberal Democrats*, receives some donations from private enterprise (LRD, 1985b), to a large extent the party is purposely non-aligned with either side of industry.

It is important to recognise that these differences in affiliation go well beyond financial support, and reflect the prevailing ideologies of governments. Although the previous Labour government was regarded as more pro-business than earlier Labour administrations, it had its own distinctive approach to employment legislation. For example, it sought to promote a culture of competitiveness and partnership, which was underpinned by a floor of legal rights for workers. In contrast, former Conservative governments not only removed many hard-fought-for legal rights, but also

aggressively attacked the trade union movement by passing laws to curb union activities. However, since enacting legislation is just one way in which the State can intervene in employment relations, it is important to consider other possible methods that it has at its disposal.

The scope and methods of State intervention

Hyman (2009) reviews a number of long-standing debates concerning government and political influences shaping employment relations. While each of these will be evident in most countries, the importance and depth of each method will vary over time and depend on prevailing political values of a particular government of the day. The broad methods of intervention include the government as:

- an employer in its own right
- a regulator of incomes and prices
- an economic manager
- a protector of standards
- a rule-maker and legislator
- a promoter of social citizenship guidelines.

employer in its own right (the State)

As an employer, the State can set the standards of responsible employment practice.

The first of these is related to the State's role as an **employer in its own right**. A long-held principle in Great Britain is that, in this role, the State should act as a responsible employer, thereby sending signals to the private sector about how people should be treated at work. In return for this, public sector employees and trade unions accepted a reciprocal obligation to try to avoid conflict in employment relations (Winchester, 1983).

Indeed, the origins of this philosophy are much older and go back to 1891, when the Fair Wages Resolution of the House of Commons was passed, in which the principle was established that government contracts would not automatically be awarded to the lowest bidder – a move designed to ensure that unscrupulous private employers were not at an automatic cost advantage. The idea of the State as a responsible employer also resulted in a degree of encouragement for trade union membership in the public sector, which is perhaps why union membership has remained healthy among many public sector employees, in areas such as the National Health Service (NHS), the civil service, local government and education.

A second means by which the State is able to intervene in employment relations is through its role as an **incomes regulator**. Since the end of the Second World War governments of both political persuasions have felt a need to regulate prices and wage increases, with the aim of controlling inflation. For example, in the 1970s the government consulted with employers and unions in an attempt to set acceptable income policies for the country. While the Conservative governments of the 1980s publicly rejected the very idea of market controls, they nonetheless set prices and wages in less visible ways: for instance, by manipulating interest rates, public spending and the money supply, they effectively regulated the rate of real-wage increases for public sector workers.

Another method of intervention by the State is as the **economic manager** of the country. This is naturally very broad, and is considered in more detail later in the chapter. As a method of intervention, this centres

incomes regulator (the State)

The State can control prices and wages, either through direct intervention or in its management of the economy.

economic manager (the State)

Macro-economic policies of the State which affect labour market demand, employment and manpower utilisation.

around macro-economic policies in terms of money supply, aggregate demand and fiscal regulations that can affect the operation of the labour market and utilisation of manpower; for example, by providing return-to-work incentives, or by operating employment exchanges to link those seeking work with those who have employment to offer. In this role, the State has also taken steps to encourage labour mobility: for example, by providing training to try to address concerns about skill shortages in the economy. This economic manager role signals a government's position on **labour decommodification**, that is, the extent to which the State funds welfare protection so employees do not become totally and wholly dependent upon employers for survival (Grimshaw and Rubery, 2003), particularly in times of economic recession and unemployment.

A fourth and equally important role is the State as a **protector** of minimum standards in employment. These standards have existed in different ways since the beginning of the twentieth century: for example, in 1920 the Employment of Women and Young Persons and Children Act established basic standards on health and safety. In the 1970s a great deal of protective legislation was introduced in relation to unfair dismissal, race discrimination and equal pay. The scope of protective intervention also saw the creation of specialist State agencies in the 1960s and 1970s, such as the Equal Opportunities Commission (EOC) and the Health and Safety Executive (HSE). In the new millennium, the scope has widened even further with the likes of the Low Pay Commission (LPC).

Fifth, and perhaps the most visible method of intervention in employment relations by the State, is its role as a **rule-maker and legislator**. This involves direct promulgation of legislation, and according to Kahn-Freund (1965), the law in this respect has three main functions. First, it has an *auxiliary* function, which encourages good employment relations by specifying sanctions that can be taken against those who flout the rules. An example would be the Codes of Practice issued by ACAS that define good employment practices and procedures. An organisation that fails to observe these Codes of Practice can be called to account in a court of law. There is also the *restrictive* function of the law, in which the State outlaws certain practices, such as child labour or racial discrimination in employment. Finally, there is the *regulative* function, in which the State establishes minimum standards for all citizens, for example, the national minimum wage.

Finally, governments pursue a number of policy objectives that shape the idea of **social citizenship**, which reflects the extension of wider political democracy in the narrower domain of workplace governance, where employees can expect to be consulted and treated with respect by employers. In capitalist systems, as considered in Chapter 4, managers have an obligation to shareholders (owners). However, in recent decades the promotion of a stakeholder agenda has emerged, which significantly counters the exclusivity of shareholder rights, or at least civilises free-market capitalism (Hutton, 1996). Inherent in this agenda is a social responsibility in the workplace that embodies the employee as a citizen (Hyman, 2009). In short, political citizenship does not end at the workplace gates and governments influence employment relations behaviour through policies and objectives in areas such as mandated employee voice, family-friendly objectives and work-life balance policies.

It is important to note that the extent of these interventions varies over time, and often depends on the political ideologies of the government of the day. For example, the role of the

labour decommodification

The extent of welfare protection so employees are not wholly dependent upon employers for survival.

protector (the State)

An employment relations role adopted by the State, in which it establishes and monitors minimum standards through its agencies.

rule-maker and legislator (the State)

Enacting legislation to create auxiliary, restrictive and regulatory rules that affect the other parties in employment relations.

social citizenship (the State)

The extension of political citizenship rights to the workplace through legislation and policy.

State as *an employer* diminished greatly between 1980 and 1997, when public sector employment declined year on year and whole industries were sold off through privatisation. The role of the State as a *protector* and *rule-maker* grew considerably following the election of the Labour government in 1997, with its support for European-led employee rights. The notion of stakeholder capitalism also gained increased popularity through government policies, thereby reflecting attention given to the idea of social citizenship through organisational policies that may include rather than exclude employees in management decisions. In order to appreciate the variation in State intervention, and the way it has changed across the years, it is necessary to examine changes in the political philosophies of governments, and this is considered next.

Summary points

- In employment relations ‘the State’ can be an imprecise term, although it is generally taken to mean the elected government and all other State agencies that carry out government policy and legislation.
- The objectives for State intervention tend to reflect the political priorities of government in terms of its economic and social goals for society as a whole.
- Labour decommmodification signals the extent to which government provides welfare support to minimise employee dependence on an employer for survival.
- There are several ways in which the State can intervene in employment relations, including as: an employer and paymaster; an incomes regulator; an economic manager; a protector and rule-maker; and a legislator.

The changing nature of State intervention

Until the beginning of the last century the prevailing belief in Great Britain was that employers and employees were the best judges of what form their relationship should take. For the most part, therefore, the State officially abstained from direct intervention in employment relations. However, this does not mean that it completely ruled out interventionist policies. Rather, it decided what aspects of the employment relationship were appropriate for intervention, and whether this should be of a direct or indirect nature. Since then, what has changed more than anything else is the definition of what constitutes an appropriate area for State intervention, and this in turn reflects very different government approaches towards employment relations. In explaining the changing nature of State intervention over time, Crouch (1982) considers two related variables: the existence of certain *dominant politico-economic philosophies*, and the development of *strong, autonomous trade unions* in a society. The way that these two variables interact can be plotted to give four characteristic patterns of State intervention, which are shown in Figure 6.1.

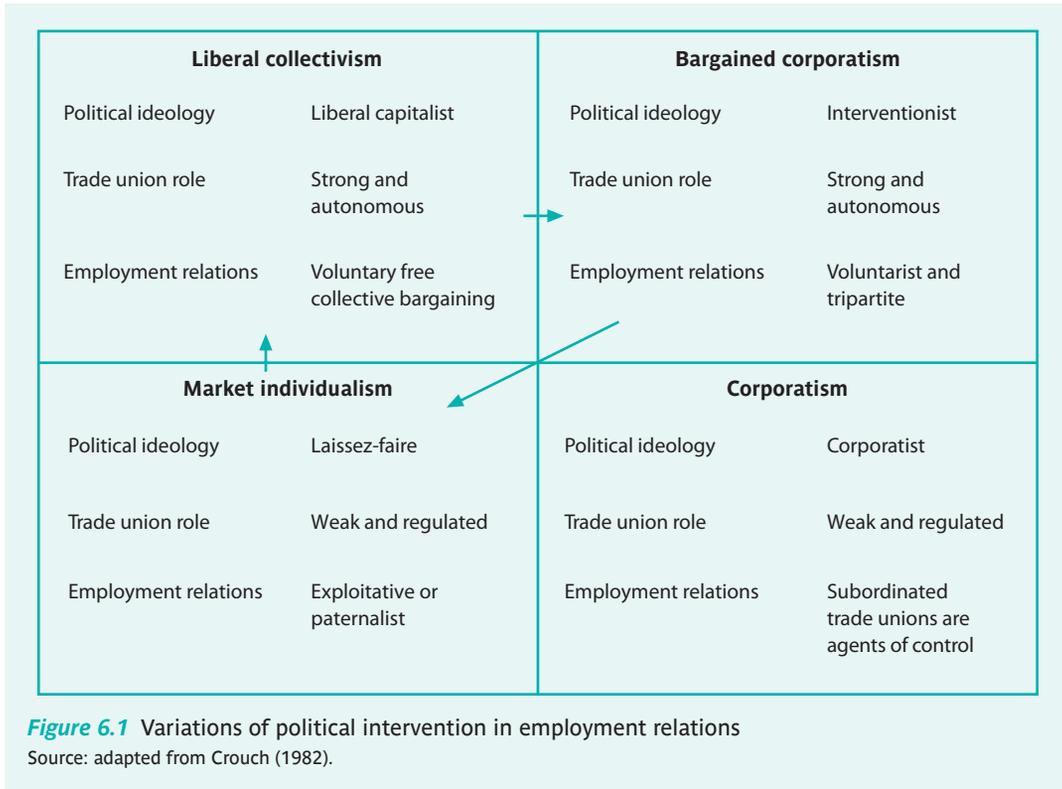
corporatism

Centralised State control of economic activity along with weak trade unions.

market individualism

A situation that often results in weak trade unions because *laissez faire* economic philosophies of the State support ruling class interests.

Full **corporatism** has never really existed in Great Britain and is of little concern here. Suffice it to say that the corporate state is one that is associated with totalitarian regimes, and if trade unions are allowed to exist, they can become incorporated into the State apparatus. For Great Britain the story really starts with **market individualism**. This was the situation in Great Britain until the late nineteenth century. Trade unions were very weak and undeveloped, and the dominant economic philosophy was *laissez faire*: a belief that market competition would encourage the strongest to



rise and prosper. This, in turn, gave legitimacy to the existence of social inequalities. The employment relationship tended to be seen as an extension of the master and servant relationship and, while the State avoided direct involvement in employment relations, its laws reinforced the social values of the ruling class, the most sacred of which were their property rights. Crucially, trade unions were only just inside the law and operated in a precarious way, which gave employers a free hand to be highly exploitative. As Crouch points out, the whole thing subordinated workers to the control and authority of the owner, which at best was paternalistic, and most of the time was downright repressive. Thus, it was inherently unstable, and employees had a strong incentive to collectivise in order to redress their disadvantaged position.

The subsequent growth in union membership and a higher degree of professional organisation in union activities prompted the State to change its stance to one most easily described as *liberal collectivism*. In this, the government philosophy remained essentially capitalist, although at the same time it recognised that there are competing interests in the employment relationship, and trade unions were afforded a greater role in articulating employee concerns. Realising that unions had a power resource at their disposal, namely their members, the State's role came to be seen as that of supporting a framework that encouraged the parties to find ways of voluntarily reconciling their differences. Under **liberal collectivism**, therefore, it was possible for employees and unions to challenge managerial domination in a limited way, and in one form or another, this state of affairs continued for over half a century.

Shortly after the end of the Second World War a further development started to appear. This was **bargained corporatism**, in which there was a

liberal collectivism

The interests of strong and autonomous trade unions and employers are legitimised via State intervention through limited legislative frameworks.

bargained corporatism

State intervention through the creation of tripartite bodies who consult on a broad range of economic and social matters with strong trade unions and employers.

greater recognition of a plurality of interests in industry. While employment relations was considered to be mostly voluntarist at an organisational level, at a national level there was a strong emphasis on planning the future prosperity of the nation. Thus a number of tripartite bodies – involving unions, employers and the government – were formed to collaborate in finding answers to the problems of the future. During the war, trade unions had been co-opted into the power structures of industry and State, and when the war ended, all major political parties sought the co-operation of both sides of industry to try to achieve a policy objective of full employment. In its attempt to control inflation and expand employment, the government increasingly consulted on a regular basis with both employer associations and the trade union movement. The significance of this is that the State effectively became a third party at the bargaining table in employment relations. In one form or another, this lasted up to the end of the 1970s, and many aspects of the employment relationship which are now the subject of legislation were first raised for discussion in this era.

These four patterns of State intervention have very different implications for employment relations outcomes. Each of them is synonymous with a different set of economic and political philosophies, and occurred at different times in history when trade unions were either in an early stage of development, or had acquired more professional organisation and muscle. Significantly, each one of them indicates that, as the State increases its level of intervention, the principle of voluntarism is further undermined. Moreover, since legal enactment has been shown to have an impact on the parties to employment relations, there are lessons to be learned from considering the role of the State over this longer time period. For this reason, three distinct phases of State intervention are explained, namely:

- 1 The post-war consensus: 1945–1979
- 2 A return to market individualism: 1979–1997
- 3 The ‘Third Way’ agenda: 1997–2010

The post-war consensus: 1945 – 1979

While it is not the intention to provide a history lesson, a consideration of government approaches over a longer time period is necessary to understand the changing nature of State intervention. From the end of the Second World War, governments of different political persuasions adapted broadly similar **Keynesian** economic objectives designed to manage the demand side of the economy in several ways, particularly the objective of seeking to achieve full employment and stable economic growth.

While the government of the day changed between Conservative and Labour during this period, all governments had a common purpose in terms of economic management and employment relations (Kessler and Bayliss, 1998). This era can be characterised as being similar to that of *bargained corporatism*, with the State providing a general framework to allow the parties to engage in constructive dialogue. The full extent of the legislation during this period is beyond the scope of this chapter, although there are several developments that point towards a consensus-building approach on the part of the State, briefly summarised in Table 6.1.

Keynesian (economics)

A macro-economic theory which concentrates on managing the demand side of the economy through government fiscal policies, with the aim of achieving full employment, price stability and a balance of payments equilibrium.

Legislation	Matters covered
Trade Disputes Act 1965	<ul style="list-style-type: none"> ■ Provided union members with protection from employer threats when contemplating strike action
Equal Pay Act 1970 and 1975	<ul style="list-style-type: none"> ■ Provisions to ensure equal pay for work of equal value ■ Allowed women to take a claim for pay discrimination to a tribunal
Industrial Relations Act 1971	<ul style="list-style-type: none"> ■ Reduced trade union immunity during disputes by defining certain union practices and actions as unfair ■ Powers for Secretary of State to order a 'cooling-off' period if a dispute was likely to damage the economy ■ Statutory provisions for trade union recognition ■ Introduced an employee's right to claim unfair dismissal
Trade Union and Labour Relations Act 1974	<ul style="list-style-type: none"> ■ Repealed most of the 1971 Industrial Relations Act provisions ■ Redefined trade union immunities with respect to strikes and industrial disputes
Health and Safety at Work Act 1974	<ul style="list-style-type: none"> ■ Introduced statutory obligations on employers and employees with respect to health and safety in the workplace ■ Provided statutory rights for trade union health and safety committee ■ Established the Health and Safety Commission (HSC) and Health and Safety Executive (HSE)
Employment Protection (Consolidation) Act 1975 and 1978	<ul style="list-style-type: none"> ■ Established tripartite employment relations processes (i.e. including TUC, CBI and government) ■ Outlined the statutory role and provisions of ACAS ■ Entitlement to written particulars of employment contract ■ Time off work for public duties ■ Time off work for trade union duties
Sex Discrimination Act 1975	<ul style="list-style-type: none"> ■ Provisions to outlaw sexual discrimination in employment practices (i.e. recruitment, pensions, promotion, training) ■ Established the Equal Opportunities Commission (EOC)
Race Relations Act 1976	<ul style="list-style-type: none"> ■ Provisions to outlaw racial discrimination in employment practices (i.e. recruitment, promotion, training) ■ Established the Commission for Racial Equality (CRE)

Table 6.1 Major legislation during the period 1945 – 1979

First, protective-type laws were enacted which not only gave employees legal rights at work, but also specified employers' obligations towards their workers. For example, the Equal Pay (1970), Sex Discrimination (1975) and Race Relations (1976) Acts placed a statutory obligation on employers to outlaw discriminatory practices in employment (see Table 6.1). Second, auxiliary-type legislation during the 1970s provided a role for ACAS as a State agency that helped the parties settle disputes through mediation, from which emerged a 'social contract' in which trade unions agreed to give assistance to the government in resolving some of the country's economic problems. In return for union support, the government delivered a number of reforms to promote social and economic equality – the so-called 'social wage'.

However, the period was also plagued with economic and employment relations tensions. Despite the government's 'social contract' with the trade union movement, unemployment and wage demands continued to rise. The public sector came to be seen as the major culprit in what was continuing economic instability and rising inflation, which in turn fuelled aspirations in private industry, the effect of which was a wave of major private sector disputes (Thomson and Beaumont, 1978). These prompted an eruption in the public sector, which culminated in widespread industrial action, the so-called *1978–1979 Winter of Discontent*. On the back of this, the Conservative government led by Margaret Thatcher came to power in 1979, with promises to 'roll back the frontiers of the State' and to curb trade union power.

A return to market individualism: 1979 – 1997

monetarism

Right-wing economic theory based on market forces as the most efficient way to control inflation. Trade unions are deemed to be a supply-side constraint, and so their activities are curbed by the State.

supply side (economics)

Macro-economic policies designed to eradicate market constraints in managing prices, income, employment and economic growth.

Between 1979 and 1997 successive Conservative governments systematically dismantled the consensus-building approach of the previous three decades. As a result, out went the Keynesian economic policies of the past, and in came **monetarism**, an economic theory based on the philosophies of *market individualism* described earlier, in Figure 6.1. The government argued that there was a natural level of unemployment, and for the market to operate effectively **supply-side** constraints had to be removed, such as price controls or restrictive labour practices (Keegan, 1984). The most significant supply-side constraint was perceived to be trade unionism, and a number of radical policy objectives were adopted, which included:

- the private sector, not the State, being viewed as the best model employer
- abandoning the objective of full employment, and instead seeking to combat inflation by controlling the money supply (prices and wages)
- abolishing the tripartite employment relations system (i.e. excluding the TUC and CBI from government policy formulation)
- the privatisation of nationalised industries to enable them to compete in a free-market environment
- weakening trade unions so that the market could operate freely.

Several strategies underpinned the government's approach to employment relations during this period. The first was an outright attack on the public sector (Seifert and Ironside, 2001). In the eyes of the government, these workers were responsible for a wave of strikes during the 'Winter of Discontent' of 1978–1979. As a result, the government immediately sought efficiencies in wages and labour utilisation among teachers, local government workers, the civil service and

in nationalised industries. One of the more enduring aspects of the government's approach in this respect was the privatisation of whole industries, such as British Telecom, British Gas, British Airways and British Rail. In what remained of the public sector, a range of free-market initiatives were also introduced, which further destabilised public sector employment; for example, Compulsory Competitive Tendering (CCT) allowed private sector contractors to bid for local authority work. Consequently, it was no longer deemed a responsibility of the State to be a model employer, but instead the private sector was promoted as a shining example for a new era of non-union employment relations.

Second, and perhaps the most visible strategy of the State, was to weaken trade unionism, and in this respect the government practised what it preached when in 1989 it outlawed trade union membership at the Government Communications Headquarters (GCHQ). Overall, the government adopted what can be described as a 'step-by-step ratchet approach' to legal intervention. Significantly, this stands in stark contrast to the wholesale legal reform of previous governments (1945–1979). For example, the ill-fated Industrial Relations Act (1971) set out to completely reform collective labour law, and had it succeeded in its aims, it would have imposed on British industrial relations many of the features of the US system: that is, collective agreements would have become legally enforceable unless they included, among other things, a specific disclaimer clause to the contrary (Weekes et al, 1975). This wholesale legal approach of previous governments enabled unions (and employers) to co-ordinate their opposition against the 1971 Industrial Relations Act, whereas since 1979 such resistance has been considerably more difficult as the government passed, on average, one major piece of statutory legislation every two years (Ackers et al, 1996).

It was this 'drip-drip' approach to legal reform during the 1979–1997 era that made it more difficult to mobilise a counter-offensive, especially for the trade unions. For example, the employment laws of 1980, 1982, 1984, 1988 and 1990 restricted union activities and the capability of employees to take industrial action (see Table 6.2 overleaf). The 1982 Employment Act limited the scope for trade unions to claim immunity from prosecution during disputes; the 1988 Act forced unions to elect their leaders by postal ballot; and the 1990 Employment Act made unions legally responsible for the actions of their members. Even after a decade of systematic legal intervention the government's attack on trade unionism never abated. For instance, the 1993 Trade Union Reform and Employment Rights Act placed further restrictions on union activities: a Commissioner with powers to assist individual union members to take their union to court was established; written permission had to be obtained from every union member to have their union subscriptions deducted from their salaries; and additional procedures were applied to any union that wanted to engage in lawful industrial action (see Table 6.2).

Finally, in line with the philosophy of *market individualism*, laws were passed which limited or removed individual employee protections, and this in turn provided employers with a greater degree of freedom to alter the employment relationship. For example, the Employment Act (1982) made it easier for an employer to dismiss workers, because the qualifying period to claim unfair dismissal was increased from one to two years' continuous employment (see Table 6.2). In addition, changed Industrial Tribunal Regulations in 1984 placed new burdens of proof on employees when claiming unfair dismissal. Moreover, Conservative governments took little interest in the development of individual rights derived from the European social model. In 1989 the government refused to sign the *Social Charter* on fundamental rights for workers under the Maastricht Treaty (1992), and in so doing excluded British workers from a set of employment rights available to employees in all other European member states (Collins, 2001). In summing

up the effect of these radical State interventions at the time, one commentator remarked that, 'if it were not for the Clean Air Act, the government would reintroduce child chimney sweeps' (Keegan, 1991).

Legislation	Matters covered
Employment Act 1980	<ul style="list-style-type: none"> ■ Employers able to take legal action against individual employees who were believed to be engaged in unlawful industrial action ■ Removed immunity for those engaging in secondary industrial action
Employment Act 1982	<ul style="list-style-type: none"> ■ Disputes could only relate 'wholly or mainly' to terms and conditions of employment or bargaining machinery ■ Definition of a trade dispute revised, so that immunity for unions narrowed ■ The qualifying period for an individual to claim unfair dismissal extended from 1 to 2 years' continuous employment ■ Industrial action to compel union membership or trade union recognition made unlawful ■ Rescinded 'fair wages' resolutions of House of Commons (1891 onwards) which obliged government contractors to observe terms and conditions no less favourable than those agreed by trade unions and employers in a locality
Trade Union Act 1984	<ul style="list-style-type: none"> ■ Political fund ballots to be conducted at least once every ten years if a union seeks to pursue political objectives ■ Introduced secret ballots for election of union executive council members ■ Trade union liability for damages established, enabling unions to be sued for unlawful industrial action
Industrial Tribunal Regulations 1985	<ul style="list-style-type: none"> ■ Burden of proof about the 'reasonableness' of unfair dismissal placed equally on employer and employee, and no longer solely on employer
Sex Discrimination Act 1986	<ul style="list-style-type: none"> ■ Extended range of areas to protect individuals from discrimination in: dismissal, promotion or demotion, retirement and training ■ Amended Equal Pay Act 1970, under same provisions
Employment Act 1990	<ul style="list-style-type: none"> ■ Trade unions made liable for all industrial action, unless measures taken to repudiate the action ■ Legal right for employers to dismiss an individual engaged in unofficial industrial action, with no right to claim unfair dismissal ■ Industrial action in support of other employees dismissed for taking unofficial industrial action made illegal

continued

Table 6.2 Major legislation during the period 1979 – 1997

Legislation	Matters covered
Trade Union Reform and Employment Rights Act 1993	<ul style="list-style-type: none"> ■ Established a Commissioner for Protection Against Unlawful Industrial Action. The Commissioner to assist members of the public in the High Court who attempt to prevent unlawful industrial action ■ Introduced legal provisions to ensure ballots for industrial action; ballots to use postal methods ■ Requirement of union to give employer seven days' written notice prior to commencement of official industrial action ■ Requirement for trade unions to obtain written permission from individual members to have union subscriptions deducted from their salaries

Table 6.2 Continued

The 'Third Way' agenda: 1997 – 2010

The election of the Labour government in 1997 marked a further shift in the direction of the State's intervention policies for employment relations. Speaking at the TUC's annual conference shortly before the election in 1997, Tony Blair summed up the values of the Labour government vis-à-vis trade unions as 'fairness not favours'. Contrast this with post-2010 Conservative-Liberal Democrat coalition government sentiments espousing 'freedom, fairness and responsibility' – and a similarity can be detected. The Labour government's approach was labelled a 'Third Way' agenda, in which it is assumed that the State has a responsibility not only to promote economic competitiveness and labour market flexibility, but also to support social justice and citizenship at the workplace. In this respect, a number of policy objectives were adopted:

- improve competitiveness and innovation in industry by encouraging partnership, flexibility and high performance in industry
- improve employee skills and adaptability
- promote a policy for work–life balance
- establish a floor of individual employee rights (rather than general immunities for trade unions) by supporting the European social model.

One of the first steps, which signalled a new era of State intervention, was the government's adoption of the *Social Charter* for workers' rights, as contained in the Maastricht Treaty, which was signed in 1998 (the Conservative government had refused to sign this a decade earlier). The net result was that individual workers in Britain could now expect support and protection for a range of fundamental employment rights, such as adequate remuneration, job security, equality and training. In addition, the ban on trade union membership at GCHQ was revoked, and a Low Pay Commission created to investigate and report on a national minimum wage.

Some of the main legal interventions establishing these fundamental rights in British law are summarised in Table 6.3, and one of the first laws passed was the National Minimum Wage Act (1998), which established a legal right to a **national minimum wage** for all workers. Significantly, the minimum hourly rate was set at a level calculated to avoid damaging the competitive standing of British industry, especially for smaller firms which are

national minimum wage

A statutory minimum rate of pay for all workers and trainees in Britain.

more constrained by tight labour costs (Metcalf, 1999). Arguably the most significant legal intervention by the State since 1997 was the passing of the Employment Relations Act (1999), which provided for the first time in Britain a set of new rights and obligations in employment: for instance, new maternity and paternity rights; statutory mechanisms for trade union recognition; a renewed role for ACAS; and a reduction in the qualifying period from two years to one year for an employee to be able to claim unfair dismissal (Wedderburn, 2001).

Legislation	Matters covered
National Minimum Wage Act 1998	<ul style="list-style-type: none"> ■ Established a statutory basis for the Low Pay Commission ■ Set the first national minimum wage rate
Public Interest Disclosure Act 1998	<ul style="list-style-type: none"> ■ Employee protection from dismissal established for disclosing information that is deemed to be in the public interest, for example health and safety concerns or an employer failing to comply with legal requirements
Employment Relations Act 1999	<ul style="list-style-type: none"> ■ Reduction in qualifying period to claim unfair dismissal from 2 to 1 year's service ■ 18 weeks' maternity leave ■ Statutory right to unpaid parental leave of 3 months for all employees ■ Statutory trade union recognition provisions ■ Restricted employer discrimination on the basis of union or non-union membership ■ Revised the role and duties of ACAS
Learning and Skills Act 2000	<ul style="list-style-type: none"> ■ Established the Learning and Skills Council (LSC) for post-16 education and training (excludes higher education)
Employment Act 2002	<ul style="list-style-type: none"> ■ Revised maternity leave provisions of 6 months' paid and 6 months' unpaid for mothers (2 weeks' paid paternity leave for fathers) ■ Sets out minimum standards for organisational discipline and grievance procedures ■ Rights for fixed-term workers ■ Obligation for employers to 'seriously consider' requests from parent employees for flexible working arrangements ■ Statutory roles, duties and time off with pay for trade union learning representatives
Pensions Act 2004	<ul style="list-style-type: none"> ■ Requires an employer to consult about pension scheme changes with pension scheme member representatives, including employee and/or union representatives

continued

Table 6.3 Major legislation during the period 1997–2010

Legislation	Matters covered
Employment Relations Act 2004	<ul style="list-style-type: none"> ■ Clarifies and defines an 'appropriate bargaining unit' for the purpose of collective bargaining for trade union recognition ■ Provides rights of access for the purpose of trade union recognition ballots ■ Provides employee protection from detrimental action in circumstances relating to union membership ■ Outlaws the practice of employer offering inducements not to be a member of a trade union ■ Rights for employees to be accompanied by a trade union officer or fellow worker at non-trivial disciplinary and grievance hearings
Transfer of Undertakings (Protection of Employment) Regulations 2006	<ul style="list-style-type: none"> ■ Provisions have been widened to cover cases where services are outsourced, insourced or assigned to a new contractor, where such service provision is provided on an 'ongoing' basis ■ There is a duty on the old employer (the transferor) to supply information about employees being transferred to the new employer (the transferee employer) ■ Provisions specify that it is unfair for an employer to dismiss employees for reasons connected with a transfer ■ Employee representatives of the employees affected have the right to be informed and consulted about a prospective transfer
Equality Act 2006	<ul style="list-style-type: none"> ■ Creates a single equality commission, the Equality and Human Rights Commission (EHRC) ■ The EHRC replaces the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC) ■ The EHRC will monitor and promote a 'gender equality duty', which places a duty on public authorities to ensure equality between men and women ■ To implement regulation prohibiting discrimination on seven grounds: age, disability, gender, race, religion and belief, sexual orientation, and gender reassignment
Employment Act 2008	<ul style="list-style-type: none"> ■ Allows trade unions to discipline/expel members under certain conditions (e.g. rule breach) ■ Outlaws the blacklisting of trade unionists by employers ■ Revised dispute resolution arrangements ■ Power to ensure national minimum wage compliance by employers ■ Regulations for the activities of employment agencies <p style="text-align: right;"><i>continued</i></p>

Table 6.3 Continued

Legislation	Matters covered
Equality Act 2010	<ul style="list-style-type: none"> ■ To provide a single framework for equality by incorporating nine previous Acts of Parliament into one Act ■ Important Acts it will include are the Sex Discrimination Act (1975) and Race Relations Act (1976) ■ Bans secrecy clauses that prohibit individuals discussing pay to help identify possible gender pay gap and add transparency ■ Strengthens the powers of employment tribunals in areas such as discrimination

Table 6.3 Continued

Subsequent legislation in 2002 and 2004 extended further the philosophy of balancing social justice for employees with encouraging competitiveness and flexibility. For example, the 2002 Employment Act required employers to ‘seriously consider’ the option of flexible working arrangements for employees with childcare responsibilities, established the right to extended (unpaid) maternity leave, and set out the legal status for trade union learning representatives to be able to bargain about employee skills and training needs (see Table 6.3). Among other things, the 2004 Employment Relations Act clarified the definition of a bargaining unit for the purposes of collective bargaining and trade union recognition, the Pensions Act (2004) established the requirement for substantial change to a company’s pension to be first approved (following consultation) by representatives of the scheme’s members (i.e. with employee representatives), and the Employment Act (2008) outlawed the blacklisting of employees who might be considered trade union sympathisers (see Table 6.3).

In addition to the legislation summarised in Table 6.3, the practice of making greater use of *statutory instruments* has been adopted by the State. These deal with the many employment regulations contained in European directives: for example, the 1998 Working Time Regulations, which set maximum working hours, rest periods and holidays for employees (Böheim and Taylor, 2003). Other regulations include comparable rights for part-time and fixed-term employees with those of full-time workers, rights for people in employment who are over 65 years of age, the ACAS 2009 Approved Code of Practice on discipline and grievance handling, extended maternity and working time rights in 2011 and protections for agency workers.

The role of government post-2010, with a new Conservative-Liberal Democrat coalition, remains uncertain with regard to specific employment policy orientations. In some areas there is considerable overlap, with both Conservative and Liberal-Democrat manifestos calling for enhanced parental leave and family-friendly arrangements. However, a key point of difference is how such policy change might be delivered, with the Conservative-side of government concerned about the costs to business, while Liberal ideals gravitate more towards the principles of family support than burdening business *per se*. On other key issues there remain differences within the coalition government that will only be played out in due course. A litmus test is likely to be around the implementation of policy. For example, while all political parties now accept the legitimacy of a national minimum wage, Conservatives want to reign back how much is paid and to whom, while the Liberal Democrats (at least prior to the election result) favoured a universal rate regardless of age. Other potential policy changes (and possible inter-coalition tensions) are both the extent and pace of measures to reduce the public deficit, including the

pay and jobs of thousands of public sector workers. Yet one point of apparent unity within the Conservative-Liberal Democrat coalition is the desire to reduce what is perceived as costly regulation to industry, which may or not include changing various employment rights introduced during the previous 13 years of Labour rule. The creation of 'new' Business Secretary, the Liberal Democrat Vince Cable, is also likely to be an important dynamic in shaping the role of government agencies such as the Department for Business, Innovation and Skills (BIS). Interestingly, Cable advocated a longer period of bank nationalisation during the economic crisis, along with abolition of the Department of Trade and Industry (which is now BIS). Moreover, debate remains as to the substance of any similarity as well as any real or meaningful divergence in the respective ideological postures of all mainstream political parties in Britain. One view is that there existed a strong undercurrent of neo-liberalism throughout the Labour government's term and this, in its broadest form, is likely to continue if not be further reinforced during the Conservative-Liberal Democrat coalition pact.

Critical discussion question

Critically evaluate the argument that the Labour government's approach to employment relations since 1997 was underpinned by the same right-wing philosophies and actions of previous Conservative governments (1979–1997).

Despite these legal interventions since 1997, there are a number of criticisms of the former Labour government's approach to employment regulation in Britain. First, in practical terms, it was found that many employees simply could not afford to take unpaid maternity leave, and some employers still treated part-time workers less favourably than their full-time counterparts (Houston and Marks, 2003). As a result many employees still find they work excessively long hours, despite regulations to the contrary (DTI, 2004). A second criticism is from the trade union movement, which felt 'let down' by the Labour government (Wood et al, 2003). The main concern here was that many of the anti-union laws of the previous Conservative government remained on the statute books, particularly those that affect ballots and industrial action. Finally, it has been argued that the Labour government's 'Third Way' agenda was simply an extension of Conservative neo-liberal ideologies which underpin market individualism (Callinicos, 2001). For example, privatisation, labour market flexibility, compulsory competitive tendering and the outsourcing of many public sector jobs all remained a central plank of the Labour government's employment relations agenda (Smith, 2009).

In other ways, the Labour government did adopt what can be described as a minimalist strategy when transposing European directives into domestic law that tilted the balance of power towards business interests. The details of the European Working Time Regulations were reduced to allow individuals to opt-out of the 48-hour maximum working week. It has since been shown that employers have pressurised some workers to do so (Barnard et al, 2003), and often for the sake of greater company flexibility. Nor is this isolated to a single issue. The transposition of the regulations for employee information and consultation, which will be considered in greater detail in Chapter 9, deviated from the original European objective when the British government allowed for direct (e.g. individual) communication channels rather than the collective structures envisaged in the directive. Furthermore, for workers to avail of consultation rights, they have to invoke a legal procedure rather than having access to a universal right that applies to all. Because of these sorts of issue, it has been argued that Labour's attempt to balance the needs of business efficiency

with employee justice meant that the government ‘annoyed everyone and protected only the few’ (Gennard, 2002). Arguably, Labour’s claim to have promoted ‘fairness at work’ may have been based on good intentions but the underpinning philosophical basis of its subsequent economic and social policies remained inherently neo-liberal. It was different from previous Conservative governments only in so far as it fused minimal rights of citizenship within the confines of dominant free-market flexibility.

It is these sorts of debate that show how the role of the State remains a key player in shaping employment relations. It may be different from what it was in the past, with individual employee protections such as the national minimum wage, extended paternity leave, statutory union representation and employee consultation, but it also supports an environment of free enterprise and capitalism that makes for a contradictory and uneven set of employment relations conditions. What is perhaps more certain, however, is given the plethora of European regulations that will require transposing into British law in the decades ahead, future developments of this type are virtually inevitable. Therefore, the next section explains how such regulations are transposed, and how employment law operates in Great Britain.

Summary points

- Variations in State intervention can be assessed according to two variables: *dominant politico-economic ideologies* and the *role of trade unions*, and these give rise to four characteristic patterns of State intervention:
 - corporatism
 - market individualism
 - liberal collectivism
 - bargained corporatism.
- From the above scheme, three distinct phases of State intervention can be described in Britain:
 - The period 1945–1979 – voluntary consensus
 - The period 1979–1997 – a resurgence in market individualism
 - The period 1997–2010 – a Third Way agenda, based on balancing market competition and individual social justice.

The law in employment relations

An overview of sources

The laws that influence employment relations come from a number of different sources, and a fundamental distinction that can be made is between *criminal* and *civil* law. **Criminal law** deals with unlawful acts that are offences against the public at large: for example, theft of an employer’s property by an employee, or an employer’s wilful neglect of the health and safety of its employees. In contrast, **civil law** deals with the rights of private citizens, and their conduct towards each other (a corporation being regarded as an individual person in the eyes of the law). The most significant laws affecting employment relations are civil laws, although there are elements of criminal law which have some relevance.

criminal law

Deals with unlawful acts that are offences against the public at large.

civil law

Deals with the rights of private citizens and their conduct towards each other.

The most important source of civil law is **statute law**, which comes into existence when the government of the day introduces legislation in Parliament, which is passed by both houses and receives royal assent. Sometimes, however, an Act makes provision for a government minister to modify or update the details of a law through a **statutory instrument**. In addition, **European law** has increasingly had a major impact in Britain, and the most important sources are *European directives*. For convenience, *statutory instruments* and *European law* can be regarded as part of statute law.

Another important source of law in employment relations is **common law**, which results from decisions made by judges and by tribunals, which then creates binding precedents on judgments in subsequent cases.

statute laws

Laws that are passed by Parliament and have received royal assent.

statutory instrument

A device used by a minister of the government to change or update legislation that already exists.

European law

Directives and regulations passed by the European Parliament, which are then transposed into British statute law.

common law

Laws that arise from legal decisions made in a court of law or at an employment tribunal.

Pause for reflection

In your own words, briefly define each of the six sources of law that can affect employment relations in Britain.

A typology of employment relations law

In law, employees and organisations are both treated as individuals in their own right, and either one can be taken to court in a criminal prosecution or civil lawsuit. While the laws affecting employment relations are diverse, they all have one thing in common: they all serve to regulate relationships of some sort. Thus they can all be placed into one or more of five categories according to the relationships that they influence. These are shown in Figure 6.2.

Laws regulating the relationship between individual employees and employers

In Chapter 1 it was explained that the law assumes that the relationship between an employee and his or her employer is an individual one. For that reason, the main body of law that is relevant here is that affecting the contract of employment. Examples include the Health and Safety at Work Act (1974); Race Relations Act (1976); Employment Protection (Consolidation) Act (1987); almost two decades of Employment Acts (1980 to 2008); the Equality Act (2006); and the Transfer of Undertaking (Protection of Employment) Regulations (among others).

Because the contract of employment can never be so specific that it details every possible contingency for the future, the laws in this area have been subject to considerable ongoing amendment. Above all, the way the courts interpret the application of legal rules is not straightforward and can lead to fierce disagreement. One example is the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), which was introduced in Britain as a result of the European Acquired Rights Directive. Its purpose is to protect the rights and conditions of workers should a company merge or change ownership. Problematically, the original directive failed to define a

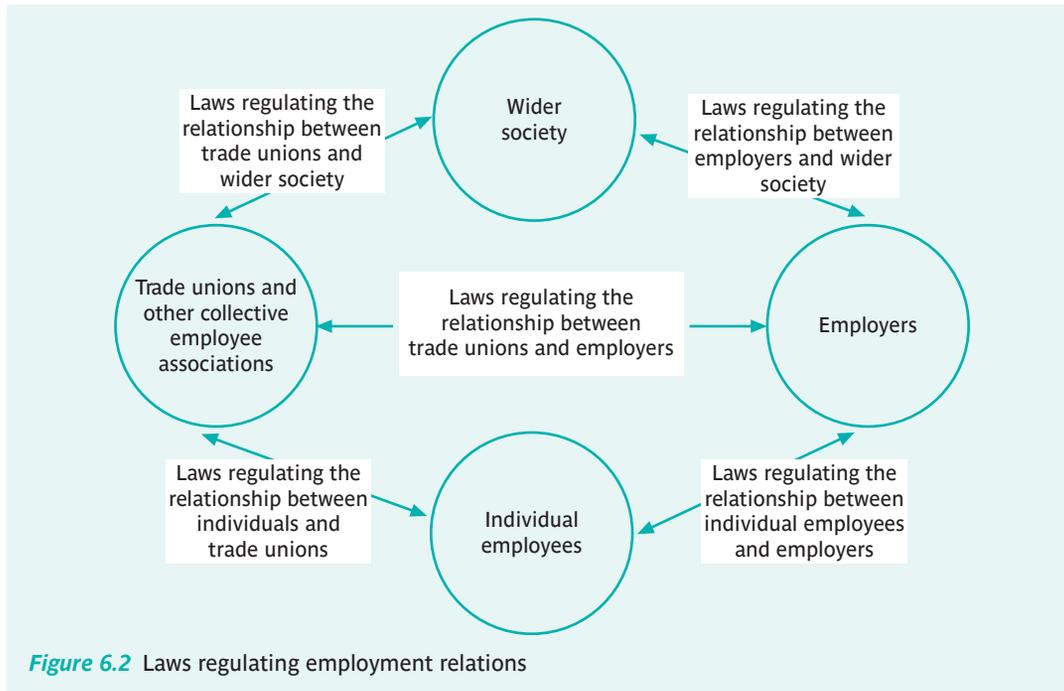


Figure 6.2 Laws regulating employment relations

transfer, and so a number of contradictory court rulings appeared (see Exhibit 6.1). In response, government has had to clarify the issue by amending the original law. The effect of TUPE is to preserve the continuity of employment conditions for those employees who may be transferred to a new employer when a relevant transfer or service provision occurs. With the exception of some occupational pension rights, this effectively means that, when the jobs of employees are transferred to a different employer, their terms and conditions remain the same. However, the regulations do not prohibit the old or new employer varying employment conditions with the employees' (or their representatives') agreement (DTI, 2006a).

Brookes v Borough Care Services Ltd and CLS Care Services Ltd [IRLR 636, 1998]

In this case Wigan Council decided to transfer the running of care homes for the elderly to the voluntary sector. There were 335 employees who worked for a company established by Wigan Council, CLS Ltd. A transfer occurred by transferring the shares of CLS Ltd, along with the same directors, to Borough Care Services Ltd. The court ruled that since there had been no change as to who the employer was, in this case the directors, there had not been a transfer.

Suzënv Zehnacker Gebäudereinigung [IRLR 255, 1997]

In this case a school transferred a cleaning contract from one contractor to another, and Suzën was not offered work with the new contractor, claiming her employment should have been protected by the TUPE regulations. The European Court of Justice (ECJ) ruled that as there was no transfer of an 'entity', which includes assets and/or a majority of a workforce and their skills, but only those of an 'activity' (i.e. the cleaning of a school), there had been no transfer. The ruling meant there was considerable uncertainty as to whether the TUPE regulations apply in cases which involve a transfer of only labour-intensive activities.

ECM Ltd v Cox [IRLR 559, 1999]

However, in another case there was a change of contractor who ran a car-delivery contract. In this case there was no transfer of tangible assets or employees or their skills, but the Court of Appeal upheld that there was a transfer, implying that labour-only activities do fall under TUPE. The court ruled that the employer could not escape TUPE by failing to take on the previous contractor's workforce.

Exhibit 6.1 Contradictory TUPE legal interpretations

Laws regulating the relationship between individuals and their trade unions

In this area there exist legal provisions that define the obligations of trade unions towards their members. Most of these have been introduced since 1979, and were arguably designed to frustrate union activities. For example, the Trade Union Act (1984) forced unions to elect their executive councils by postal ballot, and to confirm by a ballot of all members the existence of a political fund. In addition, the Employment Relations Act (1988) made it illegal for a trade union to discipline its members for breaching the union's rules. This Act also established a Commissioner for Trade Union Rights, whose main objective is to assist individual members who may consider taking legal action against their union. The Employment Act (2008) has reinstated some rights where trade unions can discipline members for breaching union rules.

Laws regulating the relationship between trade unions and employers

The relationship between trade unions and employers has always been constrained by the law, usually to the disadvantage of unions. This is because the law accords a paramount position to the individual contract of employment, and takes little account of the fact that many employment relations matters are essentially collective in nature. Therefore, much labour law in Britain aims to prevent trade unions from cutting across what is deemed to be an individual contract. Again, this is an area in which there has been significant change since 1979, and most laws remained on the statute book under the Labour government. Examples include the Employment Act (1980), which makes secondary picketing illegal; the Employment Act (1982), which outlaws a closed-shop arrangement; and the Trade Union Act (1984), which makes unions liable for unofficial industrial action by their members.

Perhaps the most significant piece of legislation in this area originates in the Trades Disputes Act (1906), the main provisions of which were updated in the Trade Union and Labour Relations (Consolidation) Act (1992) (TULRCA). This Act stipulates that, while employees engaging in industrial action are in breach of their contracts of employment, and the trade union involved in organising the action is, in effect, inducing a breach of contract, they are granted a degree of **(trade union) immunity** from prosecution. For a trade union to qualify for the immunity certain conditions have to be met, and these are known as the *Golden Formula* (see Exhibit 6.2). To this end, Section 219(1)a of the TULRCA states that, as long as industrial action taken is in contemplation or furtherance of a **trade dispute** (defined as a dispute between workers and their employing organisation), then a union is protected from legal prosecution for inducing its members to breach their employment contracts. The legislation refers to a 'worker', and this applies to those who are directly employed by the firm in dispute with a union. It may be recalled that, as described in Chapter 4, organisations are increasingly outsourcing many of their activities, including the use of agency staff working alongside company employees, thereby fragmenting organisational structures and hierarchies. The effect of this can complicate who is actually a direct worker of the employing organisation.

Furthermore, interpreting what is, and what is not, a legitimate trade dispute can be quite complex. For example, when UNISON members at University College Hospital in London voted overwhelmingly in favour of strike action in 1999, the Court of Appeal held that the intended dispute would not be legal because employees were seeking employment guarantees in a new hospital

trade union immunity

A convention that protects a trade union from prosecution for inducing its members to breach their individual employment contracts when engaging in strike or other similar industrial action.

trade dispute

A dispute between workers and their employing organisation, which complies with Section 219(1)a of the TULRCA 1992 (i.e. the Golden Formula).

that would be created under the government's Private Finance Initiative (PFI). Here, the court held that the dispute was not concerned with the terms and conditions of employees at the existing NHS Trust, but was in fact connected with the future employment conditions of prospective employees, who would work in the new hospital when it opened. Therefore the industrial action was deemed to be outside the conditions specified in the *Golden Formula* (Lewis and Sargeant, 2009).

In many ways the UNISON example is indicative of the way that the goalposts have been moved by the State in order to make it more difficult for a union to sanction or organise industrial action. In addition to the 'Golden Formula' summarised in Exhibit 6.2, there are many other legal hurdles a union must overcome. For example, it must ballot its members; it must ensure the employer agrees to the wording on the ballot paper; and, following the result of a ballot, it must provide the employer with at least seven days' written notice prior to the commencement of any industrial action. Failure to comply with these conditions could result in a union's finances being sequestered by the courts, and needless to say, there are nowhere near as many reciprocal obligations on an employer who decides to lock out workers, close a factory or move part of its operations to another part of the world.

A trade dispute is defined as a dispute between workers and the employing organisation, and which relates wholly or mainly to one or more of the following:

- Terms and conditions of employment, including physical conditions and the reasonableness of an employer's instructions about work
- The engagement or non-engagement, or termination or suspension of employment, or the duties of one or more workers
- The allocation of work or the duties of employment between workers or groups of workers
- Matters of discipline
- The membership or non-membership of a trade union, excluding compulsory conditions of union membership (i.e. to enforce a closed shop)
- Facilities for trade union representatives and officials
- The machinery for negotiation or consultation, or other arrangements relating to the above matters.

Exhibit 6.2 The meanings of a trade dispute (the 'Golden Formula')

Source: adapted from Lewis and Sargeant (2009: 329).

Laws regulating the relationship between trade unions and wider society

For the most part, the law in this area is aimed at ensuring that the actions of trade unions do not affect the well-being of society at large. Therefore, it is an area in which certain aspects of criminal law are relevant. For example, the Conspiracy and Protection of Property Act (1875) contained clauses pertaining to the orderly conduct of pickets during industrial disputes. Similarly, public order measures during strike action were introduced in the Prevention of Crime Act (1953), the Criminal Law Act (1977) and the Public Order Act (1986). In addition, the powers of the police to tackle public disorder were strengthened after the miners' strike of 1985–1986, and the TUL-RCA (1992) lists potential criminal actions when pickets use abusive or threatening behaviour or obstruct the police in their duties (Lewis and Sargeant, 2009). Arising from this legislation there is now a government *Code of Practice on Picketing*, which gives guidelines recommending that the number of pickets at a workplace entrance or exit should not normally exceed six.

Laws regulating the relationship between employers and wider society

The legislation in this area falls mainly into two categories. First, there is a huge volume of company law which regulates the activities of firms as corporate entities, some of which is part of the field of criminal law and designed to protect shareholders against fraud or malpractice. Second, there are laws which regulate to some extent the responsibilities of organisations towards the general public. For example, the Health and Safety at Work Act (1974) imposes a duty on employers to ensure that members of the public are not at risk: for instance, a person entering a hospital or shopping at a local supermarket. The Equality Act (2006) also places obligations on public authorities to promote good race and non-discriminatory relations. In other commercial activities there can be strong employment relations implications: for example, when there is a company merger or takeover, the TUPE regulations mean that contractual employment conditions may have to be transferred to the new owner.

Pause for reflection

Review the legislation summarised in Tables 6.1, 6.2 and 6.3, and then identify at least two specific laws that regulate each of the five relationships described in the model in Figure 6.2.

How the law operates

This section briefly describes how the various courts and institutions deal with employment law cases in England and Wales (Northern Ireland and Scotland have a slightly different legal system). The British legal system has a hierarchical structure, shown in Figure 6.3, and the general principle is that attempts are always made to resolve a case at the lowest level possible. Only when a decision is not accepted by the parties, or it is beyond the jurisdiction of a lower-level court, does it pass to the next one.

The key institutions of employment relations law

Criminal cases involve prosecution by an agency of the State such as the police or one of the various employment relations commissions. For example, health and safety violations can be brought by the Health and Safety Executive (HSE) and dealt with in a magistrates' or crown court, and can result in prohibition orders, fines or plant closure if they are ignored. Prosecutions can also be brought by the police for obstruction, assault, and public order offences that may occur during industrial disputes.

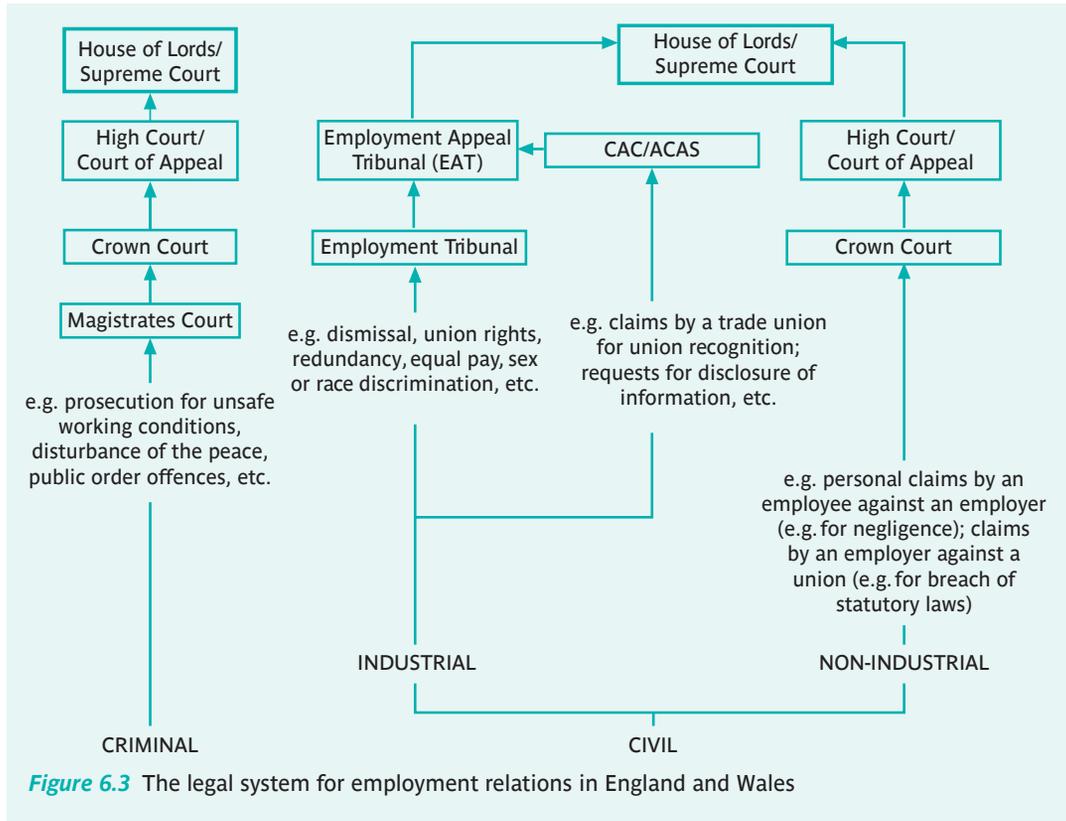
Civil cases are progressed through one of two general routes that deal with cases brought by individual employees or organisations. An **employment tribunal** is a legal court that adjudicates almost exclusively on employment relations cases. Tribunals were first established as 'industrial tribunals' under the Industrial Training Act (1964). Since then their legal jurisdiction has been greatly extended, and their name was changed to 'employment tribunals' in the Employment Rights (Dispute Resolution) Act (1998). From their inception they were designed to be less

criminal case

A legal prosecution brought to either the magistrates or crown court by an agency of the State, such as the police or one of the various employment relations commissions.

employment tribunal

A legal court that adjudicates on employment law cases.



threatening than other British courts, mainly because cases are brought by individual employees, who often lack detailed knowledge of how the British legal system works. Employment tribunal cases are heard by three members: a legally qualified chairperson appointed by the Lord Chancellor, plus two lay members – one nominated from employer’ associations and the other selected from a panel nominated by the TUC. While the two lay members of the tribunal are required to have expertise in workplace employment relations issues, they are not legally qualified. Nor are they representatives of their nominating organisation. Employment tribunals are bound by the decisions of higher courts, such as the *high court* and **employment appeal tribunal (EAT)**. The latter hears appeals on points of law from tribunals, or on matters arising from a decision of the Certification Officer. They are composed of a high court judge, and up to four people nominated by the TUC and the Confederation of British Industry (CBI). The parties can be represented by anyone of their choosing, and for the employee this often means a trade union officer, a union-appointed solicitor or a civil society organisation representative (e.g. the Citizens Advice Bureau).

employment appeal tribunal

A higher legal court that deals with appeals from employment tribunals.

non-industrial civil courts

Courts that deal with an array of other employment-related matters, such as claims of negligence against an employer or injunctions seeking to restrain union action.

Non-industrial civil courts deal with a vast array of issues: for example, claims for compensation for injury resulting from an allegation of negligence would be handled in this way. It is also the route that would be used by an employer seeking to restrain a trade union from taking industrial action, and in these situations employers typically go directly to the high court.

The Advisory, Conciliation and Arbitration Service (ACAS)

The Advisory, Conciliation and Arbitration Service (ACAS) is an independent body established by Parliament in 1975, and has its origins in the passing of the Industrial Relations Act (1971), when both trade unions and employers called for an independent conciliation and arbitration service to be established. It has a general duty to improve employment relations by advising employers, unions and individuals on their rights and obligations, and its functions are to help settle any potential or ongoing industrial disputes (ACAS, 2005). The role of ACAS has often been described as akin to that of a boxing referee separating heavyweight fighters when mediating major disputes between trade unions, employers and even the government. However, these days much of ACAS's work is directed at resolving disputes between individual employees and management before matters progress to a tribunal, or in advising employers on good employment relations practice.

ACAS has many strings to its bow and some of its main functions and responsibilities merit attention. As its name indicates, **conciliation** is one of the most important functions of ACAS. Where a collective dispute exists or is likely to exist, ACAS can provide advice and assistance to help bring about a resolution, either at the request of one or more parties or of its own volition. In around 94 per cent of the collective disputes using the services of ACAS, conciliation has been successfully used to bring about a resolution (Lewis and Sargeant, 2009). ACAS also offers conciliation in cases where individual employees have complained to an employment tribunal. Indeed, ACAS is automatically informed of these cases and, in the interests of expediency, must try to settle them before they are heard by a tribunal.

A second service is that of **mediation**: a process in which a potential solution to a dispute is recommended by ACAS to the parties. With mediation, however, the parties still carry on negotiating in order to work out the details of a settlement. **Arbitration** is another important ACAS service, in which an arbitrator is appointed to set the terms of a settlement. Arbitration has to be at the request of at least one party, and at the express consent of both. Here, it should be noted that ACAS is obliged to first consider whether the dispute may be settled through conciliation or mediation, before moving to arbitration. It does not arbitrate itself, since this would affect its ability to conciliate. Rather, it appoints an arbitrator or arbitration panel.

In addition to these highly visible activities, ACAS provides a range of *advisory services* for both employers and trade unions, and again these are highly valued by both parties. ACAS produces *Approved Codes of Practice (ACOP)*, which can substitute as *statutory instruments*, and conformance with them can be taken into account during a case at an employment tribunal; for example, in relation to an organisation's dismissal or grievance procedures. ACAS also undertakes inquiries and investigations in an attempt to improve employment relations in specific industries or firms. Finally, it also undertakes a good deal of *research*, either directly or commissioned from others, to provide commentaries on new and current issues relating to the nature of British employment relations.

conciliation

Advice and assistance to help resolve a collective or individual dispute.

mediation

A process in which the mediator recommends a potential solution to a dispute for the parties to consider.

arbitration

A process in which an arbitrator or arbitration panel is appointed to set the terms of a settlement to a dispute.

Pause for reflection

In your own words, briefly distinguish between the functions of 'conciliation, mediation and arbitration' in employment relations.

The Central Arbitration Committee (CAC)

In addition to arbitration requests received directly from the parties to a dispute, cases can also be referred to the *Central Arbitration Committee (CAC)* from ACAS. The CAC is comprised of members appointed by the Secretary of State following consultations with ACAS. It has a legal chairperson, industry practitioners and academic experts drawn from the field of employment relations and personnel management. Like ACAS, the CAC is an independent body and is not subject to directions from a government minister (Lewis and Sargeant, 2009). It has a statutory obligation to make decisions in a number of specific areas; for example, where an employer fails to disclose information to a recognised trade union for the purpose of collective bargaining; to adjudicate in disputes concerning the establishment of a European Works Council; to establish the procedure or instigate a ballot on receipt of a request for trade union recognition; and to establish arrangements in relation to the Information and Consultation of Employees (ICE) Regulations (2004). No court can overturn a CAC decision, unless there has been an error in law or it has exceeded its legal jurisdiction (*ibid*).

Other State institutions

In addition to the courts of law involved in administering justice in employment law cases, there are a number of other State institutions that have an ongoing role concerning the conduct and outcomes in employment relations.

The Certification Officer

The *Certification Officer* is responsible for maintaining a list of trade unions and employer associations. However, the powers of the Certification Officer extend far beyond the compilation of lists. The Employment Relations Act (1999) conferred powers on the Certification Officer to be able to act as an alternative to the courts in cases where trade union members complain about a union breaching its rules. The Certification Officer also scrutinises union political activities; issues a certificate of union independence; oversees their rules and accounts; and handles disputes that may arise following a union merger or amalgamation. Appeals against the decisions of the Certification Officer can be made to the EAT, and only on questions of law or fact (Lewis and Sargeant, 2009).

The Equality and Human Rights Commission (EHRC)

The *EHRC* was created under the Equality Act (2006), when the Labour government decided to merge the functions of three other related State agencies – the Equal Opportunities Commission (EOC), the commission for Racial Equality (CRE) and the Disability Rights Commissioner (DRC) – into a single commission (see www.equalityhumanrights.com). The *EHRC* is a publicly funded body that is independent of direct government interference. It has a broad remit to promote equality and human rights at work in several ways: to enforce the law, issue codes of practice and promote good practice on equality and diversity, and conduct research and compile evidence. Importantly, the commission has powers to ensure compliance in the areas of equality, with additional functional roles that seek to influence legislation and government policy on equality and human rights. Since its inception in 2007, 80 per cent of cases have been resolved through intervention without the need to execute legal proceedings against employers (*EHRC*, 2009). Examples of interventions by the commission are provided in Exhibit 6.3.

The Commission intervened in a case between the mother of Private Jason Smith, who died in Iraq of hypothermia, and the Ministry of Defence. The Commission argued that armed forces personnel serving overseas are protected by both Article 2 (Right to Life) of the European Convention and the Human Rights Act. The Court of Appeal held that this protection applies whether or not soldiers are physically on an armed forces base or elsewhere.

As a result of the Commission's intervention, the Ministry of Defence (MoD) will now have to ensure that soldiers and military personnel serving overseas are fully protected. It also means that the MoD has an obligation to provide more information to the families of bereaved soldiers. The implications arising from the case have opened up other related issues, including whether military personnel have adequate equipment and medical facilities. The case also means that any future investigation concerning the deaths of soldiers similar to Private Smith's will have to be more transparent, subject to independent scrutiny and involve the family.

At the time of writing, the Ministry of Defence had been given leave to appeal to the House of Lords.

Exhibit 6.3 Equality and Human Rights Commission interventions

Secretary of State for Defence v The Queen (EHRC [2009] EWCA Civ 441).

Health and Safety Executive (HSE)

In April 2008 the powers and functions of two related State agencies, the Health and Safety Commission (HSC) and Health and Safety Executive, were brought together as one national regulatory body, the *Health and Safety Executive (HSE)*. The HSE is charged with carrying out research, providing advice, information and training in relation to health and safety at work, and submitting proposed regulations to the Secretary of State. It also has powers to establish policy, with an inspectorate to encourage good practice and enforce the law (Lewis and Sargeant, 2009). The legal powers of enforcing officers are quite extensive, ranging from entering an organisation to inspect its premises to the serving of a prohibition notice, which, in serious cases, may mean the immediate closure of a company's premises. An employer can appeal to an employment tribunal against a prohibition notice.

Learning and Skills Council (LSC)

The *Learning and Skills Council* is charged with elevating the skills of all post-16-year-olds. It replaced the former Training and Enterprise Councils (TECs) in 2001, and is regionally based across Britain. While part of its remit is concerned with schools and sixth form colleges, it is also responsible for encouraging work-based training programmes and establishing links between industry and education providers to help alleviate Britain's skills deficit. The LSC works toward the achievement of key learning targets set by government, and its aim is to improve both efficiency and skill levels across industry.

The Low Pay Commission (LPC)

The *Low Pay Commission* was established in Britain as a result of the National Minimum Wage Act (1998). Under the legislation, the Secretary of State can refer matters to the LPC for consideration and review, and this body has been primarily responsible for recommending the national minimum wage rates for Great Britain. While it does not have a direct intervention role, HM Revenue & Customs is charged with ensuring that workers are paid according to the national minimum wage, with legal remedies determined at an employment tribunal.

Summary points

- Six principal sources of employment relations law exist: *criminal laws, civil laws, statutory laws, statutory instruments, European laws* and *common laws*.
- These laws can regulate one of five aspects of the employment relationship:
 - 1 relations between employees and employers
 - 2 relations between individual employees and trade unions
 - 3 relations between trade unions and employers
 - 4 relations between trade unions and wider society, and
 - 5 relations between employers and wider society.
- In Britain, the law operates through a hierarchical court structure, as follows:
 - Employment tribunal
 - Employment appeal tribunal
 - High Court
 - Supreme Court
 - House of Lords.
- In addition to the courts, there are a number of other State institutions that can regulate employment relations, such as ACAS, the CAC, EHRC or HSE.

Conclusions

By virtue of its law-making powers, the State is able to exert a significant influence on the relationship between an organisation and its employees. Indeed, legal intervention by the State has been a continually unfolding process, which has changed direction according to the political ideologies and philosophies of those in power. The Labour government sought to pacify business concerns by supporting a number of free-market principles, but at the same time, it embraced the spirit of fairness and social justice through a European-style social model, albeit with a degree of questioned acceptance.

Since the State is an influential player, its actions have clear implications for some of the topics already covered in the book, and those that will follow in subsequent chapters. For example, the rights of employees as defined by the contract of employment, which was explained in Chapter 1, have been extended and enhanced. Similarly, the role of trade unions has been legitimised with statutory union-recognition procedures, as explained in Chapter 5. Furthermore, the topics of discipline and grievance, redundancy and employee voice, which will be covered in Chapters 7 to 9, are also heavily influenced by important legal interventions. Finally, there are also legal aspects to the topics of equality, collective bargaining, negotiation and conflict, and these will be covered in Chapters 10 to 13.

Real-world case study 6.1: The changing contours of the role of the State

Consider the following extracts from different publications and reports:

- 1 At midday on 2 March 1989 Gareth Morris walked out of the Government Communications Headquarters (GCHQ) for the last time. Mr Morris had been sacked, ending 40 years of trade union membership at GCHQ. A ban on the membership of independent trade unions had been instituted some five years earlier by Margaret Thatcher's Conservative government, who held that trade unions were a barrier to the efficient operation of free markets and that employers should look to non-union firms for examples of how to manage employment relations. The banning of trade unions at GCHQ showed that the government was prepared to practise what it preached.

Source: adapted from McLoughlin and Gourlay (1994, pp. 1 – 2).

- 2 In the early 1990s Prime Minister John Major returned from Europe, having negotiated an opt-out clause for Britain from the social chapter for workers' rights of the Maastricht Treaty. In this, the government opposed State protections for workers on the basis that this would restrict 'free enterprise'. Speaking to journalist Jonathan Dimbleby on the BBC's *On the Record* programme, Major said: 'The Social Chapter in the Maastricht Agreement is a really worrying attempt by Europe to try and rebuild in Britain the [collective employment relations] things that we have dismantled over the last twelve or fifteen years.' When proposing the Maastricht Agreement to Parliament, Minister Douglas Hurd commented that: 'We do not believe that the interests of British working people are best served by giving organised management and labour a privileged position and asking them to take provisions to make suggestions across the whole area of employment. We believe in a more flexible system.'

Source: adapted from *BBC News*, 1993; *Hansard*, 1991 (*HC Deb 19 December 1991 vol 201 cc477-556*).

- 3 Shortly after its election in 1997, the New Labour government under Tony Blair signed up to European employment protections and passed the right to statutory trade union recognition. However, the government argued that the European Union's Charter of Fundamental Human Rights should not be made legally binding on member states. Originally the charter sought to guarantee the legal right of workers to: organise in trade unions; negotiate with employers; withdraw their labour when deemed by them to be right to do so; and be consulted by employers. Tony Blair and Gordon Brown were bitterly against such legal provision. They argued that the protection of workers as workers was a matter of social policy, while the protection of workers as individuals, outside their employment, could be considered a question of human rights. As Britain's new prime minister, Blair assured business people that however he might tinker with employment laws and trade union rights, they could be certain that at the end of the exercise Britain's trade unions would still be the least free in Europe. This became part of the sales pitch for encouraging inward investment in the United Kingdom. Come to Britain, under New Labour, and get yourself a shackled and tamed workforce.

Source: adapted from *The Guardian*, 27 November 2000 (www.guardian.co.uk).

- 4 In the 1970s Ireland developed an aggressive public policy for attracting foreign investment by encouraging multinational corporations (MNCs) to set up subsidiary plants in the country. Among other reasons, the objective was to help boost employment through innovation, knowledge and investment, particularly from US MNCs eager to establish a base for European markets. When embarking on the policy, the government

stressed that investing firms would need to conform to Ireland's pluralist employment relations regime: 'Incoming companies should recognise the industrial relations of this country and the inevitability of union recognition' (Enterprise Ireland Commission, 1969). However, by the late 1990s State policy appeared to have shifted dramatically when the government Minister for Enterprise Trade and Employment remarked: 'The Irish Development Agency (IDA) is not there to press one particular way of dealing with industrial relations. I don't see that as part of the IDA agenda. Some companies have an approach which doesn't involve unions. We can't set preconditions.'

Source: adapted from Gunnigle et al (2001); Collings et al (2008).

- 5 In America, President Barack Obama has signalled the need to modernise employment laws and reverse the anti-union measures endorsed by the Bush administration. The Employee Free Choice Act will be adopted to allow workers the right of trade union membership and collective bargaining. While these rights have existed in America since 1935 through the National Labor Relations Act (NLRA), in practice the NLRA has been distorted by decades of hostile amendments, lax enforcement and anti-union tactics by employers. Obama's objective is to reinstate basic liberties for union representation, equality rights, bargaining with employers and access to health care. Obama's government has passed what is known as the Lilly Ledbetter Fair Pay Restoration Act (2009), which now guarantees that all workers receive equal pay for equal work, thereby seeking to end discrimination on the grounds of age, religion, race and gender. The president also issued an Executive Order (No. 13496: *Notification of Employee Rights Under Federal Labor Laws*), which stipulates a number of regulations concerning public sector contracts, including collective bargaining and union rights for workers under public works contracts.

Source: adapted from www.aflcio.org; www.presidency.ucsb.edu.

Questions

- 1 How would you assess the role of the State towards employment relations intervention described in each extract above in relation to Crouch's model given in the chapter (Figure 6.1)?
- 2 Why do you think government policies and practices concerning employment relations matters change over time?
- 3 Is there any similarity or divergence in the underpinning approach of the different governments (Britain, Ireland and America) described in the above extracts?



Online Learning Centre

When you have read this chapter, log on to the Online Learning Centre at www.mcgraw-hill.co.uk/textbooks/dundon for additional case studies, hints for completing the exercises in the book and quizzes to test your understanding.

? Review and discussion questions

- 1 How would you define the role of the State in employment relations?
- 2 Identify at least four specific ways in which the State can intervene and influence employment relations matters, other than by legal means.
- 3 How would you explain the variation in government approaches to employment relations intervention?
- 4 Distinguish between Keynesian and monetarist economic philosophies of the State.
- 5 Outline the main criticisms of the government's approach to employment relations intervention in the years 1949 to 1979.
- 6 How would you characterise the State's approach with regard to employment law intervention since 1997?
- 7 What are the six main sources of employment relations law in Britain?
- 8 Identify, and explain, some of the main laws that affect the relationship between a trade union and employers.
- 9 How does the law operate for employment relations matters in Britain?
- 10 In your own words, describe the functions and roles of ACAS and the CAC.

Further reading

- Collins, H. (2001) 'Regulating the employment relationship for competitiveness', *Industrial Law Journal*, Vol. 30, pp. 17–47. A very readable analysis of the post-1997 Labour government's objectives towards State intervention and the idea of social justice.
- Crouch, C. (1982) *The Politics of Industrial Relations*, Fontana, London. Despite its date, this is a penetrating and highly readable analysis of the growth of government intervention in employment relations in post-war Britain.
- Houston, D. and G. Marks (2003) 'The role of planning and workplace support in returning to work after maternity leave', *British Journal of Industrial Relations*, Vol. 41 (2), pp. 197–214. An empirically based research paper which reports on limitations arising from government intervention in the area of extended maternity leave.
- Hyman, R. (2009) 'The State in industrial relations', *The Sage Handbook of Industrial Relations*, P. Blyton, N. Bacon, J. Fiorito and E. Heery (eds), Sage, London. This chapter provides a review and critique of State interventions, drawing on several theories and international evidence.
- Lewis, D. and M. Sargeant (2009) *Essentials of Employment Law*, 10th edn, CIPD Publishing, London. A valuable resource guide, providing comprehensive and practical coverage of numerous British employment laws.
- Metcalf, D. (1999) 'The British national minimum wage', *British Journal of Industrial Relations*, Vol. 37, pp. 171–201. A paper that presents a concise and analytical review of the national minimum wage in Britain.
- Smith, P. (2009) 'New Labour and the commonsense of neoliberalism: trade unionism, collective bargaining and workers' rights', *Industrial Relations Journal*, Vol. 40 (4), pp. 337–355. A well-argued

paper concerning the adoption of neo-liberal values and policies by New Labour that resonate with those inspired by previous Conservative governments.

Wedderburn, Lord (1986) *The Worker and the Law*, 3rd edn, Penguin, Harmondsworth. A seminal study that, despite its age, is highly recommended for its insightful and analytical coverage of the sources and philosophies of labour law, and especially for its extensive coverage of the topics of voluntarism versus state intervention.

Integration 2

Integrating parties and contexts in employment relations

LEARNING OUTCOMES



After studying this chapter you should be able to:

- ✓ **explain** how environmental contexts impact on the actions of the three main parties in employment relations
- ✓ **critically assess** the extent to which the State influences the actions of employers, managers and trade unions
- ✓ **explain** how trade unions and other employee associations influence the actions of employers and managers, and vice versa.

Introduction

The purpose of these integrative chapters is to convey something of the dynamic and real nature of employment relations, and to show how many of the topics covered in the book are interconnected. In this, the second of these integrative chapters, the aim is more modest. It traces the ways

in which contextual factors in employment relations can influence the three main parties, that is: *employers and managers; trade unions and other collective associations of employees; and the State.*

Each of the preceding three chapters dealt with one of these parties separately; however, they do not exist in isolation, but within a wider environment. Perhaps more important, they are interconnected in ways in which the actions of any one of them can affect the behaviour of the others. There are many different ways in which these links could be explained, but the simplest and most convenient is to consider the three parties in pairs, and trace some of the known linkages between them. To do this, it is necessary for the State and its interventionist activities (which were described in Chapter 6) and the political-legal context of the environment (covered in Chapter 3) to be treated as the same thing, because employment relations laws can only be passed or modified by the government of the day. Nevertheless, for completeness, it is also necessary to trace the effects of other contexts (*economic, socio-ideological and technological*) on employers, managers and trade unions, and so these effects are treated separately. The interconnecting linkages are shown in Figure 11, and there are two particular features of this model that should be noted. First, the State can exert some influence over environmental contexts, but this is not the case for either trade unions or employers and managers, who are only shown as connected by one-way influence arrows. Second, in some cases the parties are capable of influencing each other, and where this is the case, they are connected by double-headed arrows.

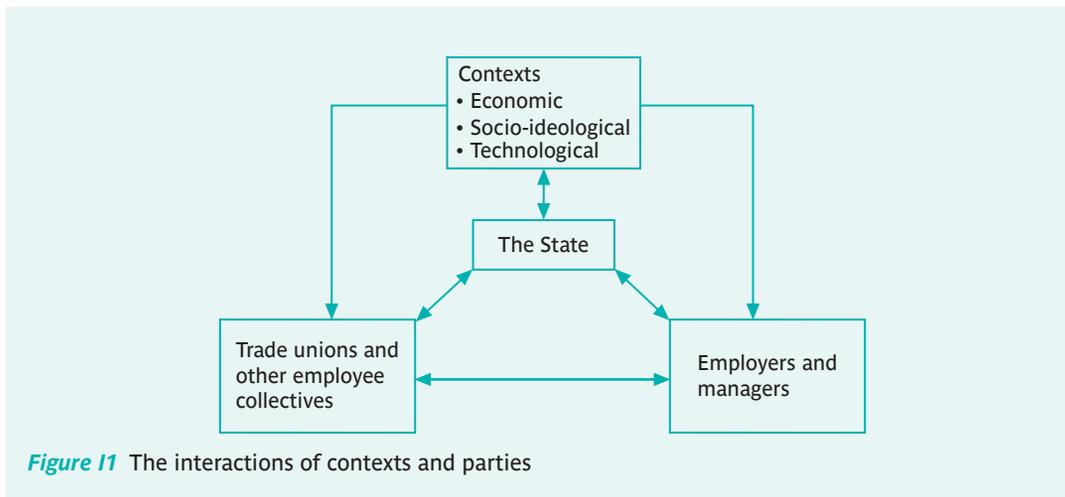


Figure 11 The interactions of contexts and parties

The effects of environmental contexts on the parties

The influences on employers and managers

The *economic context*, which embraces key features of the domestic and global economy such as labour market conditions, unemployment and international trade, is never far from the minds of employers and managers. As such, it tends to be a constant source of influence. However, its precise impact can be more apparent than real in some cases. Even though not engaged in international trade themselves, many managers tend to assume that globalisation is such a powerful and all-pervasive phenomenon that addressing it requires their urgent and sometimes drastic attention. For this reason, managers of firms often assume that economic pressures are always so pressing

that it is necessary to conduct a near-continuous search for cheaper, more flexible and productive ways of using employees. In some cases, this has led to the adoption of 'flexible firm' techniques, such as core and periphery labour strategies (Atkinson and Meager, 1986). For similar reasons, there has also been an increased use of temporary and atypical workforces, many of which have been sourced from external agency contractors but work alongside (core) employees in an organisation. These factors help explain why the boundaries between an employer and employee have become increasingly blurred and fragmented. One effect has been the displacement of what used to be more secure employment, as jobs are outsourced to an external agency firm, which has led to growing concerns regarding worker vulnerability (Pollert and Charlwood, 2009) and consequences for employment levels in Britain as production facilities are moved to cheaper overseas markets.

The *socio-ideological context* of the environment is broadly reflective of the behavioural and cultural norms of Great Britain, and so far as this is concerned, British employers and managers retain many of their unitarist ideologies. In addition, many organisations are now small businesses, in which owner-managers have their own preferred styles of managing that are based on very informal practices. Even though the anti-union repressiveness of the 1980s and early 1990s has diminished, there is still a strong attempt by many managers to safeguard their perceived prerogatives. In these firms, management is still probably confident enough to feel that it retains the upper hand in pushing through changes in work organisation, and even where employers and managers are tolerant of trade unions, it may well be because they feel that they can, if they wish, engage in union substitution and/or union suppression strategies at some other time.

The *technological context*, which reflects the choices that firms make about the technology that they use, has always been a highly influential factor. It can destroy some jobs and create others, and makes some work infinitely more controllable than before. New technology has been used to streamline work organisation, increase productivity and cut costs, while also providing managers with additional tools for job control and employee surveillance (Baldry, 2003). Since managers tend to regard the 'right to control' as one of their most sacred prerogatives (Findlay and McKinlay, 2003), the ability to do this has probably been welcomed with open arms. Moreover, new technology has facilitated the development of human resource information systems (HRISs), which has prompted a resurgence in the use of Taylorist scientific management techniques (Warhurst and Thompson, 1998).

The influences on trade unions and other collective employee associations

Trade unions and other employee collectives have been strongly affected by changes in the *economic* environment. There has been a dramatic fall in the size of manufacturing industry and whole swathes of the public services have disappeared, largely through job outsourcing and privatisation. The net result is that, by 2008, trade unions were left with approximately 6 million fewer members than they had two decades before (Barrett, 2009: 11). Both manufacturing and public services were strongholds of trade unionism, and so far it has proved near impossible for unions to recoup their membership losses. To some extent this has been a dispiriting experience for trade unions and left them running just to stand still. What has made things worse, however, is that some of these workers have now been forced to migrate to smaller, private sector organisations, in which there are no prior traditions of unionisation. One effect is that large sections of the British workforce are classified as 'never-members'; that is, a new generation of employees who have never experienced a unionised employment relationship (Metcalf, 2005). In addition to this, the workforce has become highly feminised across the last two decades, and since many of these

women are in service sector jobs that are low paid and low skilled, it is harder for unions to attract them into membership because of the fragmented nature of their jobs.

There has also been an important impact from the broader *socio-ideological context*. It is possible that part of the decline in trade union membership is attributable to a loss of endearment to trade unions, or because of a shift towards an individualistic ethos on the part of the working population of Great Britain (Phelps Brown, 1990). Nobody completely knows the truth of this, but it is known that the number of trade union representatives at workplace level now tends to be much lower than before, and many work-related concerns are often championed by other civil society organisations such as the Citizens Advice Bureaux or local community-union groups because of a permanent union absence in many workplaces (Abbot, 2004; Holgate and Wills, 2007). Thus, apart from the public sector, the highly collectivised employment relations common in earlier years is now confined to large organisations, and a great deal of the employment relations in the country is handled in small, non-unionised companies (Dundon and Wilkinson, 2009). From what we know of non-union companies, there is often a strong tendency for managers to protect what they see as their legitimate managerial prerogatives (Gollan, 2007). Therefore, although managers will sometimes consult employees, many try to avoid negotiating, which again makes it hard for a collective body to make inroads and recruit new members.

So far as the *technological context* is concerned, trade unions have responded and adapted to the effects of new technology on their members' jobs from as far back as the late nineteenth century. In the 1960s, for example, when new technologies led to a decline in manufacturing jobs, trade unions were very much occupied in dealing with the effects on employment and terms and conditions. Later, when management embarked on its numerous searches for more flexible, innovative and productive ways of working, the introduction of another wave of new technology found trade unions negotiating on these matters. For unions themselves, technology has enabled them to campaign on behalf of their members in different ways – for example, using the Internet to establish international solidarity alliances, or simply responding to member concerns more effectively through email communications.

The influences on the State

As will be seen shortly, the State is not so much a recipient of influences, but an entity that can have an impact both on the environment, via laws and policies, and also on the other parties in employment relations, such as managers and unions. There is an exception to this, because the British government is heavily influenced by the European Union. However, as European law has to pass through the British parliamentary system, the EU can conveniently be treated as part of the State. In addition, there are other influences of which the State in Great Britain needs to take account, and some of these originate in the contexts of employment relations.

As was noted in Chapter 6, irrespective of the political party that forms the government of the day, the State is often preoccupied with trying to achieve a number of broad economic and social policy objectives. Underpinning these objectives, political parties have their own distinct philosophies and ideologies, which reflect their employment relations priorities and aims for the nature of wider society. The *economic context* tends to set limits on the extent to which these are achievable, and for this reason, the State has to organise its priorities according to domestic and global economic pressures. One way that it can do this is to influence the economy and labour market, through taxation policies, unemployment benefits or even by partially nationalising some banks as a form of government-sponsored bail-out (e.g. Royal Bank of Scotland).

However, the *political* system in Great Britain is such that no party can govern unless it has a majority in Parliament and, to achieve this, it needs to appeal to the widest possible public constituency. Arguably, it was for this reason that the policies of New Labour, elected in 1997, were much more business-friendly than those of earlier Labour governments. This was dubbed the ‘Third Way agenda’, and while it set aside the economic dogma of previous (Conservative) administrations, it stopped short of a return to former (old) Labour Party values. Thus the promise of ‘fairness but not favours’ in relation to the trade union movement was in many ways the presentation of a new economic and social agenda, designed almost exclusively to get elected at all costs after two decades in the political wilderness. Although it might seem cynical to portray matters in this way, the Labour Party felt the need to realign itself more closely with the mainstream *socio-ideological* values of the vast majority of working people: namely, the electorate. In short, therefore, like any astute newspaper it listened to its readership, and reflected the readership’s own values back as being synonymous with the aims of New Labour.

The effects of the State

The influences on employers and managers

Employment relations in Great Britain are now influenced by government legislation to a much greater extent than ever before, and the State has become what is probably the most influential of all the parties in employment relations. Not only does it constrain the freedom of managers and unions to regulate the details of the employment relationship, but the rules of the game are now also set out in more highly detailed and prescribed ways. Over the past quarter-century, State intervention has influenced employers and managers in two main waves.

First, much of the legislation enacted by Conservative governments between 1979 and 1997 was aimed at curbing trade union activities, and shifting the balance of power firmly towards employers (Ackers et al, 1996; McIlroy, 1995). This wave of intervention gave a very strong signal to employers that, in the government’s eyes, managers should legitimately hold the upper hand in employment relations, and that, henceforth, non-unionism would be the preferred form of employment relations. Although this was by no means sufficient to turn all employers into anti-union managers, it engendered a greater degree of confidence in themselves as managers, able to alter the employment relationship into something that was more favourable to the employer. Included in this was the use of strategies to either marginalise unions, or substitute and suppress union representation completely.

The second wave occurred shortly after the election of the Labour government in 1997, at which point State intervention took on a new emphasis. Not only did it seek to promote social justice for many disenfranchised employees, but it combined this with a distinctly ‘business-friendly’ economic agenda (Metcalf, 1999). There was also strong support for a European-style social model, and employers had to accommodate a whole raft of individual employment rights. However, and to the disappointment of trade unions, the State was noticeably silent about the repeal of the anti-union laws of the previous (Conservative) administration (Wood et al, 2003). For some commentators, therefore, the influence of the State under New Labour appeared to be a watered-down extension of Conservative policies under another name, and as such, maintained a high degree of managerial freedom and power (Callanicos, 2001). Nevertheless, for others, it meant that the actions and behaviours of employers were now regulated to a greater extent by legislation than by voluntary bargaining, thereby restraining managerial actions and protecting employees (Ewing, 2003).

Where, then, does this leave employers and managers in terms of being under the influence of the State? Because this influence is exerted through legislation, managers have little choice but to comply. However, they probably continue to receive many of the messages that they want to receive, and are probably not unhappy with them. The anti-union legislation passed by the Conservative government is still in place, which leaves managers comparatively free of trade unions, and, although there are provisions for compulsory trade union recognition, this has not resulted in a rise in union membership. Of course, the real world of political life is such that many employers are linked to powerful lobbying organisations that can help ensure that managerial values are incorporated into any proposed legislation. Overall, therefore, employers and managers not only seemed to have retained the things that they wanted from the legislation of a prior era, but during the New Labour period they became willing recipients of further influence from the State.

The influences on trade unions and other collective employee associations

In broad terms, trade unions have always had to bear the brunt of State influence, and as with employers, one of the main sources of influence has been legislation. Even some of the other collective employee associations that were discussed in Chapter 5, such as management-sponsored unions at the AA, have to register with the State, specifically the Certification Officer. However, the main thrust of State influence has produced effects in the opposite direction for unions to those experienced by most employers and managers.

Although the climate for trade unions and their activities was extremely hostile before the election of the Labour government in 1997, since then it has been more positive. Broadly speaking, the State seems to have striven hard to find a new (and possibly slightly modified) place in the world for British trade unions, and if anything typifies this, it is a single piece of legislation. This was the introduction of provisions for statutory trade union recognition in the Employment Relations Act (1999), as explained in Chapters 5 and 6. Although trade unions expressed disappointment with the detail of the recognition legislation, arguing that it did not go far enough and excluded an estimated 8 million people employed in smaller firms (Dickens and Hall, 2003), the legislation appears to have led to a number of new voluntary recognition agreements in organisations that had previously been non-unionised (Gall, 2004). In addition, subsequent legislation led to a new and potentially re-energised role for trade unions. Specifically, the Employment Relations Act (2002) placed the activities of Union Learning Representatives (ULR) on a statutory footing. The Employment Act (2008) strengthens the role of trade unions in areas of dispute resolution, and further prohibits the blacklisting of union activities by employers.

Much the same can be said with respect to another landmark piece of legislation. This was the Information and Consultation Regulations 2004 (ICE), which are described later, in Chapter 9. These reflect State philosophies about ensuring that all employees, regardless of union recognition, are informed and consulted by the management of an employing organisation. To one author, at least, this is an important step that might ultimately turn out to be as significant as the right not to be unfairly dismissed or discriminated against in employment (Sisson, 2002).

Overall, although the State now exerts just as much influence on trade unions as ever, the philosophy underpinning it is now considerably less antagonistic towards unions than before. While they by no means get their own way about everything, trade unions probably benefited considerably from the New Labour regime. Perhaps as important, and in line with the spirit of consultation promoted in other areas, the State is now more willing – in conjunction with employer and manager representatives – to admit trade unions into a dialogue about future legislation.

It is worth noting that both trade unions and management are perfectly capable of exerting (or at least attempting to exert) a modicum of influence on the State in return. For example, the British TUC is a member of the European Trade Union Confederation (ETUC), which promotes and co-ordinates the interests of trade unions in Europe. At a European level, the ETUC, in conjunction with its employers' counterpart, the Union of Industrial and Employers Confederations of Europe (UNICE), can come together to negotiate a framework agreement. Once adopted by the European Council of Ministers, the agreement can substitute for legislation, and ultimately become part of the regulations that apply in Great Britain.

The effects of trade unions on management and employers

The influences that trade unions can exert on managers and employers can be many and varied. Indeed, it is not so much a case of trade unions seeking to exert influence, but that this is their *raison d'être* for existence. They influence wages, working conditions, health and safety, discipline and grievance, and also seek to improve the general well-being of people in employment. Similarly, although managers have many other things to attend to in their respective organisations, they too seek to influence the actions of trade unions, which can sometimes include the design of policies and practices that try to avoid having to deal with unions.

The processes and procedures through which these influences are exerted are covered in subsequent chapters of the book, and since each one of them can be a complex story in its own right, space precludes covering them here. Nevertheless, it is worth noting that, even if a firm does not recognise a trade union, there is a silent implication that a union will some day seek recognition, and this in itself can be a source of influence that leads to a range of manoeuvres to try and stay union-free. Indeed, even if a firm recognises a trade union and is willing to allow it to exert influence, this influence is likely to be limited. This will be explained in more detail in Chapter 11, when the concept of a 'frontier of control' is explained. In basic terms, this sets boundaries on the freedom of action that management and trade unions can exercise in the employment relationship, and this will show that the nature of the struggle between the two main protagonists in employment relations can take on a very dynamic, fluid and rapidly shifting character.

Further reading

- Brown, W., A. Bryson, J. Forth and K. Whitfield (eds) (2009) *The Evolution of the Modern Workplace*, Cambridge University Press, Cambridge. An edited collection of chapters which provide analyses of the changes in work and employment over 30 years of WERS findings.
- Dundon, T. and D.J. Rollinson (2004) *Employment Relations in Non-union Firms*, Routledge, London. As the title suggests, the book reports on a research study that explores employment relations in non-union firms. Among other things, it provides a detailed picture of management styles in non-union firms, which illustrates the wide variety of styles that exist.
- Hyman, R. (2001) *Understanding European Trade Unionism: Between Market, Class and Society*, Sage, London. A very thoughtful and articulate review of different union functions and purposes. Chapter 5 is well worth a read on the history and current identity crisis of British trade unions.
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