

INDUSTRIAL RELATIONS LAW IN THE UK

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Cambridge – Antwerp – Portland

Intersentia Publishing Ltd.
Trinity House | Cambridge Business Park | Cowley Road
Cambridge | CB4 0WZ | United Kingdom
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Distribution for the UK:
Hart Publishing Ltd.
16C Worcester Place
Oxford OX1 2JW
UK
Tel.: +44 1865 517 530
Email: mail@hartpub.co.uk

Distribution for the USA and Canada:
International Specialized Book Services
920 NE 58th Ave. Suite 300
Portland, OR 97213
USA
Tel.: +1 800 944 6190 (toll free)
Email: info@isbs.com

Distribution for Austria:
Neuer Wissenschaftlicher Verlag
Argentinierstraße 42/6
1040 Wien
Austria
Tel.: +43 1 535 61 03 24
Email: office@nvw.at

Distribution for other countries:
Intersentia Publishing nv
Groenstraat 31
2640 Mortsel
Belgium
Tel.: +32 3 680 15 50
Email: mail@intersentia.be

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© 2012 Intersentia
Cambridge – Antwerp – Portland
www.intersentia.com | www.intersentia.co.uk

ISBN 978-90-5095-959-9
NUR 828

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

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PREFACE

'Industrial Relations' is not a phrase that is often used today. It may appear to be something of the past, reminiscent of times when trade unions were strong and significantly influential. It corresponds to an era where employment relations were primarily 'regulated' or determined by collective actors, on a national, sectoral or plant level. In those times, law played a relatively minor role and it was regarded by the relevant actors as unnecessary. The Industrial Relations Act 1971 was a first attempt to regulate the industrial actors comprehensively. Yet, it was unsuccessful as unions did not cooperate with what the legal framework required. Referring to 'industrial relations law' was perhaps very pertinent under the successive Conservative governments of the 1980s and the 1990s as trade unions became subject to a raft of measures designed to limit their powers and influence. Is industrial relations law still relevant today? While the title of this book was chosen by the author of the Belgian volume who had started commissioning a series of manuscripts on this subject,¹ it appears very pertinent to consider this area of law at a time when the concept of industrial relations is at a crossroads. In this book, industrial relations law is understood broadly as covering the law applicable to collective actors.² These are primarily trade unions and the book therefore follows a relatively traditional approach of considering the relationship between trade unions and employers and between trade unions and their members. However, two factors make it important to re-consider the traditional approach and to take a slightly different view on industrial relations. Firstly, the strength of the unions seems to be consistently declining as membership decreases and the coverage of collective bargaining diminishes. Secondly, another type of collective voice has emerged. Mainly introduced by European Community (now Union) law, employee representatives can be involved in decision making via information and consultation mechanisms. For this purpose, a dual channel of representation was created and non-union representation is increasing. This picture is explained by a number of factors ranging from economic developments to political and regulatory choices. The outcome is a worrying yet potentially interesting future. The negative assessment

¹ M. RIGAUX and P. HUMBLET, *Belgian Industrial Relations Law*, Intersentia EWL, Antwerp 2005.

² Although it is rightfully more largely defined as an area of social relations and an academic subject that analyses the world of work in L. CLARKE, E. DONNELLY, R. HYMAN, J. KELLY, S. MCKAY and S. MOORE, 'What's the Point of Industrial Relations?' (2011) 27 *International Journal of Comparative Labour Law and Industrial Relations* 239.

results from the lack of legal initiatives that would truly reform and invigorate the traditional role and functions of trade unions (collective bargaining and industrial action), despite constant criticism by transnational bodies that uphold human rights and fundamental freedoms. The positive outlook is inspired by the potential that instruments such as the Information and Consultation of Employees Regulations can create for trade unions and non-trade union representatives. These topics have been considered through six chapters. Firstly, 'Industrial Relations and the Law' looks at the current picture created by successive governmental policies. Actors and the tools available to them to exercise their roles are examined, highlighting new functions and how the law is dealing with the category of non-union representatives. The second chapter tackles freedom of association and how governments seem to have taken very little notice of its application in the UK. Thirdly, the trade union's principal function of collective bargaining is analysed, assessing the legacy of the statutory recognition procedure. In the fourth chapter, relationships between members and their unions are examined, demonstrating that internal union affairs have been unduly interfered with by the law. The subject of industrial action follows in the fifth chapter. Finally, chapter 6 considers the statutory obligation to inform and consult workers via representatives.

Many people have helped with the production of this book. Firstly, we are most grateful to Intersentia and Tom Scheirs and Ann-Christin Maak in particular, for their patience and understanding. Pascale thanks her co-author Tonia Novitz for agreeing to work with her and for her extraordinary assistance and input during the long life of this project. Pascale is also thankful to the University of Leicester for granting study leaves to write and complete this book. She benefitted from much support from her colleagues at the law school, with special thanks going to Mark Bell and David Antill. Working with the University College Union (UCU) on a local level has also contributed to some of Pascale's reflections. Thanks go to Sue Davis and Julie Cooper for their insight. Finally, on a personal level, writing this book would not have been possible without an incredibly supportive family. Pascale *remercie chaleureusement ses parents*. She also dedicates this book to Oliver Woolhouse and to Theo and Hugo Woolhouse-Lorber who are always a great source of joy. Tonia likewise owes many thanks to her co-author for including her in this exciting project. She owes thanks to the University of Bristol for study leave which has helped to complete this book. She has benefitted tremendously from the assistance of colleagues there and institutions elsewhere, especially Charlotte Villiers, Lydia Hayes, Alan Bogg, and Shae McCrystal. As always, Tonia thanks Phil Syrpis for his ongoing support and is very grateful to Alex and Kris Syrpis for their continued ability to distract her from the world of work.

Pascale Lorber and Tonia Novitz, March 2012

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LIST OF ABBREVIATIONS

ACAS	Advisory, Conciliation and Arbitration Service
BIS	Department for Business, Innovation and Skills
BJIR	British Journal of Industrial Relations
CAC	Central Arbitration Committee
CBI	Confederation of British Industry
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CFA	ILO Governing Body Committee on Freedom of Association
CJEU	Court of Justice of the European Union (used for all cases including for those decided prior to the change of name from European Court of Justice to the current CJEU)
CO	Certification Officer
EA	Employment Act
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECR	European Court Reports
EPA	Employment Protection Act
ERA	Employment Rights Act
ERelA	Employment Relations Act
ESC	European Social Charter
ETUC	European Trade Union Confederation
EU	European Union
EUCFR	European Union Charter of Fundamental Rights
EWC	European Works Council
FTER	Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations
HRA	Human Rights Act
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICER	Information and Consultation of Employees Regulations
ICESCR	International Covenant on Economic, Social and Cultural Rights
IJLLIR	International Journal of Comparative Labour Law and Industrial Relations
ILO	International Labour Organisation
ILJ	Industrial Law Journal

IRA	Industrial Relations Act
IRJ	Industrial Relations Journal
IRLR	Industrial Relations Law Reports
MLR	Modern Law Review
SI	Statutory Instrument
TUC	Trades Union Congress
TICER	Transnational Information and Consultation of Employees Regulations
TULRCA	Trade Union and Labour Relations (Consolidation) Act
TUPE	Transfer of Undertakings (Protection of Employment) Regulations
UDHR	Universal Declaration on Human Rights
UN	United Nations