INDUSTRIAL RELATIONS LAW IN THE UK
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IN THE UK

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intersentia
Cambridge – Antwerp – Portland
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.

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## CONTENTS

**Preface** ................................................................. v

**List of Abbreviations** .................................................. xi

Chapter 1. Industrial Relations and the Law ................................. 1

1. Introduction – The state of industrial relations ......................... 1
2. Policy history and collective labour law ................................. 2
   2.1. Trade unions and the common law ................................ 3
   2.2. Laissez faire and the Donovan report ........................... 3
   2.3. Conservative v Labour: regulating trade unions affairs and
       activities .............................................................. 4
   2.4. The Coalition agenda ............................................. 7
3. Actors ............................................................................. 9
   3.1. Definitions ............................................................ 10
      3.1.1. Trade unions ..................................................... 10
      3.1.2. Employers' associations ..................................... 11
      3.1.3. Other collective voice ....................................... 11
   3.2. Role of trade unions ................................................ 13
   3.3. Rights and protection of workers' representatives ................. 15
      3.3.1. Time off for duties and activities ........................... 15
      3.3.2. Protection against detriment and dismissal ............... 18
         3.3.2.1. Trade union representatives ............................ 18
         3.3.2.2. Non-union representatives .............................. 22
4. The institutional safeguards ................................................ 23
   4.1. Certification Officer (CO) .......................................... 24
   4.2. Central Arbitration Committee (CAC) ............................ 25
   4.3. The Advisory, Conciliation and Arbitration Service (ACAS) .... 25
5. The future of collective voice .............................................. 26

Chapter 2. Freedom of Association .......................................... 27

1. Introduction ..................................................................... 27
2. Theories of freedom of association ...................................... 30
3. ILO treatment of freedom of association ............................... 35
4. UN instruments .............................................................. 40
   4.1. Universal Declaration of Human Rights 1948 .................... 40
   4.2. 1966 UN Covenants ................................................. 41
Chapter 3. Collective Bargaining

1. Introduction

2. The pre-condition for collective bargaining – recognition of trade unions
   2.1. Voluntary recognition
   2.2. The statutory procedure for recognition
      2.2.1. Conditions for application
      2.2.2. Application to the employer
      2.2.3. Conditions of admissibility of the request
      2.2.4. The bargaining unit
      2.2.5. Deciding on recognition
      2.2.5.1. Automatic recognition
      2.2.5.2. Ballot
      2.2.6. Recognition and collective bargaining

3. The conduct of collective bargaining
   3.1. The duty to disclose information
   3.2. Complaints and remedies

4. The product of collective bargaining – collective agreements
   4.1. Parties and content
   4.2. Status and impact on contracts of employment

5. Conclusion

Chapter 4. Trade Unions and their Members: The Regulation of Internal Affairs

1. Introduction

2. Unions’ rules and the common law
   2.1. Status of the rule book and contract of membership
   2.2. Breach and interpretation of the rules
   2.3. Principles of natural justice
   2.4. Remedies

3. Trade union governance and statutes
   3.1. Disciplinary actions
      3.1.1. Unjustifiable discipline
      3.1.2. Expelling and excluding members
## Contents

3.2. Elections ................................................. 95
3.3. Financial affairs ........................................ 97
3.4. Political activities and political funds ....................... 98
4. Conclusion: trade union internal affairs and the law .......... 101

Chapter 5. Industrial Conflict ..................................... 103
1. Forms of industrial conflict and their motivations .......... 103
2. An introduction to UK regulation of industrial conflict ...... 105
   2.1. The edifice of common law and statute .................. 105
   2.2. The potential relevance of international human rights law ... 107
3. The legal definition of a strike ................................ 110
4. The consequences of industrial action for participants ......... 112
   4.1. Proportionate withdrawal of pay (and disproportionate removal of benefits) .......... 112
   4.2. Dismissal ............................................ 113
5. Consequences of collective action for organisers .......... 116
   5.1. The legitimate aims of industrial action ................. 119
   5.2. Procedural requirements: balloting and notice provisions .. 124
6. The relevance of injunctive relief ................................ 126
7. Looking to the future ....................................... 132

Chapter 6. Collective Representation and Information and Consultation .... 135
1. Introduction ............................................... 135
2. Information and consultation in specific situations .......... 136
   2.1. Collective redundancies .................................. 136
      2.1.1. Timing of information and consultation ............. 137
      2.1.2. The procedural and substantial requirements of the information and consultation obligation ...... 141
      2.1.3. Representatives ...................................... 143
      2.1.4. Enforcement and remedies ........................... 144
      2.1.5. Notification to authorities ........................... 146
      2.2. Transfer of undertakings ................................ 147
         2.2.1. Timing, substance and process ...................... 148
         2.2.2. Remedies ........................................... 149
      2.3. Health and safety ..................................... 150
3. The general obligation to inform and consult employee representatives ... 153
   3.1. Information and consultation in undertakings of more than 50 employees .......... 153
      3.1.1. Scope ............................................. 154
      3.1.2. Establishment and functioning of information and consultation bodies ................................. 155
Industrial Relations Law in the UK

3.1.3. Employee representatives ............................................. 158
3.1.4. Enforcement and remedies ........................................ 160
3.1.5. Assessment .............................................................. 161

3.2. European Works Councils in multinationals ..................... 163
3.2.1. Scope and application of the Regulations ...................... 164
3.2.2. Establishment and functioning of EWCs ...................... 164
3.2.3. Employee representatives ........................................ 167
3.2.4. Enforcement and remedies ....................................... 168
3.2.5. Recast Directive and changes to TICER 1999 ............... 169

4. Conclusion ........................................................................ 171
## LIST OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACAS</td>
<td>Advisory, Conciliation and Arbitration Service</td>
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<tr>
<td>BIS</td>
<td>Department for Business, Innovation and Skills</td>
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<td>BJIR</td>
<td>British Journal of Industrial Relations</td>
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<tr>
<td>CAC</td>
<td>Central Arbitration Committee</td>
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<td>CBI</td>
<td>Confederation of British Industry</td>
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<tr>
<td>CEACR</td>
<td>ILO Committee of Experts on the Application of Conventions and Recommendations</td>
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<tr>
<td>CFA</td>
<td>ILO Governing Body Committee on Freedom of Association</td>
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<tr>
<td>CJEU</td>
<td>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)</td>
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<td>CO</td>
<td>Certification Officer</td>
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<td>EA</td>
<td>Employment Act</td>
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<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<td>ECHR</td>
<td>European Court of Human Rights</td>
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<td>ECR</td>
<td>European Court Reports</td>
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<td>EPA</td>
<td>Employment Protection Act</td>
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<td>Employment Rights Act</td>
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<td>ERelA</td>
<td>Employment Relations Act</td>
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<td>ESC</td>
<td>European Social Charter</td>
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<td>ETUC</td>
<td>European Trade Union Confederation</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUCFR</td>
<td>European Union Charter of Fundamental Rights</td>
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<td>EWC</td>
<td>European Works Council</td>
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<td>FTER</td>
<td>Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations</td>
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<td>Human Rights Act</td>
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<td>Human Rights Committee</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICER</td>
<td>Information and Consultation of Employees Regulations</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<tr>
<td>IJCLLR</td>
<td>International Journal of Comparative Labour Law and Industrial Relations</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>ILJ</td>
<td>Industrial Law Journal</td>
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<td>Acronym</td>
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<td>IRA</td>
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<td>MLR</td>
<td>Modern Law Review</td>
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<td>Statutory Instrument</td>
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<td>Trades Union Congress</td>
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<td>TICER</td>
<td>Transnational Information and Consultation of Employees Regulations</td>
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<td>Trade Union and Labour Relations (Consolidation) Act</td>
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<tr>
<td>TUPE</td>
<td>Transfer of Undertakings (Protection of Employment) Regulations</td>
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<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<td>United Nations</td>
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