Chapter 6

The Role of the State in Employment Relations

What the Chapter Covers

This chapter covers the final actor in employment relations, the State, and the material is presented in the following order:

• First, the State is defined.
• Second, the way the State has intervened in employment relations is explained, and this includes the changing character of legal intervention in Great Britain.
• Third, how different types of laws affect one or more of the parties to an employment relationship is considered.
• Finally, how the law and the legal institutions operate in Britain is reviewed.

The chapter contains four themes concerning the role of the State in British employment relations:

1. While Great Britain is traditionally characterised as having a voluntarist system of employment relations, the scope of State intervention has put limits on the actions of managers, unions and employees.
2. The law is not neutral, and therefore the political and ideological perspectives of government are important. Therefore the law can be based on political beliefs about which party should hold the balance of power in the employment relationship, and this is even more significant given the Conservative-Liberal coalition government.
3. How the law operates in practice, including the role of European legislation and the key British legal institutions is another important theme of the chapter.
New Concepts Introduced in Chapter

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

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

Civil law: deals with the rights of private citizens and their conduct towards each other.

Common law: laws that arise from legal decisions made in a court of law or an employment tribunal.

Conciliation: advice and assistance to help resolve a collective or individual dispute.

Corporatism: centralised state control of economic activity that results in relatively weak trade unions.

Criminal case: a legal prosecution brought to either the magistrates or crown courts by an agency of the State, such as the police or one of the various employment relations commissions.

Criminal law: deals with unlawful acts that are offences against the public at large.

Economic manager (the State): macro-economic policies of the State which affect labour market demand, employment and effective manpower utilisation.

Employer in its own right (the State): by virtue of its role as an employer, the State can set the standards of responsible employment practice.

Employment appeals tribunal: a higher legal court that deals with appeals from employment tribunals.

Employment tribunal: a legal court that adjudicates on employment law cases.

European law: directives and regulations passed by the European parliament, which are then transposed into British statute law.

Incomes regulator (the State): the State can control prices and wages, either through direct intervention or in its management of the economy.

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.
**Labour decommodification:** the extent of welfare protection so employees are not wholly dependent upon employers for survival

**Liberal collectivism:** a situation in which the interests of strong and autonomous trade unions and employers become legitimised via State intervention through limited legislative frameworks

**Market individualism:** a situation that often results in weak trade unions because laissez fair economic philosophies of the State support ruling class interests.

**Mediation:** a process in which the mediator recommends a potential solution to a dispute for the parties to consider.

**Monetarism:** a 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 curbed by the State.

**National minimum wage:** a statutory minimum rate of pay for all workers and trainees in Britain.

**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.

**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):** by enacting legislation the State can establish 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.

**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

**Supply-side (economics):** a set of macroeconomic policies designed to eradicate presumed market constraints in managing prices, income, employment and economic growth.

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

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.
Teaching Materials in Textbook

Pause for Reflection Exercises: Hints for Completing

Exercise on page 168: High or low interventionist stance by British government
Think of some obvious employment laws, and ask how these fit with the notion of voluntarist employment relations considered in Chapter 2.

Exercise on page 185: Defining sources of employment law
Think about the different ways the law deals with: private citizens, workers, decisions made by a judge in a court, and laws passed by parliament.

Exercise on page 189: Laws regulating the employment relationship
In tackling this question, you are being asked to apply ‘actual’ laws to the framework for categorizing legislation given in Figure 6.2. You will need to look through the examples given in Tables 6.1, 6.2 and 6.3 in the chapter.

Exercise on page 191: Functions of conciliation, mediation and arbitration
Each of the different functions of ACAS is very different, and each has a different purpose in employment relations.

Critical Discussion Questions: Hints for Completing
As with the Pause for Reflection Exercises, the Critical Discussion Questions are help you discuss competing ideas with co-students.

Exercise on page 139: Difference or similarities between current and previous government approaches to State intervention.
In tackling this question, think about the approach what was different (or similar) to the underlying approach and philosophy between the previous labour government and former conservative governments. How did they differ with regard to European regulations, for example? Is there any further change is the Conservative-Liberal coalition government was elected in 2010?
Case Studies: Hints for Completing
There is one case study in the textbook chapter, and an additional supplementary case study later in this student web-site resource.

CASE 6.1: The Changing contours of the role of the State
This case is not exceptionally long and provides extracts of different State roles, some of which are from other countries to give an international or comparative view. You might want to consider a scheme to answer the questions, such as that covered in Figure 6.1 in the Chapter by Crouch, or by considering a range of broader factors that may influence government policy and action concerning employment relations intervention.

Exhibits
There are three Exhibits in this chapter:

Exhibit 6.1: Contradictory TUPE legal interpretations
This Exhibit (page 186) illustrates the variability in the way the courts can interpret and re-interpret legislation that results in different outcomes and impacts workers in different ways.

Exhibit 6.2: The meanings of a trade dispute (the ‘Golden Formula’)
On page 188 Exhibit 6.2 shows the conditions that have to be met for a trade union to qualify for legal immunity from inducing a breach of contract when pursuing a trade dispute (otherwise known as the Golden Formula), as contained in Section 219(1)a of the Trade Union and Labour Relations (Consolidation) Act 1992.

Exhibit 6.3: Equality and Human Rights Commission interventions
This Exhibit (page 193) describes the role of the Equality and Human Rights Commission, with examples of specific case interventions.
Supplementary Case Study

Case 6.2: A time for radical change?

You are the recently appointed Human Resources Manager of Peak Electronics, a small media and technology company that provides a range of information and communication technology (ICT) services to other organisations. The company specialise in the design and technical support for internet and intranet software products, many of which incorporate technological security systems. Peak Electronics started in 1999 by five friends, who between them had specialist knowledge in information technology and technical engineering. Shortly after they all graduated from university, they spotted a niche in the ICT market and created Peak Electronics. In its first few years the company was particularly successful in attracting business from the growth in outsourcing activities among public sector organisations. Today its client base includes many well-known private sector companies and public sector organisations, such as the NHS, London Metropolitan Police, the Inland Revenue, several major High St Banks and multinational companies with sites in Britain.

From its inception employment relations at Peak Electronics have been very informal and relaxed. All of the five owners are personal friends, and they started a business venture in what amounted to their personal interests and hobbies. In its first year, clerical and admin support was ‘drafted-in’ from amongst family and friends, often working long hours as the company was in its start-up phase. As the company grew, two of the owners’ sisters were employed on a permanent basis as clerical assistants when they left school, and another owner’s aunty is now the full-time general office manager. The use of a network of family and friends has remained the main source for recruiting new staff.

Peak Electronics now employs 64 people and has an annual turnover of several million. Pay is generous and the working conditions are reasonably pleasant. The owners set pay unilaterally for each individual employee. The rate of pay is based on the owners’ evaluation of an individual employee’s performance over the previous year (e.g. in terms of commitment, loyalty, client satisfaction, performance and profit, and technical expertise). Overall, the owners have never felt the need to have any formal policies or procedures, as everyone in Peak Electronics are all friends and all work for the good of the client. What formality does exist is a very short one page contract of employment which employees sign on their first day, and which was drafted by the owners in the early days of the company. Indeed, one owner remarked that personnel management is just another term for common sense.

Despite the appearance of a friendly and informal employment relationship, a number of tensions have been developing in the company. First, despite generous pay and benefits, some technical consultants have started to complain that they are working excessively long hours, and without any extra pay. Indeed, on one occasion a team worked for three consecutive days and nights to meet a client deadline. Furthermore, the relationship between one of Peak Electronics major client’s and the consultant team seems to be getting worse. The technical consultants on this particular project (which is due to run for another 2 years) are concerned that managers in the client organisation are issuing them with rules and procedures. For example, they have been asked to
attend the induction for new employees of the client organisation, and have been asked to make any requests for annual leave to management in the client company and not to the office manager of Peak Electronics.

Second, some of the clerical and admin staff have been muttering concern they never seem to see any of the fringe benefits as they are always office-based, and therefore not directly linked to a client project. Of the 14 clerical employees (all women), 10 of them work part-time as they have family responsibilities, and they now feel that their part-time status means they are treated as second-class citizens.

Third, a married couple who work at Peak Electronics (a clerical assistant and technical consultant) are expecting their first baby, and have asked for time off together. However, the office manager feels that the company cannot support releasing the two of them at the same time, especially the technician who is a key specialist on an important client project.

Finally, the MD of Peak Electronics recently received a letter explaining that a former part-time clerical employee is taking the company to an employment tribunal to claim unfair dismissal. The employee was dismissed for what the office manager described as excessive and unauthorised leave over a period of 6 months. While Peak Electronics tried to help the employee with support and some time-off to deal with family and childcare issues, the office manager eventually felt that matters were getting worse and not better, and therefore felt they had no alternative but to terminate the person’s employment.

Given the above information the owners have come to realise that employment relations matters are perhaps a little more complicated than just relying on common sense, and have therefore appointed you as the HR Manager. Accordingly, the MD has asked you to make a presentation to the owners, highlighting the following:

1) A general overview of the current legal situation for employment relations in Britain.

2) What internal employment relations policies and procedures should Peak Electronics consider introducing or changing, and what implications will these have on the company’s informal approach.

What will you say in your presentation?
Useful Sources of Additional Material

Books and Journal Articles


Wedderburn, Lord. (1986) *The Worker and the Law, 3rd Edition*, 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.

**Web-based Materials**

Below are a number of potentially useful websites that provide information about government policy and legislation.

http://www.berr.gov.uk/whatwedo/employment/index.html
Department for Business Innovation and Skills (BIS), which includes plenty of data and information concerning public policy and legislation in the area of employment relations.

http://www.acas.org.uk/
The Arbitration, Conciliation and Advisory Service (ACAS) web site provides many useful reports and codes of practices on almost all areas related to employment relations and labour law in Britain.

http://www.cac.gov.uk/
The Central Arbitration Committee (CAC) is an independent body of the State with the statutory powers to adjudicate on matters relating to trade union recognition and information and consultation rights. Its web site reports on such adjudications.

http://www.equalityhumanrights.com/
The Equality and Human Rights Commission (EHRC). The web site provides information on the Commission’s mission, its strategy, advice and areas of good practices. It also includes some information on case reports.

http://www.employmenttribunals.gov.uk/
The Employment Tribunal service web site contains resources and publications relating legal applications and the types of issues it can resolve.

http://www.lowpay.gov.uk/
The Low Pay Commission (LPC) web site provides research and publications relating to changing in and the impact of the national minimum wage in Britain.

http://www.lrc.ie/docs/Welcome/4.htm
The Labour Relations Commission (LRC) is the statutory body for employment relations matters for the Republic of Ireland, similar to ACAS in Britain. Its web site contains other useful links, publications and legal guidance on employment relations matters for Ireland.
Multiple Choice Questions

Try the following multiple choice questions to test your knowledge of the information in Chapter 6. You should note that each question has only one correct answer, and this is one of the four alternatives (a), (b), (c) or (d) listed below the question. When you have answered the questions, move to the grid at the end of this chapter to see the correct answers.

This activity contains 12 questions

1. An Employment Tribunal is:
   a. A legal court that adjudicates on employment relations cases
   b. An independent State body to help resolve disputes between the parties to an employment relationship.
   c. A higher legal court that has the power to rule on decisions taken in lower British courts.
   d. An employment relations conciliation service which has the power to enforce statutory laws.

2. In employment relations the task of defining the State can be difficult for which of the following reasons?
   a. It embraces so many different institutions and government departments
   b. Because the elected government of the day can change after a General Election
   c. The role of the State is determined by civil servants rather than politicians
   d. The laws enacted in Britain are now all made at a European level

3. In general terms, which of the following can be described as a broad objective of the State?
   a. To maintain high levels of employment
   b. To ensure price stability
   c. To maintain a balance of payment surplus
   d. All of the above

4. A government which pursues a monetarist economic approach can be defined by which of the following characteristics?
   a. Belief that free market forces are the most efficient way to control inflation
   b. That trade unions are a supply-side constraint on the efficient operation of the market.
   c. Privatising public sector services and industries will stimulate greater competition and growth in private sector jobs
   d. All of the above.
5. The concept of ‘social citizenship’ can be influenced by the State because of which of the following ideas?

a. To force a private sector employer to act responsibly for the good of the environment
b. To ensure that goods and services are based on fair-trade principles.
c. To ensure legislation and policy reflects the same principles of wider political democracy at the workplace level.
d. To pass laws to protect the health and safety of all members of society, regardless of whether they are workers or not.

6. The *Transfer of Undertakings (Protection of Employment) Regulations (TUPE)* seeks to do what?

a. Protect union membership and union facilities when two or more companies merge.
b. Regulate the working hours of employees when they start a new job with a new employer.
c. Safeguard the rights and working conditions of employees should their employer merge or change ownership.
d. All of the above.

7. According to Kahn-Freund (1965), legislation passed by the State fulfils which of the following functions?

a. To encourage good employment relations among businesses
b. To enforce sanctions that can be taken against employers who ignore laws and rules established by the State
c. To establish minimum standards for all citizens in the country
d. All of the above.

8. In Britain, a Conservative government would tend to see the role of the State in terms of:

a. Providing stable and long-term employment security for British workers
b. Protecting British jobs and British industry from foreign competition
c. Promoting free enterprise and supporting private business
d. Managing the economy by agreeing incomes policies with business leaders and trade unions.

9. *Statute laws* can be defined by which of the following statements

a. Laws made by judges in a higher court of law
b. Legislation that is passed by parliament and has received royal assent.
c. Legislation that deals with unlawful civil acts committed against workers.
d. All of the above.
10. According to Crouch (1982), the changing role of the State can be explained by which of the following variables?
   a. The relationship between micro and macro economic policies of the State
   b. Changing social values and union membership levels
   c. Dominant political ideologies and strong independent trade unions
   d. All of the above.

11. A legitimate and legal trade dispute is defined as which of the following?
   a. Action that is taken in contemplation or furtherance of a trade dispute between workers and their employing organisation, and which relates wholly or mainly to the employees’ terms and conditions of employment.
   b. Industrial action that is taken in contemplation of securing a closed shop union agreement between workers and the employing organisation.
   c. Action that is short of a strike and is taken in opposition to government plans to privatise public services.
   d. Strike action taken with the support of all affected employees by a show of hands in support of a dismissed union member.

12. A level of State intervention characterised as ‘Bargained Corporatism’ would include which of the following features?
   a. A strong interventionist belief by the State, which includes the creation of tripartite consultative bodies to help manage the economy
   b. A moderate but begrudging interventionist approach, which the State adopts only because of the power of strong trade unions
   c. A highly centralised strategy to control economic activity because trade unions are weak and ineffective.
   d. A minimalist intervention approach by the State as a way to encourage the parties to bargain voluntarily without the need for extensive labour laws.
# Answers to Multiple Choice Questions

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