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Centre for Labour, Employment and Work

UK and European governments take different approaches to employment relations

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Although the viability of collective bargaining rests primarily on the autonomy of trade unions and employer organisations, government can and frequently does alter its rules. This is perhaps most true in parliamentary systems of government, in which the executive branch derives its legitimacy from and is accountable to the legislative branch, Parliament. In the UK, for instance, as in New Zealand, labour law seems to be a constantly moving feast, shifting along with the tides of electoral politics. Changes enacted to the UK's employment laws in recent years under David Cameron's Conservative Government include extending the qualifying period for unfair dismissal claims from 1 year to 2 years employment with the employer; dramatically increasing the fee required to commence proceedings in an Employment Tribunal, a public body with statutory jurisdiction to hear disputes between employers and employees; and, cutting the number of workplace visits made by health inspectors.

Last month, the UK Government's Trade Union Bill, which promises to bring sweeping changes to the country's collective bargaining regime, had its Second Reading in Parliament. Among other things, the Bill includes plans to:

- introduce a 50 percent turnout requirement for industrial action ballots, and – for "important public sector services", including the health service – require at least 40% of all eligible members to vote in favour of action;
- lift the ban on using agency workers to replace permanent staff during strikes; and
- stop union subscriptions being collected straight from members' salaries.

The Bill, due to become law in the northern summer, would also impose several new restrictions on strikers in the UK. Trade unions will be required to appoint a picket supervisor, who must wear a badge, armband or other item that readily identifies the picket supervisor as such, and supply that supervisor with a letter of authorisation, which the supervisor must show to a police constable or to any other person who reasonably asks to see it. Failure to comply with any of these obligations will mean that the union loses legal protection for the picketing, that an injunction can be granted to stop the picketing, and that damages to cover any losses it causes may subsequently be claimed. Under the Bill as it stands, the government will also be able to limit public sector employees' time devoted to union activities while at work.

Finally, the legislation proposes to change the way trade unionists pay into their union political fund, the only source from which unions can give money to the Labour Party. The changes mean each union member will have to agree in writing every five years to opt into paying the political levy, as opposed to opting out via the current system. The new rules will apply to all 4 million existing political levy

payers in unions affiliated to the Labour Party, and those who are not. The bill gives the unions only three months to get a union member's signature agreeing to the levy payment. The change in the trade union bill would cut the Party's income, both from the drop in annual union affiliation fees and a reduction in the size of grants from the government.

The Bill has been widely criticised by trade union leaders, Labour and Liberal Democrat politicians, as well as by human rights groups, which contend the reforms included in the Bill represent a "major attack on civil liberties". For one, the ILO limits restrictions of the right to strike in essential services to services "the interruption of which would endanger the life, personal safety or health of the whole or part of the population". This would appear to exclude transport services, public transport, port authorities, postal services, public education, and other groups of public service employees.

In addition, the UK already has among the most restrictive strike laws in the European Union, and the rules concerning strike ballots are open to such wide interpretation that employers are prone to seek injunctions for suspected minor infringements. The current law also imposes strict conditions on picketing, including limiting it to at or near the picketer's own place of work and for the purposes of "peacefully obtaining or communicating information or peacefully persuading any person to work or refrain from working."

Yet, following a vigorous campaign against the Bill, trade unions and the TUC won some notable concessions in the House of Commons. Among these, for instance, the Tory government has dropped its proposal to require that unions give notice of their planned public protests and use of social media during the course of labour disputes. Furthermore, a report released last month by the Equality and Human Rights Commission (EHRC), the Conservative government's own human rights watchdog found that by imposing "potentially unlawful" restrictions on the right to strike, the Trade Union Bill may violate the British government's obligations under international human rights treaties.

Collective bargaining and wage-setting in the rest of the EU have also undergone considerable change subsequent to the GFC. Perhaps the most noteworthy these changes is the decentralisation of collective bargaining, in particular in the private sector, in many EU member countries where national and multi-employer bargaining were for many decades the predominant wage-setting mechanisms. This would include France, Italy, Germany and Spain, among others, although this decentralisation has taken various forms – both organised and unorganised – across the EU, and notwithstanding that collective bargaining in Belgium and Finland has recently recentralised. In the 11 EU member states in which the process of wage-setting has now been decentralised, however, agreements concluded at lower levels are typically restricted to making only improvements on the standards established by higher level agreements.

Another major change affecting collective bargaining across the EU has occurred in the public sector and is a consequence of governments in most EU member states embarking on unyielding fiscal austerity programmes to help rid themselves of the deficits they incurred during and in the aftermath of the GFC. EU governments generally responded to the crisis by freezing or even cutting public sector wages, hence declaring an end to wage bargaining with the public sector unions before it had begun. This, in turn, served to minimise those unions' role in public sector governance, thereby limiting their ability to influence those governments' responses to the crisis.

Public sector collective bargaining rights in the EU received a recent boost, though. In particular, before adjourning for the end-of-year holidays, the European Social Dialogue Committee for Central Government Administrations adopted a landmark agreement on information and consultation rights of central government employees in Europe. The agreement was reached following months of discussions between the EU social partners. It sets out a general framework of common minimum standards for the rights of workers and their trade union representatives to be informed and consulted.

Given this agreement, central government employees across the EU will now have input on key workplace issues, including proposed restructurings or changes in working time. The agreement will also allow those workers to propose health and safety or work/life balance improvements. The European Commission is now tasked with turning the agreement into a Directive for adoption in the European Council.