Changes in British strike law and their impact on industrial disputes

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Contents of presentation

- Context of British strike law
- Changes introduced by Conservative government in 2016
- Impact of these changes
The basis of British strike law

- British workers have never had a right to strike
  - Striking is a breach of contract
  - Taff Vale Judgment (1901) made unions liable for loss of profits caused by strike
  - Reversed by Trade Disputes Act (1906)

- This gave workers and unions “immunity” from dismissal and civil claims where action is
  - “in contemplation or furtherance of a trade dispute”
Despite this still have strikes
Changes introduced by Thatcher 1

- Step-by-step limitations on ability to strike
- Immunities were removed from
  - Action to enforce union membership (closed shop)
  - Action in protest at dismissal following earlier unofficial action
  - Secondary action (sympathy strikes)
  - Action to force an employer to impose a recognition agreement (agreement to negotiate with the unions) on suppliers or customers
Changes introduced by Thatcher 2

• Immunities were removed from otherwise legal strike action unless all of the following conditions were met covering:
  – Balloting which
    • must be postal – sent to the home address
    • must state that “if you take part in a strike … you may be in breach of your contract of employment”
    • must only be sent to those being asked to take part in action
    • must have an independent scrutineer
  – Time limits
    • Action must begin within four weeks of the ballot
    • Employers must be given at least 7 days notice of the ballot and at least 7 days notice of the action, indicating the type of workers to be called out
Changes introduced by Thatcher 3

• If workers take action without union approval it is “unofficial” action
  – Union faces threat of civil damages unless it “repudiates” action

• Main mechanism used by employers against “unlawful strikes” is injunction
  – to stop the strike
Continuing protections

• In a lawful dispute (where all conditions have been met) the employer cannot
  – Dismiss strikers during the first 12 weeks of a strike
    • After this they can be dismissed but all must be dismissed (employer cannot pick and choose)
  – Use of agency workers to replace strikers

• But where the strike is unofficial employer can choose which employees to dismiss
All changes in place by 1992 then no change for 24 years

Days lost fluctuate but no sharp increase
But Conservative pressure for change

• During period of Conservative-Liberal Democrat coalition government (2010-15) increasing calls for more restrictions
  – Boris Johnson (then Mayor of London) and facing strikes on underground called on government to:
    “consider a law insisting on a minimum 50% participation in a strike ballot“ (2010)
    “What we need is legislation so that when there is a ballot for strike action... the number of people participating in the ballot, of the relevant workforce, has to exceed 50% of that relevant workforce before you can have a strike“ (2014)

• New law on strikes included in Conservative manifesto
Trade Union Act 2016
key changes

• At least 50% of those entitled to vote must participate in ballot and a majority of those must vote in favour
• In “important public services” at least 50% of those entitled to vote must participate and at least 40% of those entitled to vote, and a majority of those voting, must vote in favour
• Ballot valid only for 6 months (previously no limit)
• Unions must give 14 days notice (previously 7)
• Union must appoint a named “picket supervisor”
  – Individuals picketing where there is no “picket supervisor” lose protection and can be dismissed
• Unions must report annually on union action to Certification Officer
Important public services where 40% threshold applies

• Health services
  – Hospitals and ambulances

• Education of under-17s

• Transport services
  – Bus, rail, underground, air traffic control and ports

• Border security
  – Customs, immigration

• Strikes already forbidden for:
  – Members of armed forces, police, prison officers
Expected implications: by government

• New balloting rules will make it harder to get majorities for strikes and there will be fewer strikes
  – especially in important public services
• Six month limit on validity of ballot will limit union action
• Individuals will be less willing to picket
Experience since March 2017

No overall decline in days lost

- Public sector
- Private sector
Specific examples

• Universities dispute on pensions March – April 2018
  – 68 workplaces were separately balloted
  – 61 had a turnout above 50% (average was 58.3%)
  – All voted in favour of action (average was 88.1%)
  – Led to 14 days of strikes and an improved offer

• Railways Virgin West Coast (RMT) November 2017
  – 1,793 balloted
  – Turnout 81.6%
  – Voting in favour 91.2%
Final thoughts

• Still too early to judge overall impact of legislation

• BUT
  – Clear that unions are able to win votes if they put in effort
  – Likely that 6 month limit on ballot validity means action is concentrated at start of period
  – Not clear what impact of new rules on picketing will be
  – UK still has restrictive strike laws AND interference in union affairs
Thank you for your attention!

• Questions and comments …
Despite this, strikes have taken place

Working days lost 1891-2016 (millions)

Source: Office for National Statistics
Experience so far: since March 2017

No overall decline in days lost

- Public sector
- Private sector

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