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Locating the 2000 Statutory Recognition Procedure

*The employer controls the organisation, the hierarchy, the supervision; and the employer can always put his arguments across.* (McCarthy, 2000)

Until 2000, save for a very brief period in the 1970s (discussed below), there was no statutory system of trade union recognition. Trade unions had rights to represent their members only in so far as an employer was prepared to concede it. This notion of an employer veto over rights to representation is very different from that which applies in most of the Member States of the European Union. In these states the legitimacy of trade unions is acknowledged; either because it is enshrined in the state’s constitution or is embedded in primary legislation which recognises trade unions as key social actors and which therefore grants an automatic right to recognition. The idea that an employer in Italy, Germany or France would have the power to veto the rights of trade unions to represent their members in the workplace is unthinkable, and social dialogue is conducted through the recognised social partners – the trade unions and their counterpart employer organisations. In these countries the employer has no say over the right of a union to represent its members and workers more generally. This apparent weakness in the UK model seems to be at odds with the power and the position which trade unions in the UK have traditionally been viewed as exercising; at least until relatively recently a majority of workers were union members or as a minimum worked under terms and conditions that had been negotiated by a trade union with their employer. At the highpoint of trade union membership in 1975, 58 per cent of all employees were trade union members and more than 70 per cent of all workers were covered by collective bargaining (Machin, 2002).
By 2012, despite more than ten years of the operation of a law, which was supposed to enforce trade union rights to represent their members, union density rates had fallen dramatically, to just 27 per cent of the labour force in 2010. Furthermore, in the private sector, just 17 per cent of workers were covered by collective agreements (Achur, 2011). This chapter seeks to explain how a UK model based on voluntarism (the principle of non-interference by the state in the actions of employers and trade unions, save in cases where collective representation does not deliver industrial justice or stability) was found lacking and how legislation introduced to redress this has also been found wanting.

The right to union recognition

It is important to stress at the outset that unions seek recognition not only because it allows them to negotiate the terms and conditions of work of their members, consequently ensuring better terms and conditions than would otherwise prevail (Blanchflower and Bryson, 2010), but also because unions that are not recognised, and thus their members, do not have access to a wide range of legal rights, both individual and collective. Without recognition union members cannot claim the right to take time off to participate in union activities; union local representatives do not have rights to take time off to attend to their duties or to take part in training; they have no right to information necessary for the purposes of collective bargaining; and no automatic right to consultation in redundancy situations. Union recognition therefore not only gives trade unions a consciousness of their legitimacy in the workplace, but it also confers valuable rights which are essential to the proper exercise of the functions of trade unions and their representatives.

The Employment Relations Act 1999 granted to trade unions a statutory right to recognition, although in contrast to the earlier attempts at legislation (see below) the Act does not seek to promote the extension of collective bargaining. Instead it adopts a position of ‘neutrality’, merely providing a procedure for awarding recognition in the absence of voluntary agreement, provided that specific conditions are met, in relation to size of the employer, evidence of union membership and support and, in most cases, through a ballot. The relevant provisions are contained in Schedule A1 of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended). However, although the legislation introduced a process that can lead to statutory recognition, its primary aim has remained one of encouraging voluntary recognition.