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I. IDEOLOGICAL DEBATES AND LABOUR LAW

Questions 1 and 2

Labour law discourse in the UK is dominated by a debate about the impact of globalization. The government's rhetoric in debates about labour law places a heavy emphasis on the need to compete in the global market-place. Because the UK is a high-wage economy, the government's proclaimed strategy is to build a highly productive and highly skilled workforce to attract inward investment in areas such as scientific research and the high-tech industries. Labour law is expected to contribute in various ways towards this goal. In this section, I will offer a working definition of globalization before setting the UK's labour law discourse in its historical context. I will then consider recent academic critiques which suggest that a gap is emerging between the government's rhetoric and the reality of the labour law reforms it has enacted.

Globalization can take many different forms. For present purposes, I will focus on economic globalization. This refers to the breaking down of national borders in economic life, and in particular to the ability of firms to locate themselves anywhere in the world. In a country like

the UK, consumers have benefited from the availability of cheaper products, such as clothing and electrical goods, as a result of the globalization of production. However, from an employment perspective, there have been well-publicized concerns about the demise of the UK's manufacturing sector (car manufacturing is a commonly cited example) and more recently, some parts of the service sector (notably call centres in the banking sector) as firms outsource these functions to other countries where costs are lower. Although the UK's unemployment rate is not high at the present time, there are substantial variations according to region and skill level, with manual workers in traditionally industrial regions facing particular difficulties in finding work. Moreover, amongst more affluent consumers in particular, there is some concern with the conditions of employment offered to workers in developing countries. This has led to an interest in 'ethical' investment vehicles, boycotts of certain firms, and a thriving market in 'fairly-traded' food products in particular.

In my view, it is important not to over-emphasise the 'newness' of globalization. It has been a key factor in the development of labour law policy in the UK for many years now. This can be explained by setting the current government's rhetoric in its historical context.[1] Many of the most important workers' rights – protections against arbitrary dismissal and discrimination, for example – were not enshrined in UK legislation until the 1960s and 1970s. This was because successive governments chose to rely instead on trade unions to protect their members through collective bargaining. Trade unions and their members were given a certain amount of assistance by the law, though this was not expressed in the form of positive rights to associate, bargain or strike. The UK does not have a strong tradition of explicit rights guarantees, largely because it does not have a written constitution. The enactment of the so-called 'floor of rights' in labour law in the 1960s and 1970s had a number of motivations. Alongside a desire to protect workers, particularly those who were not union members, governments were concerned to maximize the UK's competitiveness on the world stage – a globalization issue – by reducing the level of strike action. Thus, the enactment of unfair dismissal legislation can be regarded as motivated in part by a concern to reduce the number of strikes taking place in protest at employers' dismissal decisions.

In the 1980s and early 1990s, a succession of Conservative governments sought to dismantle much of the worker-protective legislation of the preceding period, and in particular, to reduce the power of the trade unions. Again, this was motivated by a concern with the UK's global competitiveness. The government's perception of labour law was that it was a 'burden on business', increasing the costs of UK firms and limiting their ability to compete with firms established in other countries. The government also sought to attract inward

[1] For a brief introduction, see A.C.L. Davies (2004), *Perspectives on Labour Law*, chapter 1.

investment by reducing the UK's labour costs. Obviously, the UK could not compete with developing countries because of its much higher wage levels, but it could potentially attract firms seeking a base in Europe. The empirical evidence regarding the impact of this policy is hotly debated. It is tempting to describe government policy during this period as an example of the 'race to the bottom' feared by labour law scholars. However, the government was constrained in various ways and could not remove labour rights completely. Although there was a measure of popular support for a reduction in trade union power, particularly in the early 1980s, there was less support for reductions in individual employment rights. Moreover, the government was constrained by the UK's membership of the European Union. Although the government vetoed many proposals and refused to sign the 'Social Chapter' of the Maastricht Treaty, it was nevertheless bound to respect European obligations, notably in the field of equal pay for men and women.

Since 1997, the UK has had a series of 'New Labour' governments. The clearest expression of their policy in the labour law field came in a White Paper entitled *Fairness at Work* published in 1997.[2] The 'New Labour' approach has been characterized as an example of 'third way' politics. This denotes a middle way between the traditional 'left' and 'right' divisions in British politics. In labour law, its most noticeable feature is its attempt to break down the traditional opposition between workers and employers and to argue that both 'sides' of industry have the same interests at heart. Thus, the government claims that a workforce whose rights are respected will feel more secure at work and will be more productive as a result. To give a concrete example, rights of workers to be consulted collectively about changes in the workplace are justified as a means to secure higher productivity. Workers will be more prepared for changes if they understand business developments. And by communicating with their staff, firms will be able to secure their loyalty and their ideas for improving the production process. This approach to labour law can be clearly linked to globalization. It reflects the government's view that the UK cannot compete through the cost-cutting route favoured by its Conservative predecessors. Instead, the UK must justify its relatively high labour costs by offering other advantages such as high skill levels and high productivity. And these aims can be furthered by, among other things, worker-protective labour laws.

However, the 'third way' approach to labour law has not commanded universal support among non-governmental actors in the UK. The trade union movement has been confronted with a dilemma. On the one hand, it is difficult for unions to argue against the broad aim of promoting a globally-competitive economy through worker-protective legislation. On the other

[2] Department of Trade and Industry (1998), *Fairness at Work* (Cm. 3698).

hand, some aspects of the third way may limit unions' ability to defend their members' interests. A key component of the third way is the idea of a 'partnership' between unions and management. The government's support for the trade union movement appears to hinge on unions' willingness to co-operate with management and to avoid conflict, particularly in the form of industrial action. Unions are suspicious of this as a potential threat to their autonomy. Employers' organizations have also doubted the thinking behind third way labour law policies. Their concern has continued to be that labour rights act as a burden on business, increasing costs and making competition with firms in other countries much more difficult. They have mounted attacks on various labour law developments from this perspective. They can claim some success in persuading the government to 'water down' some of its proposals to make them cheaper to implement. For example, at one stage the government proposed to introduce a right for women to return to work part-time after taking maternity leave. The government was persuaded by employers' organizations to provide a right to *request* flexible working instead, giving employers greater scope for denying the request on business efficiency grounds.

In the early years, the third way rhetoric resulted in a flurry of new legislation. The government signed up to the Social Chapter of the Maastricht Treaty soon after taking office, and accepted several European measures enacted under those powers which had not previously extended to the UK. It promised to enact new labour legislation, including a national minimum wage and a statutory procedure to help trade unions to secure recognition for collective bargaining purposes from employers. The government also introduced more explicit protection for human rights into the law through the Human Rights Act 1998, a measure which has had some impact on labour law even though the rights it protects are mostly civil and political. However, doubts have begun to emerge about both the government's rhetoric and the government's commitment to its own policies. The government's attitude to the trade union movement has been a particular cause for concern. For example, in *Wilson v. UK*, the ECtHR condemned the government for failing to protect workers' freedom of association rights.[3] The government's legislative response to the judgment has been described as 'grudging and minimalist' and has probably failed to meet the ECtHR's criticisms in full.[4] More generally, academic writers have begun to question whether the government is not in reality motivated more by cost-cutting concerns than by the worker-protective, high productivity route to success. Some new legislation has not lived up to its initial promise: the statutory recognition procedure for trade unions has helped some unions to achieve recognition but it is highly complicated and cumbersome to invoke.

[3] (2002) 35 EHRR 20.
[4] See A.L. Bogg, 'Employment Relations Act 2004: another false dawn for collectivism?', (2005) 34 ILJ 72, at 73.

Perhaps more significantly, there have been active attempts to cut costs in certain areas. In unfair dismissal, for example, new rules penalize workers who do not participate in employers' disciplinary and grievance procedures before trying to claim unfair dismissal at a tribunal. This has been condemned for reducing workers' access to legal redress for breaches of their rights, particularly because most workers are unlikely to be aware of the procedures they are supposed to follow.[5]

These criticisms of the government's lack of commitment to its own third way policies still suggest that globalization is a highly relevant factor in UK labour law discourse. The difficulty lies in deciding how best to respond to the concern that firms may decide that the UK is no longer an attractive location for investment. The third way solution is to maintain a highly-regulated labour market but to compete on the basis of quality and productivity rather than cost. But this approach may meet with a hostile reaction in certain quarters, notably employers' organizations, tempting the government to fall back on the alternative strategy of trying to cut costs in order to compete in the global marketplace.

Questions 3 and 4

This section will consider the role of globalization in the debates surrounding recent legislative developments in the UK. There is very little evidence to suggest that judicial decisions have been influenced by globalization. Collective bargaining is probably influenced quite heavily by globalization: a firm may be able to deny unions a pay rise by threatening to relocate to a lower-wage economy. But the evidence for this tends to be anecdotal so it is difficult to present in a reliable way.

The complexity of the globalization debate discussed above makes it difficult to label recent legislative developments in a clear-cut way as 'responses to globalization'. A new measure might be a cost-cutting response to globalization, or a third way response to globalization. Alternatively, it might be a measure enacted for purely worker-protective motives, but with third way justifications employed on a purely rhetorical level. Finally, since the UK is a member of the EU, many new employment measures are enacted in order to implement European directives. Here, the government tends to do the minimum that is required for implementation, rarely choosing to provide greater protection than the directives themselves require. This section will outline recent developments and endeavour to place them in context, though my interpretations should be regarded as open to debate.

[5] For discussion, see B. Hepple and G.S. Morris, 'The Employment Act 2002 and the crisis of individual employment rights', (2002) 31 ILJ 245.

The National Minimum Wage Act 1998 is perhaps the most obvious example of a measure which is primarily worker-protective in its justification. It sets, for the first time in the UK, a single minimum wage applicable across all regions and all sectors. The government's justificatory rhetoric included third way ideas about improving productivity, but the primary motivation of the legislation was clearly worker-protective.[6] The government placed a strong emphasis on the dignity justification for having such legislation. However, it is important to note that many have criticized the legislation, casting doubt on its ability to achieve its dignity goal.[7] This is because the minimum wage rate has been set at a relatively low level, and because the legislation is quite complex and therefore difficult for low-paid workers to enforce. The government has also enacted some apparently worker-protective measures in collective labour law. The most obvious of these is the statutory recognition procedure for trade unions. This is a highly complex procedure, but put very simply, it allows a trade union to obtain an order forcing an employer to recognize it for collective bargaining provided that the union can achieve majority support in a ballot. The government has used third way justifications for this procedure, emphasizing the role of unions in forming a partnership with employers to promote a productive workplace.[8] In reality, the government was probably motivated by a desire to do something to benefit the trade union movement, since it is a major source of political support – and funding – for the Labour party. Again, commentators have criticized the reforms for providing a cumbersome procedure that does not offer a substantial practical benefit to the unions.[9] At the end of the procedure, the employer is required to meet the union just once a year, to bargain only about pay, hours and holidays. The government has also made some improvements to the rights of trade union members not to be discriminated against by their employers. These changes were prompted by an adverse decision by the ECtHR and can thus be described as worker-protective in their orientation. However, once again, commentators have criticized the limited nature of the reforms.[10] The government appears to be concerned with cost-cutting because one of its aims in making the changes was to preserve employers' freedom to derecognize a trade union and refuse to continue with collective bargaining.

Other new legislative measures have been justified more explicitly in third way terms. A good example of this is a raft of new 'family-friendly' rights, intended to assist workers with their childcare responsibilities. Although some of these rights were amended or introduced in

[6] See Department of Trade and Industry, above note 2, para. 3.2.
[7] See, for example, B. Simpson, 'The National Minimum Wage five years on: reflections on some general issues', (2004) 33 ILJ 22.
[8] See Department of Trade and Industry, above note 2, especially para. 4.7.
[9] See, for example, B. Simpson, 'Trade union recognition and the law, a new approach – Parts I and II of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992', (2000) 3 ILJ 193.
[10] Bogg, above note 4.

response to European directives, the government did for once decide to go beyond the strict requirements of those directives. The government could have chosen to portray 'family-friendly' rights as worker-protective measures, in particular because they can be regarded as an important way to help women (who often face a greater burden of childcare responsibilities than men) to achieve equality in the workplace. Instead, the government chose to focus on the economic justifications for these policies.[11] In particular, the government emphasized the need for employers to have a wide pool of talent on which to draw when recruiting employees. If workers found it difficult to combine work with family life, they might choose to stay out of the labour market altogether, or accept part-time jobs for which they were over-qualified. By making it easier to hold down a good job and raise a family, the government hoped to keep more workers in the labour market and to make maximum use of their skills. However, critics have suggested that in making concessions to firms' claims that the new rules would be too costly, the government has failed to implement the new policies effectively.[12] For example, the new right to parental leave (around one month's leave per year per child up to the age of five) is a right to unpaid leave. This means that only relatively wealthy families with two incomes will be able to afford to invoke the right. This reduces the chance that the new right will succeed in its third way aim of increasing the pool of talent available to employers.

Some measures are fairly explicit in their aim to cut the costs of labour regulation for employers. The changes to the law of unfair dismissal made by the Employment Act 2002 are a good illustration of this. This Act requires employers to have disciplinary and grievance procedures internal to the firm. Employers and employees are strongly encouraged to use these procedures prior to dismissal or resignation. If the employee resigns without first invoking a grievance procedure, he or she may lose the right to complain of unfair dismissal at an Employment Tribunal. If the employee fails to complete a disciplinary or grievance procedure and then proceeds to a tribunal, his or her damages may be reduced. If the employer is at fault for failing to use or complete the procedure, it may be confronted with a higher award of damages at the tribunal. These developments have been presented by the government as being part of a wider trend towards the use of alternative dispute resolution procedures because of their speed and cheapness relative to the courts and tribunals. However, commentators have criticized them as cost-cutting measures.[13] Employers have voiced concerns over the growing number of tribunal claims and the high cost of defending them, even though the overall level of damages awards remains low. In particular,

[11] Department of Trade and Industry (2000), *Work and Parents: Competitiveness and Choice*.
[12] For example, A. McColgan, 'Family-friendly frolics? The Maternity and Parental Leave etc. Regulations 1999', (2000) 29 ILJ 125.
[13] See Hepple and Morris, above note 5.

academics have argued that it is only appropriate to deter claimants from going to the tribunal if their claims are unmeritorious, and in putting forward these proposals, the government did not produce clear evidence to that effect.

Measures with an obvious European source include the Working Time Regulations 1998, limiting weekly working hours and guaranteeing holiday entitlements; anti-discrimination measures designed to protect fixed-term and part-time workers; extending the scope of anti-discrimination law to cover sexual orientation and religion or belief; and new measures on collective consultation. The UK has been criticized for its cost-cutting emphasis, both during the negotiation of new measures and during their implementation. For example, the UK refused to agree to a proposal that employers would not be allowed to implement certain decisions taken without consultation, even though this would clearly have made the consultation measures much more effective.[14] The government's attitude is more obvious in the area of implementation. For example, at present, workers are allowed to 'opt out' of the maximum 48-hour working week. The government justified this by claiming that since the UK did not have any controls on working time, the new legislation would be a major shock for UK firms. However, the result of this has been to allow firms to save money by employing fewer workers to work longer hours. It also ignores third way justifications for working time controls, for example, that shorter working hours might improve workers' productivity. It seems therefore to reflect a cost-cutting strategy.

To sum up, globalization has influenced the way in which recent labour law reforms have been explained and justified, but not in an obvious or straightforward manner. There is no clear evidence of a race to the bottom in UK labour law. Instead, the government has been willing to enact new regulatory measures. It has drawn to some extent on the claim that the UK should aim to have a highly productive and highly skilled workforce in order to justify these new measures. This claim can be traced to the idea that in a globalized economy, the UK cannot compete on price and must find an alternative basis on which to attract investors. However, there seems to be a measure of doubt about the high-regulation route to economic success. This may reflect a lack of knowledge about the relative costs and benefits of particular measures, or a more general concern about the validity of the approach as a whole. As a result, the government has sought to cut the costs of existing labour market regulation and to keep to a minimum the costs of new regulatory measures when they are introduced. This approach can be traced to globalization: it reflects a desire to compete globally by keeping costs down. In short, globalization is a major factor in UK labour law discourse, but no-one is quite sure how best to respond to it.

[14] B. Bercusson, 'The European social model comes to Britain', (2002) 31 ILJ 209, at 237-9.

II. BUSINESS LAW AND LABOUR LAW

Question 5

Most of the matters raised in the question here would be treated as part of labour law in the UK, not as a separate 'business law' topic. The legal rules governing transfers of undertakings, insolvency and collective redundancies are governed largely by Community law, so there has been little scope for change as a result of globalization. The other matters mentioned in the question have not undergone major changes in recent years.

III. INTERNATIONAL TRADE AND LABOUR LAW

Questions 6-12

The UK is a member of the European Union. The EU's jurisdiction over labour law matters is governed by Article 137 of the EC Treaty:

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:
(a) improvement in particular of the working environment to protect workers' health and safety;
(b) working conditions;
(c) social security and social protection of workers;
(d) protection of workers where their employment contract is terminated;
(e) the information and consultation of workers;
(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
(g) conditions of employment for third-country nationals legally residing in Community territory;
(h) the integration of persons excluded from the labour market, without prejudice to Article 150;
(i) equality between men and women with regard to labour market opportunities and treatment at work;
(j) the combating of social exclusion;
(k) the modernisation of social protection systems without prejudice to point (c).

2. To this end, the Council:
(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing

administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d), (f) and (g) of this article, where the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the said Committees. The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the procedure referred to in Article 251 applicable to paragraph 1(d), (f) and (g) of this article.

3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2.
In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

4. The provisions adopted pursuant to this article:

- shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,
- shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

5. The provisions of this article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

This gives the Community very substantial jurisdiction over most aspects of labour law, with the exception of certain collective rights and wage levels.

The Community's main method of legislation in the labour law field is the directive. Directives are legally binding on the Member States but only as to the results to be achieved.[15] Member States have discretion over the means to be used in transposing directives into their own legal systems. Directives are generally implemented through legislation, though Member States may choose to allow trade unions and employers' associations to implement a directive through collective bargaining, provided that they ensure that the directive is fully implemented for all relevant workers, including those who are not union members. If a Member State fails to implement a directive, the Commission may bring infringement proceedings before the European Court of Justice (ECJ) (which may ultimately result in the Member State being required to pay a financial penalty), and affected individuals may be able to claim damages against the Member State for losses flowing from the failure. In recent years, the Community has made greater use of 'soft law' measures such as guidance documents and benchmarking. This reflects a concern that even directives are insufficiently flexible as a method of implementation.

[15] Article 249 EC.

The so-called 'social partners' – trade unions and employers' organizations – play an important role in the legislative process at EU level. Under Article 138 EC, the Commission must consult the social partners before developing new proposals on labour law. If the social partners so wish, they may choose to reach an agreement themselves on a particular issue under Article 139 EC. Their agreement may be implemented either by collective agreement in the Member States, or (if it addresses a matter covered by Article 137 EC) it may be enacted as a directive by the Member States. This process of legislation through 'social dialogue' has now been used on a number of occasions to enact measures for the protection of so-called 'atypical' workers, such as those with part-time or fixed-term contracts. Although many commentators welcome a high level of involvement of the social partners in the legislative process, others have expressed concern about their democratic legitimacy, given the low levels of membership of trade unions and employers' associations in some Member States.[16]

It is well-known that the EU uses labour rights conditionality in its external trade policies. The EU's current Generalized System of Preferences (GSP) scheme takes a 'carrot and stick' approach to labour rights. The 'stick' is that a country may find that its tariff preferences under the GSP scheme are temporarily withdrawn in a range of situations, including 'serious and systematic violation of the freedom of association, the right to collective bargaining or the principle of non-discrimination in respect of employment and occupation, or use of child labour, as defined in the relevant ILO Conventions'.[17] The 'carrot' is that the EU offers additional tariff preferences to developing countries which respect labour rights. The requesting country must demonstrate that its legislation 'incorporates the substance of the standards' laid down in ILO Conventions on the four core labour rights (freedom from forced labour, freedom from child labour, freedom from discrimination, and freedom of association and the right to collective bargaining), and that the legislation is 'effectively' applied.[18] However, the current scheme has been criticised. Few countries have applied for the additional preferences for respecting labour rights. And in a case brought by India, the WTO's appellate body criticised the GSP scheme's overall complexity and lack of transparency.[19]

[16] For discussion, see A.C.L. Davies (2005), 'Should the EU have the power to set minimum standards for collective labour rights in the Member States?', in P. Alston (ed.), *Labour Rights as Human Rights*, at 178-182.
[17] Council Regulation 2501/2001 EC, as amended, Art. 26(1)(b).
[18] Above note 17, Art. 14(2).
[19] WTO Appellate Body, *European Communities: Conditions for the Granting of Tariff Preferences to Developing Countries* (AB-2004-1), paras. 177-189.

The EU's revised approach is contained in Regulation 980/2005 EC and will apply from 2006. This offers additional tariff preferences to countries which meet certain standards of 'sustainable development and good governance'.[20] There are two main differences between this scheme and its predecessor. First, there is a single scheme of additional preferences for countries which comply with international standards on a range of issues including human rights, labour rights, environmental protection and governance, instead of separate schemes in different areas. Second, there is a greater focus on compliance with international instruments which have their own evaluation mechanisms in the hope of making the scheme more transparent. Thus, under Article 9 of the new regulation, a country may obtain additional preferences where it has 'ratified and effectively implemented' a list of international instruments relating to human rights, labour rights, environmental protection and governance. The instruments relating to labour rights are the conventions underlying the ILO's Declaration of Fundamental Principles and Rights at Work of 1998, although the major human rights instruments (for example, ICCPR, ICESCR, ICERD and CEDAW) also contain many provisions relating to workers' rights. The country has to apply for the additional preferences and the decision on whether or not to grant the application is taken by the Commission after reviewing the evidence. The Regulation contains withdrawal provisions in the event of serious and systematic violations of the listed international instruments.[21]

The UK, as a developed country, is not a potential beneficiary of incentive schemes of this kind. However, it should be noted that the UK contributes to some extent to a perception that the EU is somewhat hypocritical in its approach to labour rights, enforcing them more effectively against other countries than against the Member States. The UK has been condemned repeatedly by the ILO for violations of the core conventions on freedom of association and collective bargaining.[22] Yet it is content, through the EU GSP, to demand high levels of compliance with labour rights from other countries.

IV. SOFT LAW AND THE EMERGENCE OF NEW ACTORS

Questions 13, 14, 15

The discussion will focus on Questions 13 and 15 because they are of greater relevance to the UK than Question 14. There is considerable interest among the business community in the UK in a range of initiatives that can be grouped together under the broad heading of

[20] Council Regulation 980/2005 EC, Articles 8-11.
[21] Above note 20, Articles 16-23.
[22] For discussion, see T. Novitz, 'Freedom of association and 'fairness at work' - an assessment of the impact and relevance of ILO Convention No. 87 on its fiftieth anniversary', (1998) 27 ILJ 169, though note that the law has been amended in certain respects since this article was written.

'corporate social responsibility'. I will begin by considering some domestic initiatives before assessing the international developments. I will not address the corporate codes of conduct of individual firms in any detail. Most firms now have a code of some description, but as is well-known, few are linked to international standards or subjected to any independent verification. The most meaningful initiatives are those with external involvement of some kind. Moreover, in the absence of detailed large-scale empirical studies on which to draw, it is difficult to discuss individual firms' codes other than on an anecdotal basis.

The present UK government takes an active interest in corporate social responsibility (CSR) issues. A minister has responsibility for CSR and the government maintains a website that provides information on CSR-related activities across different government departments.[23] CSR fits well with New Labour's 'third way' philosophy, discussed above, in which an efficient economy and the promotion of social goals are seen as intimately connected rather than diametrically opposed. The fact that some firms are willing to promote social goals voluntarily might be thought to suggest that this 'third way' philosophy is well-founded. The government supports an organization called 'Business in the Community' (BITC), a movement of 700 UK companies committed to the development of CSR.[24] BITC runs the Corporate Responsibility Index, a domestic CSR initiative.[25] Companies which sign up for the Index must report their progress against a range of goals, including environmental protection and support for local community initiatives. Although BITC gives companies a score, it is up to the companies themselves to report their activities. In the labour law field, two key indicators are workforce diversity and workplace health and safety. This illustrates a common feature of CSR initiatives: their lack of relation to international norms, such the ILO Declaration on Fundamental Principles and Rights at Work of 1998. This lays down four 'core' labour rights: freedom from forced labour, freedom from child labour, freedom from discrimination, and rights to freedom of association and collective bargaining. The Index includes health and safety, which was omitted from the Declaration, but makes no mention of trade union rights, which are included in the Declaration. However, the Index must be read in the context of UK labour law, which does offer (albeit not perfect) protection for the ILO's 'core' rights. For present purposes, perhaps the biggest deficiency of the Index is that its focus is largely on companies' performance within the UK, even though many of the 140 participant companies have global operations. One indicator does relate to human rights in the supply chain, but it is not compulsory for companies to report on it.

[23] See http://www.societyandbusiness.gov.uk/.
[24] See http://www.bitc.org.uk/index.html.
[25] See http://www.bitc.org.uk/programmes/key_initiatives/corporate_responsibility_index/index.html.

Another mechanism backed by the UK government (through the Department for International Development) is the Ethical Trading Initiative (ETI).[26] The ETI differs from the BITC Corporate Responsibility Index in two main respects. First, it is exclusively focused on the upholding of labour standards in the supply chain. Second, its members include NGOs and trade unions as well as firms. The ETI encourages firms to sign up to its Base Code. This is a set of labour standards which includes the four 'core' labour rights in the ILO Declaration and adds some others, such as safe working conditions and reasonable working hours. The ETI requires companies to report their progress annually and encourages independent verification of companies' claims. Because trade unions (both national and international) and NGOs are involved in the initiative, companies' reports are subjected to a greater degree of scrutiny from organizations with access to local information. The ETI has a relatively small membership of around 37 companies but this does include some major 'high street' clothing retailers (for example Next, New Look, Gap, Debenhams) and supermarkets (including Asda, Tesco and Sainsburys). Its members have a combined turnover of over £100 billion.

Some CSR initiatives focus on investment rather than management. An important example of this in the UK is the FTSE4GOOD investment index.[27] The index is designed to help socially-responsible investors to identify appropriate companies in which to invest. Companies are required to report their performance against a set of criteria. Their reports are assessed on behalf of FTSE before a decision is made as to whether or not to include them in the index. The criteria require compliance with human rights standards. The precise requirements vary according to the category into which the company falls. Companies in the global resource sector (oil, gas and mining) and companies operating in countries 'of concern' have to meet relatively exacting human rights standards. These include a requirement that the company have a public statement of support for the ILO Declaration or OECD Guidelines for MNEs, or have signed up to the UN Global Compact. All other companies need only meet the relatively minimal requirement that they have a basic policy on either equal opportunities or freedom of association. It is difficult to give a precise assessment of the impact of an initiative like FTSE4GOOD. Many of the major institutional investors in the UK, such as pension funds, do now have ethical investment policies and therefore make use of the index. But it remains to be seen whether this will be sufficient to persuade a very large number of firms to be listed in FTSE4GOOD.

Turning now to international initiatives, there are around 60 UK firms which have signed up to the UN Global Compact, including some major international players, for example, HSBC, Rio

[26] See http://www.ethicaltrade.org/Z/home/index.shtml.
[27] See http://www.ftse.com/ftse4good/index.jsp.

Tinto, BP and Royal Dutch/Shell.[28] The Compact includes the four labour rights identified as 'core' by the ILO in the 1998 Declaration on Fundamental Principles and Rights at Work. However, the Compact fails to provide any real monitoring or enforcement mechanisms. Companies are required to submit an annual report, a Communication on Progress, detailing their efforts to comply with the Global Compact principles. But it is up to the company itself to draft the report, and there is no expectation even that the company will address all of the Global Compact principles.

The UK is a member of the OECD and is therefore involved in the operation of the OECD Guidelines for Multinational Enterprises. These guidelines are addressed to MNEs operating in, or out of, adhering states. Thus, multinationals based in the UK are expected to comply with the guidelines in all their operations, including those outside the UK. The Guidelines contain a number of labour standards including all four rights in the ILO Declaration and some additional ones including a health and safety obligation. However, the obligations are expressly stated to be subject to the applicable national law in the country of operation which may limit their effectiveness. Adhering states are expected to operate a National Contact Point (NCP). The role of the NCP is to promote awareness of the Guidelines and to act as a mediator where it is claimed that a firm is in breach. The UK NCP is located in the Department of Trade and Industry.[29] It has had very little work to do in terms of resolving complaints about the Guidelines, but it does provide useful web resources and engages in a range of activities to promote the Guidelines among the business community.

Since the UK is a developed country with a vocal minority of socially-aware consumers, one would expect to find participation by UK firms in CSR initiatives both domestically and on the international stage. It is, however, difficult to give an accurate picture of the coverage of these initiatives. Certain firms have an obvious motivation for participating in CSR: perhaps they operate in highly controversial sectors such as the exploitation of natural resources, or perhaps they are major 'high street' names and might therefore be particularly vulnerable to consumer boycotts. Thus, although many well-known UK firms participate in CSR schemes, it is difficult to obtain accurate empirical data on their significance as a proportion of the UK market as a whole. The less well-known firms that do not participate in CSR may be in the majority. Commentators have also highlighted problems with CSR initiatives: their tendency to ignore international standards, and the absence of effective independent monitoring mechanisms. These criticisms do apply to some of the mechanisms discussed here, but not to all of them: both ETI and FTSE4GOOD draw on international standards and stress the

[28] See http://www.unglobalcompact.org/Portal/Default.asp?.
[29] See http://www.dti.gov.uk/ewt/ukncp.htm.

value of independent verification of firms' claims. ETI also involves NGOs and trade unions much more effectively than most other CSR mechanisms. Thus, although the UK experience of CSR is far from perfect, there are some useful lessons to be learnt.