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The Petroleum Driver Passport Scheme: A Case Study in Reregulation

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Introduction

The deregulation of the labour market has been a core element of the Washington Consensus, the neo-liberal framework that has dominated Western public policy for three decades. Deregulation has encompassed the weakening or withdrawal of substantive employment rules, designed to shelter workers from market forces or establish minimum standards. It has also embraced procedural reform, restricting the opportunities for workers to seek legal redress for grievances or organize and bargain through trade unions. Finally, it has involved decentralization of labour market decision-making, typically through the break-up of industrywide collective bargaining and the abandoning of employment regulation that establishes common standards across multiple employers. Reform of the labour market in accordance with these principles has been a marked feature of the recent Coalition and Conservative administrations of the United Kingdom (Williams and Scott 2016) and, in the period since the global financial crisis, has also been characteristic of several continental European countries (Marginson 2015; Meardi 2014). The appetite for deregulation amongst many policy makers remains unabated. For proponents, reform of this kind improves the functioning of the labour market and so operates to the long-term benefit of both buyers and sellers of labour. Privileged insiders, such as those organized in trade unions which monopolize labour supply, may lose access to economic rents as market-restricting regulation is abolished but the package of reform is believed to serve all legitimate labour market interests.

While the deregulationist programme remains highly influential, it has increasingly been subject to critique by those who question whether its effects are universally beneficial. One line of critique claims that deregulation encourages a low-skill/low-productivity dynamic within the economy and so operates against the long-term interests of capital itself. The claim here is that deregulation encourages a form of economic development that is excessively reliant on cost reduction and which is not sustainable over the longer term (Rubery et al. 2016). A second argument points to the high social cost associated with rising income inequality, which itself is regarded as the unavoidable consequence of a deregulated labour market. According to this line of argument the emergence of a 'precariat', a substantial group of low-wage, insecure workers, threatens social integration and facilitates political volatility, seen in the rise of populist political movements (Standing 2011). A third argument claims essentially that while business may gain from deregulation, at least in the shorter term, there are serious adverse consequences for labour seen in the erosion of employment standards and a 'race to the bottom' in standards of management practice. The suggestion here is that deregulation is zero-sum in its effects, shifting the balance of economic returns from labour to capital and transferring risk from employers to workers (Hacker 2008; Kochan and Riordan 2016). Wage stagnation, insecure work and diminished welfare support, according to this view, are the price that workers pay for deregulation.

Growing awareness of the potential downside to deregulation has prompted the emergence of counterproposals. The need to reregulate the labour market has emerged as a theme in public policy. Advocates of reregulation have tended to call for new institutions of labour market governance that operate above the level of the employing enterprise, and which can afford fresh protection to workers and re-establish good labour market standards within industry or occupational labour markets. The purpose of this article is to present a case study of a successful initiative of this

kind, the Petroleum Driver Passport scheme. The latter is a new form of industry-level regulation that operates in the UK's downstream oil-distribution industry and which stipulates and enforces safe working practices in the transport of petroleum-related products. Under the scheme, petroleum tanker drivers can only collect fuel from refineries and distribution centres if they possess a passport, which vouches for their safety competence. The scheme is backed by trade unions, the oil majors, logistics companies and other stakeholders within the industry and represents a concerted, industrywide attempt to address mounting concern about safety standards in a fragmented and competitive sector. In what follows, we present an account of the scheme, identify the multiple factors that caused it to be created, evaluate its success, and offer reflections on the lessons that it holds for the wider theme of reregulation. Before presenting the case, however, we first examine the literature on reregulation, identifying core prescriptions and reviewing key pieces of research.

Reregulation

Just as the deregulation of the labour market can assume a number of forms, so might its reregulation. *Inter alia*, it can encompass the enactment of new or the strengthening of existing legal protection for employees, the strengthening of enforcement mechanisms through which such protection is given effect and the bolstering of the capacity of trade unions to organize workers and engage in collective bargaining with employers (Dickens and Hall 2003). It can also encompass centralization and the creation of new regulatory institutions that operate at a multi-employer level and whose rationale is to formulate substantive rules that apply across a given industry, occupational or regional labour market. The Petroleum Driver Passport scheme is an example of multi-employer regulation of this type. It is not unique in this regard and a feature of both prescriptive and research literature in recent years has been a fresh attention to multi-employer regulation and how it can be re-established to counter the adverse features of deregulated labour markets. In what follows, we consider two cases of this kind which can serve as a comparative reference for our case study of the Petroleum Driver scheme, allowing us to identify the distinctive features of the latter as an episode of reregulation.

The first case can be found in the US literature on union revitalization and concerns the creation of state-wide systems of collective bargaining for care assistants providing domiciliary care. The latter comprise a large and growing segment of the working population, are primarily female and frequently of ethnic minority status and are involved in low-wage work that often is insecure, unsafe and lacking in the provision of protective benefits. They are also a highly fragmented group of workers, divided between multiple employers and with many working as independent contractors who are hired directly by the individuals to whom they provide care (Stacey 2011). The unionization of this group of workers in states such as California, Oregon and Ohio, and has been one of the signal successes of the American labour movement in recent years (Boris and Klein 2007; Cobble and Merrill 2009; Delp and Quan 2002; Mareschal 2006, 2007). It has relied upon classic organizing practice, such as face-to-face recruitment, house-calling, and the identification and development of leaders from amongst the social care workforce. The intrinsic difficulty of organizing a dispersed and fragmented workforce, however, means that use has been made of other resources. State-level campaigns have made use of union-community alliances, with organizations of service users joining unions in campaigning for improved employment standards from a belief that this will simultaneously raise service standards. The campaigns have also typically had a strong political dimension, targeting state and city legislatures for action to improve pay and working conditions for the social care workforce. Political support has been an essential condition for the main institutional innovation that has emerged from the campaigns: the creation of a public authority that acts as a collective representative of multiple employers and negotiates collective agreements with the

unions representing care workers. The collective agreements that have resulted from this process have raised pay and established portable security benefits for the workforce and include provisions for training, registration and the accreditation of home care aides. Research indicates that they have been effective in reducing turnover and in so doing have probably enhanced the quality of care provided. Social care remains a poorly paid and insecure occupation in the USA but the union-organizing drive has resulted in appreciable benefits for workers and the provision of a public good, a more stable and better qualified workforce.

The second case can be found in the growing literature on employment relations within extended supply chains. A focus of this literature has been the growth of attempts to regulate employment conditions within supply chains to counter the erosive effect of outsourcing on labour standards. In some cases regulation has taken the form of a code of conduct developed by a multinational enterprise at the apex of a supply chain which seeks to raise employment standards within supplier businesses, while in others multiple stakeholders, comprising leading brands and retailers, unions, NGOs and government agencies, formulate standards that they seek to have applied and enforced through public inspection and audit (Wright and Kaine 2015). Much of the literature on the regulation of employment conditions within supply chains is concerned with international business and the application of codes originating in the Global North to contractors in the Global South (e.g. Locke 2013). There is a growing policy and research interest, however, in the regulation of supply chains within developed economies and it is to this current that the second case belongs.

The case deals with the response of Unite to the decline of pay and labour standards in the UK's meat processing industry, where intense cost pressure applied by retailers at the top of the supply chain had led to the growing employment of migrant workers on agency contracts with lower rates of pay than the direct workforce (Wright 2016; Wright and Brown 2013). Unite initially tried to deal with these problems through organizing agency workers and instituting a form of pattern bargaining amongst meat processing companies. The failure of these classic union methods, however, led Unite to change tack and target the retail chains, seeking to enlist their support for initiatives to improve pay and labour standards within their suppliers. Unite directed this effort through the Ethical Trading Initiative, to which most leading retailers belong, and exerted additional pressure by successfully requesting the Equality and Human Rights Commission (EHRC) investigate racial discrimination within the employment practices of the meat processing sector. The ensuing report received extensive press coverage, which was highly critical of the major retailers. These initiatives met with partial success. Marks and Spencer agreed to establish two model factories in partnership with supplier businesses, while supermarket chain, ASDA, negotiated a framework agreement with Unite which guaranteed pay parity to agency workers from day one and transition to permanent employment after three months and formulated a set of employment standards with which all of its 29 meat suppliers had to comply or lose contracts. These reforms covered only a fraction of the industry but nevertheless led to tangible benefits including increases in pay, improved job security and the elimination of the worst forms of labour abuse in conforming factories.

The American developments in social care and the UK experiment in 'socially sustainable sourcing' are not the only cases of reregulation through multi-employer arrangements that have been reported. The arrangements in social care have clear parallels with the well-known Justice for Janitors campaign in the USA (Milkman 2006) and in Ireland a union campaign has led to the extension of public sector terms and conditions to domiciliary care workers employed by voluntary organizations that receive state funding (Murphy and Turner 2014). In the UK, other studies attest to the role of unions and lead firms in promoting good health and safety practice amongst

subcontractors in both construction and the maritime industry (James et al. 2015; Wright and Brown 2013). Moreover, proposals to revive multi-employer collective bargaining have gained currency in recent years and won support from both the TUC and the Labour Party. In a *Manifesto for Labour Law*, leading employment lawyers have proposed that Sectoral Employment Commissions be established by statute across all UK industries and charged with negotiating Sectoral Collective Agreements. The latter would establish industry-minimum employment conditions and have specific responsibilities for promoting equal pay, health and safety, industrywide pensions, and training and apprenticeships. Significantly, Sectoral Collective Agreements would apply to public sector contractors and to all agency workers operating within an industry (Ewing et al. 2016).

The cases that we have reviewed are of interest, we believe, because they exemplify broader themes within this reregulation literature. First, the labour problems identified in the cases are attributed to deregulation and associated forces, including union decline, the break-up of multi-employer bargaining, the weakening of employment protection, anti-union law, privatization and outsourcing. Second, the problems themselves are centred on low pay but also embrace poor working and health and safety conditions, worker insecurity, low productivity and low skills. Third, the primary agent promoting reregulation are trade unions. These are trade unions in straitened circumstances, however, which must supplement traditional forms of collective action with alliances with consumers, human rights campaigners, advocates of corporate social responsibility, and state agencies. The case for reregulation tends to be allied to the case for a 'new unionism' to fit the altered circumstances of deregulated, insecure labour markets (Milkman 2013). Fourth, while reregulation has often assumed a voluntarist form, inscribed in framework agreements and codes of practice, its emergence has depended upon state support, seen in the creation of public authorities to negotiate agreements in US social care and the part played by the EHRC in UK meat-processing. Fifth, and pivotally, reregulation has taken the form of new institutions that recentralize regulation and which cover multiple employers. The public authorities and state-level collective agreements in the American case and the framework agreements with lead firms, which apply to subcontractors in the British case, both assume this form. Finally, the substantive regulation that issues from these new institutions addresses the multiple problems found within deregulated labour markets. Raising low wages is a central concern but so is addressing worker insecurity through portable benefits and temp-to-perm clauses. The questions of poor workforce treatment and health safety are also addressed as are improvements in training and attempts to upgrade HR practice in order to support improved business performance. Reregulation in these cases, it is suggested, generates public goods that serve the interests of multiple stakeholders.

Research

The case of the Petroleum Driver Passport was encountered serendipitously while carrying out a larger study of the contemporary role of employers' organizations. In the context of this wider research, a major finding of which was the continuing withdrawal of traditional employers' organizations from collective regulation (Reference concealed), we were immediately struck by the counter-trend quality of the scheme. The latter was a deliberate attempt to recreate multi-employer regulation in the UK's ostensibly flexible labour market. The scheme was of interest, in the first place therefore, because of its idiosyncrasy and the fact that it was not representative of dominant trends within UK industrial relations.

The scheme was also of interest, however, because it was representative in a different sense. It embodied a particular type of prescription for the reregulation of labour markets, which focuses on the creation of new labour market institutions that operate at the multi-employer level. In this regard, the Petroleum Driver Passport can function as a 'lead' or 'pre-figurative' case,

furnishing lessons about the conditions under which reregulation can occur, which has relevance beyond oil distribution. The case of the Petroleum Driver Passport is an idiosyncratic development in UK industrial relations, therefore, but should be of interest to those who wish to reform the labour market and who are sceptical about the value of the dominant deregulatory thrust of public policy.

The research itself pursued two courses. Along the first, semi-structured interviews were held in 2015-16 with representatives of the multiple institutions involved in developing and implementing the Passport. The purpose was to obtain the differing perspectives of the stakeholders in the scheme – trade unions, employers, business organizations and government – while also using the interviews as a reliability check, developing an account of the scheme that drew upon a variety of sources. Those involved in the Passport were extremely cooperative and with a couple of exceptions, it was possible to interview all of the main participants in the scheme’s development and implementation. Table 1 lists the organizations from which interviewees came and gives the number of interviewees per organization. In all but two cases interviews were recorded and transcribed and were analysed to identify key developments, events and themes. In the cases where it was not possible to record the interview an account was written down shortly after the interview was completed.

INSERT TABLE 1 HERE

The second line of research involved the collection of documents on the Passport scheme that described its origin, form and effects. These documents included: 1) the report of ACAS into the industrial dispute between Unite and the oil distribution companies that prompted the development of the Passport; 2) ministerial correspondence on the setting up of a multi-stakeholder body to review health and safety in the industry and formulate proposals for its regulation; 3) the constitution of the Downstream Oil-industry Distribution Forum (DODF), the body which oversees the Passport; 4) accounts of the scheme and of the training and accreditation regime that supports it produced by Unite and by Cogent Skills, the industry training body; and 5) statistical data describing the diffusion of the scheme following its launch in 2014. The Petroleum Driver Passport added a new layer of formal regulation to the oil distribution industry and in so doing generated rich documentary material that provided information in its own right but which also allowed for the triangulation of evidence from interviews.

To summarise, the research into the Petroleum Driver Passport was a case study of an industry-specific and in certain respects idiosyncratic institutional development. While confined to a single industry, however, the case has relevance for the broader debate about labour market reregulation. It followed a mixed-method design (Bergman 2008), comprising interviewing and documentary analysis, in order to obtain multiple perspectives on the Passport and generate a full and rounded description of the scheme. The twin-track research, we feel, also enhanced the reliability of the study, allowing sources to be checked against one another to provide a robust account of the Passport.

Downstream Oil Distribution

The downstream oil industry in the UK comprises the refining and storage of oil products and their marketing and distribution. Petroleum tanker drivers, of whom there are approximately 8,500, are a core group within the workforce of the industry, collecting oil from refineries and storage facilities and transporting it by road to supermarket forecourts and other end-users. In certain respects, this workforce is unlike those identified in other case studies of reregulation. Tanker drivers are a relatively well-paid group, earning more than most other manual occupations and other road

haulage workers. It is a male-dominated occupation, with a predominantly white and relatively old workforce, features that it shares with the wider road haulage sector (House of Commons Select Committee on Transport 2016). It is also a workforce with a long-history of trade union organization (Smith 2001).

Other features of the industry, however, do correspond to those found in the other studies described above. In the past, oil distribution was vertically integrated with the major oil companies operating refineries, tanker-fleets and petrol stations. Today, this pattern has almost completely disintegrated. Refined petroleum is often stored by specialist tank storage operators, is distributed by hauliers, such as Wincanton, Stobart, Hoyer and Certas Energy, and is sold through supermarket outlets. For haulage companies, contracts to supply the main supermarket chains are core business and there is intense competition to win contracts of this kind, a by-product of which is that tanker drivers may be transferred to a new employer when supply-contracts are won and lost. Oil distribution is now a vertically fragmented industry, therefore, characterized by the operation of supply chains in the same manner as meat processing and construction.

Another feature of oil distribution that it shares with other cases is the erosion of joint regulation. Multi-employer bargaining was never a feature of oil distribution and deregulation has not taken the form of a collapse of industrywide arrangements. Rather there has been an erosion of bargaining per se, partly through employers derecognizing unions and partly through the entry of non-union operators, such as Stobart (Smith 2001). Other developments, such as increased use of agency labour, have also served to erode the union position.

These long-term structural and regulatory changes in the industry were increasingly seen by Unite as posing a threat both to its own institutional position within oil distribution and to the substantive employment conditions of its tanker-driver members. In response, in the late 2000s, the union launched a campaign, *Enough is Enough*, which focused on three demands: a minimum wage for the industry, an industrywide occupational pension scheme, and a legally-enforceable code of health and safety practice. All three issues, it was argued by the union, were necessary because of the entry of low-cost operators who were undermining terms and conditions and which reduced costs by failing to offer security benefits and cutting corners on safety training and practice. A Unite national officer characterised the motivation behind the campaign as follows:

At one point they [tanker drivers] wouldn't have talked about a minimum standard because it all would be about improvements and collective bargaining to improve, but I think increasingly people want those minimum standards and stakes in the ground because they see how low things can go without them. Deregulation and privatization and all these other things have shown that if it's only about survival of the fittest in terms of the cheapest and the one with least standards, then we have to have some totally agreed standards.

The pensions issue was additionally a product of the fragmentation of the industry and the transfer of drivers initially from the oil companies to hauliers and then from haulier to haulier as a result of the tendering process. Because of this process many drivers were members of multiple pension schemes and the demand was for rationalization through the merging of company schemes into a single, industrywide pension.

The union campaign ran for two years, attempted to raise public awareness through media coverage and a dedicated website, and was accompanied by a recruitment drive and a road show with regional meetings designed to explain the issues and win support amongst the tanker-driver workforce. An important feature of the campaign was that it was framed in terms of "community

safety”, around a claim that a “race to the bottom” in employment terms was endangering the public through the unsafe transport of fuel. The main objective of the campaign was to secure an industry agreement on the three issues with the main haulage companies and while joint meetings were held no agreement was concluded. This failure led the union to organize a successful ballot for strike action, which prompted collective conciliation by ACAS in early 2012. The dispute was resolved without a strike taking place as a consequence of ACAS’s intervention, which led to the establishment of three joint union-employer working parties to examine the calls for a minimum wage, industrywide pension and a code for safe working practice.

Least progress was made on the question of an industrywide pension. It was accepted by all within the working group that a scheme of this kind was desirable but the technical difficulties in merging existing schemes into a new scheme proved insuperable and the attempt was abandoned. To date, the industry continues to lack a portable, occupational pension. The attempt to establish an industry minimum rate of pay was also abandoned though in this case it was accepted by those reviewing the issue that a minimum rate may not in fact be desirable and could rebound against the workforce. The fear was that supermarket chains negotiating supply contracts with hauliers would seek a price based on or slightly above the industry minimum, thereby exerting a downward pressure on wage rates. As a consequence, a different course was adopted. Pay consultants, *Incomes Data Research*, were commissioned to carry out a pay and benefits survey of the oil distribution sector to identify the range of experience and facilitate the diffusion of good practice from one firm to another. The strategy switched therefore from seeking to apply a minimum rate to providing the resources for greater coordination of company-level bargaining. (Sisson and Marginson 2002). The most successful of the three working groups was that dealing with health and safety and the need for a new code of practice. It was from the deliberation of this third group that the Petroleum Driver Passport was born.

The Petroleum Driver Passport

The central recommendation of the working party on safety was that the Downstream Oil-industry Distribution Forum (DODF) should be reconvened with a brief to review safety in the transport of oil and formulate recommendations for the development of a safety passport for tanker drivers. The DODF had originally been established in the early 2000s, following a previous union campaign, to consider safety issues in the industry but had fallen into disuse. At the request of ACAS and the parties to the dispute, Ed Davey, the Coalition’s energy minister, asked for the DODF to be re-established, ‘to facilitate a review of best practice in health and safety and driver training standards with the aim of incorporating this into a new industry-wide Code of Practice’.

In the wake of the Minister’s call, the DODF was reconvened with a fresh membership and constitution in 2012. The essential feature of the DODF is that it was a multi-stakeholder body that sought to involve all of the main interests in the industry in the attempt to develop the new safety code. The membership of the DODF was drawn from the industry’s unions (Unite, URTU), the main haulage companies, sector skills bodies (Cogent Skills and Skills for Logistics), representatives from the Department of Energy and Climate Change (DECC) and the Department for Transport (DoT), and the main trade associations for the industry. The latter comprised: United Kingdom Petroleum Industry Association (UKPIA), Downstream Fuel Association (DFA), Federation of Petroleum Suppliers (FPS), Freight Transport Association (FTA), Road Haulage Association (RHA) and Petrol Retailers Association (PRA). It was also agreed that the Health and Safety Executive would provide expert support to DODF. While the list of organizations represented in the DODF was extensive, it did not include the main supermarket chains (PRA is the trade association for independent petrol retailers). Perhaps the key participants among the trade associations who were included were UKPIA,

representing the oil majors and TSA, representing businesses that provide “liquid warehousing”, storing refined fuel. The membership of these two associations play the key role in enforcing the Passport and a notable feature of the development of the scheme was that it rested on businesses at the base of the supply chain rather than being driven by retail brands at its apex.

A second important feature of the DODF was that it was not a negotiating body, engaged in joint regulation. The unions and the direct employers of the members, the haulage companies, occupied a central position in the Forum but they sat alongside other interests, most of which did not have a direct relationship with Unite or URTU outside of the Forum. Moreover, the terms of reference for the DODF stated explicitly that it would ‘operate by consensus, not by voting’. The assumption underpinning the creation of the Forum, therefore, was that questions of safety and of related training were issues of shared interest across the multiple groups and agencies that comprise the industry, an assumption that most who were interviewed reported had been reflected in behaviour:

[E]verything that I’ve seen...has been extremely collaborative and has seen strong engagement from the industry people...So actually I do think they share kind of a common objective in developing it and I don’t think they see it as in anyone’s interest for there to be poor standards of training. It could only be a good thing (Civil servant).

The task of the Forum was to produce regulation but to do this through an integrative, not distributive process with a consensual decision as the end product.

To discharge its new responsibility, the DODF established a PDP Management Group from amongst its members to develop, launch, support and review the Passport scheme. Expert and administrative support to this group was provided by Cogent Skills, the skills body for science-based industries. It was the PDP Management Group which developed the Passport over the course of 2012-13, allowing the scheme to be launched in January 2014. The scheme that was developed by the Management Group has the following features:-

- The scope of the scheme embraces all drivers of road tankers engaged in the transport of ‘finished petroleum products’ to end-users, such as petrol retailers, business users of liquid fuel and domestic customers. All of the products covered by the scheme are classed as hazardous substances;
- At the heart of the scheme is an Industry Training Standard, which specifies levels of competence that are required to obtain the Passport in preparing, loading, driving, offloading and delivering petroleum products by road tanker. Each of these five main competences are broken down into lists of ‘standards of performance’ and ‘underpinning knowledge and understanding’, including specific requirements for particular segments of the industry such as retail, aviation, commercial and domestic heating;
- Assessment of competence includes formal assessment through a written, multiple-choice examination and a practical assessment, which focuses on loading, driving and offloading. It is necessary for drivers to pass both elements to be issued with the Passport;
- The Passport itself is valid for five years but to maintain validation it is necessary for drivers to undergo annual refreshment training, including a practical assessment. The aim is to maintain skills and to update them in line with developments in the industry;
- Training and assessment is conducted by accredited Training Providers, which include several of the leading haulage firms, FPS, and independent training businesses. Training providers need to demonstrate that they have instructors and assessors in place who have appropriate skills and qualifications, including relevant industry experience;

- The scheme is managed under contract by the Scottish Qualifications Authority (SQA), which has responsibility for accrediting and monitoring Training Providers and issuing Passports to drivers. SQA employs a team of External Verifiers who monitor the performance of Training Providers.

In addition to its substantive content, the Passport possesses a number of other distinguishing features. First, it is a voluntary scheme, an example of the private regulation of the labour market in the manner of corporate codes of conduct that apply within international supply chains or the framework agreement in meat processing described above. Unite's initial objective was to secure a statutory code but it relinquished this position in the conciliation process. Partly this was because securing a statutory code would prove difficult: the Coalition Government had launched its *Red Tape Challenge* to reduce the regulatory 'burden' on business and would not countenance further statutory regulation of driver safety (James 2016). Partly too, it was because there were perceived benefits in voluntary regulation. If the industry was responsible for developing and operating its own code then 'buy-in' would be greater and regulation would possess more legitimacy. It was also suggested that a voluntary code could be more rapidly developed, focus on desirable rather than minimal standards and be tailored to the particular requirements of the industry. In the eyes of industry participants the Passport possessed the benefits of 'reflexive regulation' (Hepple 2012).

The weakness of voluntary regulation is that it can prove ineffective because it generally lacks means of enforcement (Deakin et al. 2012). However, a second distinguishing feature of the Passport is that the method of enforcing the scheme is relatively robust, especially when compared with the consumer marks or light auditing practices that support other voluntary standards. Drivers cannot enter refineries or fuel storage depots to collect fuel unless they have the Passport and the oil majors and companies operating tank storage facilities have accepted the responsibility for ensuring this provision is enforced. There are six refineries in the UK and about 70 oil terminals from which the vast majority of refined fuel is distributed. Enforcement is concentrated at relatively few points within the distribution network, therefore, with the result that any haulage company wishing to gain access to the network has to ensure that its drivers have the Passport:

Now with the PDP scheme, there are a limited number of fuel distribution terminals and that means that if you can get that limited number of fuel distribution terminals to insist that any driver loading fuel on their site has to have a valid PDP, then you are effectively enforcing the PDP scheme even though you don't need to by law (DODF Representative).

It can further be noted that the resource upon which enforcement relies is the 'positional power' of the oil companies and tank storage operators at the base of the supply chain and not the monopsonistic power of retailers at the top of the chain. Moreover, the use of the power of oil companies to establish effective voluntary regulation is not solely a feature of the downstream oil industry. It can also be seen upstream in the international oil trade where the oil majors enforce a very tight code of safety practice on the operators of marine oil tankers (Walters and Bailey 2013). The oil companies are businesses with a long record of intervening in and organizing their own supply chains.

A third feature of the scheme was that it was designed explicitly to fit with existing regulatory arrangements that applied within the industry. Voluntary regulation often complements and can amplify the effects of statutory regulation (James et al. 2015) and this kind of interaction between different regulatory forms was also seen in the case of the Passport. One statutory provision that covers the downstream oil industry is the ADR Dangerous Goods Driver Training Qualification, a certificate of competence that all drivers involved in the transport of hazardous

materials must acquire. The Industry Training Standard for the Passport has been written to complement the ADR, such that training and tests of competence focus on the specific features of oil transportation and do not seek to reproduce more general requirements. Another provision is the Driver Certificate of Professional Competence (CPC), which derives from a European regulation designed to improve road safety and which is compulsory for drivers of all commercial vehicles of 3.5 tonnes gross weight. CPC requires that drivers undergo periodic retraining and it has been agreed by regulatory authorities that the annual reassessment for the Passport can count for this purpose. This is an important concession because it reduces the amount of time drivers are absent from work being trained and so diminishes costs. The integration with CPC was vital in securing the support of haulage companies for the Passport. A final piece of complementary regulation is the voluntary Safe Loading Pass. The latter originated in the 1980s, though has been revised extensively since, and is another piece of regulation created by the oil majors. The Pass, like the Passport, is required to enter refineries and terminals to collect fuel but it refers to the road tanker not its driver and is based on a six-monthly assessment of whether the former is in a safe condition. The Pass and the Passport were described to us as two sides of the same coin, standards to ensure safe distribution of fuel that target the vehicle and its driver respectively.

Origins of the Passport

The primary agent that gave rise to the Passport was Unite and the case, like the other instances of reregulation described above, attests to the continuing role of unions as forces for change within industrial relations. Oil distribution is a strategic industry and it was the prospect of the major economic disruption that would flow from a national strike that gave impetus to the Passport scheme. This was readily conceded by those who were interviewed on the employers' side:

You'll recall that the tanker drivers were threatening to go on strike and there was a lot of meetings with government around that, and one of the things that came out of that was that the unions wanted to develop a forum around safety and improved safety for tanker drivers etc., and that's where this came from and that was the birth of the PDP (Trade Association Representative).

The Petroleum Driver Passport is not the only instance of Unite seeking to develop multi-employer regulation of the labour market and the union has a strategy of recreating institutions of this kind. The developments in meat-processing, described above, provide another example. Also, at the same time as the Passport was developed Unite was running a campaign to establish multi-employer collective bargaining across the 18 companies operating London buses. The union is also a strong supporter of the proposal for Sectoral Employment Commissions. In pursuing this reregulation objective what is notable is the union's reliance on relatively traditional methods. As we have seen, these were abandoned in meat-processing when they proved ineffective but in the case of the Passport and for London buses the union campaign relied upon strike action. There have been appeals for public support and a framing of the union's objective as the pursuit of a public good but, contrary to much of the union revitalization literature, the threat of withdrawal labour has been the main power resource that the union has deployed.

While Unite had primacy in the origins of the Passport, other actors also exercised significant agency. Once the dispute had broken the state played an important role in resolving the conflict and in guiding the parties towards the development of the Passport. Thus, ACAS provided collective conciliation and encouraged the creation of a joint working party to review safety and HSE advised that a voluntary code could prove more effective than statutory regulation. The Government was

also centrally involved, taking the initiative in reconstituting the DODF and encouraging the various stakeholders to cooperate in developing the Passport:

[W]ithout them approaching, this would not have happened because we would not have been alerted to doing this and the industry and the other players...My phraseology and forgive me, is they do not come together unless someone herds the cats together. So we had our first meeting of the DODF in July of 2012. The then Secretary of State for DECC, which would be Ed Davey, came and did a sort of five minutes, "Thank you for all coming together. I'm wishing you well with your project". So I think Government were the initiating spark and they have been a champion and a supporter throughout the process (Officer of Industry Training Body).

The Government also offered more tangible support in the form of pump-priming money to get the Passport up and running and by signing – via the DoT - the management contract with SQA (DODF did not have the legal capacity itself to act as signatory).

The primary stance adopted by Government towards the resolution of the dispute and the development of the Passport was both voluntarist and integrative. From the outset, it was made clear that a statutory code would not be countenanced but there was a commitment to supporting self-regulation of the industry through the participation of all stakeholders, including the unions. The preference for an integrative, multi-stakeholder solution to the dispute probably reflected the less-hawkish perspective on industrial relations favoured by Liberal Democrat members of the Coalition Government, like Ed Davey (Williams et al. 2016). This perspective did not fully define the approach adopted by Government, however, and the most controversial feature of the Passport was the extension of the scheme to military drivers. From the outset, a programme was initiated to train a large force of military drivers in the safe practice of loading, driving and offloading fuel as part of the Government's contingency planning. Some who were interviewed, on both employer and union sides, saw this as an explicit attempt to create a replacement workforce in the event of a future threatened strike; a means of reducing the positional power of the trade unions.

The employers and other businesses within oil distribution also played an important part in developing the PDP scheme, including assuming the key responsibility for enforcement. Two features of the industry were important in supporting the participation of employers. The first is that, notwithstanding the emergence of extended and fragmented supply chains, oil distribution is highly organized. Like many mature industries, the industry boasts a rich institutional environment. All of the main segments of the industry are represented by trade associations with high levels of membership and the sector skills organizations, Cogent Skills and Skills for Logistics (the latter now defunct), provided an additional context for deliberation and common action. The support of oil companies, owners of oil terminals and smaller haulage contractors was secured through their trade associations, which sold the scheme to members and ensured their interests were incorporated within its design. Voluntary regulation at an industry scale therefore was conditional on the collective organization of industry participants; but it should be noted that this was collective organization through trade, not employer associations. UKPIA, TSA, FPS and other associations involved in the Passport scheme are not concerned primarily with employment issues and have no collective bargaining relationship with trade unions.

The second characteristic was the fact that oil distribution is a safety-critical industry. The products that are stored and transported are extremely hazardous and there is an extensive web of safety regulation that stems variously from the United Nations (ADR), the European Union (CPC), the UK Government and the industry itself (Safe Loading Pass). Paying regard to safety, complying with

regulations and establishing internal systems of safe-working are consequently integral to the operations of firms within the industry: for example, all haulage companies in oil distribution must by law appoint a Dangerous Goods Safety Advisor. Moreover, several respondents referred to the legacy of the Buncefield Disaster, a major explosion and fire at a storage terminal in Hertfordshire in 2005. In this context, businesses and trade associations were receptive to further action on safe-working and wanted to demonstrate their safety commitment to Government, employees and to the public at large. There were also tangible benefits to be obtained through the Passport scheme. For operators of oil terminals, for instance, it was a means of demonstrating to HSE that they were discharging their obligation to operate safely by only admitting safety-trained drivers on-site.

Effects of the Passport

Following its launch in January 2014 the Petroleum Driver Passport has diffused rapidly through the industry. By the autumn of 2015 more than 6,500 Passports had been issued, covering the majority of the eligible workforce. A manager from a major haulage company told us that his firm had put 1000 drivers through the training programme to ensure they acquired the Passport, a major investment in training, and there had also been widespread take-up amongst smaller haulage businesses, represented by FPS. Cross-industry support and, crucially, the enforcement of the scheme at refineries and terminals has allowed the Passport to become rapidly established as part of the regulatory framework for the industry.

There was also evidence of the diffusion of the Passport. The scheme was initially launched in Great Britain but was then extended to Northern Ireland, a process that required the cooperation of the Irish authorities because of the open border and extensive cross-border trade in fuel. Other jurisdictions have also expressed interest in the Passport (e.g. Italy, Australia) and at the time of the research the possibility of franchising the scheme was being explored. In addition, the DODF was considering the development of a new regulation to improve safety at the retail end of the supply chain, on station forecourts, albeit with a different format and without the enforcement through a passport mechanism of the original scheme.

The main beneficial effect of the scheme, in the eyes of the logistics companies, was to standardize management practice, such that a common training regime and set of procedures were established for safe working in oil transport. An important feature of this new standardized practice was the spread of practical assessment of driver competence, something which was practised within leading firms but which was not previously universal. The scheme, it was suggested had eliminated egregious bad practice, found in a minority of businesses, and had established a benchmark below which future practice would not fall:

[T]he reason we've been a strong advocate of this from the outset because it is what we should be doing and in most cases you ask any of the industry, what it has done is give a level playing field. So even for our sub-contractors it's a way for us to ensure that the guys that are subcontracted to us...it is a way for us to ensure that there is training being given to those drivers and from a cost point of view, to ensure that what I'm doing should be the same for everybody else (Haulage Company Training Manager).

An important consequence of this standardization was the levelling of the competitive playing ground, reducing the exposure to competition of leading firms from those with lower standards.

The other main outcome from the initiative was the re-establishing of DODF, a governance institution that brought together the main stakeholders within the industry, including the unions, who were represented both by senior national officers and by shop stewards drawn from the

unionized haulage companies. The DODF was described to us by all who were interviewed as an effective institution that operated through cooperative joint-working; although the language of ‘partnership’ was avoided, it embodied the principle of social partnership:

All participated and very constructively. It wasn’t a case of they just sent a couple of minions along. It was dealt with very constructively and I must admit that Unite have been very, very helpful in driving the scheme forward (Haulage Company Safety Manager).

Unite was especially positive about the DODF, feeling that it provided the union with due recognition of the constructive role it played in the industry and welcoming the opportunity it provided to play a part in the industry’s governance. Trade associations, representing relatively new entrants and smaller businesses, welcomed the forum in very similar terms.

While the DODF was a successful, industry-level institution, however, it also seemed to be a discrete initiative with limited repercussion beyond the question of driver safety. Employer representatives were adamant that the forum had no bargaining role and was distinct from existing industrial relations institutions through which pay and benefits were determined. They also underlined the determination of haulage companies to retain the locus of bargaining at company level:

[W]e [DODF] are not a substitute or any way, shape or form, a board that would get between a company and a union. We’re not there to help union negotiations. We are focusing on the one aspect of road safety (Trade Association Representative).

There seemed little chance, at the time of the research, of the DODF leading to a more general centralization of industrial relations within oil distribution. It was a step towards reregulation at the multi-employer level but one that was confined to a particular issue and which had only limited implications for the broader structure of industrial relations within the sector.

Conclusion

The Petroleum Driver Passport shares some of the features identified in other cases of reregulation. Thus, the scheme originated in concern amongst employees that a more fragmented and deregulated labour market was eroding conditions of employment, exerting a downward pressure on pay and threatening safety. The changed conditions in the industry were also creating a new requirement for portable benefits. In addition, pressure for action originated in the trade union movement and resulted in a form of voluntary regulation that encompassed multiple employers. Despite the voluntarism of the scheme, however, Government and state agencies played an important part in bringing the Passport into being, and at the heart of the scheme was a new industry-level institution, the DODF, which created the Passport and assumed responsibility for its implementation. Finally, the Passport was promoted as a public good, affording protection to the industry’s workforce but also to the wider public at risk from the unsafe transport of hazardous fuel.

Although the Passport shared features with other cases, it was also distinctive in certain respects. Road tanker drivers are a relatively well-paid and well-organized group, with a demographic profile at odds with that of the women, migrant and minority workers at the heart of other cases. Arguably, the Passport case points to the insecurities attendant on deregulation spreading through the workforce to encompass those in hitherto relatively fortunate positions. The strong trade union tradition of the industry explains another distinctive feature of the Passport case: the scheme arose from threatened strike action and the union campaign was not characterized by the building of alliances with users or human rights campaigners in the manner of other cases or as

is proposed in some of the prescriptive literature on union revitalization (e.g. Alberti 2016). The Passport was the product of an established, not a new trade unionism. The DODF is a novel institution, however, and unlike other cases, where reregulation occurred through collective bargaining, the Passport was the product of a multi-stakeholder institution acting through consensual decision-making. The method of enforcement in the scheme was also distinctive. It relied upon the issuing of a Passport to tanker drivers, a measure akin to a license to practice, which was enforced through the positional power of terminal operators who controlled the flow of product into the supply chain rather than the monopsonistic power of brands at its apex. These distinctive features indicate that reregulation can follow a number of routes and assume a variety of forms.

The Petroleum Driver Passport scheme is an example of the successful reregulation of the labour market and for this reason holds possible lessons for reform in other industries. Arguably there are four lessons of this kind. First, the scheme was the product of industrial conflict and attests to the value of conflict in bringing issues forward for resolution. The union campaign and threat of disruption was the essential precondition which compelled other actors to take seriously the question of a new code to regulate driver safety. Second, the state played an important role in facilitating the emergence of the scheme and in guiding the parties towards a voluntarist solution, a role that government has historically played within UK industrial relations (Howell 2005). Reregulation even of a voluntary kind, the case suggests, may require support from public actors. Third, another important facilitating condition was the collective organization of employers in the industry, which provided a channel through which businesses could participate in the scheme's development and implementation. Reregulation at an industry-level, the case indicates requires employers to be organized at this level. Finally, the Passport served the purpose of multiple interests within the industry, giving all parties a stake in its success. The union secured its objectives of promoting driver safety and cementing its place in the industry's governance, the Government secured a scheme that complied with its stance on avoiding statutory regulation, and employers obtained a common safety standard that demonstrated their commitment to safe-working at a cost that was acceptable thanks to the integration of the scheme with other, existing bodies of regulation. Union pressure, state support, employer organization and positive value to relevant stakeholders emerge from the case as the conditions of reregulation.

References

- Alberti, G. (2016). 'Moving beyond the dichotomy of workplace and community unionism: the challenges of organizing migrant workers in London hotels', *Economic and Industrial Democracy*, 37/1: 73-94.
- Bergman, M.M. (2008). *Advances in Mixed Methods Research*. London: Sage.
- Boris, E. and Klein, J. (2007). "'We were the invisible workforce": unionizing home care', in D.S. Cobble (ed.), *The Sex of Class: Women Transforming American Labor*. Ithaca and London: ILR Press, 177-193.
- Cobble, D.S. and Merrill, M. (2009). 'The promise of service work unionism', in M. Korczynski and C.L. MacDonald (eds), *Service Work: Critical Perspectives*. New York and Oxford: Routledge, 153-174.
- Deakin, S., McLaughlin, C. and Chai, D. (2012). 'Gender inequality and reflexive law: the potential of different regulatory mechanisms', in L. Dickens (ed.) *Making Employment Rights Effective: Issues of Enforcement and Compliance*. Oxford and Portland, Oregon: Hart Publishing, 115-138.

- Delp, L. and Quan, K. (2002). 'Homecare worker organizing in California: an analysis of a successful strategy', *Labor Studies Journal*, 27/1: 1-23.
- Dickens, L. and Hall, M. (2003). 'Labour law and industrial relations: a new settlement?', in P. Edwards (ed.), *Industrial Relations: Theory and Practice*, second edition. Oxford Blackwell, 124-156.
- Ewing, K., Hendy, J. and Jones, C. (2016). *A Manifesto for Labour Law: Towards a Comprehensive Revision of Workers' Rights*. Liverpool: The Institute of Employment Rights.
- Hacker, J.S. (2008). *The Great Risk Shift: The New Economic Insecurity and the Decline of the American Dream*, second edition. Oxford: Oxford University press.
- Hepple, B. (2012). 'Agency enforcement of workplace equality', in L. Dickens (ed.), *Making Employment Rights Effective: Issues of Enforcement and Compliance*. Oxford and Portland, Oregon: Hart Publishing, 49-66.
- House of Commons Select Committee on Transport (2016). *Skills and Workforce Planning in the Road Haulage Sector*.
<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmtrans/68/6802.htm> (accessed 24.04.2017).
- Howell, C. (2005). *Trade Unions and the State: The Construction of Industrial Relations Institutions in Britain, 1890-2000*. Princeton and Oxford: Princeton University Press.
- James, P. (2016). 'Protecting Life and Death under the Coalition', in S. Williams and P. Scott (eds), *Employment Relations under Coalition Government: The UK Experience, 2010-15*. London Routledge, 127-143.
- James, P., Walters, D., Sampson, H. and Wadsworth, E. (2015). 'Regulating the employment relationship of domestic supply chains', *The Journal of Industrial Relations*, 57/4: 526-543.
- Kochan, T.A. and Riordan, C.A. (2016). 'Employment relations and growing income inequality: causes and potential options for its reversal', *The Journal of Industrial Relations*, 58/3: 419-440.
- Locke, R.M. (2013). *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*. Cambridge: Cambridge University Press.
- Mareschal, P.M. (2006). 'Innovation and adaptation: contrasting efforts to organize home care workers in four states', *Labor Studies Journal*, 31/1: 25-49.
- Mareschal, P.M. (2007). 'How the West was won: an inside view of the SEIU's strategy and tactics for organizing home care workers in Oregon', *International Journal of Organizational Theory and Behavior*, 10/3: 386-412.
- Marginson, P. (2015). 'Coordinated bargaining in Europe: from incremental corrosion to frontal assault', *European Journal of Industrial Relations*, 21/2: 97-114.
- Meardi, G. (2014). 'Employment relations under external pressure: Italian and Spanish reforms during the Great Recession', in M. Hauptmeier and M. Vidal (eds), *Comparative Political Economy of Work*. Basingstoke: Palgrave MacMillan, 332-350.
- Milkman, R. (2006). *L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement*, New York: Russell Sage Foundation.

- Milkman, R. (2013). 'Back to the future? US labour in the New Gilded Age', *British Journal of Industrial Relations*, 51/4: 645-665.
- Murphy, C. and Turner, T. (2014). 'Organizing non-standard workers: union recruitment in the Irish care sector', *Industrial Relations Journal*, 45/5: 373-388.
- Rubery, J., Keizer, A. and Grimshaw, D. (2016). 'Flexibility bites back: the multiple and hidden costs of flexible employment policies', *Human Resource Management Journal*, 26/3: 235-251.
- Sisson, K. and Marginson, P. (2002). 'Coordinated bargaining: a process for our times?', *British Journal of Industrial Relations*, 40/2: 197-220.
- Smith, P. (2001). *Unionization and Union Leadership: The Road Haulage Industry*. London and New York: Continuum.
- Stacey, C.L. (2011). *The Caring Self: The Work Experiences of Home Care Aides*. Ithaca and London: ILR Press.
- Standing, G. (2011). *The Precariat: The New Dangerous Class*. London: Bloomsbury.
- Walters, D. and Bailey, N. (2013). *Lives in Peril: Profit or Safety in the Global Maritime Industry?* Basingstoke: MacMillan.
- Williams, S. and Scott, P. (eds) (2016). *Employment Relations under the Coalition Government: The UK Experience, 2010-15*. London: Routledge.
- Williams, S., Scott, P. and Welch, R. (2016). 'Employment relations under the Coalition Government: Reflections, Legacy and Prospects', in S. Williams and P. Scott (eds) *Employment Relations under the Coalition Government: The UK Experience, 2010-15*. London: Routledge, 253-268.
- Wright, C. (2016). 'Leveraging reputational risk: sustainable sourcing campaigns for improving labour standards in production networks', *Journal of Business Ethics*, 137: 195-210.
- Wright, C. and Brown, W. (2013). 'The effectiveness of socially sustainable sourcing mechanisms: assessing the prospects of a new form of joint regulation', *Industrial Relations Journal*, 44/1: 20-37.
- Wright, C. and Kaine, S. (2015). 'Supply chains, production networks and the employment relationship', *The Journal of Industrial Relations*, 57/4: 483-501.

Table 1 Interview programme

Organisation	Number of interviewees
Unite the Union	3
Trades Union Congress	1
Advisory Conciliation and Arbitration Service (ACAS)	2
Logistics companies/hauliers	2
Downstream Oil-industry Distribution Forum (DODF)	2
Cogent Skills	1
United Kingdom Petroleum Industry Association (UKPIA)	1
Tank Storage Association (TSA)	1
Federation of Petroleum Suppliers	1
Department of Energy and Climate Change (DECC)	1
Total	15

NB Interviews were sought but not obtained from the United Road Transport Union, the other trade union operating in oil-distribution, and from the Scottish Qualifications Authority, which plays a role in administering the Passport scheme.