



Ministry of
JUSTICE

Restrictions on Strike Action for Prison Officers in European Union (EU) Member Countries and Countries in the Organisation for Economic Co-operation and Development (OECD)

HM Prison Service

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Restrictions on Strike Action for Prison Officers

Introduction

1. This paper outlines restrictions on strike action for prison officers in European Union (EU) member countries and countries in the Organisation for Economic Co-operation and Development (OECD). The first section summarises the position in all countries within the EU and OECD, section two details restrictions on strike action for prison officers in the EU and section three details restrictions on strike action for prison officers in those OECD countries not in the EU.
2. The information on each country has been verified through Foreign and Commonwealth Office contacts.

Summary

3. Strike action is any concerted stoppage of work, slowdown or other interruption of operations by employees. Strike action can include work stoppage, job action, walk-outs, sympathy strikes, secondary strikes and wildcat strikes.
4. The right to strike in EU member countries and countries in the OECD may be restricted depending on the definition of essential and minimum services in each country. The Committee of Experts at the International Labour Organisation (ILO) defined essential services as those where, 'the interruption of which would endanger the life, personal safety or health of the whole or part of the population' (ILO, 1983b, para. 214).¹ The Committee on Freedom of Association has stated that, 'the establishment of minimum services in the case of strike should only be possible in:
 - '(1) services the interruption of which would endanger the life, personal safety and health of the whole or part of the populations (essential services in the strict sense of the term);
 - (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and
 - (3) public services of fundamental importance.'(ILO, 1996d, para. 556)²
5. The definition of essential services and agreed levels of minimum service can be laid out in the constitution, statutory or case law, or collective agreements between employers and employees. A further consideration is what sanctions can or realistically will be taken should illegal strike action take place.
6. Countries within the EU and OECD broadly fall into three categories: those which prohibit prison officers from taking any strike action, countries where the right to strike is in place but with restrictions, and countries where the right to strike operates without restriction.

¹ 1983b. *Freedom of association and collective bargaining: General survey by the Committee of Experts on the application of the Conventions on freedom of association, the right to organise and collective bargaining and the Convention and Recommendation concerning rural workers' organisations*. Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 4B), International Labour Conference, 69th Session, 1983. Geneva.

² 1996d. *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*. Fourth (revised) edition. Geneva.

7. The law or constitution prohibits prison officers from taking strike action in Austria, Bulgaria, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Latvia, Luxembourg, Malta, Poland, Iceland, Japan, South Korea, Turkey and USA (federal employees). In many cases prison officers are able to demonstrate outside work time, or make their views clear by other means, as long as it does not interfere with their duties. Where prison officers are allowed to form unions, disputes may be resolved through collective bargaining with the prison service in that country or directly with the government. In some cases conciliation, mediation or arbitration processes are provided for and when they are exhausted the state may intervene.
8. In other countries the right to strike for prison officers is guaranteed by statutory law or the constitution but with restrictions. This includes Australia, Finland, Greece, Ireland, New Zealand, Portugal, Romania, Slovenia and Switzerland. Typically, the right for prison officers to take strike action may be restricted by one or a combination of the following:
 - Collective agreements between the employer and employee. The restriction may be by virtue of the law (i.e. strike action cannot be taken when collective agreements are in place), or part of the agreement itself. In some cases strike action is allowed when an agreement has expired and a new agreement is under negotiation.
 - The need to maintain a minimum level of service during strike action. The level of minimum service is often defined by collective agreement between the employer and employees. In the absence of a collective agreement the minimum level of service may be decided by an appropriate government body or ministers.
 - Considerations of public order or safety and of prisoner safety or rights; governments may restrict or remove the right to strike if there is a risk to public or prisoner safety.
9. Breach of strike regulations may incur various disciplinary, administrative, civil or criminal sanctions depending on the country. For employees this can include fines, deductions from salary, suspension, demotion, dismissal and loss of civil service status (and associated pension entitlements). Unions may be held financially responsible. Whether enforcement action is taken depends on the political context. For example, in Austria, whilst strike action by prison officers is punishable by disciplinary action under the Civil Service Act, in a recent strike disciplinary measures were not enforced because the authorities took the view that the strike had not damaged the functioning and security of the prisons.

Restrictions on Strike Action for Prison Officers

10. The Netherlands is unusual as neither statute nor constitutional law deals with the right to strike and most legal restrictions have arisen from contract law, drawing from Article 6 of the European Social Charter as a legal basis for the right to strike for public sector workers (including prison staff). The restriction is that unions have to consider the proportionality of each action. Strikes which involve major disruption to the public could be declared unlawful.
11. The right to strike for prison officers operates without restriction in Belgium where during a strike a minimal service is provided by the police, and in Cyprus where there is no history of prison staff taking strike action.

Restrictions on strike action by prison officers in European Union member states

Austria

12. There is no specific anti-strike legislation in Austria but all federal government officials, including prison officers, are forbidden from taking strike action by the Civil Service Act. This stems from their duty of service and any withdrawal of that service can in theory lead to disciplinary action.
13. There has been at least one case of prison officers (and other civil servants working in the prison/judicial system) taking strike action against the government. Yet disciplinary measures have never been enforced. In a precedent setting case a few years ago Austrian officials took the view that the strike had not damaged the functioning and security of the prisons and therefore there was no need to enforce disciplinary action. This political compromise will affect the handling of strike action in the future (i.e. strike action will be possible if the service can be maintained).
14. Austrian prison staff can take their disputes to the Justice Ministry through staff representatives (including taking them all the way to the Federal Minister) or into the political arena through the trade unions.

Belgium

15. Prison officers are employed by the government. They are able to take strike action. The Belgian constitution does not contain a positive right to participate in industrial action. However, the Act of 11 July 1990 ratifies the European Social Charter 1961, which recognises the right to collective action, including the right to strike. The 'Essential Public Services in Peacetime Act' of 1984 contains requirements for minimum service levels during a strike which in Belgium's case means that the police must cover for striking prison officers but does not define exactly which duties they must undertake. Joint Committees (committees at industry level composed of employers' and union representatives) determine the service levels and vital public needs that must be secured in that industry in the event of a strike or lockout. The most recent action was taken in July 2007. The debate has shifted towards whether the prisons should force skeleton staff to remain while officers strike, i.e. a minimum service level agreement. This has increasing backing from the Belgian Police, who have to cover for the striking prison officers.

Bulgaria

16. Prison officers are employed by the Ministry of Justice. The Ministry of Interior Act, which is valid for the General Directorate Execution of Sentences, means prison officers are not allowed to strike at work. They are able to protest during non-working hours, not in uniform and not on an issue that is associated with the daily activities of an officer. There has not been a strike in recent years.³

Cyprus

17. Prison officers are civil servants and employed by the government. This means they are able to take strike action or withdraw their labour. However, until now strike action has not been taken. Cyprus only has five prisons making comparisons with the UK difficult.

Czech Republic

18. Prison Warders are employed by the Prison Service. They are not allowed to strike. The Declaration of Basic Rights and Liberties, part of the Constitutional Rules of the Czech Republic, guarantee the right to strike but this does not apply to Prison Warders. This is reinforced in the law about collective negotiations (zákon číslo 2/1991 Sb., o kolektivním vyjednávání). Prison Warders have not taken strike action in recent years. If they did so it would be considered a violation of law and sanctions could include deductions in salary, demotion, or dismissal.

Denmark

19. Prison officers are employed by the government and are prohibited from taking strike action. The right to strike stems from the September Agreement in 1899 between employers and unions. Most public employees are now employed by collective agreement and under Funktionærloven which gives the right to strike by law. However, prison officers, together with the police, fire brigade, priests and rescue workers, are employed under the Official Civil Service Employment Act that forbids industrial action. The Act was introduced in 1919 but has since been amended. Prison officers can demonstrate and can take to the streets but are not legally permitted to withhold their labour. In 1998 a case was brought before the ILO with regards to this prohibition. The case covered specifically teachers who were at the time employed under the Civil Service Act. The ILO criticised the Danish Government for not giving teachers the right to strike but did not criticise the government for not giving policemen or prison guards the right to strike.

³ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

20. The collective bargaining between the prison officer union and the state takes place every three years. If no agreement can be found the dispute is taken to a conciliation board. If still no agreement is found, the state will intervene and make the collective agreement into law. This system has worked well and not resulted in illegal strike action.
21. If a civil servant employed under the Civil Service Employment Act did take illegal strike action, the court can fine the employee his or her wages and impose an additional fine. If a union has been involved, that organisation will also be held financially responsible. It is against the law for the union to pay the fines or compensate for lost wages as a result of an illegal strike.

Estonia

22. Prison officers are employed by the government but are not allowed to strike. Whilst freedom of association is guaranteed by the law and unions normally have the right to strike, under the Estonian Imprisonment Act 135 prison officers are not allowed to participate in strikes, pickets or any other industrial action related with prison services. Prison officers are also not allowed to participate or support any industrial actions that may be a threat to domestic security.

Finland

23. Prison officers are employed by the government and are able to strike with some constraints. Most salaries in Finland are set by sectoral collective agreements. If agreements expire prison staff could take industrial action but when they are in place they are unable to take such action. The right to withdraw labour in the absence of such an agreement is underpinned by Employment Law. During a strike civil servants can be asked to perform 'protective work' which is work that is indispensable in order to safeguard the life or health of citizens or protect property endangered by the strike. If civil servants' industrial action causes 'serious disturbances' in society and the negotiations do not appear to be leading to a conclusion, the matter may be referred to a Civil Service Disputes Committee who can postpone action by two weeks and may recommend ending or limiting the strike (although these recommendations are not always followed). The Ministry of Labour can also postpone a strike for three weeks if 'serious disturbances' are feared. Legal strikes can only be prohibited by special legislation.
24. In the past ten years there has been one prison staff strike. This was an illegal three hour strike, during which prisoners were locked in their cells. This took place in May 2006 and was organised to protest against job cuts.

France

25. Prison officers are employed by the government and are not able to strike. The right to strike is recognised in the Preamble of the Constitution of 1947. However, the right is not absolute or unqualified. Prison officers have a special status that differs from other civil servants because of the security aspect of their job. The law dates back to August 1958 and the subsequent decree in November 1966. Any collective strike action is forbidden as well as any unruly group action carried out by the officers. Sanctions can be forcefully applied by the employer and do not guarantee the usual course of disciplinary action for civil servants. Officers carrying out illegal action can be banned for a period of time or allocated to a different position if deemed necessary (Article 86 as amended by the Bill 92-125 in February 1992). There were widespread strikes in 2001. The sanctions varied from a warning to temporary bans.

Germany

26. Prison officers are civil servants employed by the Laender (federal states) Governments. They are not allowed to go on a strike, but are free to join a union. Article 9 of the Basic Law (Constitution) guarantees collective bargaining autonomy which includes the right to strike. However, Article 33 Paragraph 5 of the Basic Law (Constitution) states that, 'The law governing the public service shall be regulated with due regard to the traditional principles of the professional civil service'. The Federal Constitutional Court ruled in 1958 that 'traditional principles' included the prohibition of strike action for civil servants. There has not been any illegal strike action by prison officers in recent years. Such action would result in officers losing their jobs and their civil servant status. This would mean losing entitlement to a generous civil service pension.

Greece

27. Prison officers are paid by the state. They are allowed to strike. However, when they go on strike they keep performing their prison duties. They do not perform duties related to prison visits and the transportation of prisoners to and from prisons and to and from courts, with the exception of cases that are in danger of being covered by statutes of limitations.⁴

⁴ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

Hungary

28. Prison officers and 'disciplinarians' are government employees. Officers in the Prison Service are not allowed to form unions. No association or union is allowed to organise a strike. The rights of Prison Service officers are defined in Act no. XLIII of 1996 on service terms for the official armed forces (Hszt Act). In accordance with Article 27 (2) of the Hszt Act, 'Workers associations may operate freely and exercise their rights under the provisions of this Act. They may not, however, organise a strike, or engage in any activity interfering with the regular operation of the armed forces, or the fulfilment of official orders'. Another relevant provision is Article 3 (2) of Act no. VII of 1989 on strikes, 'Strike is inappropriate in law enforcement, the armed forces, military and police forces, and national security services.' Recently there has been a peaceful demonstration organised by armed force staff associations, prison service included, where officers in casual clothing gathered in front of the Parliament. The dispute was related to wages.⁵

Ireland

29. Irish prison officers are civil servants. They are allowed to strike or take industrial action for both local and national disputes. The Irish Constitution guarantees the right of citizens to form associations and unions. The Prison Officers Association is obliged to follow Best Industrial Practice for the planning and duration of strike action. This obligation includes agreement with management and the provision of a minimum number of staff to maintain a minimum level of service, prisoner welfare and the safety of staff who are not on strike. Best Industrial Practice includes adherence to the normal industrial relations process which would see plans to strike brought before the Labour Relations Commission and possibly the Labour Court before lawful strike action is carried out. Prison officers have taken action for local disputes in the past and have come close to taking action on a national scale over new pay and conditions. The Department of Justice has put in place contingency plans for the police and defence forces to man prisons. The police and defence forces are not allowed to take industrial action.

⁵ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

Italy

30. Prison officers (Corpo di Polizia Penitenziaria) are employed by the Ministry of Justice. The right to strike is protected by Article 40 of the Italian Constitution. However, prison officers are not entitled to strike, nor can they withdraw their labour while on duty as this would jeopardise the security of the prison. They can take part in demonstrations at local or national level, but not when on duty. This is part of the legislation (395/90).⁶

Latvia

31. Prison officers are employed by the Prison Administration, a state institution, and are not allowed to strike. Freedom of association is guaranteed by the Constitution and the Law on Meetings, Street Processions, and Pickets. The right to strike and its restrictions in general are provided by the Law on Strikes. This prohibits the right to strike for judges, prosecutors, members of the police, fire-fighters, border-guards, members of the state security service, prison guards and the armed forces. The right to strike for prison officers is also prohibited in the Law on Prison Administration. Due to this prohibition, prison officers have not been involved in strikes. In case of illegal strike action, prison officers would be subject to disciplinary sanctions, the most severe would be dismissal.⁷

Lithuania

32. No information.

Luxembourg

33. Prison officers are either state employees or state workers. Prison officers are not allowed to strike. A right to strike does not exist explicitly in the Constitution or in legislation but Article 11 of the Constitution guarantees freedom of association from which a Supreme Court ruling in 1952 derived the right to strike. The right to strike was extended to the public sector in 1979 but excludes certain groups such as diplomats, the judiciary and prison administration staff, senior civil servants and managers, the armed forces, the police, medical and security personnel. Prison officers have not been on strike in recent years.

⁶ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

⁷ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

Malta

34. Prison officers are employed by the government under the remit of the Ministry of Justice and Home Affairs. Freedom of association is guaranteed under the constitution and unions have the right to strike. However, Prison officers do not have the right to strike as they are classified as a disciplined force like the Army and Police. Disciplinary action can be taken against prison officers who strike illegally which can lead to dismissal from the force. Prison officers have not taken strike action in recent years.⁸

Netherlands

35. Prison officers are employed by the government and in principle are able to take industrial action. Neither statute nor constitutional law deals with the right to strike and most legal restrictions on the right to strike have arisen from individual court cases concerning the application of contract law. Courts have used Article 6 of the European Social Charter as a legal basis to justify the right to strike for public sector workers (including prison staff). Unions have to consider proportionality of each action and may be referred to the Court of Justice where there is dispute over this. Strikes which involve major disruption to the public could be declared unlawful. There were prison staff strikes in March 2007 over pay. Strikes affected half of the Dutch prisons and were limited to 12 hour periods, called in turn in various prisons.

Poland

36. The government employs Prison Service Officers. The Polish Prison Service is a uniform service with its own organisational structure, overseen by the Justice Ministry. Prison Service Officers, as well as officers of other uniform services, Government and Local Government officials and employees of Polish Courts and Prosecutor's Office, cannot strike or withdraw labour. They can manifest their views by putting up posters or disseminating leaflets in the workplace but these actions should not interfere with their duties or cause any threat to the public or impact on prisoners' welfare. An article in a Prison Service Law regulates this issue.

37. In the case of a group conflict, mediation or arbitration can take place, usually between a trade union and the employer. Polish Civil Code covers the issue of right to strike in general, the Labour Law and Act on Resolving Group Conflicts (1991) cover the issue in more detail.

⁸ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

38. In the event of illegal strike action (with reference to the Prison Service) criminal charges apply as well as compensation for any damages that occur during the action. Also, sanctions resulting from the Labour Law could be used (i.e. termination of employment).

Portugal

39. Prison officers are civil servants employed by the state. Their right to strike is defined by general law and protected under the constitution (Article 57). However, within the civil service, they are considered 'security forces' and have a specific status akin to the police force. Within their right to strike, they are obliged to maintain minimum services, defined as: a continuing capacity to maintain vigilance of prisoners, accompany detainees to court in some specific circumstances, maintain the security of prison facilities and services, manage members of the service working during a strike, maintain feeding, hygiene, medical assistance, medicinal and religious services to inmates.

Romania

40. Prison officers are employed by the government. Law no. 53/2003 in the Labour Code and Article 250 and Article 43 in the Constitution define the right to strike. Prison officers are able to take industrial action but cannot withdraw their labour. This is according to Article 35 of Law 293/2004, which stipulates that prison staff are able to take strikes on the condition that one third of prison activity is ensured so that prisoners' rights and safety are in place. Industrial action cannot be taken when linked to political matters. Prison officers have not taken strike action in recent years.⁹

Slovak Republic

41. No information.

⁹ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

Slovenia

42. Prison officers are employed by the Prison Administration of the Republic of Slovenia. According to the Constitution (Article 77), employees have the right to strike. Where required by the public interest, the right to strike may be restricted by law, with due consideration given to the type and nature of the activity involved. According to the Law on Execution of Criminal (Penal) Sanction (Article 217), there are some restrictions on the right to strike. Workers have to perform those duties which assure security and do not disturb the work of the prison administration. Prison officers have to monitor and guard prisoners according to decisions by the Court of Justice. There has not been any strike action by prison officers in recent years.¹⁰

Spain

43. Prison officers are employed by the government as civilians (not law enforcement) and they are able to take strike action but in practice will engage in negotiation with Prisons Headquarters before taking any action.

Sweden

44. No information.

¹⁰ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

Restrictions on strike action by prison officers in Countries in the Organisation for Economic Co-operation and Development who are not EU member states

Australia

45. At the Commonwealth (Federal) level, legislation has been passed that applies ILO standards and in particular its implied position that all workers have the right to strike in certain circumstances, known as 'protected industrial action' (Workplace Relations Act 1996). There is no national prison service in Australia and the situation is different in each of the states:

46. **Capital Territory:** There are no prisons in the Australian Capital Territory (ACT). However there are several remand centres. Custodial officers working in the remand centres are employees of the ACT Government under the control of the Chief Executive Department of Justice and Community Safety. The Workplace Relations Act 1996 and amendments in 2007 govern arrangements associated with taking industrial action. Arrangements for custodial officers are covered in the department certified agreement which provides for dispute resolutions processes. Any employee has the right to strike. However, subject to when their action is taken it is either protected or unprotected industrial action. This defines the penalties or sanctions as a result of action. It is illegal for the employer to pay staff when striking or applying workbans.¹¹

47. **New South Wales (NSW):** The majority of correctional officers are employed by the NSW government (one correctional centre is privately run) and can take strike action but with restrictions. The NSW Industrial Relations Act 1996 does not prohibit strike action. However, the Essential Services Act 1988 at section 4(1) (j) states that the conduct of a prison is regarded as an essential service. The Act would usually only be evoked if, during periods of industrial action, difficulties were experienced in providing food, laundry and transport services at correctional centres. In most cases of industrial action, correctional centres operate under 'lockdown' where food, laundry and transport conditions continue to operate. A nominated minister can direct normal work to resume in an essential service that has been disrupted by strike action. Since November 2006 NSW prison officers have taken strike action on seven occasions, mainly over staffing issues. Most action was at a single centre and involved fewer than 100 officers. However in November 2006, 661 officers

¹¹ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

in four centres took industrial action following the suspension of two officers.¹²

48. **Northern Territory:** No information.

49. **South Australia:** Correctional Officers are employed under state jurisdiction and have the right to strike under the Fair Work Act. There are no restrictions on the right to strike but an employer can seek orders from the Industrial Relations Commission of South Australia to ensure services can continue. There has been strike action by correctional officers in recent years during which they had to provide minimum staffing levels.¹³

50. **Tasmania:** Correctional officers are employed under state jurisdiction and are able to strike. State legislation empowers a Commission to intervene to settle industrial action when it occurs but it does not confer or limit the right to strike. This Commission operates for both employers and employees in the private and public sector. So correctional officers may strike as any other employee might and there are no specific restrictions. In recent years there have been bans placed on certain tasks which has been interpreted as a 'withdrawal of labour' and application was made to the Commission to intervene. Its usual condition is that industrial action is lifted. Commission orders must be obeyed; non compliance would result in a fine. When they have intervened strike action has halted immediately and normal duties undertaken.¹⁴

51. **Western Australia:** All prison officers are employed by the state government except in one privately run prison. Under the Western Australian Industrial Relations Act 1979 prison officers do have a legal avenue for industrial action and can strike. If there is a dispute, and prison officers withdraw their labour, the dispute is taken to the Western Australia Industrial Relations Commission which acts as arbitrator. The Commissioner has the legal right to order officers back to work and can also allow the action to continue if it does not impinge on public safety. The Commissioner's decision is binding on both the employer and the union and employee. There are penalties on the individual employee up to a maximum of \$5000. If either side refuse to comply, an Order can be issued by the Industrial Commissioner, which can go as far, for example, of de-recognition of the union.

¹² Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

¹³ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

¹⁴ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

52. Prison officers in the privately run prison come under Federal Corporation laws. They have some legal right to strike but this will depend on their 'Enterprise Agreement' and what 'Protected Action' they are permitted in support of their claim. The Federal Industrial Relation Commissioner can authorise a ballot of the workforce and arbitrate, but the Federal Minister can overturn any decision.
53. The last industrial action was a five day stoppage in 2002 over safety levels and staff shortages and a two day stoppage in 2001.
54. **State of Queensland:** The state government operates the majority of correctional centres but two are privately run. Correctional officers can take industrial action but only if there is an imminent risk to the health and safety of staff, or it is in support of a claim to make a certified agreement. This is referred to as 'protected industrial action'. The employment of custodial correctional officers is governed by the Industrial Relations Act 1999, Department of Correctional Services Correctional Employees Certified Agreement 2007 (subordinate to the Act), and the Department of Corrective Services Correctional Employees Award State 2005 (subordinate to the Agreement). Queensland Correctional Services does not condone or accept strikes and will always take action to seek the enforcement of the Act and Agreement provisions when faced with industrial action. The correctional workforce has a history of attempting to take unprotected industrial action, however the Agency has been successful in preventing action by access to the Queensland Industrial Relations Commission (which administers the agreement framework) and enforcing the provisions of the agreement.¹⁵
55. **State of Victoria:** Victoria has ten public prisons and two private prisons. The staff of public prisons are state government employees. Both staff in public and private prisons are bound by the provisions of the Workplace Relations Act 1996 (Federal) which defines protected and unprotected industrial action. Protected action is associated with renewal of enterprise agreements which are between the employer and the union and are required to contain dispute resolution procedure. Sanctions of injunction relief and/or penalties for unprotected action are available through the Federal Courts. The most recent industrial action occurred around 1999/2000 and it involved strike action in a single prison.¹⁶

¹⁵ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

¹⁶ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

Canada

56. Correctional officers employed in Canadian federal penitentiaries are represented by the Union of Canadian Correctional Officers and have operated under a collective agreement for a number of years.
57. Under federal labour laws, unionised employees have a right to strike unless they provide services that are essential for maintaining the safety and security of the Canadian public. Inmates are deemed to be members of the public pursuant to the legislation and as a result, correctional officers must report to work in the event of strike activity due to the essential nature of their duties.
58. Identification of essential service positions pursuant to the statutory process, are jointly negotiated by the employer and the union and where there may be disputes as to the appropriate status of a position, the parties may seek the assistance of the Labour Board to make a final determination. It is important to note, however, that under the current Canadian legislation, it is the employer that determines the essential services within their operations and the extent and level of those services. The Labour Board only has the discretion to address the position issues identified within those services.
59. Notwithstanding their essential status, correctional officers may still participate in picket line and strike activity during their non-work hours and have a long history of active strike action in Canada. New legislative prohibitions on hindering the access or regress of essential services staff to workplaces (including fines) should provide additional support for picket line access management.

Iceland

60. The Prison Service of Iceland employs prison warders. They do not have the right to strike under a civil service law of 1996. In Spring 2007 90% of prison warders resigned in a dispute over wages. According to the labour law in Iceland, the term of notice is three months but the prison authorities extended the term to six months. This did not solve the problem and the dispute was only resolved when further funding was found to increase wages. This is an unusual method for civil servants in Iceland to get their demands across.

Japan

61. In Japan prison officers are employed by the government although there are a small number of private prisons. Prison officers are not allowed to form unions or engage in collective bargaining. They are prohibited from taking strike action under Article 98-(2) and Article 108-2-(5) of the National Public Services Act.

Mexico

62. No information.

New Zealand

63. Prison officers are employed by the government and are able to strike but with some limitations. Under the Employment Relations Act 2000 strikes and lockouts are lawful where they relate to the bargaining for a collective agreement or when the employees or employer believe on reasonable grounds that action is justified on the grounds of safety or health. A strike is unlawful when the required notice is not given, when a binding collective agreement is in force, or during bargaining for a collective agreement, and in respect of personal grievances, disputes and freedom of association matters. Prison officers have not taken strike action in New Zealand in recent years.

South Korea

64. Prison officers are employed by the government and are not allowed to strike. The Constitution (Article 33) provides for the rights to organise, the right to collectively bargain and the right to collectively act, in order for employees to maintain or improve, on their own, their working conditions, including wage and hours of work. However, all public servants, including prison officers are not allowed the right to strike under Article 6.2 of the law on the Establishment and Operation of the Civil Service Union. Article 33.1 of the same law mentions that public servants, including prison officers, have the right to bargain with the government delegation, including ministers of government administration and home affairs and city mayors, to improve their working environment through the civil service union.

Switzerland

65. Prison officers and staff are cantonal government employees. They are not employed by the federal authorities. This means that there can be variation by canton. In general, though, there is the right to strike or take industrial action but the service of custody and welfare of detainees must be guaranteed. There must be serious negotiations between employer and employee before a strike could be considered. The law permits the right to strike to be curtailed or restricted if the custody and welfare of prison inmates is at risk. Prison officers have not taken strike action in recent years.

Turkey

66. Prison officers are civil servants employed by the Ministry of Justice and do not have the right to strike. Turkey has signed and ratified the ILO Conventions No 87 on Freedom of Association and Protection of the Right to Organise and No 98 on the Right to Organise and Collective Bargaining. However, domestic legislation has not been adapted accordingly. Turkey has not accepted Article 5 (right to organise) and Article 6 (right to bargain collectively, including the right to strike) of the European Social Charter. According to Civil Servants Law (Law number 657), Article 27, prison officers have no right to strike, call for a strike or conduct propaganda to this end. Like other civil servants they are allowed to establish and become members of syndicates (under Article 22). In this respect they could become members of Tun-Yargi Sen, a syndicate established by the Justice Ministry Personnel. In addition they are allowed to establish Staff Welfare Divisions for social collaboration among themselves.¹⁷

¹⁷ Confirmed as correct by Foreign and Commonwealth Office contacts as at October 2007.

United States

67. At the federal level, prison officers are employed by the Federal Bureau of Prisons, an agency of the US Department of Justice. There are some private prisons which employ their own officers. Below state level, officers are employed by various state, city, county and tribal authorities, as well as private contractors.
68. There is a statutory bar on federal employees, including prison officers, withdrawing their labour. The primary sanction for unions who call an illegal strike are fines, restrictions on political campaigning and ultimately dissolution. Secondary sanctions will include disciplinary action against individuals. All federal employees are able to take negotiable issues to the Federal Service Impasse Program (FSIP) if negotiations with the employer fail. The FSIP listens to both sides and makes a binding decision. The FSIP is not competent to rule on pay, as this is set by an outside body and confirmed by Congress.
69. Staff working for contractors are able to strike as they are governed by general labour relations laws.

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