

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TRADE UNION BILL

Sixth Sitting

Tuesday 20 October 2015

(Afternoon)

CONTENTS

CLAUSES 2 to 7 agreed to.

Written evidence reported to the House.

CLAUSE 8 under consideration when the Committee adjourned till
Thursday 22 October at half-past Eleven o'clock.

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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chairs: SIR EDWARD LEIGH, † SIR ALAN MEALE

- | | |
|--|---|
| † Argar, Edward (<i>Charnwood</i>) (Con) | † Howell, John (<i>Henley</i>) (Con) |
| † Barclay, Stephen (<i>North East Cambridgeshire</i>) (Con) | † Kennedy, Seema (<i>South Ribble</i>) (Con) |
| † Blenkinsop, Tom (<i>Middlesbrough South and East Cleveland</i>) (Lab) | † Mearns, Ian (<i>Gateshead</i>) (Lab) |
| † Boles, Nick (<i>Minister for Skills</i>) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Cameron, Dr Lisa (<i>East Kilbride, Strathaven and Lesmahagow</i>) (SNP) | † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) |
| † Cartlidge, James (<i>South Suffolk</i>) (Con) | † Prentis, Victoria (<i>Banbury</i>) (Con) |
| † Doughty, Stephen (<i>Cardiff South and Penarth</i>) (Lab/Co-op) | † Stephens, Chris (<i>Glasgow South West</i>) (SNP) |
| † Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † Stevens, Jo (<i>Cardiff Central</i>) (Lab) |
| † Ghani, Nusrat (<i>Wealden</i>) (Con) | † Sunak, Rishi (<i>Richmond (Yorks)</i>) (Con) |
| | Fergus Reid, <i>Committee Clerk</i> |
| | † attended the Committee |

Public Bill Committee

Tuesday 20 October 2015

(Afternoon)

[SIR ALAN MEALE *in the Chair*]

Trade Union Bill

2 pm

Clause 2

BALLOTS: 50% TURNOUT REQUIREMENT

Amendment proposed (this day): 90, in clause 2, page 1, line 14, at end insert—

‘(3) This section shall not apply to trade disputes in Scotland.’—(*Chris Stephens.*)

The Chair: I remind the Committee that with this we are discussing the following:

Amendment 11, in clause 3, page 2, line 24, at end insert—

‘(2G) None of the provisions of this section shall apply to services the provision of which is devolved wholly or partially to the Scottish Government, Welsh Government or Northern Ireland Executive.’

The amendment would ensure that the provisions of the Bill requiring 40% support for industrial action in certain public services would not apply to services devolved to the Scottish Government, the Welsh Government and the Northern Ireland Executive.

Amendment 12, in clause 3, page 2, line 24, at end insert—

‘(2H) None of the provisions of this section shall apply to services provided by the Mayor of London or local authorities in England.’

The amendment would ensure that the provisions of the Bill requiring 40% support for industrial action in certain public services would not apply to services devolved to the Mayor of London or local authorities in England.

Amendment 77, in clause 3, page 2, line 28, at end insert—

‘(4) This section shall not apply to trade disputes in Scotland.’

Amendment 78, in clause 4, page 3, line 2, at end insert—

‘(3) This section shall not apply to trade disputes in Scotland.’

Amendment 79, in clause 5, page 3, line 25, at end insert—

‘(3) This section shall not apply to trade disputes in Scotland.’

Amendment 80, in clause 6, page 3, line 44, at end insert—

‘(3) This section does not apply in relation to industrial action in Scotland.’

Amendment 81, in clause 7, page 4, line 9, at end insert—

‘(3) This section shall not apply to trade disputes in Scotland.’

Amendment 82, in clause 8, page 4, line 24, at end insert—

‘(3) This section shall not apply to disputes in Scotland.’

Amendment 42, in clause 10, page 7, line 10, at end insert—

‘(5) None of the provisions of sections 84 and 85 shall apply to public sector employees in sectors or providing services which are wholly or partially devolved to the Scottish Government, Welsh Government or Northern Ireland Executive.’

The amendment would ensure that the provisions on contributions to political funds would not apply to employees in public services providing services which are devolved to the Scottish Government, the Welsh Government, the Northern Ireland Executive.

Amendment 72, in clause 10, page 7, line 10, at end insert—

‘(6) None of the provisions of this section shall apply to employees of the Mayor of London or local authorities in England.’

The amendment would ensure that the provisions on contributions to political funds would not apply to employees in public services providing services which are devolved to the Mayor of London or local authorities in England.

Amendment 51, in clause 12, page 9, line 20, at end insert?

‘(13) None of the provisions of this section shall apply to facility time of the employees of the Scottish Government, the Welsh Government or the Northern Ireland Executive, or to public sector employers working for or providing services that are wholly or partially devolved to the Scottish Government, Welsh Government or Northern Ireland Executive.’

The amendment would ensure that the provisions on facility time would not apply to employees working for or providing public services which are devolved to the Scottish Government, the Welsh Government or the Northern Ireland Executive.

Amendment 73, in clause 12, page 9, line 20, at end insert?

‘(14) None of the provisions of this section shall apply to facility time of the employees of the Mayor of London or local authorities in England.’

The amendment would ensure that the provisions on facility time would not apply to employees working for or providing public services which are devolved to employees of the Mayor of London or local authorities in England.

Amendment 84, in clause 12, page 9, line 20, at end insert—

‘(13) The provisions in this section shall only apply with the consent of the Scottish Government, Welsh Government, Northern Ireland Executive, the Mayor of London and Local Authorities in England in their areas of responsibility.’

Amendment 85, in clause 13, page 10, line 44, at end insert—

‘(14) For the avoidance of doubt, the powers in this section shall only apply with the consent of the Scottish Government, Welsh Government, Northern Ireland Executive, the Mayor of London and Local Authorities in England in their areas of responsibility.’

Amendment 86, in clause 14, page 11, line 11, at end insert—

‘(4) This section and the Schedules it inserts shall not apply in Scotland.’

Amendment 87, in clause 15, page 12, line 23, at end insert—

‘(4) This section shall not apply in Scotland.’

Amendment 88, in clause 16, page 13, line 26, at end insert—

‘(5) This section and the Schedule it inserts shall not apply in Scotland.’

Amendment 89, in clause 17, page 14, line 43, at end insert—

‘(11) Trade union members resident in Scotland shall not be required through their union to contribute to a levy imposed by this section.’

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Sir Alan, as we return to line-by-line scrutiny of the Bill. When we left, we were discussing the group of amendments about devolution and I was about to set out my case on amendment 11.

By setting balloting thresholds for the range of important services defined by the Bill, we need to be clear that this will impact on public policy areas that are wholly devolved. As a Welsh Member of Parliament, I am concerned that the Bill could breach the devolution settlement in Wales and in Scotland, as well as with regard to the increasing powers of local authorities in England, Mayors and the Mayor of London.

Health services, education of those aged under 17 and fire services are already clearly devolved to Wales, and the Welsh First Minister stated in a recent letter to the Prime Minister:

“It is clear...that significant elements of the Bill relate specifically to public services which in Wales are unambiguously devolved responsibilities. I therefore do not accept the suggestion that the Bill must be regarded as concerned exclusively with non-devolved issues...Policy on how to support, or ‘protect’, the delivery of devolved public services such as health, education and fire is...for the Welsh Government and the National Assembly for Wales. This includes the way the public sector bodies in such devolved services work with trade unions to ensure effective delivery of services to the public.”

That is very important because we regularly hear examples from the Government about services. Most of them seem to relate to London—though, as I have said, we should give the Mayor of London the choice of how to handle these relationships. These examples do not relate to services in Wales, Scotland or elsewhere. I wonder why that is. Given that the devolved Governments have raised a series of concerns in their oral and written evidence, in letters and so on, will the Minister inform the Committee what discussions he and other Ministers in the Department and the Minister for the Cabinet Office have had with Ministers and officials in the devolved Administrations before the Bill was published and subsequent to their concerns being raised?

This is particularly important because the First Minister of Wales specifically pointed out the positive social partnerships that exist in Wales—we have heard similar evidence from Scotland—and the impact that that can have on the positive delivery of public services. The Minister need not accept just the word of the Welsh Government for this, welcome though that would be, as we also have research published by the Royal College of Nursing, which witnesses touched on in oral evidence. The research highlights the benefits of high-trust working relationships between managers and unions in the public sector. In that case, it was related to health in particular. I believe that the Bill and this clause seek to drive a false wedge between them.

We have already heard how Scottish Labour and local authorities run by Scottish Labour have made it very clear that they do not intend to implement the Bill. I have been made aware during the lunch break of a statement released by one of the Welsh councils, and I

know that many share this position. I have a statement from Torfaen, a Labour-run authority. Councillor Anthony Hunt has tabled a resolution there, endorsed by the council, which says that the council

“resolves to oppose the introduction of the Trade Union Bill 2015, urges the Government to abandon the Bill and instead make a commitment to work in partnership with the trade union movement”.

There is dissension at many levels.

Jessica Morden (Newport East) (Lab): I refer the Committee to my declaration in the Register of Members’ Financial Interests. We also heard evidence from the Welsh Minister for Public Services about the firefighters’ dispute over pensions, in which a solution was reached and the Fire Brigades Union put off strike action in Wales. Is that not a good example of where Wales is doing things differently?

Stephen Doughty: That is a perfect example, which exposes the different industrial relations policies that different Governments across these islands are pursuing and the benefits to the public of avoiding strike action, which is what the Government say that they want to do with the Bill. The example that my hon. Friend just gave stands in stark contrast to the testy relationship that appears to exist, as we heard in oral evidence, between the London fire brigade and the Fire Brigades Union, and the wider context of industrial relations in that city. Surely if the Government’s aim, as they keep repeating, is to reduce industrial action and disruption, particularly in crucial services such as fire, we want to do everything we can to build positive partnerships and come to resolutions, as was the case in Wales.

Amendment 12, in a similar vein to amendment 11, seeks to ensure that the Bill does not interfere with the ability of directly elected Mayors and local authorities in England to manage such services and decide how to manage their relationships with trade unions. It is consistent with the Government’s localism agenda. Amendments 42 and 72 relate to clause 10, on political party fund opt-ins, which we will discuss in due course. Briefly, amendment 42 would ensure that the opt-in requirements for trade union political funds would not apply to public sector employees working in sectors or providing services that are devolved to the Scottish and Welsh Governments. Amendment 72 would ensure that the proposed new opt-in requirements for union political funds did not apply to employees of the Mayor of London or local authorities in England. Again, as a point of principle, we believe that those bodies should be able to make their own decisions about how to manage their relationships with trade unions in those sectors and how those trade unions use their money.

On amendment 51 and 73, I draw the Committee’s attention to a letter dated 10 September 2015 from Carwyn Jones, the Welsh First Minister, to the Prime Minister, expressing his concerns about the Trade Union Bill. In the letter, the First Minister says:

“Similarly, it cannot be right for the UK Government—blind to policy priorities and devolved service delivery reforms in Wales—to specify how much union ‘facility time’ devolved public sector employers should allow. Nor am I convinced that the intention to end ‘check off’ arrangements for trade union subscriptions in the public sector is necessary or appropriate. The Welsh Government operates these arrangements as part of its approach to effective social partnership and is not seeking to change this.”

[Stephen Doughty]

I know that the Scottish Government are similarly concerned about this matter, and I am sure that my colleagues from the Scottish National party would agree.

These are important policy decisions about relationships and the balance of responsibilities and rights. They are part of the crucial relationship between the Government and public bodies, and those who work in them. Frankly, the Welsh and Scottish Governments have a different approach, and they want to ensure that it is positive.

Ian Mearns (Gateshead) (Lab): My hon. Friend outlines a coherent case. Although the Government maintain that they have the power to enact the Bill across the United Kingdom, it could in practice be enacted in very different ways in different parts of the United Kingdom. English citizens could end up with many fewer rights than their counterparts in Scotland, Wales and Northern Ireland. Do we want English men and women to have fewer rights than their Scottish, Welsh and Northern Irish counterparts?

Stephen Doughty: That is a very important point. As I made clear when introducing our amendments, the Labour party believes in exempting all parts of the United Kingdom from the Bill and its provisions. It would be hugely problematic for there to be areas of complete disagreement and an imbalance among the different parts of the UK. That prompts a series of questions, and I hope the Minister can explain how the measure will work in practice, given that the devolved Governments and local authorities are already indicating that they do not wish to implement it.

Amendment 51 would ensure that the new requirements to report on facility time would not apply to employees of the Scottish Government, the Welsh Government, the Northern Ireland Executive or public sector employers working for or providing services that are partially or wholly devolved to those bodies. It would ensure that the Bill does not interfere with the ability of those Governments to manage those services and decide how they engage with their staff and determine their relationships with trade unions.

In the same vein, amendment 73 would ensure that the new reporting requirements did not apply to the facility time of employees of the Mayor of London or local authorities in England. Again, that is consistent with the Government's localism agenda.

Chris Stephens (Glasgow South West) (SNP): May I remind the shadow Minister of Dave Prentis's evidence last week? I thought it was peculiar—perhaps the shadow Minister can enlighten us—that he said that, when it comes to check-off, it is not just about the devolved nations, but the new combined authorities. They will be allowed to do everything, but not talk to staff and trade unions about having check-off or not.

Stephen Doughty: That is a very important point. I thank the hon. Gentleman for drawing our attention to what the general secretary of Unison had to say on that matter. Unison represents a significant number of employees in local government across the UK and has exposed a very serious problem.

I want to ask the Minister some specific questions that I hope he will answer in his response to this part of the debate. I pressed him in the oral evidence session about the legal assessments that had been made in developing the Bill. Clearly, I do not expect him to share the detail of Government legal advice, but I would like to know, given the apparent paucity of consultation with devolved Governments across the UK and, it appears, with local government, what conversations took place. I am not asking the Minister to share the contents of the conversations, but can he tell us what conversations took place, given the huge implications of the Bill and the legal precedent for cases such as this ending up in the Supreme Court? What conversations took place? Did any take place? I sincerely hope that they did. Anything the Minister can share with the Committee would be very helpful.

I pushed the Minister on my second point in the oral evidence session. As we have heard from a vast number of legal experts, there is a serious risk of legal challenge to the Bill. One legal opinion can be challenged by another, but the reality is that that might be exactly where the Bill ends up: in the courts. Have the Government set aside funds to deal with legal proceedings that might result—it is inevitable, I believe—from the Bill's proceeding in its present form?

Thirdly, I would like to know the Minister's response to the apparent concerns of the Welsh and Scottish Governments, local government across England and local government in Wales and Scotland, and his response should they choose not to implement the Bill, because they believe that it breaches their settlement. Will he take legal proceedings against them to enforce the Bill? How much does he think that that will cost the taxpayer? Or will he just let them carry on? I am sure that he wants to enforce his Bill, but there will be a cost if there is resistance to it from the public bodies to which he is trying to apply it. Keith Ewing said very clearly that he thought that we were walking blindfold into a major constitutional crisis. I have great sympathy with that position.

Fourthly, given the nature of existing contractual arrangements in a whole series of public bodies that receive public funding, which refer to check-off, facility time, and to many other matters that are pertinent to the Bill, does the Minister propose that the measure will apply retrospectively, and that we would therefore have to unwind hundreds of thousands of contractual arrangements, particularly in the public sector across the UK? Will the Bill apply retrospectively? How does the Minister think that will impact? What estimate has he made of the cost, should any individual challenge that through the courts? I imagine that quite a significant number of individuals would want to challenge that if they believed that they had signed a contract in good faith with a public body that gave them certain rights. What estimate have the Minister and the Department made of the cost of that? How does he see the Bill being implemented?

Will he have a hit squad, which the Minister for the Cabinet Office talked about, going round local authorities and devolved Governments to check the texts of the contractual arrangements that they enter into? Will he go through every piece of paper signed by every public sector employee or by anyone who could vaguely be determined to have enjoyed some sort of

public sector funding in their role? Will he interfere with every single one of those contracts? This is an extraordinarily heavy-handed approach from a Government who claim that they want to avoid regulation and interference—and that they are the Government of devolution and localism.

I have a final question for the Minister. We heard from the Scottish and Welsh Governments that they are reserving their position on whether a legislative consent motion is required for the Bill. Perhaps not all members of the Committee are familiar with legislative consent motions—LCMs—but they can be seen regularly on the Table in the House when the UK Government seek to legislate for matters that are partially or fully devolved for some practical reason. If the legislation makes sense, the Scottish and Welsh Governments and the Northern Ireland Executive can give permission to the UK Government to do that. There are many circumstances in which that is appropriate. However, on this occasion they clearly do not believe there is a clear case for that. I would like to know what the Minister would do, should the Welsh and Scottish Governments withhold legislative consent. What discussion has the Minister had with UK Government Law Officers about the Government's approach and, again, what would be the costs to the public purse? I suggest that the Minister makes ready a tidy little pot of money to deal with all the legal proceedings that will emanate from the Bill if it goes ahead in its current form. That will really put paid to the suggestion that the Bill will benefit the taxpayer. It will cost the taxpayer a lot of money.

2.15 pm

The Minister for Skills (Nick Boles): It is a pleasure to serve under your chairmanship again, Sir Alan. As we have heard in eloquent speeches from the shadow Minister, the hon. Member for Cardiff South and Penarth, and the hon. Member for Glasgow South West, amendment 90 and the rest of the amendments in this group aim to limit the geographical extent of the Bill. In the oral evidence sessions last week, we heard evidence from Roseanna Cunningham, the Cabinet Secretary for Fair Work, Skills and Training in the Scottish Government, and Leighton Andrews, the Minister for Public Services in the Welsh Government, about the collaborative relationship that these Administrations have with trade unions. That is, of course, laudable. There is absolutely nothing in the Bill that need cut across the positive relationships—the partnerships, as they describe them—between unions and Government in Scotland and Wales, any more than it will cut across the partnership and the positive relationship that we have with unions in relation to English matters.

The Bill is about ensuring that industrial action can go ahead only with a strong, democratic and recent mandate. It is about increasing transparency and accountability, both in strike ballots and in political funds. It is about protecting non-striking workers from intimidation and ensuring that unions take proper responsibility for picket lines. It is about securing transparency and value for money for the taxpayer. It is about creating an appropriate regulatory environment for unions. To me, these all seem to be reasonable objectives. How can we not want to apply these benefits uniformly across Great Britain?

Mike Emmott, senior policy adviser at the CIPD, who in general does not support the measures in the Bill, nevertheless put it eloquently when he told this Committee last week that it was appropriate for the Bill measures to be dealt with on a Great Britain-wide basis. He said:

“It is going to be quite odd for employers dealing with different rules applying in different jurisdictions, where there may be issues that go across the whole of the UK.”—[*Official Report, Trade Union Public Bill Committee*, 13 October 2015; c. 36, Q90.]

The Bill seeks to ensure that when the lives of commuters or patients or parents of school-age children are disrupted by strike action, that action is supported by a significant proportion of union members. In particular, we are seeking to protect the users of important public services from highly disruptive strike action that is driven by a small minority on the basis of an outdated ballot. The provisions of the Bill apply to the whole of Great Britain: to England, Scotland and Wales, to London, and to English local authorities. This is because all the provisions in the Bill relate to employment and industrial relations law, all of which are clearly reserved matters under the devolution settlements with Scotland and Wales. In Northern Ireland, on the other hand, employment and industrial relations are transferred matters; therefore, respecting the agreement that was properly reached with Northern Ireland, the Bill's provisions do not apply there.

On that basis—that this is indeed a reserved matter—it is entirely in order for the Government to propose that the Bill applies to the whole of Great Britain. There are strong, practical reasons why employment law should apply across the whole of Great Britain. Under the devolution settlements with Scotland and Wales, Parliament devolved some responsibilities, while some remain reserved. Again, certain responsibilities are being devolved to local authorities in England and to the Mayor of London. None of the responsibilities that are devolved include employment law or industrial relations, so devolved matters are simply not at play.

The shadow Minister asked a number of detailed questions, which I will try to answer as best I can. Obviously contacts take place between officials in every Department here in London and officials in the devolved Administrations. I am not going to provide a running commentary or a list of them, but I can tell the hon. Gentleman that, in response to letters that the First Minister of Wales wrote to the Prime Minister on 9 September, the Prime Minister replied on 2 October. In response to letters from Roseanna Cunningham on 7 August and 9 September, she and I had a reasonably lengthy phone conversation on 8 October. I am always happy to speak to them and to discuss any concerns they may have.

The hon. Member for Cardiff South and Penarth said that there had been suggestions by members of the Welsh Government, the Scottish Government and other local authorities that they might refuse to comply with the provisions in the Bill should it become law. I say gently to the hon. Gentleman that it is quite remarkable to compare the number of times you hear people threatening not to obey a law in prospect—when it is being considered by Parliament and when there is some chance of affecting the outcome of Parliament's deliberations—and the number of times when those duly constituted public authorities actually refuse to obey the law of the land

[Nick Boles]

and put themselves in breach. Let us cross that bridge when we come to it. I do not anticipate those rather wild and lurid threats being carried out—they are, after all, being made by institutions and individuals who oppose the Government politically and oppose the measures. They are, of course, entitled to use, in rhetoric, whatever arguments they like, but ultimately what they do is what will count.

Similarly, the number of times when it might be claimed that a legislative consent motion is required is very different from the number of times when it is actually required. When it is required is determined by the devolution settlement and by whether a matter is reserved or not. As Ms Cunningham herself has admitted, it is absolutely clear that, currently, employment law and industrial relations are reserved matters. There is absolutely no question about the full right of the UK Parliament to make laws that affect the whole of Great Britain on those matters.

Stephen Doughty: I appreciate that the Minister would not do anything other than defend the Bill as an entirely reserved matter, but does he accept that its provisions will have significant consequences for matters that are wholly or partially devolved to a series of Administrations around the UK? Yes or no?

Nick Boles: No, I do not accept that. The hon. Gentleman seems to suggest that minor changes in how individual employees pay a subscription to a particular membership organisation is a challenge to the ability of the devolved Administrations—the Scottish or Welsh Governments—to run their national health service or their schools. That seems ludicrous to me. It is, of course, a matter of employment law and it will, therefore, apply to people who work in public services that are, themselves, devolved, but the idea that it will prevent or interrupt the policies of those Governments towards their public services is to overstate the case.

Stephen Doughty *rose*—

Jo Stevens (Cardiff Central) (Lab): *rose*—

Nick Boles: I am happy to give way to the hon. Lady, but I do not want to have an endless ping-pong session with the hon. Gentleman at this point.

Jo Stevens: I refer the Minister to the letter of 14 October from the Welsh NHS Confederation to his colleague, the Minister for the Cabinet Office, which states:

“We feel that some of the proposals outlined in the Trade Union Bill could have a detrimental effect on this relationship”—with trade unions—

“and potentially lead to unnecessarily challenging industrial relations in future...strike action in the NHS in Wales over the last decade has been minimal, despite significant organisational change and the introduction of significant changes to terms and conditions, so we do not believe that any additional measures to protect the public from strikes are necessarily required.”

Will the Minister comment on that?

Nick Boles: Yes. In a sense, the answer is the same. Everybody is entitled to say exactly what they think. I encourage it, I welcome it and we will always listen to any representations. We disagree. We believe that those people are overstating the case and that, when the Bill becomes law and the provisions are implemented—in Scotland and Wales as well as in England—it will not interrupt those very positive industrial relations, it will not interrupt those partnerships, and it certainly will not interrupt their ability to run their public services as they see fit.

Chris Stephens: There is a difference between employment law and industrial relations and how they impact on public services. I am curious about the Minister’s comment about the provision of public services, because political parties say how they will deal with industrial relations in public services as part of their manifesto commitments, whether for Scottish, Welsh or any other elections. Surely, those mandates have to be respected.

Nick Boles: We respect mandates, as I hope the hon. Gentleman will respect ours. I draw his attention to another example. The national minimum wage affects every single person who works anywhere in the United Kingdom. It is a reserved matter. It is something that this Parliament sets. I have not heard objections from the Scottish Minister—the very same Scottish Minister—saying that this is an egregious intrusion into Scottish matters and that somehow it is appalling that there is a national minimum wage. It is simply the case that we live in a system where some matters are reserved to the national—the United Kingdom—Parliament and other matters are devolved. The content of employment law and industrial relations is a reserved matter.

Stephen Doughty *rose*—

Nick Boles: I think we have had enough, Sir Alan. I will give way one last time, because we are making incredibly slow process.

Stephen Doughty: To be fair, Sir Alan, I asked the Minister a number of questions. He has not answered the major question about whether the legislation applies retrospectively to contractual arrangements in the public sector in the devolved Administrations and across local government in England and elsewhere, and about what he believes the consequences will be. He makes out that this is all some slightly trifling matter that is not going to cause problems. Often, facility time, check-off and whatever else are written into contractual provisions and exist in arrangements that are made by devolved Administrations with their employees about their contracts. Will the legislation apply retrospectively, and what does the Minister believe will be the impact on the ability of Administrations to make contractual arrangements, as they have done before? Or is he admitting that the Bill interferes with their ability to do that?

Nick Boles: On the effect of the provisions on existing contracts, we have asked whether they are acceptable by international obligations and we are absolutely assured that they are. Again, I refer the hon. Gentleman to the national minimum wage. Its introduction had an impact

on existing contracts, some of which therefore had to be revised to reflect it. This legislation will have no greater impact—in fact, rather less so—on existing contracts. We are confident that any effect it will have is entirely consistent with all the relevant legal framework.

Chris Stephens: Will the Minister give way?

Nick Boles: This is seriously the last time, because the hon. Gentleman has many that new clauses he wants to get to and I am just trying to help.

Chris Stephens: The Minister has been most kind, so I will ask just this question. The cost to public bodies of reissuing new statements of particulars and contracts could be considerable. Will the Government provide finances to the public bodies in that position?

Nick Boles: Sir Alan, you know as well as I do that if I were even to dare tiptoe on to the question of the financial settlement with devolved Administrations, there is literally a device implanted in my brain that would explode and decapitate me. I am not going to go there, however much pleasure it might give Opposition Members. *[Interruption.]* However, if the hon. Gentleman wants to write to the Chancellor—or to me and I can pass on the request—I will, of course, reply to his question.

If there are no further requests for interventions, I will conclude. The amendments in this group seek to use the Bill as a mechanism to carve out different arrangements in employment law and industrial relations for Scotland, Wales, London and English local authorities. Parliament has already determined that these matters are reserved. The amendments are an attempt to extend devolution by the back door and that is why we cannot accept them. I ask hon. Members not to press the amendments.

Jo Stevens: In opposing clause 3 and speaking in support of our amendments, I wish I had the faith in the legal advice that the Minister seems to have in his lawyers. I remind the Government of the evidence that we heard last week from Professor Keith Ewing, professor of public law at King's College, London, about the Bill being incompatible with settlements in Wales and Scotland, which is entirely contrary to the position that the Minister has just asserted. The Committee will recall that Professor Ewing said:

“The Government are walking, almost blindfolded, into a major constitutional crisis around the Bill. That constitutional crisis could be as explosive for this Government as the poll tax was for the Thatcher Government in the late 1980s and early 1990s. This is a big, big problem, and I am not sure that people have really thought through the consequences.”—*[Official Report, Trade Union Public Bill Committee, 15 October 2015; c. 129, Q346.]*

Not having thought through the consequences is a recurrent theme in the Bill. I appreciate that the Government seem to have struggled to give examples of good industrial relations in England. Almost every example of industrial action and dispute that they have referred to has involved employees in London, which I would suggest is a reflection on the Mayor of London rather than on current industrial law.

2.30 pm

In Wales, the Welsh Labour Government have taken a very different approach and have a constructive industrial relations strategy at the heart of their policy making and their legislative programme. The Welsh Government understand the importance of constructive industrial relations to the economy and the public. As the First Minister, Carwyn Jones, said in his written statement on 9 September, the Bill

“has the potential to cause significant damage to the social and economic fabric of the UK.”

The Committee is well aware of the view of the First Minister and the Welsh Government that the Bill offends the devolution settlement. It intrudes into Welsh jurisdiction and devolved powers. Significant elements of the Bill, as my hon. Friend the Member for Cardiff South and Penarth has pointed out, refer specifically to public services, which are unquestionably devolved to the National Assembly for Wales. They will require its legislative consent. The Committee has also heard evidence from the Minister for Public Services, Leighton Andrews, confirming this. Clause 3, which requires the additional 40% overall membership support threshold for industrial action, includes health services, education of those aged under 17 and fire services. Some devolved transport responsibilities such as highway maintenance may also be affected.

The Government will also be aware that all public bodies in Britain are required to have regard to the need to eliminate discrimination, but the duties in Wales and Scotland on this are much stronger. That raises an additional area of concern about the breach of the devolution settlement that the Bill presents in relation to public services.

Dr Lisa Cameron (East Kilbride, Strathaven and Lesmahagow) (SNP): Is the hon. Lady as surprised as I am that the Minister's response appears somewhat flippant, as though he wishes to call the bluff of the devolved Governments and the councils? There is little recognition of possible legal repercussions, costs and contingencies for the public.

Jo Stevens: I absolutely agree, and that is a risk that the Government are taking. The Bill has significant equality implications, despite the suggestion otherwise in the equality impact assessment—which reads, frankly, as though it was written on the back of a fag packet. The Bill presents a real danger that decades of progress on equality in the workplace will be undermined through the erosion of trade union rights. We know that trade unions are one of the best protections from discriminatory treatment in the workplace, with trained officers and representatives who deal with a range of workplace issues, protecting equality of treatment and, in the process, saving employers from reputational damage and litigation. It is simply not acceptable or legitimate for the UK Government to impose the Bill on Wales.

We have heard that the First Minister wrote to the Prime Minister to set out his position and his concerns clearly and constructively. The Prime Minister's response has been described by the Minister for Public Services as disappointing. I think he was being too polite. I would go further and describe it as inadequate. It failed to acknowledge any devolved interest whatever.

[*Jo Stevens*]

We have heard from the Minister for Public Services that the Welsh Government are considering how they would seek to protect legitimate, devolved interests, including devolved public services, from the Bill, including tabling a legislative consent motion.

I go back to the comments of Professor Ewing from the beginning of my contribution. Do the Government really want to mire themselves in expensive, lengthy litigation with the Welsh Government over the Bill, played out in Supreme Court? Do the Government really want to suffer another embarrassing defeat as they did over the Agricultural Wages Board litigation with the Welsh Government?

The Bill was the subject of a debate in the Welsh Assembly last week. The Assembly Member for Pontypridd summed up the view of the Welsh Government by saying:

“We do not need this law in Wales and we do not want this law in Wales”—

it sounds a bit like Dr Seuss, this—

“And I know that we will do all that we can to support all those who oppose this Bill and, if necessary, to challenge its legitimacy in the Supreme Court.”

The Government have been given a clear warning. By accepting our amendments to clause 3, the Government have the opportunity to save time, save face and save taxpayers’ money. Will they take it?

Stephen Doughty: I want to respond briefly to a number of comments made by the Minister. Obviously, he maintained his position that this is a wholly reserved matter and claimed—shamefully—that this was about extending devolution by the back door. We on this side would contend that this is attempting to extinguish part of devolution by the back door. The Government have made that very clear.

The Minister is essentially saying to the Committee and to the public, “Trust me, it’s not devolved in any way: it’s all fine,” but we have heard from my hon. Friend the Member for Cardiff Central that the Government’s record on this is wobbly at best. They have already suffered serious defeats in the Supreme Court at great cost to the taxpayer. I would expect, at the very least, the Government to have taken the most precautionary and consultative approach before proceeding with matters of this seriousness. The Minister did not want to detail all the different meetings or give a running commentary. I gently suggest to the Committee that that was because not many meetings, if any, took place before the Bill was published. That is certainly the impression we have been left with by the Scottish and Welsh Governments, let alone local government in England.

The Minister was very hazy on his expectations of the impact of the Bill on existing contractual arrangements, either retrospectively or going forward. I hope that he and the Government have very deep pockets, because I sense that this is not an idle threat; there are real, serious legal objections to the Bill and its implications and I imagine that a number of the bodies that are raising these concerns will take action over this. It is for that reason that I give the Minister a chance to exempt himself from that cost and trouble to the taxpayer, by pressing amendments 11 and 12 to a vote.

The Chair: Order. Before the hon. Gentleman does that, I remind Members, in dealing with such amendments, that the mover wants to respond too, and that they will have the opportunity to have a more wide-ranging debate on matters that have been raised in the stand-part section of this consideration. I ask them to keep succinctly to the topic in hand, or we will not have time to deal with all the measures that concern us.

Victoria Prentis (Banbury) (Con): I am sorry to reduce the agricultural wages case to the level of Dr Seuss, but do you agree, Sir Alan, that within the agricultural wages case it was found, in principle, that although agriculture is a devolved matter—that matter was won by the Government—the wages aspect is not? It was because it was a mixed Bill that there was the result that there was. This is quite different. This is a Bill about industrial relations and trade unions. It is quite simple and obvious that this is a reserved matter.

Chris Stephens: This has been an interesting debate about the group of amendments on the impacts on the devolved Administrations and other public bodies. It is interesting that some know better than others the effects that this will have on those bodies. I shall respond first to the shadow Minister’s gentle rebuke on the SNP’s amendments only applying to Scotland. He indicated that he respects our mandate on that and I agree with his point that the group of amendments seeks to enforce what has been referred to as the respect agenda. We hear from the UK Government that they respect the devolved Administrations and other public bodies, but with these amendments we want to ensure that that takes place.

Like the shadow Minister, the SNP opposes all of the Bill and will be voting for many of the amendments and against the clauses. We agree on his point about solidarity; we may have different approaches, but I assure him that we are in solidarity with all workers in the UK regarding the Bill, although there may be some differences in how we want to achieve that. I would go as far as to say that if the Bill were introduced in another nation state, we would oppose it and would be raising it in this Parliament, as we do with any abuses of workers’ rights across the world. There is no contradiction in supporting the consent amendments in this group and those that want to take workers out of it.

I turn to the hon. Member for Gateshead’s contribution about English workers having fewer rights. The general secretary of Unite, Len McCluskey, commented about that in his evidence, saying that that was one of the dangers that the Bill would introduce. The Minister seems to indicate that it is settled that employment law is reserved, but that is not the case. A new clause is being introduced to the Scotland Bill. I do not want to touch on the Scotland Bill too much, but a new clause is being inserted for debate, it will be put to the parliamentary test and the parliamentary verdict on that is yet to be given.

Nor have the Government taken into account the fact that Scotland has a different civil and criminal law and a different legal jurisdiction. That was also mentioned in the evidence from Thompsons Solicitors. Given that the Bill touches on criminalising certain behaviour, more consultation with the devolved Administrations is required. I certainly take the view that a legislative consent motion is needed, as is consent across the board in the public services.

[Stephen Doughty]

of rigour and attention is paid to the specific wording, so that Her Majesty feels confident with it and it reflects the Government's intent very clearly. That is an important point.

“Essential” is the word used in International Labour Organisation conventions, and it has a very narrow legal definition. To quote an ILO general survey, the definition is restricted to services

“the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.

Transport services, public transport, public education, port authorities, postal services and others all fall outside that category. Given that, I very much suspect—perhaps the Minister can enlighten us when he gets to his feet—that the Government realised that the legislation was poorly drafted and that using those words would leave it vulnerable to serious legal challenge, so they sought to row back, instead changing the wording to “important” public services, as we now see in the Bill. Disturbingly, those public services are to be defined by the Secretary of State in as yet unseen secondary legislation.

A number of categories of services are referred to in the clause using very broad terms, such as “health services”. There is

“education of those aged 17 and under”,

which we discussed in the devolution debate; I do not want to go over old ground, but that causes particular issues for differing education systems across the UK. “Fire services” are referred to, as are “transport services”—in a very general sense, and we have already heard how those are excluded from the ILO definition. There is

“the decommissioning of nuclear installations and management of radioactive waste and spent fuel”,

and “border security”.

Those provisions, alongside the consultation document, are so wide that they could apply to nearly every area of publicly funded activity. One might think that the Government have taken their chance not only to ensure that they can potentially avoid legal challenges—although I think this could still be subject to one—but to draw the definition as wide as possible so that everybody would be forced into the 40% threshold. What assessment has the Minister made of whether it is predicted that the other place will still feel bound by the Salisbury convention, given that the clause clearly breaches a Conservative manifesto commitment, let alone the specific text that was in the Gracious Speech?

What assessment has the Minister made of the effect that the proposals will have on women? We have discussed that at length already, but TUC research suggests that nearly three quarters—73%—of trade union members working in important public services, as defined by the Government, are women. I imagine that Committee members will vote on the proposals shortly; does the Minister think it is appropriate that they do not yet know for certain to whom they will apply? We have to take our responsibilities as legislators in this place very seriously. We do not know what this secondary legislation is, but the Government are again saying, “Trust us, trust us. We’ll be all right. We’re going to put this stuff down and you’ll be fine with it.” That is not acceptable. The Bill has been scheduled for some time; the Government

have had plenty of time to introduce the regulations and they have not. What we know for certain, as I said, is that the proposals will impact on public policy areas that are wholly devolved, and that will have the implications we have discussed.

At this stage, it is also important to challenge one particular myth that is being peddled by those in favour of the Bill. It is a particular favourite of the hon. Member for Uxbridge and South Ruislip (Boris Johnson) who, on Second Reading, suggested that unions are required to meet a 75% threshold in Germany. For the record, that is not accurate. Some German trade unions have adopted rules requiring 75% support for industrial action among members, but those are decisions taken by the union within its own democratic structures, not imposed by the state.

Julie Elliott (Sunderland Central) (Lab): Does my hon. Friend agree that many trade unions in this country also have internal procedures whereby they will ask for a higher threshold on certain ballots for strike action in order to make sure that the result is overwhelming, and well beyond what is legally required?

Stephen Doughty: I agree absolutely. I think that sits alongside the comments made by the hon. Member for Glasgow South West that the unions want to have a high turnout and that they want to be able to have as much confidence as possible among their members, because of the fact they cannot sanction members for not taking part in the industrial action as agreed. It is important to look at the German example, because statutory thresholds, as proposed by the UK Government, would actually be unconstitutional in Germany. We heard about international comparisons in the oral evidence, and the Bill, in so many respects—this is yet another one—puts us in a very serious place in terms of the international league of whether these measures restrict or infringe on long-established rights. Therefore, we will oppose the clause, because we think it is ill thought out, partisan, open to serious legal challenge, breaches the devolution settlement and will not do anything to better industrial relations.

Amendment 4 is a probing amendment that provides that the 40% threshold should only apply to those who are normally engaged “solely” in the provision of important public services or ancillary activities. We need to discuss this very important issue, and I hope that the Minister can enlighten us on it. The amendment is designed to highlight the problems that unions will face when trying to determine whether the 40% threshold applies. It is not clear whether individuals who spend only part of their time providing important public services will be covered by the 40% yes vote requirement.

Let us take, for example, education unions planning to ballot staff in a school with a sixth form, where they might be involved in the provision of education to young people of different ages. Trade union officials will find it very difficult to assess whether staff who teach both pupils aged under 17 and those in years 12 and 13 are “normally engaged” in providing “important public services”. That will be particularly problematic where teachers’ work schedules vary during the academic year. It is just one of the many implementation problems that I do not think the Government can have seriously thought through if they intend to proceed with the Bill as drafted.

Amendment 5 is also designed to encourage debate. It provides that the 40% yes vote requirement should apply to those employed in the provision of “essential public services” rather than “important public services”. As I have said, the Government’s proposed restrictions extend well beyond the definition of “essential services” recognised by the ILO. The Government claim that the proposed thresholds are justifiable because they do not introduce a complete ban—some would beg to differ—on the right to strike in “important public services”. They therefore argue that the ILO standards do not apply.

However, the Employment Lawyers Association warned the Government against introducing thresholds to services not covered by the ILO definition of “essential services” in its response to the BIS consultation on balloting thresholds. The response continued:

“ELA cautions that if the provisions”—

in the Bill and any accompanying regulations—

“are not drawn as narrowly as possible then the Government runs the risk of a challenge on the basis that the imposition of the raised thresholds infringes Article 11 of the European Convention on Human Rights. Any restrictions on the right to strike must not be greater than necessary to pursue a legitimate aim and...necessary in a democratic society.”

That is why it is important that we look at the ILO definition. It is very tightly defined, referring to public safety and so on. It is very clearly defined in terms of where things would be problematic. The Government are going well beyond that boundary. The ILO has criticised Governments who have introduced thresholds for industrial action ballots. The ILO committee on freedom of association has concluded:

“The requirement of a decision by over half of all the workers involved in order to declare a strike is excessive and could excessively hinder the possibility of carrying out a strike, particularly in large enterprises.”

The ILO has called on Governments who have imposed statutory thresholds to amend their national laws to bring them into closer conformity with the principles of freedom of association. Dare I make some international comparisons? The countries that it has gone after include Bulgaria, Honduras and Nigeria. Does this country really want to be in that territory? Not only are we going well beyond what a near neighbour in the EU—Germany—believes would be unconstitutional, but we will be putting ourselves in the league of countries that are being criticised by the ILO, such as Bulgaria, Honduras and Nigeria. That simply is not good enough.

I come now to amendment 6. The 40% yes vote requirement will apply not only to individuals directly involved in the delivery of important public services, but to individuals normally engaged in

“activities that are ancillary to the provision of important public services.”

As a result, hundreds of thousands of union members working in large parts of the private services sector are likely to be caught by the 40% threshold. The amendment would therefore delete the reference to ancillary activities. Again, it will be very hard to define and identify who is involved in such activities. The Government are clearly trying to apply the provision as widely as possible and certainly well beyond what the ILO would expect.

Further to amendment 5, amendment 9 would define essential public services in line with the ILO definition. We want the wording to mean

“services the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.

We have some very serious issues for the Minister to explain. He needs to explain how these passages will be implemented. When we look at international legal comparisons, the potential impact of the measure, the breach that I referred to and the risk of legal challenge, we are experiencing many of the same challenges as we discussed under the last clause, and I hope that the Minister can explain his position.

Jo Stevens: We have heard numerous submissions in evidence to the Committee, both oral and in writing, that the Government’s definition of “important public services” is at odds with the definition of essential services used in international law, but if we go outside the legal technicality of this broad definition, there are many practical considerations to assess when it comes to important public services and I do not see that the Government have put any thought into those practicalities on the basis of the Bill as drafted.

3 pm

First, knowing who is deemed to be an important public servant is not as easy as it may seem. The neat categories defined by the Bill might look simple on paper, but they are far less clear in practice and in workplaces up and down the country. My hon. Friend gave us an example about education establishments covering people who are under 16 and those who are over 16. How will that work in practice? How will this legislation work in a sixth-form college with a mix of students, where a teacher could be teaching at a number of levels and with different age groups?

The situation is further muddled by the order-making powers contained within these clauses, which mean that when we come to vote we still will not know what specific roles in each of the six sectors that are in the clause are covered. We are told that the 40% double threshold will apply to private companies supplying public services. It is ironic that the Government have been so desperate to reduce the public sector and outsource these services to private companies so that shareholders can profit, yet when it comes to a trade union dispute, the Government are desperate to bring them back into the public sector setting so that they can impose the double threshold on them. Will the provisions apply to private sector companies that provide goods and services to so-called important public services as ancillary services? Can the Minister tell us whether, for example, private sector commercial provision of school meals to state schools would be caught by clause 3?

Nuclear decommissioning has been included in the Bill, yet this is a heavily unionised sector with a history of excellent industrial relations. Its inclusion seems excessive and counterproductive. There was a suggestion in the consultation published by the Department for Business, Innovation and Skills that management, cleaning and other support services would be included within the definition of important public services, because without them there could be an adverse impact on service provision. It is clear that there is potential within those order-making powers to allow more and more roles within these

sectors to be deemed as “important” and therefore subject to the double threshold. We will end up with threshold creep.

Given everything that we have heard today and in the evidence sessions last week, it bears repeating that it is not legitimate—Amnesty and Liberty witnesses confirmed this—to restrict a fundamental right because it may inconvenience the public or businesses. Of course, no-one wants that to happen, but on every measure we have seen the public support the basic right to strike as a last resort, and these measures make that much more difficult for a large body of working people.

Finally, the logistical and organisational difficulties, alongside the potential for increased costs that this measure presents to trade unions that want to ballot their members, are significant. The industrial landscape after the Bill will mean that some sectors in the same trade union will have different rules applied to them. In some large disputes, unions may simultaneously need to ballot members in “important” and, for want of a better term, “less important” services around exactly the same issues. With the powers that the Government are awarding themselves, who is “important” within those defined sectors could change from ballot to ballot. Have the Government thought about these practicalities? This is all alongside the newly empowered and defined certification officer, who will have new resources to seek out and penalise unions for any mistake around balloting and then charge them for the luxury of that investigation.

The Bill in its entirety introduces swathes of red tape for trade unions and this definition is a key factor in that red tape. Far from simplifying or modernising industrial relations, the Bill will frustrate and complicate them. The clause will create a mess. Perhaps the Minister can tell us whether those who will have to clean up after it will be defined as ancillary services and subject to a double threshold too.

Julie Elliott: It is a pleasure to serve under your chairmanship once again, Sir Alan. I want to speak in support of the amendments in the names of my right hon. and hon. Friends concerning the differences between “essential” and “important” public services. I totally agree with the comments from my hon. Friend, who has outlined the problems very clearly.

As written, these clauses unworkable in practice. Everything I have said so far in this Committee has been about the practicalities of the Bill and that is really where I want to start today, but before doing that, I want to talk about the definition of essential public services. It is a well established, well trodden path: everybody understands what it is. The Conservative manifesto and Her Majesty’s Gracious Speech both talked about essential public services. During our consideration of the previous group of amendments, the Minister said, “Of course, we respect the mandate of the commitments made in manifestos.” If that is what he believes, this flies in the face of it and is an absolute contradiction, so I would like to hear his comments on that matter.

The TUC is a representative body of 52 trade unions, most of which are not affiliated to a political party, representing almost 6 million people—the TUC expresses the views of a substantial body of people. On pages 2 and 3 of its written evidence, the TUC mentions that the Employment Lawyers Association

“has warned the government against introducing thresholds to services not covered by the ILO definition of ‘essential services’.”

The ELA clearly recognises that there will be problems with the definition. Page 3 of the evidence states:

“The TUC is concerned that the Bill does not define ‘important public services’. Instead the government plans to specify which workers will be covered by 40 per cent threshold in regulations. MPs will therefore have limited opportunity to scrutinise and amend new legislation which restricts the democratic rights of millions of UK workers.”

In oral evidence, Dave Prentis, the general secretary of the largest public sector union, Unison, talked about life and limb cover; but in their oral evidence some of the people who support the Bill did not seem to understand either what life and limb cover is or that it even exists. Dave Prentis’s evidence is highly pertinent. Once again, I feel that the Government are heading blindly into legal action. Recklessly changing the definition will cause major problems and ultimately could restrict, by the back door, the right of workers in the private sector to take what I regard as legitimate strike or industrial action.

The public sector has changed out of all recognition over the past 20 years. It now has substantial organisations, whether in local government, the national health service or other areas. There is a melange of different constructs, whether they are outsourced by contracts, let by bidding, that contain clauses with which some of this legislation might clash, or whether they are in arm’s length management organisations. Will people in cleaning services, for example, be deemed as essential or important, or will they be deemed as not important? Different cleaning services in a hospital might be treated differently. Someone who cleans a reception area might be treated differently from someone who cleans operating theatres. All of those things will come into the mix at every stage of every different industrial dispute. The cost implications have not been thought through.

It would be much safer, and would practically avoid the risk of litigation, if we stuck to the term “essential public services.” The Conservative Government have a mandate for that from their manifesto commitment and from Her Majesty’s Gracious Speech. The term is well defined, unlike the alternative in the Bill, which will be incredibly difficult for MPs to scrutinise and will restrict the right of many people to take industrial action. Almost inevitably, the result will be litigation, which will cost taxpayers money. Every time the Government go to court when they have not thought proposals through—we saw many instances in the previous Parliament, particularly in the energy sector, where the Government lost cases—the cost of that litigation returns to the taxpayers, who fund Government court cases. I urge the Government to consider these proposals carefully. Although we disagree with the Bill’s substance, these amendments would at least make the clause workable. Also, I look forward to hearing the Minister’s comments on his party’s manifesto.

Nick Boles: I thank hon. Members for their contributions. The amendments strike at the very heart of the Government’s objective in introducing a 40% threshold for strikes in important public services. I remind the Committee why we are introducing this measure. Nowhere is the impact of strike action more severe than when it takes place in important public services. The reason for

that, and it is a thread that runs through all of the sectors listed as important public services, is that broadly—I accept it is not the case in every single detail—each of those services, as public services, operates as a monopoly in the lives of those who rely on it as users. That is not to say that, in time, people cannot put their children into a different school, secure an appointment with a consultant in a hospital trust outside the area in which they live, or find other ways to make the journey that they do every single morning and evening to and from work. It does mean, however, that when strikes happen, it is impossible for the vast majority of the British public who rely on those services to secure that alternative provision within public services. It goes without saying that the Border Force is itself a public monopoly—quite rightly so—and although nuclear decommissioning may involve contractors, thankfully we do not have competing nuclear commissioning regimes.

Where people and businesses rely on the services every day and where they have no choice of an alternative service provider, we believe that those services represent the important service sectors where the additional requirement of the 40% threshold is justified. That threshold ensures that strikes affecting services in those sectors can go ahead only when a reasonable level of support has been secured by the trade union. We are not banning strikes; the legislation is about making sure that enough members support the proposed action before it can go ahead.

The six sectors set out in the Bill as being subject to the 40% threshold have been chosen precisely because they are those where strike action has the potential to have the most far-reaching consequences for a significant number of people. Opposition Members discussed the difference between important services versus essential services. They are right that the ILO defines “essential services” and that that is an accepted definition, but it does so for the purposes of making it clear that it is therefore allowable to prohibit the right to strike in those services. The right to strike can be entirely prohibited in the sectors that the ILO has deemed to be essential, which include some but not all of the same sectors that we have listed—for example, firefighting services, the hospital sector, air traffic control, public or private prison services, electricity services, water supply services and telephone services.

Stephen Doughty: Will the Minister give way?

Nick Boles: No, not at the moment. I will make my argument, and then I will be happy to take as many interventions as hon. Members wish to make.

Because of the ILO’s definition of essential public services as those where it is permissible to prohibit the right to strike we decided to clarify that clause 3 proposes not a prohibition or a strike ban but simply a threshold of support for a strike. That was intended to clarify that the services listed are not the same as those covered in ILO definition, but are important public services. To be clear, our manifesto named the four most important of those services to which clause 3 applies. We have an absolute manifesto mandate for the inclusion of fire, health, education and transport services. Since then, based on cross-government consultation, we have added border security and nuclear decommissioning. If Opposition Members want to argue that those two sectors are not important public services on which the public have

good reason to rely, they are welcome to have a go. I accept that the sectors were not listed in our manifesto, but I feel pretty sure of what the public’s view will be of whether they should be included in the definition of “important public services”.

3.15 pm

We will identify the people to whom the provisions will apply within the sectors in the regulations, and we have consulted properly on that. I suspect that Opposition Members would criticise us if we had just written in the Bill a precise breakdown of groups of employees within those sectors to whom the provision will apply without having consulted. We have consulted, and we received many responses. We will make clear proposals for who we expect to be covered by the provision before the Bill achieves Royal Assent.

Jo Stevens: Can the Minister tell us when those regulations will be published?

Nick Boles: I have consistently made it clear that it will be before the Bill receives Royal Assent. I cannot give the hon. Lady the precise timing. We do not know the precise timing of the Bill’s further parliamentary stages, because that is not entirely within our gift, but the regulations will come forward before the Bill receives Royal Assent.

Stephen Doughty: The Minister has given a very convoluted explanation of why the wording was changed from “essential” to “important” public services, which does not bear scrutiny. Was it because he was worried that if he used the phrase “essential services”, it would be subject to legal challenge? On the point that my hon. Friend the Member for Cardiff Central has just made, will the Minister commit to publishing the regulations before the Bill leaves the Commons and goes to the other place? It is important that the public see them.

Nick Boles: It is always interesting to describe an argument one disagrees with as “convoluted”. My argument was not convoluted; the hon. Gentleman just disagrees with it. His argument was not convoluted either; I just disagree with him. I have made clear when the regulations will be brought forward—before Royal Assent—and I do not think I need to say any more than that.

I turn to amendment 4. In the modern economy, many people work in roles that encompass several different tasks and responsibilities, so it is likely that some workers who contribute to the delivery of important public services do not do so for 100% of their time. None the less, if such workers were absent during strike action, their absence would undermine the service. For example, a deputy headteacher might teach for only part of their time, spending the rest of the time on planning and management. That is why the Government propose to include all those “normally engaged” in important public services within the scope of the 40% threshold. We believe that that phrase is easy to understand and correctly encompasses those whose absence would adversely impact the public service.

On amendment 6, we have included so-called ancillary workers in the scope of the 40% threshold because they are often central to the operation of the important public services cited. For example, while hospital cleaners

[Nick Boles]

and rescue centre call staff are not front-line surgeons or firefighters, their work is critical to ensuring that front-line staff can deliver the service. Their absence can make the difference between the ability to run a service and it shutting down during the period of strike.

As I said, the Government consulted on these issues over the summer, and we are currently analysing the responses. That will help us in preparing the regulations, and I will take all views into account as we develop the secondary legislation to implement the detail of the threshold. For those reasons, I ask the hon. Gentleman to withdraw amendment 4.

Stephen Doughty: Although the Minister gave his explanation in funny terms, I find it unbelievable, quite frankly. It is a very convoluted reasoning. The reality is that the ILO defines essential services in a very restrictive way because the international legal consensus, and indeed the international human rights consensus, is that the right to strike and to freedom of association should be restricted only in very narrow cases. That is why it is a tight definition. It is intriguing that the Government have chosen to move away from that. They clearly want to expand the restrictions much more widely. I have already given the example of Germany, where such provisions would be unconstitutional.

I must take issue with the Minister's unwillingness to give us a commitment on the publication of the regulations. He said that there was a consultation. Like all consultations on the Bill, it took only eight weeks rather than the usual 12. All the consultations were done over the summer to frustrate the input from sectors such as teaching, as many of the profession's union members are away from school at that time. It is an odd situation, and a serious one for Parliament, that we are discussing severe restrictions on the exercise of people's democratic rights, yet the Minister is saying, "Trust me. We'll publish them. They'll be all right. It'll be fine." The regulations should have been published alongside the Bill so that we could see what the Government intend. Is the Minister going to publish them 20 minutes before the Bill gets Royal Assent, if we ever get that far? That is simply not good enough, and I would like the Minister to consider publishing the draft regulations. We need to get some clearer intent before the Bill leaves the Commons, and certainly before it gets into the other place. For that reason I am keen to test the will of the Committee on amendment 5.

Chris Stephens: Is the hon. Gentleman as confused as I am? The hon. Member for Cardiff Central made a similar point about some of the services being covered under existing legislation, such as life and limb cover. I am beginning to wonder whether it is not just the Government witnesses who do not know about life and limb cover but the Government too.

In addition, does the hon. Gentleman not think that the 40% threshold is dangerous? The last time a Government introduced such a threshold they had a small majority and ended up out of power for 18 years. That might happen again.

Stephen Doughty: That is an intriguing historical example. The hon. Gentleman's point is a good one. Large parts of the legislation have not been thought

through and appear to have been drafted by people who simply do not understand how trade unions operate in the modern workforce. The witnesses the Government called forward certainly did not know that. As my hon. Friends the Members for Cardiff Central and for Sunderland Central have made clear, there are serious practical implications. I would therefore like to press amendment 5 to a vote, with the clear message that we believe the Government should stick to their manifesto and to their own Queen's Speech, and stick to the definition of essential services laid out by the ILO.

In the case of amendment 4, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 5, in clause 3, page 2, leave out lines 6 to 8 and insert—

"the provision of essential public services."—(Stephen Doughty.)

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 5]

AYES

Blenkinsop, Tom	Mearns, Ian
Cameron, Dr Lisa	Morden, Jessica
Doughty, Stephen	Stephens, Chris
Elliott, Julie	Stevens, Jo

NOES

Argar, Edward	Howell, John
Barclay, Stephen	Kennedy, Seema
Boles, Nick	Morris, Anne Marie
Cartlidge, James	Prentis, Victoria
Ghani, Nusrat	Sunak, Rishi

Question accordingly negated.

Amendment proposed: 7, in clause 3, page 2, line 9, leave out

"were entitled to vote in the ballot"

and insert:

"according to the trade union's reasonable belief were employed by the employer in a trade dispute, and whom the union reasonably believed would be induced to take part in the industrial action."—(Stephen Doughty.)

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 6]

AYES

Blenkinsop, Tom	Mearns, Ian
Cameron, Dr Lisa	Morden, Jessica
Doughty, Stephen	Stephens, Chris
Elliott, Julie	Stevens, Jo

NOES

Argar, Edward	Howell, John
Barclay, Stephen	Kennedy, Seema
Boles, Nick	Morris, Anne Marie
Cartlidge, James	Prentis, Victoria
Ghani, Nusrat	Sunak, Rishi

Question accordingly negated.

Amendment proposed: 11, in clause 3, page 2, line 24, at end insert—

“(2G) None of the provisions of this section shall apply to services the provision of which is devolved wholly or partially to the Scottish Government, Welsh Government or Northern Ireland Executive.”—(*Stephen Doughty.*)

The amendment would ensure that the provisions of the Bill requiring 40% support for industrial action in certain public services would not apply to services devolved to the Scottish Government, the Welsh Government and the Northern Ireland Executive.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 7]

AYES

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

NOES

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

Question accordingly negated.

Amendment proposed: 12, in clause 3, page 2, line 24, at end insert—

“(2H) None of the provisions of this section shall apply to services provided by the Mayor of London or local authorities in England.”—(*Stephen Doughty.*)

The amendment would ensure that the provisions of the Bill requiring 40% support for industrial action in certain public services would not apply to services devolved to the Mayor of London or local authorities in England.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 8]

AYES

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

NOES

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

Question accordingly negated.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 8.

Division No. 9]

AYES

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

NOES

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

Question accordingly agreed to.

Clause 3 ordered to stand part of the Bill.

Clause 4

INFORMATION TO BE INCLUDED ON VOTING PAPER

3.30 pm

Stephen Doughty: I beg to move amendment 14, in clause 4, page 2, leave out lines 32 to 34 and insert—

“(2B) The voting paper must state the trade dispute to which the proposed industrial action relates.”

The Chair: With this it will be convenient to discuss the following:

Amendment 15, in clause 4, page 2, line 32, leave out “reasonably detailed indication of the matter or matters in issue in the”

and insert “description of the”.

Amendment 16, in clause 4, page 2, leave out lines to 38.

Amendment 17, in clause 4, page 2, leave out lines 39 to 41 and insert?

“(2D) The voting paper must state whether the industrial action is intended to be continuous or discontinuous.”

Amendment 18, in clause 4, page 2, leave out lines 39 to 41 and insert?

“(2D) The voting paper must state whether the industrial action is intended to be continuous, and if so the intended date for any of the affected employees to begin to take part in the action or, if discontinuous, the intended dates during which any of the affected employees are to take part in the action.”

Amendment 19, in clause 4, page 2, leave out lines 39 to 41.

Stephen Doughty: We now come to another area of the Bill where I believe that the Government’s true intent is to frustrate the rights of trade unions to take action, to provide grounds for vexatious legal challenges and essentially, in the words of Sara Ogilvie from Liberty, to make their rights “illusory in practice”. While some aspects of the Bill are designed to stop industrial action going ahead in the first instance, others are there to frustrate the industrial action that does go ahead. This clause is very much in the latter vein.

The hon. Member for Glasgow South West, who has briefly left the room, spoke powerfully in opposition to the Bill on Second Reading. He said that the Government were trying to tie up trade unions in blue tape, and I think he is right. Clause 4 will require trade unions to provide more information on the ballot paper, but unions are already required to ask members on the ballot about the type of industrial action they are willing to take—for example, strike action, action short of a strike, a work to rule and so on. Failure to comply with the clause would enable employers to apply for an injunction to stop the strike going ahead or for damages

[Stephen Doughty]

after industrial action has started. I am keen to see the burden and cost of Government regulation fall wherever possible, and the Government's one-in, two-out rule is a good starting place. The Government's own words in their statement online are:

"To reduce the number of new regulations for businesses, the government operates a 'one-in, two-out' rule. This helps prevent government policymakers from creating new regulations that increase costs for business and voluntary organisations.

Where policymakers do need to introduce a new regulation, and where there is a cost to business when complying with that regulation, departments have to remove or modify existing regulation(s) to the value of £2 of savings for every pound of cost imposed."

As this is an example of a significant level of new regulation, I hope the Minister will rise to his feet and inform the Committee which two regulations applying to trade unions will now be removed. He does not want to do so at the moment; I hope he will come to that in his speech.

This additional blue tape and regulation risks making industrial relations in the UK worse, not better. With new regulation come additional risks of litigation, and to reduce that risk many unions are likely to include lengthy descriptions of the dispute on the ballot paper that go well beyond those defined in the clause. That will risk confusing members and confusing the issue when we should be having things as simple and straightforward as possible. It will also mean, in a similar vein to other parts of the Bill, that it is more difficult for unions and employers to resolve disputes and avoid the very strikes and industrial action that the Government say they want to avoid. Many unions may find it difficult to convince members that they should accept a settlement that does not deal with all the issues listed on the ballot paper. Unions may also be reluctant to reach an agreement on part of the dispute for fear that it will prevent future industrial action on other aspects of the dispute. Alongside the Government's wider proposed changes—lifting the ban on the use of agency workers, for example—that will unbalance workplace relations, assisting employers to plan for future strike action by lining up agency staff.

I ask the Minister to explain why, if the Government's stated intent to reduce regulation and avoid costs is as defined on their website, it is one rule for the business and voluntary sector and another for the trade unions. The effect of the clause will be to introduce a level of regulation that ties unions up in blue tape and causes a whole series of effects for them.

Ian Mearns: The principle that my hon. Friend is outlining is solid. The Government have a hard and fast "one in, two out" rule for business regulation. When organisations such as the Federation of Small Businesses do consultations, their members say they would like less regulation but the organisations cannot put their finger on what they would like to get rid of. Things that would be difficult to get rid of normally come top of the list—VAT returns and health and safety regulations, which protect the employers as well as the employees in many respects. I am wondering whether my hon. Friend can tease out from the Minister what regulations on trade unions he would get rid of in order to impose this set of rules on them.

Stephen Doughty: I would be very interested to hear what the Minister has to say. The whole Bill seems to be about creating additional burdens, which will, quite frankly, make illusory a lot of the rights that trade unions and their members—ordinary workers up and down the country—enjoy at the moment and put those people at serious risk of not being able to exercise those rights.

Let me turn to the amendments, which have been tabled to encourage debate. We will decide whether to press any to a Division when we have heard what the Minister says. Amendment 14 would require unions to state on the ballot paper

"the trade dispute to which the proposed industrial action relates", but they would no longer be required to provide a detailed description of "every aspect of the dispute"—that very amorphous term that the Government are using.

Amendment 15 would require unions to provide a description of the trade dispute, rather than a

"reasonably detailed indication of the matter or matters in issue".

In general, reducing and simplifying the information about the dispute that unions are required to provide on the voting paper would assist in the earlier settlement of disputes. As a result, workers would return to work faster. Disputes would be less likely to escalate, and there would be fewer legal challenges, reducing costs for employers and unions. That is an important point.

The Bill is muddying the waters around straightforward and transparent processes that already exist. Essentially, we are providing a very big space for the lawyers' hands to come in and for a lot of cost to be expended on behalf of business, the public sector and trade union members. We should avoid legal proceedings wherever we can and encourage arbitration, negotiation and the reasonable settlement of disputes without recourse to the courts. All the proposals in the Bill will increase costs for all the parties involved.

Amendment 16, approaching things in a different way, would remove the requirement to describe the types of action short of a strike on the ballot paper. Amendment 17 would remove the requirement on trade unions to specify the timetable for different forms of action. Instead, trade unions would be required simply to state whether the proposed action is continuous or intermittent, which is perfectly reasonable. That would clearly set out whether it would be one long piece of industrial action or one with numerous parts to it.

Amendment 18 would remove the requirement on trade unions to specify the timetable for different forms of action. Instead, trade unions would be required to state when the industrial action was scheduled to start—in principle, that is reasonable—and when any discontinuous industrial action would come to an end. If we are going to start requiring unions to set out detailed explanations and timetables on how they will conduct the action and so on, action may be stirred up at earlier stages in disputes and people will be encouraged not to seek arbitration and reconciliation. Instead, conflict will be encouraged. Amendment 19, taking a slightly different approach, would completely remove the requirement on unions to specify the timetable for different forms of action.

The amendments are intended to tease out of the Minister how he sees this part of the legislation operating in practice and make him justify why it is necessary.

Balloting is already a straightforward process. It is already clear what people are voting on and what types of action are being proposed. This part of the Bill simply seeks to muddy the waters and may result in a lot of expensive litigation.

Jo Stevens: I rise to speak in opposition to clause 4 and in support of amendments 14 to 19. From reading the clause, the Government appear to think that trade union members are not capable of understanding what they are voting on in a ballot on industrial action. That is a patronising attitude to working people, who do not lightly take industrial action; they consider carefully what they are voting for. They understand the issues. There is not one single shred of evidence of union members saying that they did not understand what they were voting on or why.

The Government propose changes to the law that will turn an industrial ballot paper from a succinct statement with a yes or no question to something resembling a legal disclaimer. The Chartered Institute of Personnel and Development has said that the proposals are “counterproductive”. Employers’ lawyers have said that the proposals are vague and unworkable and that they will lead to legal challenges and expensive litigation. No one wants that—apart from the Government, it would appear.

As my hon. Friend the Member for Cardiff South and Penarth said, the purpose of the proposals appears to be to encourage court cases by employers. Witnesses to the Committee have said that they are not about information for union members, but ammunition for employers. Looking at the detail, the ballot paper must include

“a reasonably detailed indication of the matter or matters in issue in the trade dispute”.

What does that mean? It has been criticised by lawyers across the spectrum for being so uncertain as to be meaningless. What is “reasonably detailed”? It is an oxymoron and it is contradictory. How will both sides of industry know whether something is detailed enough to be “reasonably” detailed or regarded as too detailed? Unions and employers will be in court every single time. What is “an indication”—a nod or a wink? This is not the language of statute, and I wonder whether it might come from the Prime Minister’s nudge unit. Anyone with any experience of industrial relations will know that the question of what is in issue in a dispute is often a matter of disagreement. This wording will further add to legal challenges.

The next requirement imposed by the Bill is to state “the type or types of industrial action”.

What does that mean? We heard in evidence to the Committee that even Government lawyers themselves cannot explain it. The current definitions of “strike” and “action short of a strike” have been clarified by case law and amendments to statute over the years. They are now clear and well understood, so what are the “types” of action the Bill refers to? We are told that they include an overtime ban, for example, and work to rule, but those are not legal terms of art. Again, this will lead to expensive litigation and legal wrangling in the courts.

Finally, the union must state on the ballot paper “the period or periods within which the industrial action or...each type of industrial action is expected to take place.”

Why should a union be required to state that information at the stage of the ballot, weeks before any action could lawfully take place, when they must in any event give notice of dates of action after the ballot is completed and before action takes place? The intention behind every single one of these provisions is to set legal traps for unions so that employers can run off to court and get injunctions to stop legitimate action.

Employers, however, do not want the provisions either. They fear the consequences. Employers’ lawyers have said they are concerned that unions will have to draw the descriptions on the ballot paper as widely as possible to give themselves legal protection. Unions will have to include every possible type of action they might take and set out every day on which they might take each type of action.

What is more, employers’ lawyers fear that to avoid legal challenges, unions will have to stick to every single detail spelled out in the ballot paper. They will not be able to resolve any issues in the dispute unless all issues are resolved, otherwise they will face legal challenge. They will have to take every type of action specified and on every single day specified, otherwise they will face legal challenge. How on earth is that supposed to reduce the number of disputes that take place? It will simply increase them.

Disputes will escalate. They will become more entrenched and more difficult to resolve, all because of these changes. That is why the CIPD says that the proposals are a “significant step back” that will “harden attitudes”. I invite the Minister to withdraw them, but if the Government persist with these counterproductive proposals that no one wants, they should be amended as we propose.

Nick Boles: I am pleased that the hon. Lady gives me the opportunity to set out in more detail what sort of information we expect unions to include on the voting paper. I fear this may take a little time, but I want to address all the amendments tabled and why we will resist them.

I will start with first principles. We want unions to be absolutely clear with their members about what they are being asked to vote for, in order to ensure full transparency in any industrial action ballot. It is clearly in the interests of union members, as well as employers and the wider public who are affected by strike action, that those being asked to vote for such action can make a fully informed decision about whether to back it.

I remain concerned that merely requiring a trade union to state the trade dispute without requiring any further detail, as suggested in amendment 14, would not meet the objective of enabling members to make a fully informed decision. It would only require a very broad statement. In reality, it will in most cases mean that members have no more information about the dispute than they have from wider communications. It does not provide enough clarity for union members to determine whether they choose to support industrial action. That cannot be right or democratic.

Chris Stephens Will the Minister give way?

3.45 pm

Nick Boles: I will continue for a second and then give way to the hon. Gentleman; I owe him one, because I did not see him trying to intervene earlier.

[Nick Boles]

I have a couple of actual strike ballot papers in front of me. They are quite hard to get hold of, so I have not got a huge number. On one, the only statement on the paper was “impact of redundancies”, which did not clarify in which workplace, which group of employees was affected or when the strike was proposed. That ballot paper provided a very vague, short description. Another ballot paper provided a vague but incredibly broad statement about

“adverse changes to pensions, workload, conditions of service, including pay and pay progression, and job loss.”

Neither statement is particularly helpful to those voting on the ballot because not enough information is given about when that dispute would be resolved, so that is not obvious to the person voting. Being told the location of the site of the affected workers would not necessarily help members to know what matters are at issue, and neither would knowing that the dispute is about pay, for instance.

Let us not lose sight of the potential wider benefits of the proposed change. As now, the employer will receive a copy of the voting paper, so including better information about why the industrial action is proposed should have the added effect of helping to eliminate any misunderstanding, which can creep in in such circumstances, between unions and employers about exactly what issues remain in dispute. In turn, that should facilitate employer discussions with the trade union about how the dispute might be resolved, where possible without recourse to industrial action.

Turning to amendment 15—

Chris Stephens: Before he turns, will the Minister give way?

Nick Boles: Of course. I was ploughing on and I did not mean to forget the hon. Gentleman. It is only because he is outside my peripheral vision—

Ian Mearns: You should take the blinkers off, Minister.

Chris Stephens: If the Minister wants to access other ballot papers, he should join a trade union. In my experience, when a ballot paper is issued, the trade unions are allowed to insert a sheet of paper that sets out fully the issues in the trade dispute, so why is the clause necessary?

Nick Boles: I would simply say that if they all do that, and I agree that that practice is welcome, it should hardly be difficult just to provide a few more details on the ballot paper so that when somebody’s vote is decided, it is clear what they have voted for or against. I promise Opposition Members that from now on there are no blinkers on this Minister, as I am sure that they will be happy to admit.

Let me explain why we have used the words “reasonably detailed”, because the hon. Member for Sunderland Central in particular thought that was a mistake. That specific form of words is used in clause 4 to take into account the particular circumstances of each trade dispute. If there is any more detail that a union could reasonably give on the ballot paper, the requirement is not satisfied.

For example, if the issue is identified simply as “pay”, it may well be right to say that there are further details that the union could have included. Those details might include which year’s pay offer is in dispute, and which employees are covered by the offer. Again, that links back to our overall objective to ensure that unions provide clarity to their members about what they are being asked to vote for so that there is full transparency in any industrial action ballot.

We think it is much more helpful to union members if a trade dispute that affects them in different ways is articulated in sufficient detail so that everyone knows the point on which they are being asked to make a decision on industrial action and how each individual is affected by the trade dispute. However, we do not want to put unnecessary burdens on unions by asking them to include a long and detailed account of the trade dispute. That would be onerous and would dilute the very clarity that we are seeking to provide. That is why the clause does not require a “reasonably detailed” description of the trade dispute. It is about balance, and the Bill as currently drafted best achieves that.

Amendment 16 would not assist members to understand what type of action they are voting for. That is particularly important because there is no definition of action short of a strike. If we do not require a trade union to state on the voting paper what specific type or types of action it is proposing, a member will not know what action he or she is being asked to back. Even stating that the proposed action is action short of a strike does not help members to make a sufficiently informed decision, because there are various types of action that amount to action short of strike. Just using that phrase will not help members to understand what they are voting for. For example, a member may support industrial action that amounts to an overtime ban, but not a period of work to rule. If the voting paper does not specifically state which of these actions the union proposes its members take, how will they know how to vote?

Having said that, I appreciate the point the hon. Gentleman made about there being a degree of uncertainty at the stage when the union is drawing up the voting paper about how the negotiations will continue to play out and therefore what action the union might subsequently take. Nevertheless, if the union has reached the stage at which it is asking its members to support a ballot for industrial action, it must surely have in mind a plan for such action. All we are asking in new section 229(2C) is that the plan should be disclosed to the union members. I do not believe that is unreasonable.

Tom Blenkinsop (Middlesbrough South and East Cleveland) (Lab): The Minister gave work to rule as one example of action short of striking. Can he define what work to rule is?

Nick Boles: My understanding is that it is working to the contractually committed hours and not being willing to work beyond those or in a different place, perhaps, than contractually committed. I am sure I can provide the hon. Gentleman with the legal or commonly accepted definition, but that is my understanding.

Tom Blenkinsop: Would the Minister apply that definition to all workplaces?

Nick Boles: I do not think it is my job to apply it to any particular workplace.

Seema Kennedy (South Ribble) (Con): Does my hon. Friend agree that the clause is about giving certainty to all involved in business: the employers and the union members, the people who are voting? I draw the Committee's attention to the submissions of Dr Marshall and, in particular, David Martin, who said:

"Communication with the workforce is fundamental".—[*Official Report, Trade Union Public Bill Committee*, 13 October 2015; c. 16, Q42.]

The clause is a sensible evolution in the legislation and is just about ensuring clarity for all involved.

Nick Boles: I thank my hon. Friend for her intervention; she is absolutely right. In a sense, the hon. Member for Middlesbrough South and East Cleveland has, perhaps unintentionally, made my argument for me—I do not have to understand what is proposed on every single ballot paper; I am the mere Minister in this. The people who have to understand it are those being asked to vote on whether to strike—which, if they choose to, will have huge direct personal effects on those being asked to strike, as hon. Members have pointed out—or being asked to co-operate with an overtime ban or anything else. It is they who need clarity about what is being proposed, and that is all we seeking to ensure.

Tom Blenkinsop: Will the Minister give way?

Nick Boles: I am not giving way again; I need to make some progress.

On the period for proposed industrial action, a union member may be fully supportive if he or she knows that it would take place in late November or early December, but not if it was to take place, say, over the Christmas period. Trade union members may want to consider the proposal in relation to their personal circumstances, as well as their work. Amendment 19 would simply not meet that objective, because it would preserve the current situation, in which there is no requirement whatever to provide any information in the voting paper to union members about the timing of industrial action.

I have similar concerns about amendment 17. Simply knowing whether industrial action is to be continuous or discontinuous, without any further information about timing, does not help a member to understand when such action might take place. Indeed, I doubt whether the words "continuous" and "discontinuous" in the context of industrial action mean very much to a lay person. Surely it is the time period that is the key to ensuring that members have clarity about when action is due to take place. Of course, it is also important that employers know whether the proposed action will be continuous or discontinuous. That is why the notice of industrial action, which a union must provide to an employer under section 234A(3)(b) of the 1992 Act before taking such action, must include a statement to that effect. Crucially, however, that notice must also contain details about the intended dates for such action. Indeed, that is its purpose: to tell the employer exactly when the action will happen. That is in contrast with proposed new section 229(2D), which requires a union

only to provide an indication of when the expected industrial action would take place, not a specific date or set of dates.

That brings me to amendment 18. To require a union to state whether the industrial action is intended to be continuous and to state the intended dates would be to require it to specify a particular date on which the action is to start—for example, from 15 October. That would be very restrictive; indeed, it is much more prescriptive than the requirement under clause 4, which, in this example, would just be to indicate the period of industrial action as being in, say, October. That would give a union the flexibility to start such an action on, for example, 1 October, 15 October or 25 October, and for it to last for, say, one day, one week or longer—subject, of course, to the union providing 14 days' notice to the employer and the action taking place within the four-month time limit of the mandate.

I have even more concern about a union's ability to meet the proposed requirement to specify that the action is discontinuous, together with the intended date for such action. That combination of words would effectively require a union to state up front and before it has even secured a mandate for action the precise dates on which such action is planned or intended. It would be much more difficult for a union to predict such dates so far in advance, and they may well turn out to be unreliable. For example, if the union finds that it does not want to take action starting on or specifically on those precise dates because negotiations are ongoing, it would no longer have a ballot mandate. The dates would need to be reliable or the union would risk misinforming members. Making a union set out its plan in such detail, so early, means that the dates would be very likely to change.

Having said that, let me be clear: it is entirely reasonable to require a trade union to specify that the action is discontinuous, together with the intended date for such action, at the point when it is serving notice of intended action to the employer under section 234A(3)(b) of the 1992 Act, as is the current position. However, to suggest that a union should articulate the precise dates on which it will take particular action so much earlier in the process is an entirely different proposition, and one I cannot support for the reasons I have outlined. I therefore urge the hon. Gentleman to withdraw the amendment.

Stephen Doughty: The debate has been interesting. As the Minister will appreciate, the role of the Opposition is to table amendments to expand on a series of issues, not necessarily to push them all to a vote. The debate has been helpful in eliciting from the Minister various responses about the intent behind clause 3.

I listened carefully to what my hon. Friend the Member for Cardiff Central said about the concerns of the Chartered Institute of Personnel and Development and employers' lawyers relating to the clause. I agree with her that, in many respects, the clause, the Government's intent and, I would gently say, some of the Minister's comments can be seen as patronising to trade union members. The suggestion that there is widespread ignorance about the disputes on which members are balloted and that they are somehow under the Jedi powers of their union steward masters is a fantasy. If Members speak to any ordinary trade union member or person affected, they will find that people are very clear: they know what issues are affecting their pay and pensions.

Tom Blenkinsop: In most unions, by the time strike action is taken, a local dispute will usually have been taken to a regional level, and if the matter was not resolved at a regional level, it will have been taken to a national level. That is certainly what happens in large private industry, particularly the steel industry. I imagine that there are such cultural norms in most trade unions.

Stephen Doughty: I completely agree. It is important to recognise something that Government Members seem to have lost in this debate: the vast majority of trade union members and workers, whether in public services or the private sector, will seek to resolve disputes through very reasonable mechanisms, such as talking to line managers, colleagues and others in the management of a firm or public service, before they reach the stage of even contemplating industrial action or disputes. Most people act in a human way and want to resolve things as easily as they can. It is only when frustrations build up and concerns are not listened to—for example, on health and safety or fundamental disputes with the Government about restrictions on pay or pensions—that things reach the point where industrial action is considered. I say gently that the Government do not appear to understand how things operate in practice.

Chris Stephens: The hon. Gentleman will have heard me ask the Minister about an insertion that goes out with the ballot paper. Can he think of an example of any trade union that would not include with the ballot paper an insertion fully stating the trade dispute?

Stephen Doughty: Indeed, I can barely think of any possible examples in which a trade union would not explain the progress of negotiations and what might be going on and feed back to its members what is happening in a workplace.

Tom Blenkinsop: As a former trade union officer with the Community trade union, I was part of the National League of the Blind and the Disabled section, which deals with blind and disabled workers who work in Remploy factories—

Ian Mearns: Who used to work in Remploy factories.

Tom Blenkinsop: Sadly, that is right. My section also dealt with blind and disabled people working in sheltered workplaces, including at Ayresome Industries in Middlesbrough. As well as union officers, the unions brought in, over a prolonged period, signers and Braille writers to ensure that those employees were informed of the situation and the exact nature of any dispute.

Stephen Doughty: That is a very important example. The Minister selectively looking at a couple of ballot papers proffered to him by his officials is simply not reflective of the wide degree of communications and engagement that will go on when trade union members—workers in a firm or a public service—are considering industrial action. It goes back, again, to the point made by the hon. Member for Glasgow South West: why would trade unions want to be hoodwinking people into action? How would they then convince them to take part in it? It is just nonsense.

4 pm

Ian Mearns: This is a very important point. Surely, in an industrial dispute there are people who will agree down the line with the union stance, others who are more ambivalent and some members who are against. When a union informs its members and updates them about what has been transpiring in the course of a dispute, members who are against taking industrial action will pass on any misinformation from their union to an employer and the employer will undoubtedly take legal action against the trade union for misinforming the workforce. Therefore, we are clearly seeing a measure here which is not necessary.

Stephen Doughty: My hon. Friend the Member for Gateshead makes a very good point. Also, as I said, the amendments encourage some clarity from the Government on the issue of timetables. I think the Minister said that—surely, they have in mind a plan. Actually, most trade unions operating in a dispute are trying to find a resolution from the start: industrial action is a last resort. We have to say that again and again. I imagine that in many circumstances there is no plan—they are hoping that management or Government, whoever it might be, will come forward with a reasonable solution through means other than industrial action to solve a dispute.

Julie Elliott (Sunderland Central) (Lab): Does my hon. Friend agree that the whole premise of the Government's argument about this part of the Bill comes from a belief that the unions are very top-down, imposing what is going wrong in the workplace, or what workers have a problem with? Whereas actually, the reality of industrial disputes is that problems arise from the bottom, from something that union members are not happy with, which the union officials are trying to sort out and resolve. If that fails, it is the union members that pressure for industrial action, often as a result of consultative balloting in the first place.

Stephen Doughty: That is exactly the point. Indeed, as with many other parts of the Bill, it looks like it has been drafted by people who simply do not understand how trade unions operate in a modern industrial setting. It is based on assertions, ideas and myths that have been created, often by the Minister's colleagues. I remember the Minister for the Cabinet Office using some very colourful language in this area. It does not reflect actual practice and I hope, given that the Minister is trying to set out the case for this, that he will explain whether the Department has received widespread, conclusive evidence of ignorance, with people writing in saying, "We don't understand what's going on, the Government must legislate". Where is the demand for this legislation, other than in the theoretical towers of Victoria Street?

With that, I seek the Committee's view on amendment 14 and the wording of disputes on a ballot paper. Also, in the spirit of wanting to encourage the Government to foster negotiation and allow the maximum time to achieve resolution of disputes, I wish to press amendment 19, which would remove the requirement for timetables altogether, to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 10]**AYES**

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

NOES

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

Question accordingly negated.

Amendment proposed: 19, in clause 4, page 2, leave out lines 39 to 41—(*Stephen Doughty.*)

The Committee divided: Ayes 8, Noes 10.

Division No. 11]**AYES**

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

NOES

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

Question accordingly negated.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 8.

Division No. 12]**AYES**

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

NOES

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

Question accordingly agreed to.

Clause 4 ordered to stand part of the Bill.

Clause 5

INFORMATION TO MEMBERS ETC ABOUT RESULT OF
BALLOT

Question proposed, That the clause stand part of the Bill.

Stephen Doughty: I do not intend to detain the Committee long on the clause because we have discussed part of it, but I do want to raise a couple of points. Under section 231 of the 1992 Act, trade unions are already required to inform members and relevant employers about the results of ballots—how many votes were cast, how many members voted yes and no, and the number of spoilt votes. Clause 5, as we have said, would add to the information that trade unions are required to include. They would be required to inform members and employers of the number who were entitled to vote in the ballot, whether the number of votes cast reached the 50% turnout requirement, and, if the 40% threshold applies—although, of course, we have no idea where that will apply at the moment—whether that was met.

As with many measures in the Bill, and as I outlined in the debates on previous clauses, the Government are simply seeking to introduce additional administrative requirements, which are unnecessary and designed to disrupt and deter trade unions from effectively representing their members. We will oppose this clause, for it is another example of that blue tape which, if it were proposed for any other organisation, would rightly be regarded as needless bureaucracy, and I am sure the Government would be wanting to call it out as such.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 8.

Division No. 13]**AYES**

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

NOES

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

Question accordingly agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6

INFORMATION TO CERTIFICATION OFFICER ABOUT
INDUSTRIAL ACTION ETC

Question proposed, That the clause stand part of the Bill.

Stephen Doughty: I am getting more and more tied up in the Government's blue tape. Much like clauses 4 and 5, this clause is designed to deter and disrupt trade unions by burdening them with additional requirements.

I am sure that we will have at a later stage an extensive discussion of the role of the certification officer, given the clauses and provisions through which the Government are attempting to expand it. This clause also touches on that issue because it will require trade unions to report to the certification officer on whether industrial action has taken place in the last 12 months, the nature of the disputes, what action was taken and

[Stephen Doughty]

the turnout and ballot results. If trade unions fail to comply, they may face severe financial penalties. Not only does this measure create significant new administrative burdens for trade unions, which do not necessarily gather those data centrally, but many are rightly asking why this new duty is necessary and what purpose it will serve.

As I hope members of the Committee know, though I am sure they will be enlightened at later stages, the certification officer is an independent agency with responsibility for regulating trade unions and employers' associations. I am concerned, as are others, including some who spoke to the Committee during the oral evidence stage, that the role of the independent certification officer risks being politicised in a wide range of ways through the Bill. This is just one of them. I would like some assurances from the Minister, even at this stage, that the Government are aware of those concerns. Will the Government seek to ensure the integrity and separation of the certification officer? We have already heard how the role will be blurred between investigator, manager of data, executioner of orders and many other things, blurring all the principles of natural justice. It would be good to hear some assurances from the Minister.

This comes down to whether the Government think it is appropriate that an agency of the state, albeit a currently independent one, should gather detailed information about private disputes between employers and unions. Although trade unions have been vocal in their opposition thus far, I believe that many businesses and employers, if they were aware of the full implications of this clause, would object to detailed information about their workplace operations being published online and a permanent record of disputes being retained. We all know about the media organisations that harvest as much information as they can from centrally published databases and so on. I suspect that quite a lot of mischief could be caused by attempting to portray certain employers in ways that I think they would feel uncomfortable with.

Ian Mearns: That is an important point. Many employers will reflect that this would not do them a great deal of good in the public gaze. Strikes are often—almost without exception—symptoms of poor industrial relations within the workplace. Many employers, where those industrial relations have broken down to such an extent, may be rather concerned to find that the Government are proposing that detailed information about their workplace operations will be open to public scrutiny. That may well not be good for the very people that the Government are trying to protect here: businesses.

Stephen Doughty: I thank my hon. Friend for that very important point. While we heard oral evidence from the CBI and the BCC on a range of issues, they did not seem to be as strident and as certain in their views as on other aspects of the Bill, despite this potentially having a significant impact on businesses and employers. It would appear, I have to say, that their formal consultation with their members was perhaps more limited than one would expect for organisations that seek to represent industry and businesses up and down the country. I find that quite surprising, given the impact that this could have on disclosing information.

Jo Stevens: Perhaps I can help the Committee because, before I came to this House, I conducted industrial relations on behalf of the business of which I was an owner with a recognised trade union. I would certainly not have wanted detailed information about the disputes, very few of which took place over a 26-year period, to be publicly available online for anyone else to see. This raises not only issues of reputation and industrial relations between businesses but also issues of commercial sensitivity that would adversely affect businesses. I am sure that is not what the Government want.

4.15 pm

Stephen Doughty: I completely agree. Many businesses and employers would have concerns if that were a consequence, unintended as it may be, of the legislation. There are some fundamental issues at stake in terms of the confidentiality of these types of dispute and the potential that this will prevent negotiations and concerns being dealt with in the most sensible, consensual and private way to come to a resolution.

Ian Mearns: We can imagine a situation where industrial relations have broken down to such an extent that, in order to embarrass an employer, the wording on the ballot paper and the information alongside it, given the detailed nature of many industrial disputes, could be written in such a way as to create commercial problems for a company. Would my hon. Friend agree? The role of the certification officer in publishing this information could also have a detrimental impact if confidential commercial information were directly related to an industrial dispute.

Stephen Doughty: Indeed, and it would be a strange situation were we to find a Minister in a future Committee sitting able to find many examples of ballot papers to read from, casting all sorts of aspersion on the conduct of businesses in industry and the public sector up and down the country.

Tom Blenkinsop: A potential example that we would certainly not want documented or in the public view is a trade union dispute between GCHQ and its employees. Would the Government really want that information published?

Stephen Doughty: I can think of all sorts of other examples. Again, the implications of this do not seem to have been properly thought through. Will the Minister briefly comment on who has requested this? Who has said they want this? Have employers, businesses and public servants up and down the country been banging on the Minister's door saying, "We want this information out there in the public domain," as the Bill would require?

This would not only add to the regulation of trade unions and the implications for employers; new powers for the certification officer would inevitably be followed by additional costs. The wide extension of the certification officer's power will have significant fiscal implications. What assessment has the Minister made of the likely cost implications of the certification officer having to gather this additional information? Will it come from existing budgets, will new moneys be provided or will it be cost-neutral?

In any other sector, I am sure the Government would attack such burdensome regulations as needless officialdom that should be done away with in a bonfire of bureaucracy. Does the Minister agree that legislation affecting trade unions should be held to the same standards?

Nick Boles: There the hon. Gentleman goes again with his blood-curdling language. I have been described as introducing “an executioner” of trade unions. The simple truth, as ever, is a lot duller: we are just trying to beef up the certification officer’s role so that it can be a modern regulator of trade unions.

The certification officer will have no greater and no more expansive powers than other regulators—indeed, rather less in some examples. We also want more transparency for everyone about industrial action undertaken by unions. Effective regulation and transparency help to improve confidence in how institutions are run, which can only be a good thing. It is slightly surprising to hear the hon. Gentleman and his colleagues argue against transparency, as if somehow the public interest is better protected by keeping things secret. That is a surprising position for the Opposition to take.

We will discuss the detail of the certification officer’s role later, and I do not want to anticipate that. This debate is about the information that trade unions are required to provide to the certification officer about industrial action. That is an important requirement, because the timely provision of good quality information is a key component of ensuring effective regulation. It gives more confidence to those affected by industrial disputes, which is of course why trade unions are already required to provide certain information every year to the certification officer. That is set out in section 32 of the Trade Union and Labour Relations (Consolidation) Act 1992 and annual returns submitted to the certification officer are already available for public inspection. I do not remember any proposal coming forward from the previous Labour Government to alter the fact of those annual returns or of that availability. If industrial action is taken during the period of the return as a result of a successful ballot called by a union, the clause requires that union to include certain information about the action in its annual return to the certification officer.

Jo Stevens: Can the Minister tell the Committee who exactly has asked for the provision? We are not aware of anyone, neither employer nor union, who has asked for it.

Nick Boles: I have news for the hon. Lady: the Government sometimes act because they have received a mandate—and a majority—at a general election on a clear proposal in their manifesto. That clear proposal was to reform the role of the certification officer. The Government have also, during the term of the coalition Government, had a longstanding commitment to transparency in the public interest and we are not ashamed to continue that in the clause.

The union will need to provide details about the nature of the dispute, the nature of the industrial action and when the action was taken, as specified by clause 4. One of the ways in which we seek to achieve a more effective role for the certification officer is by ensuring that he has full information about any industrial action proposed and taken by a union. We want to achieve that through increased transparency in the annual return to

the officer. The clause also requires a union to provide the certification officer with details of the outcome of any ballot for industrial action, if the union has called a ballot during the period of the annual return. That requirement applies whether the ballot was successful or not.

Accurate information presented in a transparent manner about industrial action proposed and taken by a union helps to demonstrate to union members, and to the wider public, that unions are properly regulated and fully accountable for their actions. I commend the clause to the Committee.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 8.

Division No. 14]

AYES

Argar, Edward	Howell, John
Barclay, Stephen	Kennedy, Seema
Boles, Nick	Morris, Anne Marie
Cartledge, James	Prentis, Victoria
Ghani, Nusrat	Sunak, Rishi

NOES

Blenkinsop, Tom	Mearns, Ian
Cameron, Dr Lisa	Morden, Jessica
Doughty, Stephen	Stephens, Chris
Elliott, Julie	Stevens, Jo

Question accordingly agreed to.

Clause 6 ordered to stand part of the Bill.

Clause 7

TWO WEEKS’ NOTICE TO BE GIVEN TO EMPLOYERS OF INDUSTRIAL ACTION

Question proposed, That the clause stand part of the Bill.

Stephen Doughty: If the administrative burdens—all the blue tape—were not already sufficient to halt industrial action, make the rights of trade unions illusory and disrupt the activities of their members, and even though the ballot thresholds are rarely used elsewhere in our democracy, the Minister has yet another legislative weapon in his armoury to render the campaigns in the run-up to industrial action, which are often used to seek agreed settlement and avert strike action, impotent. Clause 7 seeks to extend the notice period that unions must provide to employers before industrial action can take place from seven days to two weeks. That is excessive and unnecessary, because trade unions are already required to provide at least one week’s notice of a ballot, allow at least two weeks for the ballot and then announce the result before giving two weeks’ notice of action. In practice, at least five weeks will pass between the start of a balloting process and any industrial action.

It is important to understand that, because the actual practice, rather than the academic approach that the Department appears to be taking to trade union activities, is what matters. Members of the Government gave all these examples in their oral evidence of people being able to prepare for disruption and everything else. Obviously those of us on this side of the Committee would want

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people to have the maximum amount of information and awareness with which to do that, but five weeks is a long time. Of course, in most industrial disputes such things would have been under discussion for some time. There would be an awareness of tensions and potential problems. There may have been consultative ballots in the past and evidence that there may be disruption. Industrial action is always a last resort.

Ian Mearns: My hon. Friend is making a powerful point. Clause 4 has been agreed by this Committee, and is therefore likely to go forward to Report. The important point is that, because of clause 4, employers will be informed of the proposed start date of the industrial action when the people involved in the ballot receive a copy of the voting paper. The notice is already in the Bill, so this is yet another unnecessary measure.

Stephen Doughty: I absolutely agree. In fact, I was just about to make that very point. Because of clause 4, employers will know when industrial action, if it is agreed upon, would start before the ballot is run. The information is there. There is already the five-week period, which is lengthy, and most people would consider it reasonable. Again, I believe that this measure belies the Government's real intent. In my view and the view of the Opposition, the extended notice period will serve no legitimate purpose other than giving the employer additional time to organise the agency workers that the Government want to allow them to undermine the strike or industrial action, and to prepare for the legal challenges and the lawyers' charter that the Bill provides.

Seema Kennedy: The hon. Gentleman and his colleagues have made great play of the fact that Government Members have very little experience of trade union activity. Personally, I accept that; I do have not very much. But I do have experience—as does my hon. Friend the Member for South Suffolk—of running a small business. There is cost, inconvenience and, most importantly, damage to the employee's goodwill when they go to law. The idea that we are all rushing off to lawyers is a misunderstanding, certainly of what I would have done as an employee and of what the majority of British businesses do.

Stephen Doughty: I regularly speak to many small businesses up and down my constituency. I have a very positive relationship with them, and I have a good degree of understanding of the challenges they face. As I have repeatedly said in this Committee, we want to avoid situations in which industrial action takes place. That is not under dispute in this debate or in our discussion about the whole Bill, but we believe the Government are going too far on the restrictions on reasonable rights.

Jo Stevens: Is it not the case that the litigation to which the hon. Member for South Ribble referred is actually brought by employers, not by employees or trade unions? It is employers who bring injunctions against industrial action.

Stephen Doughty: My hon. Friend speaks with a great degree of legal experience and expertise from her previous career. That is indeed the case, and it is a very

important point to make. I believe this is just a case of providing opportunities to undermine, rather than seeking resolution and negotiation in a consensual manner. It again provides the potential for protracted disputes, which means that amicable settlements will be more difficult to achieve. If the Government were serious about promoting positive industrial relations, dialogue, agreement, conciliation and arbitration, they would not simply be extending time, which is already extensive, on the basis that people will be shocked if there were a tube strike tomorrow. People know well in advance if such things are happening, and it is deeply patronising to suggest otherwise.

Nick Boles: We recognise the important part that negotiations play in reaching resolution of disputes between unions and employers. Even where such negotiations have been ongoing for some time, reaching the point at which a union serves notice of an intention to take industrial action signals to an employer that the matter has now escalated to a critical level. With a valid ballot mandate having been secured—which in itself is a prior signal that the matter is escalating—serving notice is the last stage in the process before a union can take industrial action. It is therefore also the employer's last opportunity before the industrial action takes place to reach a negotiated solution. This is when continuing dialogue between the parties becomes even more important.

We recognise that, which is why the clause allows a longer period of time during which the trade union and the employer can discuss and strive to reach an agreement on how best to resolve the dispute without recourse to industrial action. That is why in clause 8 we are also removing the need to take some industrial action within four weeks of a ballot. A negotiated settlement is best for the employer, the public, the union and its members, and we are keen to promote every opportunity for such discussion to take place.

4.30 pm

Ian Mearns: Does the Minister accept that intransigence and the refusal to negotiate in a proper manner by employers is also a form of industrial action?

Nick Boles: I am realistic; I understand that there are times when unions feel they have no option but to take industrial action. As I have said, nothing we are doing is stopping that, but let us not lose sight of the scale of disruption that strikes can cause, not only for employers, but for members of the public. It is only right that those whose lives are affected are confident that the legislation provides every opportunity to avoid such disruption, if at all possible. Providing a longer period of time for the notice of the intention to take action is an important part of that process.

Some unions must agree with that, because there are instances where they have chosen to give two weeks' notice voluntarily, such as in October 2014, when nursing staff provided more than three weeks' notice of a half-day strike. It is only fair that employers and members of the public who rely on services have the certainty of having a decent amount of time to make contingency arrangements and that both parties to a dispute have more time to continue negotiations. I therefore commend the clause to the Committee.

Chris Stephens: I am still debating in my head whether the clause is insidious or whether, again, it relates to the Government's view on Jedi-like powers. This morning we discussed trade union officials having Jedi powers to convince trade union members who did not participate in the ballot to participate in the action. Does it take 14 days for those Jedi-like powers to dissipate? I do not know, but I have concerns about the clause that relate to the ever-increasing number of statutory redundancy notices being issued. The limit has been changed to 45 days, which makes it difficult for the trade union to organise and complete its ballot process within the timeframe that the Government are setting out, and that will lead to more balloting. When a trade union gets notices from an employer that there is to be redundancy, the first thing the union will have to do is trigger the mechanisms for balloting before it has even had a discussion with the employer.

The proposal also treats the public with contempt. There seems to be a suggestion that the public are somehow not aware that a trade union has served notice of industrial action to an employer, but the trade union will notify the media of that to get the discussion going with its members. Indeed, some parts of the media that are not friendly towards trade unions and are perhaps more friendly towards the Government will use that publicity too.

The population out there is not made up of hermits. I think the real purpose of changing the notice period from seven days to 14 days is to ensure that momentum is lost in support of an industrial action. In reality, the notice period starts when the employer is notified that the trade union intends to ballot for industrial action. Under existing law, employers are more than adequately able to prepare with the seven-day notices, so I am opposed to the clause.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 8.

Division No. 15]

AYES

Argar, Edward	Howell, John
Barclay, Stephen	Kennedy, Seema
Boles, Nick	Morris, Anne Marie
Cartlidge, James	Prentis, Victoria
Ghani, Nusrat	Sunak, Rishi

NOES

Blenkinsop, Tom	Mearns, Ian
Cameron, Dr Lisa	Morden, Jessica
Doughty, Stephen	Stephens, Chris
Elliott, Julie	Stevens, Jo

Question accordingly agreed to.

Clause 7 ordered to stand part of the Bill.

Clause 8

EXPIRY OF MANDATE FOR INDUSTRIAL ACTION FOUR
MONTHS AFTER DATE OF BALLOT

Stephen Doughty: I beg to move amendment 24, in clause 8, page 4, line 14, leave out "four months" and insert "twelve months"

The amendment would extend the period before any new ballot would be required, and reduce the risk of incompatibility of the provisions with Article 11 of the European Convention on Human Rights – an issue addressed by the Government in its memorandum on the Bill.

As we have discussed, Opposition Members believe that many of the measures we have scrutinised risk making industrial relations worse, not better. Clause 8 is no exception to that rule. Existing legislation provides that so long as industrial action starts within four weeks of a successful ballot, the mandate for it remains intact for as long as the dispute with the employer exists. The changes brought about by clause 8, however, will mean that trade unions are no longer required to start industrial action within four weeks. Where industrial action, whether continuous or discontinuous, lasts for more than four months, the union will be required to rebalot.

The clause will have two effects. First, it will create substantial legal and administrative costs for trade unions, which spend significant sums of money on ballots to ensure the very participation that the Government say they want to encourage. I do not see that the Government appreciate the impact this will have—perhaps I am suspicious that they do—on unions in terms of costings.

Secondly, where ballots meet the Government's thresholds, the measures will actually intensify disputes, leading to more sustained industrial action at the outset as unions try to settle disputes without the need to rebalot, given the financial implications. That is a real threat, and one that I do not believe the Government have given consideration to. Again, if their intent is to prevent industrial action and strikes, why are they introducing this sort of measure? This inevitably risks worsening employment relations and creating more disruption for the wider public, which none of us wants.

The additional risks posed by the clause to industrial relations, coupled with the fact that the number of days lost to industrial action are at a historic low—my hon. Friend the Member for Gateshead pointed out that the days lost to industrial action today are barely one hundredth of those lost in the 1970s, with nearly two thirds of actions lasting only one day—mean that many are rightly wondering what the purpose of the clause is.

I gently suggest to the Committee that the Government's focus for the proposals is some particular public sector disputes relating to the Government's proposals on pay and pension changes. In those disputes, trade unions have often relied on one ballot mandate to organise a succession of strike days over 12 months or so, to limit the immediate impact in the short term but make clear their concerns over a period and encourage the Government to negotiate on the matter. However, under the Government's proposals, after four months, unions will be required to rebalot, even if employers refuse to engage in genuine negotiations and the dispute remains unresolved. I believe this has more to do with silencing the critics of Government who want to raise legitimate grievances about pay, pensions and conditions at work.

Jo Stevens: Does my hon. Friend agree that the clause is designed to allow employers to effectively sit out a dispute and refuse to negotiate in order to force a union to rebalot, at considerable cost? For big public sector unions with hundreds of thousands of members, the costs are significant. In contrast, unions will feel forced to bring forward any planned strike days in an attempt to secure an earlier settlement.

Stephen Doughty: Indeed; that is a likely intent of this. When coupled with the measures on check-off and political funds, the Government are essentially chopping off funding for trade unions and then massively increasing their costs by this measure and the other regulatory burdens imposed by the Bill. Rather than imposing additional restrictions on workers' ability to strike, the Government should engage in genuine negotiations with trade unions.

Ian Mearns: My hon. Friend makes an important set of points. I have a real concern: the Government have stated time and again that the whole thrust behind the Bill is to avoid disruptive industrial action, but it seems to me, particularly where complicated industrial disputes cover many different workplaces, that the proposals in the clause could significantly increase the potential for unwelcome wildcat action, where members' frustrations boil over and they just walk off the job.

Stephen Doughty: That is a risk. Undoubtedly, when the Minister gets to his feet he will talk about ballot mandates from a long time ago legitimatising action years down the line. There is a genuine sympathy with that concern, which is why I tabled amendment 24, which would extend the period before a union would be required to reballot its members from four months to 12 months. The amendment would be likely to assist the resolution of disputes and significantly reduce the administrative cost burden for trade unions involved in protracted disputes, while avoiding the problem that the Minister will undoubtedly refer to as motivation for the clause.

It is a question of reasonableness in all these matters. Most unions want to ensure that there is a strong mandate for action if it is required, which is fair, but four months is such a short period. Given the costs involved, it reveals a different intent behind the Bill and will discourage good industrial relations.

Chris Stephens: Does the hon. Gentleman share my concern that the Bill is potentially a rogue employers' charter? Such employers will use tactics to continue to delay the negotiations. On that basis, if the four-month limit is coming up, they will not deal with the trade unions.

Stephen Doughty: Absolutely, and, combined with the other measures by which a vexatious employer might wish to frustrate the balloting, the wording and everything else that we have already discussed, that creates a very difficult set of circumstances that will fundamentally render illusory the right to strike, to freedom of association and to withdraw labour in furtherance of a dispute. I hope that the Minister will comment on that.

Nick Boles: As we draw towards the end of the first day of line-by-line consideration of the Bill, we are reaching a point where the shadow Minister could do my bit as well. He could make my arguments: he anticipates them and knows exactly what I am going to say before I say it. It would be vastly to the entertainment of the Committee were we to allow him to do so, but I might be fired.

We simply want to ensure that industrial action is based on a current mandate on which union members have recently voted, and that those members are still working for the employer where the industrial action is proposed. It should not be a legacy mandate based on a vote undertaken many months or years previously.

I would not want to disappoint the shadow Minister by not doing as he anticipated and reminding the Committee of certain recent strikes that caused great disruption to members of the public but were based on very old mandates. There were strikes by the National Union of Teachers in July and March 2014 that were based on mandates from June 2011 and September 2012. In October 2013, there were strikes based on a mandate from November 2011. It just is the case that there is current practice of holding strikes based on very old mandates. That is what we are seeking to address with clause 8.

We specify that a ballot mandate has to have an expiry date, which both frees employers from the current situation where strike threats are made for which the original balloting took place some years earlier and removes the resultant long periods of uncertainty, not only for employers but for union members and members of the public.

Stephen Doughty: For the benefit of the Committee, will the Minister clarify where the four months come from? Why four months?

Nick Boles: In deciding how long the mandate should last, it is important that we strike a balance. As I have said, we must remove the uncertainty, which can currently last years. That must be balanced with the need to provide a reasonable amount of time for constructive negotiations to take place. Of course, I am delighted to see that, through the amendment, the Opposition are open to the idea of testing the concept of a time limit to the mandate. The question, as the hon. Gentleman has just asked, is why we have decided on four months, rather than the 12 months that he proposes.

We consider that a four-month period balances the objective of, on the one hand, ensuring that strikes cannot be called on the basis of old ballots and, on the other, allowing sufficient time for constructive dialogue to take place. A period of 12 months would tip the balance too far in favour of the unions to the detriment of everyone else—not just employers, although employers would still have the threat of strike hanging over them for a considerable length of time. Union members should have certainty on the period during which they might be asked to take industrial action. That is particularly important given the consequential effect on their pay. Twelve months is simply too long to expect people to live with such uncertainty. If members have moved jobs, it might not even be the same group of people affected.

According to the Chartered Institute of Personnel and Development, annual staff turnover in 2014 was 13.6%, which means that after 12 months, on average, nearly 14% of the workers who voted for a strike might no longer be in the same job. That must call into question whether the union has a truly valid mandate.

Ian Mearns: The Minister is quoting statistics that cover industry and employment in the UK, which includes people who are, by design, on short-term contracts

where turnover is built into the system. By the nature of their employment rights, not having two years to protect their employment, such people will probably not go on strike in the first instance. The statistic is being skewed by a group of workers who will have no effect on the likelihood of a strike in another instance.

4.45 pm

Nick Boles: Let us not forget that people's perceptions of a dispute can change over time. It is only right that unions check whether industrial action still has the support of their members. Leaving it for a year before a union checks that it still has a mandate is simply too long. In fact, any of the circumstances about strike action are likely to have moved on after four months.

I think we are all agreed that constructive dialogue is important. Negotiation is key to resolving disputes satisfactorily. A four-month time limit on the ballot mandate should not impact on the parties' ability to negotiate a settlement. Indeed, negotiations may well be more focused when an employer has greater clarity about the trade issues in dispute and where a union has a strong and recent mandate for industrial action.

Chris Stephens: During the course of a dispute, trade unions will be contacting their members and having workplace meetings on every part of the process. I do not get why four months is necessary. The Minister seems to suggest that trade unions do not contact their members during that four-month period.

Nick Boles: Obviously we disagree on this, but the fact is that this is not only about union members—some of whom may have moved on or changed their mind—although they are incredibly important to the process. It is not only about employers, although they are also incredibly important to the process because they can lose a great deal of money and perhaps even customers as a result of strike action. This is also about members of the public who rely on services and need to know that there might be a bus strike if a ballot in support of strike action took place three months ago. No one will remember the strike ballot and its result if the period was 12 months.

Let us not forget that, crucially, the period of four months is not the only period during which negotiations will take place. Indeed, such negotiations should have started long before a union seeks a ballot mandate.

Let me also be clear about what the clause does not do. It does not prevent strikes. If a union has legitimately secured a clear, decisive, democratic ballot mandate for industrial action from its members, and the dispute cannot be resolved by negotiation, that union's members can strike. It also does not prevent unions from seeking a further ballot mandate if the dispute is ongoing when the ballot mandate expires. New subsection (1A)(a) specifically provides for that. I therefore ask the hon. Member for Cardiff South and Penarth to withdraw the amendment.

Stephen Doughty: While I sympathise with some of what the Minister said, I fundamentally do not see the argument for a four-month period. This is a matter of interpretation. Twelve months provides a much better period; four months is far too short and will encourage disputes. Indeed, as many Members have said, it could encourage wildcat action, which we certainly would not condone and I am sure the Government would not want. With that in mind, I seek to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 16]

AYES

Blenkinsop, Tom
Cameron, Dr Lisa
Doughty, Stephen
Elliott, Julie

Mearns, Ian
Morden, Jessica
Stephens, Chris
Stevens, Jo

NOES

Argar, Edward
Barclay, Stephen
Boles, Nick
Cartlidge, James
Ghani, Nusrat

Howell, John
Kennedy, Seema
Morris, Anne Marie
Prentis, Victoria
Sunak, Rishi

Question accordingly negated.

Ordered, That further consideration be now adjourned.
—(Stephen Barclay.)

4.50 pm

Adjourned till Thursday 22 October at half-past Eleven o'clock.

Written evidence reported to the House

TUB 28 UNITE - further submission

TUB 29 RMT

TUB 30 Tony Wilson, Managing Director, Abellio London and Surrey

TUB 31 Cllr Darren Rodwell, Leader, London Borough of Barking & Dagenham Council

TUB 32 Communication Workers Union (CWU)

TUB 33 National Union of Teachers (NUT)

TUB 34 Colleges Wales/Colegau Cymru

TUB 35 North Lanarkshire Council