PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TRADE UNION BILL

Fifth Sitting

Tuesday 20 October 2015

(Morning)

CONTENTS

CLAUSE 1 agreed to.
CLAUSE 2 under consideration when the Committee adjourned till this day at Two o'clock.

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Saturday 24 October 2015

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

The Committee consisted of the following Members:

Chairs: † Sir Edward Leigh, Sir Alan Meale

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

Glenn McKee, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 20 October 2015

(Morning)

[Sir Edward Leigh *in the Chair*]

Trade Union Bill

9.25 am

The Chair: I shall make a few introductory remarks to explain our process for those who are new to all this. We will now start the line-by-line consideration of the Bill. As a general rule, I and my fellow Chair do not intend to call starred amendments, which have not been tabled with adequate notice. The required notice period for Public Bill Committees is three working days. Therefore, amendments should be tabled by the rise of the House on a Monday for consideration on a Thursday and by the rise of the House on a Thursday for consideration on the following Tuesday.

As I said, I will explain how the process works for those who are new to Committees. The selection list for today's sitting is available in the room. That shows how the selected amendments have been grouped for debate. Grouped amendments are generally on the same or similar issues. A Member who has put their name to the lead amendment in a group is called first. Other Members are then free to catch my eye to speak on all or any of the amendments in that group. A Member may speak more than once in a single debate. Bear it in mind that this is not like the main Chamber: it is pretty easy to be called here, so you do not have to rely on interventions, and interventions should be short.

At the end of a debate on a group of amendments, I shall call again the Member who moved the lead amendment. Before they finish speaking, they will need to say whether they wish to withdraw the amendment or to seek a decision. If a Member wishes to press any other amendment in a group to a vote, they need to let me know. I shall work on the assumption that the Minister wishes the Committee to reach a decision on all Government amendments that are tabled, although we have none today.

Please note that decisions on amendments take place not in the order in which the amendments are debated, but in the order in which they appear on the amendment paper. In other words, the debate occurs according to the selection and grouping list. Decisions are taken when we come to the clause that the amendment affects. I know that this is complicated, but we are in good hands with the Clerks. They will sort it all out; do not worry. New clauses are decided on after we have finished with the existing text—that is, after we have considered clause 22. I shall use my discretion to decide whether to allow a separate stand part debate on individual clauses and schedules, following the debates on the relevant amendments. Obviously, if a debate on amendments has been very long, a stand part debate may not be necessary.

I hope that all that is helpful to everyone. Members will recall that we agreed a programme motion on 13 October. It is reproduced at the end of the amendment paper and sets out the order in which we will consider the Bill, so we start with clause 1. There are no amendments to this clause, so we will start with the question that clause 1 stand part of the Bill.

Clause 1

Meaning of "the 1992 Act"

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

The Minister for Skills (Nick Boles): It is a pleasure to open the line-by-line scrutiny of the Bill under your chairmanship, Sir Edward. This room has rather less comfortable chairs and rather more mind-blowing wallpaper but definitely better acoustics than the room that we were in for the evidence sessions. I think that we discovered through the evidence sessions that there are deep and passionate disagreements between the different parties on the measures in the Bill, but equally I hope that we discovered that both sides are prepared to argue their points courteously and respectfully, and we will all part, I hope, as friends and colleagues at the end of it.

Clause 1 sets out that references in the Bill to "the 1992 Act" are references to the Trade Union and Labour Relations (Consolidation) Act 1992. The Bill largely amends or inserts new provisions in the 1992 Act. This clause enables the shorthand form to be used throughout the Bill, and I commend it to the Committee.

Stephen Doughty (Cardiff South and Penarth) (Lab/Co-op): Sir Edward, it is a pleasure to serve under your chairmanship in this room with the rest of the Committee; it is a pleasure to serve opposite the Minister and alongside many hon. Friends. I agree with the Minister that we had a lively start to consideration of the Bill during the oral evidence sessions. Fundamentally, I think that Opposition Members have explored how the Bill belies its stated intent. It is partisan. It challenges long-standing civil liberties in this country. It is poorly drafted, with significant legal implications.

Given that we are discussing clause 1, which relates to the 1992 Act—previous legislation—it is important to see the Bill in context: essentially, it is a Bill without a purpose. We heard on Second Reading, most notably from my hon. Friend the Member for Kingston upon Hull West and Hessle (Alan Johnson) that given the significant reduction in industrial action over the past 30 years, it is important to question why the Bill even exists in the first place. That reduction is borne out by the statistics; the number of days lost to industrial action each year has fallen dramatically. Since 2010, on average, 647,000 days have been lost, compared with 7,213,000 lost in the 1980s. There is no problem here and the Bill goes well beyond the realms of sense in challenging the long-standing right of workers up and down this country to stand up for their rights. We heard aptly from a number of witnesses that they see many objections to the Bill. The Government are struggling to find supporters to back it up.

I declare my interest—and I am sure that other hon. Members will do the same—as a member of the GMB union and draw attention also to my declaration in the Register of Members' Financial Interests. Let me be clear from the outset: we intend to oppose every clause,

because we consider the Bill an affront to civil liberties and the rights of workers up and down the country, and do so starting with this clause.

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

The Committee divided: Ayes 10, Noes 8.

Division No. 1

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 1 ordered to stand part of the Bill.

Clause 2

BALLOTS: 50% TURNOUT REQUIREMENT

Stephen Doughty: I beg to move amendment 1, in clause 2, page 1, leave out lines 9 and 10 and insert—

"(iia) in which at least 50% of those who were sent a ballot paper in accordance with section 230(2) of the 1992 Act voted, and".

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

Amendment 2, in clause 2, page 1, leave out lines 9 and 10 and insert—

'(iia) in which at least 50% of those who 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, voted and"

Amendment 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,"

Amendment 8, in clause 3, page 2, line 10, leave out

"entitled to vote in the ballot"

and insert

"sent a ballot paper in accordance with section 230(2) of the 1992 Act."

Amendment 20, in clause 5, page 3, line 6, leave out from "individuals" to the end of the paragraph and insert

"who 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"

The amendment would be consequential to Amendments 1 and 2.

Amendment 23, in clause 5, page 3, leave out lines 15 to 21

Amendment 21, in clause 5, page 3, line 16, leave out from "individuals" to the end of the paragraph and insert

"who 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"

The amendment would be consequential to Amendments 1 and 2.

Amendment 22, in clause 5, page 3, line 20, leave out from "who" to the end of the paragraph and insert

"were sent a ballot paper in accordance with section 230(2) of the 1992 Act".

Stephen Doughty: Amendments 1, 2, 7, 8, 20, 23, 21 and 22 stand in my name and the names of my hon. Friends the Members for Wallasey (Ms Eagle) and for Edinburgh South (Ian Murray), who are not in Committee today but are taking great interest in its proceedings.

Let me first turn to the substance of clause 2, to which our lead amendments 1 and 2 refer. The clause sets out measures by which a ballot and subsequent industrial action will only be lawful if there is a minimum 50% turnout among trade union members who are entitled to vote. Committee members will know from our evidence sessions that the overwhelming majority of trade unions and the TUC are opposed to the clause in principle and are highly concerned that it seeks to introduce excessive turnout and voting thresholds for ballots for industrial action, and that it further defines abstentions as no votes. Let me take each of these in turn.

If the clause is successful, industrial action will be lawful only if there is a minimum 50% turnout among trade union members who are entitled to vote, outside certain "important public services"—as the Government define them—as referred to in clause 3, which we will come to. A simple majority will need to vote in favour of strike action. For example, if 500 members are balloted, at least 250 must vote and at least 126 must vote yes for industrial action to go ahead.

It is important to set out at the beginning that such thresholds are rarely used anywhere else in our democracy. They were not even used in recent referendums, one of which was very significant—I am sure there will be another significant one in the next few years—and certainly not in the general election or other elections up and down the country. Much as we might wish turnout to be higher on all those occasions, I am sure that the threshold provision is relevant to the election of many members of the Committee; an extensive list has been produced by the Library.

Ministers have implied in the media and in other chat about the Bill that recent industrial action in, for example, the rail sector shows the need for the change, yet a recent ASLEF ballot for industrial action on the tube would have passed the proposed threshold, with a turnout of 81%, as would many other examples. Let us be clear: trade unions, as witnesses made repeatedly clear in their evidence, want to see high turnouts and the highest engagement when considering a matter as serious as industrial action or, indeed, a full strike. Why would they not want to? They want to see a high turnout. They want to see their members engaged. They want to be organised and to demonstrate a clear wish for action as a last resort.

Government Members have raised a number of examples of low turnouts. We could debate the merits of action in each case, but I fear—this fear is shared by many of the

[Stephen Doughty]

witnesses who gave evidence and across the trade union movement—that the Government are, in reality, simply seeking to silence unions that do not reach or narrowly miss such arbitrarily high thresholds, despite having legitimate grievances about pay, pensions or health and safety. I am thinking of one particular example: the strike referred to in evidence from the Royal College of Midwives, which was the first time in 154 years that it had taken such action. Under the Bill, that strike would have narrowly missed the threshold.

As the Minister will know, there was a lot of focus on this clause in the oral evidence sessions. While a swathe of those who gave evidence were against the introduction of thresholds, I admit that a number spoke in favour of it, although they had little evidence to back up their claims. For example, Dr Marshall of the British Chambers of Commerce spoke of how his support for thresholds was underpinned by his belief that the number of people affected by industrial action was not going down, and he emphasised extensive indirect effects. That claim was made by a number of other witnesses and by the Government. The reality is that under repeated questioning, they were unable to provide any evidence to substantiate the claim of indirect effects.

As we have made repeatedly clear, if the Government truly had altruistic intentions, they would offer clear support for our amendments in Committee. Our amendments would boost participation by expanding the use of tried and tested methods such as secure workplace balloting, which has repeatedly brought about high turnout thresholds in Central Arbitration Committee ballots and in other matters, and by bringing things into the modern age through e-balloting. We will have a lengthy discussion of these matters later, but it is crucial to underline them now. Unsurprisingly, the Government are not supporting our amendments.

John Hannett, the general secretary of the Union of Shop, Distributive and Allied Workers, hammered home the point that for thresholds to be met and for higher turnouts to be achieved, we must help as much as we can to get turnout up. That is especially the case in dispersed workforces such as those in the retail and distributive sectors, which operate 24/7. I have had extensive discussions with unions such as USDAW about the inherent difficulties and the time it takes to engage with small workforces such as those operating in small shops around the country. I know USDAW members operating, for example, in local Co-op stores in my constituency. They are dispersed and working long hours, and the efforts required to engage them in the process of balloting need to be made as straightforward and easy as possible. It is not a lack of concern about issues in their sector or any ballot proposal that prevents such workforces from engaging; often, it is the very real practicalities of their lives and professions. That situation is repeated across many other sectors.

Long gone are the days of huge unionised workforces in single locations. The reality is that workforces across the country are increasingly dispersed, with people working different hours and in many different locations. John Hannett said clearly:

"I have no problem with thresholds, but it is the facilities and…access"—

access to ballots in this case—

"that is the issue."—[Official Report, Trade Union Public Bill Committee, 13 October 2015; c. 24, Q61.]

More fundamentally, the Opposition are concerned that the clause, and the Bill more generally, will undermine constructive employment relations. The reality is that the introduction of ballot thresholds will mean that unions need to take more time in the run-up to ballots to ensure necessary turnout exceeds by a significant margin whatever legal threshold the Government arbitrarily seek to set. That will inevitably divert time and effort away from finding an amicable settlement, which I am sure is what all members of the Committee want.

We do not want to see strikes or industrial action—we are well aware their consequences—so the Government should be doing everything in their power to facilitate negotiation and reasoned discussion about concerns. The reality is that the thresholds will remove the incentives for employers to seek an early resolution to a dispute. I believe that many of them will decide to wait and see whether a union can meet the strike thresholds before they make a revised offer. That is not a model for modern industrial relations.

It is also crucial that the Committee recognises that the Government are seeking to rush through these proposals without proper consideration or consultation. The Minister will know that the Regulatory Policy Committee roundly criticised the Government's approach. It concluded that the Department's impact assessment on ballot thresholds was "not fit for purpose." Those are damning words. While the impact assessment estimated that the statutory thresholds contained in clauses 2 and 3 would reduce the number of days lost to industrial action, the RPC described as inadequate the Government's

"assessment of the costs and disruption caused, and its impact on the economy".

That underlines the sense that we got from many witnesses that grand claims were being made about the indirect effects of industrial action, but they were simply not substantiated by evidence.

It is worth noting that, in the previous Parliament, the RPC issued just over 2,000 opinions, but there were only 14 instances in which a Department proceeded to the next stage of the policy process on the basis of an impact assessment rated by the RPC as "not fit for purpose." Will this be another example of flying in the face of common sense and the views of a respected independent body?

The clause defines abstentions as no votes for industrial action. We heard repeatedly from witnesses—in particular, from those with legal expertise in the field—that that is undemocratic. Others went as far as to say that that is illegal. International agencies with responsibility for supervising complaints with human rights standards have repeatedly criticised the use of strike ballot thresholds in countries across the world. The International Labour Organisation stated that, in strike ballots, only votes cast should be taken into account.

The Government's proposals go well beyond what is endorsed by internationally recognised standards. I asked the Minister in his oral evidence session what assessment he had made of legal challenge to the Bill and he said,

"we are not anticipating legal costs to fight."—[*Official Report, Trade Union Public Bill Committee*, 15 October 2015; c. 165, Q410.]

I am sure we will return to that again and again, because there is a strong weight of evidence to suggest that the Government will face significant legal costs from the Bill, and not just on this issue, but on many of the provisions on picketing and the implications for the devolution settlement, to which we will come in due course.

The Minister's answer stood in stark contrast to the weight of legal opinion the Committee heard. I refer in particular to a comment from Stephen Cavalier of Thompsons Solicitors, who said,

"the provisions under the ILO convention specifically say that an abstention should not be treated as a no vote, and that is a clear area of potential illegality. There are not similar thresholds in any other European Union member states or Council of Europe convention states. The Bill introduces a new requirement that is likely to be found to be unlawful. In particular, the treating of an abstention as a no vote is likely to be subject to legal challenge."–
–*[Official Report, Trade Union Public Bill Committee,* 13 October 2015; c. 33, Q79.]

We could not get a clearer opinion than that from a respected firm of solicitors who engage in trade union and employment law. That view about the inevitability of legal challenge was shared by Shane Enright of Amnesty, Sara Ogilvie of Liberty, Professor Keith Ewing and the representatives of the Welsh and the Scottish Governments in relation to a wide range of issues.

The amendments in this group attempt to address and expose other concerns we have on this clause and related clauses. We believe that, in this Bill, the Government are deliberately attempting to introduce the maximum number of obstacles and risks for trade unions as they go about exercising their democratic rights. Our amendments are designed to challenge that and to provide clarity in the regrettable circumstance that the Bill is passed in its current form.

9.45 am

On amendment 1, as I explained earlier clause 2 provides that industrial action will only be lawful if at least 50% of those who are entitled to vote participate in the ballot. Many organisations, including the TUC, are concerned that employers will rely on the wording of the clause to bring legal challenges. Given previous attempts to frustrate union activity, there is reason to suspect that employers will argue that some members who were entitled to vote did not receive a ballot paper, that more members were entitled to vote than were balloted and, therefore, that the minimum 50% turnout was not met. Our amendment would provide that the 50% turnout requirement should apply only to members who were sent a ballot paper. The amendment would provide trade unions with increased certainty that they have complied with the 50% turnout requirement and that they are not subject to vexatious claims or attempts to undermine ballots that have been undertaken in good faith.

Ian Mearns (Gateshead) (Lab): Of course, in all of these things we want reasonable people to behave reasonably, but the new ballot thresholds may provide a perverse incentive to employers not to seek an amicable resolution to a potential strike situation because of the heightened likelihood of a no vote with, first, people who do not vote counting against and, secondly, the possibility that the threshold might not be met. An amicable settlement will become less likely, particularly if an employer—there are some employers like this—feels that it is an advantage to press it to the ultimate sanction.

Stephen Doughty: Indeed. I also suspect that that would be the case if employees suspect that an employer will use badly drafted clauses such as this to attempt to bring legal proceedings against the conduct of a ballot. This is all about ensuring the balance of power and responsibility between employers and employees in order to promote dialogue, negotiation and settlement. I agree with my hon. Friend that there are many provisions in the Bill that seek to undermine that balance and, therefore, undermine the possibility of negotiations that would ultimately prevent industrial action or strikes.

Amendment 2 seeks to protect trade unions from legal challenges in the event that they may have inadvertently sent a ballot paper to an individual who is not entitled to vote because they are not employed by the employer involved in the dispute. That is an important point in exposing some of the risks in the Bill as currently drafted. Business structures in the UK are increasingly complicated, and outsourcing is prevalent in many companies. Companies use many different structures and set-ups to conduct their operations. As a result—some members of the Committee might be surprised by this—individuals are often not aware of who is their legal employer. The amendment would mean that unions could rely on information provided by their members about who they believe their employer to be, rather than needing to make additional inquiries of the employer. The amendment also states that the 50% turnout requirement will only apply to individuals

"whom the union reasonably believed would be induced to take part in the industrial action"

when the ballot was issued. That wording would bring clause 2 in line with existing case law on industrial action ballots and would mean that unions are less vulnerable to vexatious legal challenges. Will the Minister share whether he believes that the clause, as it stands, is in line with existing case law on ballots and whether risks such as those I have exposed here exist?

Ian Mearns: Another clause will remove the check-off system for some employers. The check-off system provides, through the payroll records, a record for employers of trade union members in a particular employment situation. Removing the check-off system, tied with clause 2, removes the ability of employers to know who is eligible to vote in a strike ballot.

Stephen Doughty: That is an important point. During our considerations we will see that, rather than hanging together coherently, the Bill belies its original drafting intent and is more like a Swiss cheese full of holes. Many aspects of the Bill do not sit together well because they are being put together for a different purpose than what the Government say they are trying to achieve.

Amendments 7 and 8 would apply similar principles to those that I have just laid out, to clause 3 of the Bill which deals with the proposed 40% threshold. I know we will come to that in due course. We have a number of serious concerns about the 40% threshold that go beyond even our concerns about the 50% threshold, but the same principles exist. If we are to have thresholds, we need to ensure that unions will not be opened to all sorts of vexatious legal challenges.

[Stephen Doughty]

Amendment 20 would apply a similar principle to the reporting requirements on ballots outlined in clause 5 of the Bill. Amendment 23 would remove the requirement on trade unions to take the responsibility of informing members and employers whether the 50% turnout threshold was met and, where relevant, whether the 40% turnout threshold was met. I do not understand why the Bill—evidenced throughout its text—seeks to bog down trade unions in extra red tape, particularly when the Government claim that it is all about reducing regulation and burdens. Surely employers would be able to easily calculate whether a trade union has met any statutory thresholds applied using the numbers provided by the trade union? I really do not see why this reporting requirement is necessary.

Tom Blenkinsop (Middlesbrough South and East Cleveland) (Lab): Does my hon. Friend think this goes beyond the percentages required for a ballot? The fact is that companies with recognised trade unions on site have either gone through voluntary recognition or compulsory recognition, which means that the workforce have already been balloted on whether they want a trade union representative liaising on their behalf with an employer. Is this legislation not going way beyond ballots and actually trying to give employers the ability to de-recognise unions across the country in all sorts of different workplaces, public or private?

Stephen Doughty: I believe that the Bill has many sinister intents. There are many provisions that can be used to tip the balance between employers and employees well beyond what would be reasonably expected in a democratic society. We heard during the evidence sessions that the Bill and these provisions put us at the bottom of the league when it comes to international labour standards and the rights of workers and trade unions.

Amendments 21 and 22 are to clause 5 and are consequential to other amendments for consistency.

Before I conclude on this group, it is worth referring to some of the comments. Many comments were made about this set of proposals in the written and oral evidence and it is important to bring the Committee's attention to a number of them.

The Royal College of Nursing said that:

"The changes that are proposed…will do nothing for the improvement of industrial relations. The emphasis on 'strikes' and seeing all industrial action through the prism of strikes is misleading. This is at a time when the number of disputes is low compared to the past. The effect of the proposals to set thresholds"—

and a whole series of other measures—

"is not a 'neutral' step, rather it further strengthens the power already held by employers in workplace disputes now."

Chris Stephens (Glasgow South West) (SNP): The hon. Gentleman has made an excellent speech. One of the other consequences of the thresholds that came out in the evidence was organisations concerned about a real impact on gender equality issues and on women workers trying to pursue industrial action. Is the hon. Gentleman concerned, as I am, that that could lead to a situation in which the gender pay gap widens as a result of this legislation?

Stephen Doughty: The hon. Gentleman makes a very important point, which was made on Second Reading and by a number of witnesses. The Bill has a disproportionate impact on women, many of whom would be standing up on issues such as disparities in equal pay. We have repeatedly heard how, despite the Equal Pay Act being so many years ago, the reality is that women earn significantly less than men for the same hour of work conducted, particularly in certain sectors. Unions play a crucial role in standing up for those women. Importantly, I mentioned the diffuse nature of the workforce in sectors such as retail, highlighted by USDAW and others. A lot of women work in those sectors, and there will be a disproportionate impact.

Turning to some of the other evidence, we heard from the GMB which underlined the point I made that thresholds will lead to unions taking more time in the run-up to ballots to ensure the necessary turnout. It stated in written evidence that

"Employers will be encouraged to sit on their hands and wait to see if the threshold can be reached rather than address the underlying issues in the dispute."

USDAW, which I have referred to a number of times, said:

"The best method to ensure high levels of workplace democracy is to make it as easy as possible to vote and to ensure that each vote counts equally. Under the proposed system of ballot thresholds, an individual choosing not to vote is likely to have more of an impact on the outcome of the ballot than someone choosing to vote against industrial action. If an individual votes against industrial action, their vote will be added to the turnout threshold even if they are in the minority, meaning that their vote could help to ensure that the ballot threshold is met. However, if someone chooses to abstain, their vote will not be added to the turnout threshold potentially meaning that, even if the vast majority of votes cast were in favour of action, the ballot will not meet the threshold requirements. As such—"

—USDAW is categorical about this

"the proposed ballot thresholds will clearly be detrimental to workplace democracy."

I have another piece of evidence from Unison:

"In the UK an absent vote is not regarded as a negative one. There are a range of reasons why trade union members might not vote."

It then gives a very practical example:

"There might be a positive decision to abstain. They might be on holiday or ill. They might not have an opinion on the dispute and rely on their colleagues to make their views clear."

Tom Blenkinsop: Does my hon. Friend agree that they can be in management and also in the trade union, and it is dependent on the employer to recognise that member of management within the business unit, although not necessarily in their branch?

Stephen Doughty: That is indeed the case. To touch on the point made by the hon. Member for Glasgow South West, low-paid workers are more likely to move and change address, and they might not regularly update the trade union on their latest details.

Unison is very clear:

"Rather than enabling such members to participate more easily in trade union ballots, the Trade Union Bill will restrict the democratic rights of working people and the ability of trade unions to represent their members in the workplace. It will ultimately lead to a diminishment of workplace democracy."

We also had a response from UCATT, an important union representing workers in the construction sector. We did not hear from UCATT in the oral evidence sessions, which was a shame, but it has submitted written evidence, which says:

"It should be also noted that for trade unions taking strike action is always a last resort, no union asks members to lose money on a whim, it is only called for following an end to protracted negotiations that 90% of the time reach an amicable settlement."

That point cannot be overemphasised. Unions want to find resolutions to disputes, but the Bill puts a whole series of barriers in the way of successfully resolving disputes.

Finally, it is important to look at some of the Bill's potential legal contraventions. I mentioned the evidence given by Thompsons Solicitors. It also submitted evidence to the Government's consultation, the conduct of which was significantly lacking, as identified by the Regulatory Policy Committee. In section 10 of the submission from Thompsons Solicitors to the Department on the consultation on ballot thresholds in important public services, it says:

"The ballot thresholds in 'important public services' will engage Article 11 of the European Convention on Human Rights. Any restriction on the right protected by Article 11 must be 'prescribed by law' and 'necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others'. To be 'prescribed by law' the proposed legal framework must have sufficient clarity and precision to enable the trade union on whom the restriction is imposed to regulate its conduct accordingly (i.e. to know exactly which of its members the additional threshold applies to). There is a very real prospect, on the evidence so far, that the government's attempts to meet this standard will fail. It is completely unacceptable to palm responsibility for identifying whether a particular member is covered by the additional threshold off on to the trade union, (paragraph 17 of the consultation). The problem will be particularly acute when considering 'mixed' balloting constituencies—i.e. ones including some members who are covered by the additional ballot threshold, and some who are not."

The complexity and uncertainty created by the way the Bill is drafted provides all sorts of grounds for legal challenge and undermines the ability of unions to stand up for their workers. Industrial action must always be seen as a last resort.

Ian Mearns: My hon. Friend makes a powerful speech. We are in a period of historically low levels of industrial action, with only about 300,000 days lost to strike action in the last year or so, compared with about 130 million days lost to sickness absence. From that perspective, we are looking at such a low level of disruption from industrial action compared to sickness and industrial illness. It accounts for just 300,000 days, as compared to 130 million.

Stephen Doughty: The statistics my hon. Friend quotes are very accurate. During the oral evidence sessions, we mentioned a number of times that the impact of industrial action on actual days lost, whether to customers or parents or users of the health service, is very small compared to the number of days lost for other reasons. We only have to look at the statistics collected by Transport for London on lost customer hours. Far more customer hours are lost due to signal failures, broken-down trains, weather and so on than as a result of industrial action. In the words of the Chartered Institute of Personnel and Development, the Government's plans to reform trade union law are an "outdated response" given the challenges that employers actually face today, many of which my hon. Friend referred to.

10 am

Ian Mearns: One passenger group working on railway delays estimated that more working hours were lost from people being delayed on their train journeys than were lost from industrial action taken by railway workers.

Stephen Doughty: That is indeed the case. It is certainly borne out by the evidence that I have seen from Transport for London. The Committee has heard from a number of train companies and representatives of passenger organisations, and indeed they also implied that this was the case. The reality is that the impacts of industrial action are very small. In conclusion, I fear that the Bill and especially clause 2 will make industrial relations worse, not better. Introducing arbitrary thresholds beyond international norms, potentially in ways that are illegal, and without any clear evidence of need underpinning that or any accompanying measures to ensure the maximum participation possible—as I said, we will return to this—suggest an ill political intent, quite frankly. That is why we will oppose clause 2 today, and we may seek to move any one of these amendments to a vote, depending on what the Minister has to say.

The Chair: We will now have a debate. Please keep in order by mentioning the word "threshold" every few minutes.

Jo Stevens (Cardiff Central) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward. I draw the Committee's attention again to my entry in the Register of Members' Financial Interests. I was a part-owner and director of a trade union law firm prior to election in May, and I am a member of the GMB and Unison trade unions. Unusually, I would like to start by agreeing with those in the party opposite sitting on the Front Bench. In responding to concerns about participation levels and thresholds in the election of police and crime commissioners, the Home Secretary said:

"I never set a turnout threshold for any election, and I'm not going to do it now".

She continued:

"For the first time ever they"—

police and crime commissioners—

"will have a democratic mandate for the people for the work that they're doing".

That is probably just as well, because the Home Secretary's mandate for police and crime commissioners was an average turnout of just 14.7%. While the Home Secretary would not place a threshold on the election of those who run our police forces, we are here today looking at the very same issue for trade union members deciding whether to take industrial action as a last resort. The thresholds proposed in the Bill are arbitrary, as we have heard. They are out of kilter with international standards in law, and they simply do not make sense.

Let us take the ballot held by the Royal College of Midwives last year on whether to undertake industrial action. It was the first such ballot in the college's

[Jo Stevens]

134-year history, and it was won with a very clear margin: 82% of those voting were in favour of industrial action, and 8% were against. Despite that vast margin of support, because the turnout was 49% of eligible members, that proposed industrial action could not legally have taken place had the Bill received Royal Assent at the time. It could not have taken place because every vote not cast would have been counted as a vote against industrial action. Yet, had a few more thousand midwives voted against the action, it could legitimately have taken place. Abstentions here would perversely have more power to influence potential industrial action than the vote of a member who was opposed to it. That is a real, practical example of how ill thought out this legislation is, and how it will adversely impact on industrial relations.

I suggest to the Minister that not only does this clause make no sense, it also raises real legal concerns. My hon. Friend the Member for Cardiff South and Penarth referred to these in his opening address. The ILO states that only votes cast should be taken into account in a ballot. It has already indicated that it would accept a complaint in relation to dual ballot thresholds. Several of the written evidence submissions to the Committee highlight our position in respect of the ILO, but one statement from the Freedom of Association Committee stands out. It said:

"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."

There is also potential for challenge in the European Court, because under the clauses we are considering today, the minority can undermine a ballot by not voting rather than by participating. I thought this was what the Bill was all about. It gives disproportionate rights to abstentions.

The European Court of Human Rights has already ruled in the Demir case that:

"it does not follow that the government can deliberately impose a restriction on fundamental union activities and so make the position of the parties so unequal that there is no incentive to engage".

The Bill does the exact opposite of incentivising participation, while at the same time taking no measures to remove barriers to engagement. If participation and legitimacy are the real aims of the Bill, then I urge the Minister to abandon clause 2 and accept our amendments.

Julie Elliott (Sunderland Central) (Lab): Like my colleagues, I refer to the declarations I made at the start of proceedings last week. I want to talk in practical terms about my experience of what was referred to in some of the evidence, but I will start by saying that I totally support the comments made by my hon. Friends today. The overarching thrust of the Bill is that it will make thresholds almost impossible to meet. The premise of the Bill is based on a total lack of understanding of how the real world of industrial relations works in this country today.

In the real world, industrial action is always an absolute last resort. Last week in the evidence session, some of the leaders of the largest trade unions stated that industrial action is not what trade unions are about and not what they aim for. At the end of the day, their members lose money by taking industrial action. They often represent some of the lowest-paid people in society and that is always at the forefront for any trade union leader or official when negotiating.

No one takes industrial action lightly. Trade union officials are trained today in order to avert industrial action at all costs. However, it is a legal right and is there as a last resort. That needs to be borne in mind in everything we are discussing today. The thresholds proposed in the Bill of 50% and 40% are extreme in their nature. Modern ways of working were outlined very articulately last week by the general secretary of Unison, Mr Dave Prentis, when he talked about partnership working. The big trade unions today work very closely with the employers of their members, whether in the public or private sector. Obviously, one of the thresholds applies to all, the second applies to the public sector of a yet undefined group of people.

Partnership working is about building up relationships and getting to know people and to understand the way they work and what the real issues and nubs of the problems are. Some of the later measures in the Bill will have an impact on that working. Removing some of the facility time from people will not lead to better relationships or better partnership working. The opposite will happen and there will be a lack of trust and understanding of people and where they come from.

Some of the later proposals on check-off are probably even more significant. A ballot is the most intensive thing that any trade union and any employer prepares for, which is why the vast majority of employers in this country are not comfortable with the Bill. Drawing up the list of eligible people in the bargaining group is the most difficult thing that anyone on either side has to do. Check-off facilitates and helps with that process, because it means that the employer knows exactly where a person works within the organisation, but that is not known if someone pays by direct debit. There is also, potentially, a data protection issue, because if someone pays their trade union membership by direct debit, that information is confidential and known only by the union member and the trade union, not the employer. Therefore, in an industrial action ballot, the crucial checks and balances for getting the lists correct will not be there. Everyone wants the lists to be correct, because if they are not, the matter will end up in court.

Tom Blenkinsop: Apart from the fact that in certain sectors management would want to pay their trade union membership by direct debit, perhaps to keep it private and away from managerial colleagues, any employee with fewer than two years in post might not want to let their employer be aware of their trade union membership—depending on the relationship between the union or workforce and the employer—because of the employer's history of behaviour towards unions. That would lead to problems for individuals seeking to exercise their right to be a union member. Furthermore, if someone had information about trade union members on direct debit, the potential for litigation in court over small anomalies being bounced back and forth between the employer and the trade union would be vast, and create even more expense for the employer and the union.

Julie Elliott: I could not agree more. None of us ever wants to reach the point where an industrial action ballot has to take place, but if we do, the time spent on the accuracy of the lists, under the new conditions, will be an enormous task. If it is a national public sector dispute, there will be at least hundreds of thousands of people to deal with. It is not just 50 or 60 people, or a handful in either direction. We are talking about huge numbers, and if it is a national dispute, they will be working all over the country and in displaced workplaces.

Chris Stephens: Does the hon. Lady believe, as I do, that part of the point of an implementing threshold is to stop national, or UK-wide, industrial action, by design, for many of the reasons she has mentioned?

Julie Elliott: That might well be the motivation behind some of it. As I said in my opening remarks, the measure makes it almost impossible for certain types of dispute to take place.

If the trade union side has to spend so much extra time not only on getting the lists correct, but on making the turnout so high, that is time the officials are not spending on talking to the employer and trying to avert strike action, which has to be the motive of everyone involved in an industrial dispute. The only way to resolve a dispute, whether an industrial dispute or any other disagreement in life, is by talking to people. If there is no time to sit down and talk constructively, the problem escalates. That is common sense.

So much time will be spent on the accuracy of the lists, with all the problems that the later clauses of the Bill throw up, and then on getting the enormous turnout. The 50% threshold is a difficult one in itself, but adding on the 40% threshold is incredible, if not completely unrealistic, except in a specific workplace with everyone working for one employer, as the rail disputes in recent history have shown. In the broader public sector there is genuine doubt as to whether the 40% threshold is achievable. The evidence from Stephen Cavalier, from Thompsons Solicitors, is that it will probably lead to more industrial action. Professor Ewing says in paragraph 10 of his written evidence:

> "The ILO Committee of Experts pointed out that 'account should only be taken of the votes cast', while any 'required quorum and majority should be fixed at a reasonable level'."

I defy anybody to say that some of the measures in the Bill around thresholds are reasonable.

Where will the Bill take us if it comes into law as it is written today? My view is that it will make positive industrial relations much more difficult. Because of that, it will inevitably lead to more strikes, which I do not believe is what any Member, on either side of the House, wants. It will most likely lead to the Government ending up in court, with a massive cost to the taxpayer. Nobody wants us to end up in that situation, so I urge the Government to look again at the two thresholds.

10.15 am

Dr Lisa Cameron (East Kilbride, Strathaven and Lesmahagow) (SNP): Does the hon. Lady agree that the Bill will not only lead, in all likelihood, to increased cost, but to increased public disruption, given that it is likely to increase disharmony within the workplace and undermine partnership working?

Julie Elliott: Absolutely, and that is a fundamental point. If the motivation behind the Bill is to try to limit industrial action, its net effect will be to make things worse.

Ian Mearns: Building on my hon. Friend's experience, industrial action is usually taken by members of trade unions when extreme frustration at a lack of progress in negotiations is being experienced. Therefore, given the levels of frustration that exist in these situations, would the imposition of thresholds enacted by this legislation make wildcat action more likely?

Julie Elliott: That is highly possible: if people do not have an avenue to resolve their dispute with their employer—in an organised workplace with trade unions, that is usually through their trade union discussing the issue with the employer—that would be an inevitable consequence. None of us wants to see that kind of action. In the past 10 years or so, legislation in this area has led to very good industrial relations. I remember very personally and vividly, as the daughter of a miner living through the 1970s, how industrial relations used to be in this country. None of us wants to end up in that situation again. It was a dreadful time to live through. What we want is constructive, good relationships where industrial action ballots are an absolute last resort. The changes that the Bill proposes will make that impossible.

Tom Blenkinsop: There is also a potential business cost. If we do not have collective bargaining, where one individual, on behalf of the company, talks to one individual, on behalf of the workforce, that will necessitate individual consultation. Depending on the size of the workplace, that could take a very long time and cost a lot of money.

Julie Elliott: I totally agree, and these are issues we will explore later when we talk about practical implications of facility time. In conclusion, I urge the Government to look again at the thresholds and what I believe will be their impact—probably unforeseen by the Government—namely more industrial action and more disharmony in the workplace, and the potential legal consequences, with the Government having to spend a lot of taxpayers' money defending challenges in the courts.

Chris Stephens: It is a pleasure to serve under your chairmanship, Sir Edward. I declare my membership of Glasgow City Unison and the fact that I was a Unison activist for 20 years prior to my election. Indeed, when I submitted my new application to join the branch again, it had created a House of Commons sub-branch, so that is a good tale to have.

I oppose the threshold for three main reasons. The first is the impact on equality issues, particularly gender equality. The Government have not addressed the difficulties of women workers being able to prosecute and to try to get an industrial dispute on such issues as shift changes, where they would be impacted far more than male workers. Amnesty, Liberty and other organisations made clear their concerns on those issues during the evidence sessions. The second reason is the issue of people not voting. I find it incredible that the deceased will be

[Chris Stephens]

described as being people who are against industrial action. There are many reasons for people not voting, and that principle is wrong.

The third reason concerns the practicalities of what happens during a ballot process and afterwards leading to a dispute. The key test of whether there is a mandate for industrial action is how many trade union members participate in the industrial dispute. The trade union has arguments and has to make a calculation after a ballot result about whether that is support for industrial action. Where there has been a low turnout, some trade unions have not gone forward to industrial action because they did not believe that they had that support. That is the true test of whether there is support, and on that basis trade unions make a gamble as to whether they should go forward.

With low turnouts, the notion has been presented that trade union activists and officials, after the ballot result has been announced and they have been unable to persuade members to take industrial action, develop mystical powers to persuade trade union members to participate in industrial action. It is almost as if trade union officials adopt Jedi-like powers, where all they have to do is make one wave of a Jedi hand and say, "This is the industrial action you're looking for." Frankly, that is a fanciful notion, and on that basis we are opposed to the principles of thresholds.

Nick Boles: At the opening of the debate and of the evidence sessions, every Opposition Member rightly and properly declared an interest as being a member of a trade union. In many cases, they have also declared an interest as being a former official of a trade union. They are proud of that, and they are right to be proud.

I do not have that privilege, but I have another privilege, which is to be a member of the general public. As members of the public, we rely on hospitals being open, because we do not get to go to another hospital under the NHS. We have to go to the one that has offered us the appointment. As members of the public, we rely on a particular school to take our children and educate them for the day, because we do not have the option to buy our way into another school within the public services. We have to send our children to the same school every day. As members of the public, we rely on particular forms of transport that are monopolies in people's lives. We do not have the choice to choose other forms of transport very easily when a form of transport is closed due to a strike.

I can tell the Committee that all Government Members take our responsibilities as Members and representatives of the general public seriously indeed. All we are trying to do through the Bill is to think of their interests when strike action happens and to adjust slightly the balance of power between union members and members of the general public. Opposition Members are absolutely right to represent the unions that they have all either worked for or been members of for many, many years, but we on this side of the House are absolutely right to defend the interests of the members of the public who put us here and elected us to this House.

Stephen Doughty: I have to say that it is a shame that the Minister is starting the debate by being somewhat disingenuous. Opposition Members also represent members of the public. In fact, the TUC made it clear in its evidence that it represents 6 million members of trade unions throughout this country who are also members of the general public and want their rights respected. Indeed, there are members of families who are not members of unions, but they also want their family members' rights respected. Will the Minister not acknowledge that with one in 10 of the British population being members of trade unions, as the TUC has put it, the Bill has a significant impact on their rights and responsibilities and they are all members of the public too?

Nick Boles: I am happy to accept that the one in 10 members of the public who are also members of trade unions must be represented properly in the House, and Opposition Members are doing an admirable job of representing them. I contend that the other nine out of 10 members of the public who are not members of unions and who are affected by strikes when they shut schools and hospitals and close down transport networks also deserve representation, and that is what we are providing.

Chris Stephens: Will the Minister give way?

Nick Boles: I will make a little progress, if I may, and I am sure that we will have an opportunity to hear from the hon. Gentleman soon.

The shadow Minister noted that there are many other things that cause more days to be lost than strike action. He mentioned, I believe, sickness, bad weather and breakdowns in machinery. I would bring forward tomorrow Bills in this House if I could abolish sickness, bad weather and breakdowns in machinery, but unfortunately we have to deal with the real world, and we are focusing on a minor adjustment to the balance—a slight rebalancing—on something that we can affect, which is the number of services shut by strikes.

Ian Mearns: Will the Minister give way?

Nick Boles: I will make a little progress and then I will be happy to take an intervention. All we are saying is that we want strike action to take place on the basis of a clear democratic mandate and not just because a very small minority of union members want it. Opposition Members have made great play of how strikes are always the last resort and no one ever wants strike action based on a tiny turnout. Indeed, we heard in last week's evidence sessions from some very distinguished and eloquent leaders of major unions who made many of the same points.

I simply draw the Committee's attention to the fact that in 2015—in this very year—London bus drivers, in a ballot organised by Unite, whose general secretary we heard from last week and who wrote in a letter to the Prime Minister that no one wants to see strike action on the basis of a very low turnout, nevertheless called a strike on the basis of 21% of the members of the union who were eligible to vote actually casting a vote and 18% to 19%, therefore, actually supporting the strike action. We also heard from Sir Paul Kenny of the GMB. In 2014, in a case involving local government workers, 23% turned out to support strike action over

pay. We heard also from the general secretary of Unison. In 2014, there was a strike over the pay of NHS workers, and 16% of the members of Unison entitled to vote in the ballot had turned out. The idea that we are somehow tackling a problem that does not exist is shown to be entirely spurious by those figures.

Chris Stephens: There are a couple of tests in terms of the Minister's arguments. First, did any of those employers take the union to court? That is a genuine question. And surely if the trade union was not confident that its members would participate in the industrial action, it would not have called it, because trade unions cannot discipline a trade union member who does not participate in industrial action.

Nick Boles: The unions may have been confident, but their confidence was surely misplaced, given that in these cases the figures ranged from 16% to 21% for the people who actually bothered to vote, and that includes the people who voted against the proposed action. This is a problem and it affects members of the public.

Jo Stevens: Will the Minister give way?

Nick Boles: I will, I promise, take a whole range of interventions, but I just want a little time to make an argument in response to the eloquent arguments that we have heard from the hon. Lady and others.

There was a lot of discussion, quite rightly and properly, about the claim that we make that the indirect consequences, the indirect impact, of strikes can outweigh the direct consequences. There was some criticism—not entirely unjustified, in my view—from Opposition Members that no statistics are available to measure those indirect impacts. I hope that Opposition Members will be pleased to learn that I have therefore written to Andrew Dilnot, who runs the ONS, requesting that the ONS look into how it can capture the indirect impacts of strikes.

The shadow Minister makes great play of the fact that the number of working days lost directly due to strike action is relatively low by historical standards. Although he picks a period that particularly flatters the figures, I nevertheless accept the broad point, which is that the number of days lost directly to industrial action is relatively low, compared with some of the dark days of the past.

10.30 am

I would like quickly to talk the Committee through a strike that actually happened, and how we might begin to start estimating its indirect impacts. In July 2014, the National Union of Teachers called a strike that caused 20% of schools to close for the day. This is all very vague, and I am going to make no absolute claims about specific numbers of days lost, but I am going to talk the Committee through how one might get a feel for the rough size and scale of the impact of such a strike. Using a rough average of 382 pupils per school, another strike of that magnitude that closed 20% of schools could close 4,029 schools, affecting 1.54 million pupils in England. According to Office for National Statistics data, there are 4.12 million working households in the UK with dependent children. Based on a school closure rate of 20%, that means that roughly 820,000 working households would be impacted by a strike that closed a school in which one of their children was expecting to spend the day.

The ONS says that 3.2 million of those households are two-parent working households, in which both parents work. A further 851,000 lone parents are also in work. I am not going to try to guess how many of those working single parents and double-parent families where both parents work actually had to take a day off work unexpectedly to look after their children when they could not go to school, because of course many of them may have been able to call a grandparent or make emergency childcare arrangements.

Julie Elliott: Will the Minister give way?

Nick Boles: I will not give way.

I am absolutely going to assert that millions of parents had to take a really difficult decision that had a great impact. Either one of them had to take a day off work, which they did not expect and so could not give their employer much notice, or they had to spend a great deal of money on emergency childcare, or they had to inconvenience another member of their family to provide childcare cover. So do not come to me—I know you would not, Sir Edward; I say this to the shadow Minister—bandying about your very low figures for the number of days lost directly to industrial action when 1 million parents in that strike that closed 20% of the nation's schools had either to take a day off work or spend a great deal of money that they would rather not have spent on emergency childcare.

Stephen Doughty: I have no reason to doubt the disruption that is caused by any individual strike. We are all clear that we want to avoid that. My mother was a teacher, and I have friends with kids. It causes disruption for lots of people. My mother was a member of the NUT, in fact, and she took any suggestion of industrial action or strike action very seriously. She was hardly a militant, and she would not have wanted to do that. However, I think the Minister needs to put those statistics in context. Given that he has done that extensive analysis, perhaps he or his officials can estimate the number of days lost to a child's education over the course of their school career—perhaps just their primary school career. It will be a very small number.

In that example—I do not know to which strike the Minister was referring—the union may have had extremely good reasons to go on strike. They do not want to, and we all recognise that it has an impact, but it must be seen in a wider context. It is not enough to justify the measures in the Bill.

Nick Boles: I want to move on to the amendments. I am sure the hon. Gentleman will remember that the strike I was talking about, which happened last year, was supported by 22% of NUT members. I am sure it was very important for those 22%, but it was not particularly important—not sufficient for them to fill out a ballot paper and put it in the post—for the other 78%, so let us get this in perspective. It was clearly of rather more importance to the millions of parents who were affected than it was to the 78% who had the right to vote but did not.

[Nick Boles]

I will now turn to the amendments unless hon. Members want to intervene.

Julie Elliott: I thank the Minister for giving way. I want to ask one simple question. Does the Minister regard children going to school as childcare?

Nick Boles: I am glad to say that it is a great deal more than that, but when a school is closed because of a strike supported by 22% of union members then, unfortunately, childcare is what parents have to be able to deliver.

Jo Stevens: My point is on the earlier remark about making slight tweaks to the current law. The Minister proposes to introduce a new concept in the Bill, which is to count abstentions as no votes. How can that be described as tweaking the current law?

Nick Boles: I do not accept the caricature. All we are saying is that, when action is proposed that will have a great effect on people—citizens and equal members of the public who have no vote at all in this ballot and who are not even consulted—it is not unreasonable to require a level of participation that is more than half. That will not stop most strikes, as we have seen from the figures, but it will reassure members of the public that strikes are happening only when they have sufficient support. The British people are fair. They believe in people having the right to strike and would always want to retain that possibility for themselves, but they feel that it is unfair when it happens, as that NUT strike or those other strikes that I listed did, on a very low turnout.

John Howell (Henley) (Con): I was looking at the evidence from John Cridland from the CBI. He sums up what the Minister is trying to say very well. He said:

"I think it is reasonable, given the level of disruption involved, that there is clear evidence of a significant mandate."—[*Official Report, Trade Union Public Bill Committee,* 13 October 2015; c. 8, Q6.]

That is all we are asking for.

Nick Boles: I entirely agree with my hon. Friend. It is important to have been reminded of John Cridland's evidence. The hon. Member for Sunderland Central made the claim that the vast majority of businesses do not support these measures. The CBI unequivocally represents more businesses than any other business organisation—that is a matter of fact—and Mr Cridland was very clear that it is not just supporting the Bill but has supported this policy for five years and has only just persuaded a Conservative Government to adopt it. So that was not an entirely accurate characterisation of the position.

Ian Mearns: I wonder whether the Minister might reflect for a moment or two on whether enacting this Bill will mean that those members—he talked about the 78% of union members in a particular ballot not voting—have an understanding that an abstention will count as a no vote. That might be the trigger that he does not want, for them to get out and vote in a ballot.

Nick Boles: One of the problems that we have in this discussion—I am sure it is a failure on my part—is that Opposition Members do not seem to understand that we are not trying to stop strikes. We are trying to stop strikes that have very low levels of support. If unions are, as a result of this legislation, enabled to ensure that every single strike ballot sails over the new thresholds, the Bill will have been successful, not least because the British public will have the confidence that the issue at stake is so important that it justifies that action.

Chris Stephens: I have a similar point to that made by the hon. Member for Gateshead. The Minister mentioned that a 22% ballot closed all those schools. If it was able to close all those schools, it would suggest that the support for the industrial action was more than 22%. Surely this is about participation and helping trade union members participate in a ballot? Will the Minister look seriously at those issues?

Nick Boles: We are looking quite seriously at those issues, which is why we have introduced the legislation. Given the hon. Gentleman's express desire to tackle those issues, I hope I can persuade him to support at least some of our measures.

On the detail of amendments 2, 7, 20 and 21, I appreciate the desire to have clarity and certainty about who is entitled to vote, but that is already well established as a result of the operation of existing provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 and of case law, which provide a balance in the system by protecting trade unions against challenge over insignificant breaches of the balloting rules. For example, many of the provisions in the legislation on balloting are already subject to a reasonableness requirement. Section 227 of the aforementioned Act confers the entitlement to vote to

"all the members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced"

to strike.

Sections 226A and 234A require that the lists and figures supplied in the ballot and strike notices

"must be as accurate as is reasonably practicable in the light of the information in the possession of the union at the time when it complies."

In addition, section 232B provides that a union still complies with the requirements on balloting even if it has made an error in the process, so long as the failure or failures are

"accidental and on a scale which is unlikely to affect the result of the ballot".

That was tested recently in court—the margin of error was considered in the case of RMT *v.* Serco Ltd. As a result, the obligations to give accurate notices and to ballot accurately are already governed by what is reasonably practicable in the light of the information in the possession of the union. The obligations are not intended to be unduly onerous for the unions to comply with. There is no obligation on the union to prepare or update records specifically for industrial action ballots. Plus, as I have explained, unions are already well used to assessing what is reasonably practicable, given that that is an established concept in the 1992 Act. Of course, we are introducing reforms to ensure that unions have up-to-date records of their membership anyway, which I will come to shortly.

Stephen Doughty: I thank the Minister for his assurances about the existing case law and previous legislation. Given that he is in the mood for tweaking, would he go back and look at those issues? We have been very clear that we oppose the legislation but, if the Minister is going to proceed, would he look at clarifying beyond doubt in the Bill that those little problems cannot be used by people who might seek to be vexatious in frustrating unions that are reasonably trying to comply with it?

Nick Boles: I am always happy to look and reassure myself, but I am pretty confident that that is the case. The amendments proposed by the Opposition go further. They would allow the union to import a reasonable belief into a trade dispute. That is in stark contrast to the current position, where there is an objective test to determine whether a matter constitutes a trade dispute or not. That is important because it is the basis from which flows the legal protections for unions and for strike action that is taking place properly. It would allow the issue to be open to a degree of uncertainty, according to what the union believed. That would be detrimental to employers and would tip the balance too far in favour of trade unions. The current wording allows clarity for both parties.

Other changes that the Government are making to the regulation of trade unions will simply make amendments 1, 8 and 22 unnecessary. The coalition Government introduced a new requirement for unions to submit membership audit certificates to show that they are complying with their duty to keep membership records accurate and up to date. The changes are designed to ensure that unions know who their members are, enabling them to be democratically accountable and to reflect the will of their members. The first membership audit certificates are due in June 2016. The fact that unions will therefore have more reliable membership records means that they will in future have more confidence that those who are entitled to vote receive the ballot paper. I am therefore not convinced that unions need leeway to allow certain members to be left out of the number of those who count towards the thresholds. Of course, that same point applies to amendments 20 and 21.

Tom Blenkinsop: Is an industrial ballot conducted among members or among employees?

Nick Boles: Obviously, the people who are eligible to vote have to be members of the union. They are also employees of the unit where the ballot is being held. Their entitlement to vote is based on being members of the union.

Tom Blenkinsop: The two are different, because the employees list could include people of other unions or none.

Nick Boles: I did not entirely catch what the hon. Gentleman just said. Perhaps he would repeat it.

Tom Blenkinsop: One list is the list of members set by the union. The other is a list of employees, which can include members of another union or of none. That is the proper list for an industrial ballot, not the members' list by the union.

Nick Boles: I am not sure that I entirely understand the distinction that the hon. Gentleman is trying to draw. To be eligible to vote, someone obviously has to be both.

Tom Blenkinsop: No.

Nick Boles: To be able to call for strike action, people have to be both an employee of the unit where there is a dispute and a member of the union that is calling the ballot.

Tom Blenkinsop: No. The Minister is obviously unaware of the law.

Nick Boles: I am sorry not to have satisfied the hon. Gentleman.

10.45 am

James Cartlidge (South Suffolk) (Con): May I reassure my hon. Friend the Minister? In the light of the evidence sessions and the correspondence I have received from my constituents, although there are a huge number of technical details, the overwhelmingly important point is the one he has made: we support the thresholds in our key public services so that disruption is not brought to our constituents on such a wide scale as we have seen resulting from school closures and so on.

Nick Boles: I entirely agree with my hon. Friend. It is always good to be reminded of whom we are sent here to represent. Sometimes, I get the sense that Members think they are representing other people.

Perhaps I can help the hon. Member for Middlesbrough South and East Cleveland by describing as well as I can who is entitled to vote in a ballot:

> "Entitlement to vote in the ballot must be accorded equally to all the members of the trade union who it is reasonable at the time of the ballot for the union to believe will be induced by the union to take part or, as the case may be, to continue to take part in the industrial action in question, and to no others."

That is my understanding of the law. I have no doubt that he will want to draw my attention to where he disagrees with the law, but I believe that that is what it says in section 227(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.

Tom Blenkinsop: I do not want to instruct the Minister in actual law, but as someone who has actually conducted a ballot, in terms of practice, a business unit and the employees within in it—[Hon. Members: "That is not the law."] Well, it is the law. It is the same thing—it is a business practice that is conducted under the law and it means that employees on site are all part of the industrial ballot, whether members of the recognised union, another union or not a member of a union at all. We are talking about a business unit. That is the law.

Nick Boles: One of the beauties of British democracy is that we Members are not sent to Parliament to control the practice out there in the real world. We are sent here to pass laws and regulations. If the hon. Gentleman wants to confess that he has been party to practice that was not in accordance with the law, I am

[Nick Boles]

certainly not going to report him for it, but it seems to me that he is suggesting that there is a difference between workplace practice and the current law.

Tom Blenkinsop: On a point of order, Sir Edward. I do not know where the Minister is going with this, trying to infer things or besmirch my reputation when I was simply pointing out what the law and business practice is. We are only two hours into line-by-line consideration of the Bill. I do not think this is a very good start, Sir Edward.

The Chair: I am not sure that that was a point of order, but the hon. Gentleman made his point.

Nick Boles: I am sorry, Sir Edward. I did mean that as a light jest. From the look in the hon. Gentleman's eyes, I think he knows that. I should probably plough on.

The Chair: Order. The Minister is not supposed to talk about Members' eyes; it is what they say that is important.

Nick Boles: Fair enough, Sir Edward.

The fact that the unions will have more reliable membership records means that, in future, they will have more confidence that those who are entitled to vote do indeed receive a postal ballot paper. That is why I am not convinced that unions need leeway to allow certain members to be left out of the number who count towards the thresholds. As I have said, that point applies to amendments 20 and 21 as well.

Finally, on amendment 23, it is not enough simply to have the 50% and 40% thresholds in place. We must also ensure that union members and the employer have information about whether all the conditions that relate to the ballot mandate have been met, because it is not just the union leaders who need to know whether the ballot has secured a valid mandate. Members and employers ought to know whether any subsequent industrial action is valid and legally secure. Information about whether the threshold or, if appropriate, thresholds are met is a crucial part of that. It adds transparency and clarity to the process.

Of course, we could leave unions, members and employers to work it out for themselves from information that they are already entitled to receive—under section 231 of the 1992 Act—about the number of votes cast and the number of individuals answering either yes or no, but that would not be fair. The union will have calculated the result in order to know itself whether it has secured a mandate, so why not simply pass on that information to those who are directly affected by the mandate? On that basis, I urge the hon. Member for Cardiff South and Penarth to withdraw amendment 1.

Stephen Doughty: I do not wish to withdraw the amendment. I will briefly comment on a few of the points that the Committee has made on this group. First, my hon. Friend the Member for Cardiff Central raised some important points about the turnout thresholds for police and crime commissioners, which gave us a very strong context for the absurdity of the Government proposals and their position. The Government have been involved in plenty of other ballots, not least the election of many Conservative Members—I accept that this is also true of Opposition Members—where those thresholds would not have been met.

I also refer to the point made on the impact of abstentions, which we will emphasise at numerous points in the Bill. The Government are supposedly serious about increasing turnout, but there is nothing in the Bill to increase participation. My hon. Friend the Member for Sunderland Central made some important points about the potential to undermine partnership working in seeking a resolution to disputes, and spoke of the practical experience that she and others have had. She described a ballot as the most intensive thing that unions and employers go through and spoke of the challenge of getting lists right.

The hon. Member for Glasgow South West aptly pointed out the equality impacts and trade union self-regulation on whether to take action.

James Cartlidge: The point of equality impacts has been raised many times. Obviously, the threshold makes no specific statement in any sense on that, but does the hon. Gentleman accept that, going back to the Minister's point about school closures and the impact of major strikes, women are among the most disproportionately affected, particularly mothers with children at school?

Stephen Doughty: I have no doubt that women are affected by strike action. Nobody on the Opposition side of the Committee is attempting to deny that. We are making a point about the impact of the Bill as a whole and its disproportionate impact in every strike ballot that is going to be undertaken under the new rules.

Ian Mearns: Do fathers take children to school?

Stephen Doughty: Yes, fathers do take children to school, but we are concerned particularly about the impact of the Bill on women trade unionists, which many witnesses have made clear. As I have said, trade union members represent one tenth of the UK population. I will come back to the Minister's comment on that in a moment.

The hon. Member for Glasgow South West made the point that trade unions will only in very rare circumstances proceed with industrial action if they are not going to be able to get their members to take part. That should be the real test of whether or not there is consent in the broader sense. I liked the hon. Member's reference to apparently Jedi-like powers to induce members into industrial action. All I can say is that this is not the Bill Ministers are looking for.

The Minister made some very false divisions. I intervened when he made the point that Opposition Members are somehow standing up for militant trade unionists and Government Members are standing up for ordinary members of the public. What absolute nonsense! The idea that there is such a division is simply not the case. Every one of those 6 million trade union members is a member of a family who care about their conditions—whether health and safety, pay, pensions, or working arrangements. I believe they have deep concern about many of the actions that the Government are taking to undermine workers, particularly in the public sector.

Jo Stevens: Would it not be right to say that many public sector unions have taken industrial action in order to protect the very public services that Conservative Members say are affected by the disruption?

Stephen Doughty: My hon. Friend makes an excellent point. I am sure that, without the Bill, we would get into a wider debate about the Government's attitude towards public services and their funding. The Minister talks about the Bill being a minor adjustment. That is simply not the case. It is the most dramatic change to trade union legislation in a generation. That is the considered view of many of the legal experts and others who have examined it. It is not "tweaking" to change the rules on abstention, potentially in breach of international conventions. It is very significant. The way that the Government and the Minister have been dressing this up as a tiny movement here and there to bring things in line is disingenuous.

Ian Mearns: We are getting to the nub of the problem the Bill is trying to sort out. Government Members have repeatedly talked about the disruption caused by industrial action in schools, but thankfully in this country industrial actions in schools are few and far between. To put it in context, according to the ONS, the problem the Bill is trying to sort out—industrial action in this country—added up to just 0.00005% of all days worked. We are sitting in this room trying to sort out that problem.

Stephen Doughty: My hon. Friend makes a very clear point about the problem the Bill seeks to solve. We have heard that again and again. I am pleased that the Minister said he will ask the ONS to look at the issue of indirect impact. It will be helpful for the House to have that information. I suspect it will confirm many of the views that have been expressed by Opposition Members and many of the witnesses. It is disappointing that some witnesses, including the CBI and others, made grand statements about the need for the Bill without being able to justify it. Even without ONS statistics, there are other ways of making the case clearer, but they have been unable to do it.

Julie Elliott: On whether bits of the Bill are legal and whether they will end up in the courts, the evidence presented last week by legal experts Stephen Cavalier and Professor Keith Ewing confirmed that the measure would end up in the courts. Does my hon. Friend agree?

Stephen Doughty: I certainly do. I am not a lawyer and I do not have experience of testing such things in the courts, but a significant amount of legal opinion suggests that the Bill is potentially in breach of a series of international conventions, let alone the devolution settlement and existing domestic legislation, and it questions whether many aspects of the Bill are enforceable in the courts.

Going back to the necessity of the measures in the Bill, the Minister has said that he accepts that there are historically low levels of industrial action in this country, and yet the Government have repeatedly extrapolated a sledgehammer from a limited number of examples. We can debate at length the rights or wrongs of any individual strike or industrial action, but we are making legislation for the whole country, all forms of industrial action and all trade union members. The legislation will affect every single trade union member in this country and every single dispute. It simply cannot be right to extrapolate and make general points on the basis of a few examples that the Government have used to back up their case.

Dr Cameron: Does the hon. Gentleman agree that the public are unlikely to look on the Bill favourably, given the potential legal challenges and the impact on the public purse?

Stephen Doughty: One interesting aspect is that the public are not aware of the likely impact on the public purse of legal challenges arising from the Bill. We can look at a number of examples. For example, the Government tried to take the Welsh Government to court over changes to the Agricultural Wages Board, which has a lot of similarities to aspects of the Bill. It resulted in an extremely expensive legal case, which went all the way to the Supreme Court. If the public were aware of the likely challenges and costs arising from the Bill, they would take a very dim view.

Let me turn briefly to what the Minister said about Opposition amendments. I appreciate his clarifying that unions are protected under section 227 of the 1992 Act. He said that they are protected under reasonableness measures in existing case law. If the Government intend to proceed with this legislation, I urge him to look carefully to ensure that those protections actually exist. I will describe more such protections when we discuss the next amendment.

I have less confidence in what the Minister said in opposing amendments 1 and 7, so I will press them to Divisions and test the will of the Committee at the appropriate point. It would be helpful, given the nature of the debate between the Minister and my hon. Friend the Member for Middlesbrough South and East Cleveland, if the Minister could clarify his position on my hon. Friend's point in writing to the Committee. It is important that the Committee is in possession of the full facts on the nature of how disputes are played out and how balloting takes place in the workplace. I re-emphasise the concerns that we and the vast majority of people who gave evidence have about clause 2 and its many implications.

11 am

Question put, That the amendment be made.

The Committee divided: Ayes 8, Noes 10.

Division No. 2]

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 negatived.

Stephen Doughty: I beg to move amendment 3, in clause 2, page 1, line 14, at end insert—

'(3) Small or accidental failures in the arrangements for carrying out the ballot which do not affect the result of the ballot are disregarded for the purposes of compliance with section 226.'

The amendment would ensure that small or accidental mistakes in the carrying out of a ballot which are immaterial to the outcome of the ballot are disregarded and are not grounds for complaint to the Certification Officer or recourse to the courts.

The Chair: With this it will be convenient to discuss amendment 13, in clause 3, page 2, line 24, and insert?

'(3ZA) Small or accidental failures in the arrangements for carrying out the ballot which do not affect the result of the ballot are disregarded for the purposes of compliance this section.'

The amendment would ensure that small or accidental mistakes in the carrying out of a ballot which are immaterial to the outcome of the ballot are disregarded and not grounds for complaint to the Certification Officer or recourse to the courts.

Stephen Doughty: I do not intend to detain the Committee for long on these two amendments, which are designed to be probing and to highlight the difficulties that unions may face when seeking to comply with the proposed threshold rules. The amendments relate to some of the points we have been discussing about the potential for vexatious legal challenges on the conduct of ballots that I believe, given the history of industrial relations in this country, some employers may choose to make.

I have already outlined why we have serious concerns that the Bill is attempting to put as many barriers as possible in the way of people exercising their democratic rights. It is worth looking at what Sara Ogilvie of Liberty said in the evidence sessions. She summarised her concerns by saying that:

"My concern is that the proposals in the Bill would absolutely render the right"—

of industrial action—

"illusory, largely by creating a system of bureaucracy and hurdles that people have to overcome."—[*Official Report, Trade Union Public Bill Committee,* 13 October 2015; c. 60, Q158.]

That concern clearly applies to the matters we have just discussed, but I want to flag up a further, related concern.

The Bill does not provide trade unions with any defence if they make a minor technical mistake when sending out ballot papers, even when they have made genuine efforts to comply with any new requirements. Trade unions are currently protected from small accidental failures when identifying who should be balloted and when sending out ballot papers. Mistakes that would not affect the outcome of the ballot should be disregarded.

The amendments would extend the small accidental failures defence to the new 50% and 40% turnout requirements. If the Minister believes that trade unions are already protected in that regard, as he has said, will he explain why? Will he reassure those who are deeply worried that the proposal will be yet another tool in the hands of those who would attempt, in a vexatious manner, to frustrate the legitimate expression of trade unions' rights, such as by complaint to the certification officer through the proposed new powers or by recourse to the courts? What are his views on that?

Nick Boles: I thank the hon. Gentleman for his comments on the amendment. In matters as serious as workplace disputes and industrial action, it is of course right that trade unions must undertake a number of procedures when running a strike ballot. The rules are there to ensure consistency and fairness in how the ballot is organised. They are not in place to trip up unions, but are there to protect the interests of workers, employers and the unions themselves.

Inconsequential errors of process that have no material impact are not what the balloting rules are designed to address. That is reflected in the Trade Union and Labour Relations (Consolidation) Act 1992 and in case law, which together already protect trade unions against challenge over insignificant breaches of the balloting rules. For example, section 232B of the 1992 Act provides that a union still complies with the requirements on balloting even if it has made some error in the process, so long as the failure or failures are accidental and on a scale that is unlikely to affect the result of the ballot. As I mentioned previously, in the case of RMT *v.* Serco the Court of Appeal held that although the exception in 232B does not apply to all parts of the 1992 Act, that does not prevent a union from claiming immunity when there is an insignificant breach or a trifling error in relation to the rules, even when there is no explicit statutory defence. That case also made clear how far unions must go to ensure the accuracy of the figures given in ballot and strike notifications, and the explanation they must give as to how the figures have been reached. Specifically, it established that there is no obligation for a union to obtain further information or to set up systems to improve its record keeping.

The law, therefore, already delivers the assurance that the hon. Gentleman seeks, and I ask him to withdraw the amendment.

Stephen Doughty: I thank the Minister for his comments. The points that have been made are important, because with any legislation it is not beyond the ken of those who would wish to frustrate the exercise of democratic rights to attempt to use the law in a way that would at least bog down disputes in lengthy litigation. I appreciate the Minister's reading his comments into the record, and I certainly hope that they will be considered if the Bill proceeds in its current form. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Chris Stephens: I beg to move amendment 90, in clause 2, page 1, line 14, at end insert—

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

The Chair: With this it will be convenient to discuss 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.'

Chris Stephens: This group of amendments could be called the devolved group. It goes to the heart of principles regarding mandates—not just the mandates that trade unions derive with regard to taking industrial action, but whether there is a mandate across the nations of the UK for the Bill and for specific clauses within it. That is natural, when we have four nations in the UK with a different leading party in each.

The amendments also raise issues of consent. The devolved Administrations and local authorities are being dictated to by the Bill regarding how they conduct their industrial relations. There are issues regarding the effect on the spirit of friendship and solidarity across the UK, and regarding our mandate, which is to seek the devolution of employment law in the Scotland Bill. It is important to point out that Parliament has yet to put to the test whether employment law should be devolved to Scotland.

The constitutional issues that arise from the Bill could have serious consequences. We were told by Ministers in the evidence sessions that industrial relations are reserved, but in reality they are not. The reality is that devolved Administrations in the past have kept the two-tier workforce agreements, which the coalition Government removed for workers in the public sector in England.

Edward Argar (Charnwood) (Con): Does the hon. Gentleman not accept, though, as the Scottish Cabinet Secretary Ms Cunningham did, that industrial relations are currently reserved?

Chris Stephens: Ms Cunningham then went on to make the position clear about the impact that would have. The hon. Gentleman is correct that industrial relations are reserved at this point, but an electoral

[Chris Stephens]

mandate was given to 56 MPs who were elected in May—I could argue that there are 58 MPs in Scotland who are opposed to the Bill. The Bill is a real concern, because it ignores, for example, the work of the Scottish Government in setting up the Scottish fair work convention. They are working in partnership with trade unions rather than seeing them as the enemy of the public and using the kind of rhetoric we have heard while discussing the Bill.

The Bill brings into question the impact of the industrial relations capacity. We have heard from the local authorities in Scotland. Conservative councillor Billy Hendry said in a Convention of Scottish Local Authorities statement that COSLA is opposed to the Bill. The Bill seeks to dictate to the devolved Administrations on issues of facility time and check-off. There seems little support in Scotland and Wales or in aspects of the public sector in England for the removal of check-off. Check-off is a voluntary arrangement, and for the UK Government to dictate to parts of the public sector who have an electoral mandate to conduct industrial relations is wrong. It will be interesting to hear from the Minister whether he has responded to the Scottish or Welsh Governments on the principles of consent.

More importantly, the deputy General Secretary of the Scottish Trades Union Congress at our political conference in Aberdeen at the weekend, at a fringe meeting, described the principles around facility time and check-off to be the most pernicious parts of the Bill, simply because it strikes at the heart of trade union organisation. Employers benefit from employees having good facility time. They know who they are; they are people who can deal with people and sort issues out; it leads to fewer tribunal claims, less litigation, better health and safety and, indeed it can lead to lifelong learning for employees as well. Those are the very real benefits of facility time.

There was no consultation with the public sector, this provision interferes with electoral and political mandates, and I believe that there is a lack of consent for the Bill across many parts of the UK.

Dr Cameron: Does my hon. Friend agree that Scotland and the Scottish Government have had harmonious working relationships with management and unions, in terms of partnership, and that there is great concern, from constituents and from the Scottish Government, the councils and the Scottish Trades Union Congress, about the Bill's potential to undermine this?

Chris Stephens: Absolutely. The current figures show that there is less industrial action in Scotland than in the rest of the UK. That suggests that partnership working is successful and leads to less industrial action and better working relationships across the board. We know that many public bodies oppose the Bill. Some public bodies have gone even further and said that they will defy the Bill. This can only lead to conflict with other public bodies, conflict across the public sector, and it could lead, as Professor Keith Ewing suggested, to a constitutional crisis across the UK. It is rather ironic that this is coming from the UK Government, when they usually point the finger at other people for causing constitutional crises across the UK.

The trade union movement is the largest group in civil society and we should be working in partnership. I look forward to the debate and will indicate in my summing-up whether we wish to push any amendments to a vote.

Stephen Doughty: It is a pleasure to move on to one of the most significant parts of the Bill in relation to its potential legality, let alone its potential for implementation.

I wish to speak to our amendments 11, 12, 42, 72, 51 and 73, but I shall respond first to the speech by the hon. the Member for Glasgow South West, many aspects of which I have a great degree of sympathy with. I entirely understand his concerns about the impact of the Bill on Scotland, particularly in areas that are clearly devolved. Let me be clear at the outset that, in line with the principles of togetherness and solidarity that underpin the trade union movement, we intend to oppose and to attempt to defeat every substantive clause of the Bill in order to stand up for workers in every part of the United Kingdom, including Scotland. Our amendments also highlight specific areas that we believe most clearly breach the existing devolution settlement, in line with the evidence provided to us by the Welsh and Scottish Governments and other concerned stakeholders.

11.15 am

Other amendments in this group that we have tabled are an attempt to expose the contradictions of a Government who repeatedly claim that they are a champion of regional devolution in England, yet seek to undermine the rights of English local authorities' mayors and, given the new devolved powers that the Government have been talking about, authorities' own industrial relations and contractual arrangements. That is particularly important in the light of the significant changes to regional devolution in England that the Government are moving ahead with. They are essentially devolving powers to mayors and regional councils across England on the one hand and then clipping their wings with the other. The Tory Government are adopting a divide and rule approach to trade union legislation and workers' rights across the United Kingdom.

I want to turn to the stark comments made by Profession Keith Ewing in the oral evidence session. He was referring to the impact on Scotland, but he said:

> "The problem will be if a Scottish public body decides, 'We are not going to comply with this ban on the check-off,' or 'We are not going to publish the facility time arrangements that we give to trade union representatives.' What will happen at that point? We are looking at the question of who will enforce those obligations against Scottish public bodies."

That could be applied to Welsh or English public bodies and local authorities. He continued:

> "Are we really saying that the Secretary of State for Scotland will bring a case against a major Scottish public authority to enforce those obligations? The Government are walking, almost blindfolded, into a major constitutional crisis around the Bill."—[*Official Report, Trade Union Public Bill Committee,* 15 October 2015; c. 129, Q346.]

Based on the Government's record, we know that they might be inspired to launch legal actions against Scottish public bodies, as they have tried to do on various occasions against the Welsh Government over decisions they have made. Of course, as the record will show, the

Government have been found to be on the wrong side, as decided by the Supreme Court, and the case has been found against them at great cost to the taxpayer.

We also need to look closely at the comments made by the Minister for Public Services in Wales, Leighton Andrews, who is clear both about the lack of consultation on the provisions that have an impact on the devolved settlement, and about their potential impact. He said:

"We have good relationships with the trade unions. We value our workforce and believe that they contribute proactively to the development of strong public services."

He also said:

"The First Minister's letter to the Prime Minister also raised a fundamental constitutional issue in respect of our right to defend legitimate devolved interests. He said in that letter that we have great concerns that the nature of the Bill would cut across the devolution settlement, which is of great concern to us. We recently received a short reply from the Prime Minister, but we do not regard it as dealing with the key issues that we set out."—[*Official Report, Trade Union Public Bill Committee,* 13 October 2015; c. 79, Q219.]

He went on:

"We also find it somewhat odd that a UK Government Bill of this kind seeks to specify, for example, how much union facility time employees have saved local authorities in Wales."—[*Official Report, Trade Union Public Bill Committee,* 13 October 2015; c. 79-80, Q221.]

As he pointed out, Wales been going through a local government reform programme. Clearly, as part of that negotiation and debate, on which there are many views in Wales, there needs to be discussion of the wider contractual arrangements with local authorities and their powers and relationships. The Bill cuts across a sensitive and important set of discussions on local government reform in Wales.

The Scottish Government have also laid out their concerns. Roseanna Cunningham, the Minister, said:

"I am not aware of there being any formal consultation in advance of the introduction of the Bill. While I have had some correspondence backwards and forwards with the relevant Minister, there has not really been much in the way of a discussion and we are still trying to establish exactly how it would impact on us. We share a lot of the concerns that the Welsh Minister expressed to you."—[*Official Report, Trade Union Public Bill Committee,* 13 October 2015; c. 82, Q227.]

I am surprised—this has been revealed at many stages of the Bill, including on Second Reading—that on such a matter of potential clash with the devolution settlement, and particularly in the light of the Government's agenda on local government devolution in England, there has not been the level of consultation that one would expect on these issues.

Ian Mearns: Hon. Members will be aware that in the north of England the Government are seeking to establish elected mayors covering regions or sub-regions, and great cities and local enterprise partnership areas in places such as the north-east of England. Does my hon. Friend see the capacity for additional conflict if elected mayors are established and then instructed by Her Majesty's Government about how they should conduct industrial relations affairs within their own elected area?

Stephen Doughty: I agree with my hon. Friend. Not only does that apply to such relationships going forward, but we need to look at the impact of the Bill retrospectively. I would appreciate clarification from the Minister on that. Obviously, local and devolved government across the UK already has extensive contractual arrangements on matters such as check-off, facility time and so on. That is particularly true in the public sector, but also in relation to bodies that receive public funding. Those things are woven into the fabric of employment contracts up and down the land. The Bill simply drives a coach and horses through that and could result in a serious number of legal challenges.

Chris Stephens: On the point raised by the hon. Member for Gateshead, if an elected mayor, a local authority political party, or even a devolved Administration political party puts in its manifesto that it wants to deal with workers by having good facility time and check-off, surely that mandate should stand and should not be interfered with.

Stephen Doughty: The hon. Gentleman makes an important point. Who should have the power in that situation to determine the type of partnerships and arrangements that exist? Should it be for the UK Government, who claim they are pro-devolution, to interfere in those relationships and negotiations?

The implications are clear. I refer to the position that many Scottish local authorities and Scottish Labour party have taken regarding the Bill, which is essentially a position of non-compliance, particularly with the measures abolishing check-off and curbing facility time. To date, every single Labour-led administration in Scotland has passed motions to that effect. They are giving a clear signal of intent regarding the potential constitutional clash we are heading towards.

James Cartlidge: I am very interested in amendment 12, which states:

"None of the provisions of this section shall apply to services provided by the Mayor of London".

In other words, thresholds would not apply in London. In the city where we have had the greatest problems with tube and bus strikes with low turnouts, on which we have had a huge amount of evidence, is the hon. Gentleman seriously suggesting that we should leave London out of the thresholds?

Stephen Doughty: The point we are making with the amendments is that it should be for devolved Governments, and the Mayor of London, to determine the type of relationships they want to have. If the hon. Gentleman wants to get into a debate about the Mayor of London's relationship with the trade unions, I think he is heading on to a sticky wicket. We heard nonsense from the Mayor of London on Second Reading. That goes back to a fundamental point: we are constantly looking at the impact of strikes rather than the reason for them. It is as though they were all dreamed up by a bunch of militants without cause. That is simply not the case. I suggest we do not go down the line of debating the Mayor of London's industrial relations.

Going back to Scotland, Scottish local government is making it clear that it will not implement the Bill. If that is the case, as also appears to be the suggestion of the Welsh Government and other public bodies across the UK, we are heading into difficult territory.

[Stephen Doughty]

The Labour party believes that a collective response and approach to this divisive legislation is both the most ethical and efficacious way to proceed, in the best traditions of trade unionism. Although I understand the principles underpinning many of the SNP amendments in this group that are intended to exempt to Scotland alone from particular clauses, our position is clear. We want to exempt all of the United Kingdom, including Scotland, from all the clauses of the Bill. We intend to do so by voting against each clause of the Bill, and I hope the SNP will continue in the vein already established in Committee and join us in doing so in the principle of solidarity.

There is much that the hon. Member for Glasgow South West and I agree on. However, although I understand the intent behind the SNP amendments, there is a risk that amendments that seek to defend the rights of workers in only part of the UK will play into the Government's hands and encourage a race to the bottom. I hope the SNP will continue its support in defeating each clause of the Bill and join us in voting against the Bill, should it proceed, on Third Reading.

The SNP has tabled amendments 84 and 85, which relate to consent to legislate on a range of issues across the UK. We believe that devolved nations should be exempted, as per our amendments. Nevertheless, there is no inconsistency in supporting those SNP amendments. We would also look favourably on a number of other amendments the SNP has tabled to later parts of the Bill.

I turn to amendment 11 to clause 3. Setting balloting thresholds for the range of important services outlined in the Bill will clearly have a direct impact on public policy areas that are wholly devolved. As a Welsh Member of Parliament, I am very concerned that the Bill could breach the devolution settlement, whether in Wales, Scotland, local authorities in England or London. In clause 3, it could particularly affect health services and the education of those aged 17.

The Chair: Order. As we have had a debate about Jedi knights, may the force be with you all.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.