

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT STRIKES (MINIMUM SERVICE LEVELS:  
PASSENGER RAILWAY SERVICES)  
REGULATIONS 2023

*Monday 27 November 2023*

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**The Committee consisted of the following Members:**

*Chair:* SIR EDWARD LEIGH

† Antoniazzi, Tonia ( <i>Gower</i> ) (Lab)	† Mohindra, Mr Gagan ( <i>South West Hertfordshire</i> ) (Con)
† Atherton, Sarah ( <i>Wrexham</i> ) (Con)	† Morgan, Stephen ( <i>Portsmouth South</i> ) (Lab)
† Bradley, Ben ( <i>Mansfield</i> ) (Con)	† Newlands, Gavin ( <i>Paisley and Renfrewshire North</i> ) (SNP)
† Carter, Andy ( <i>Warrington South</i> ) (Con)	† Phillips, Jess ( <i>Birmingham, Yardley</i> ) (Lab)
† Clarkson, Chris ( <i>Heywood and Middleton</i> ) (Con)	† Smith, Royston ( <i>Southampton, Itchen</i> ) (Con)
† Eastwood, Mark ( <i>Dewsbury</i> ) (Con)	† Spellar, John ( <i>Warley</i> ) (Lab)
† Ford, Vicky ( <i>Chelmsford</i> ) (Con)	
† Hart, Sally-Ann ( <i>Hastings and Rye</i> ) (Con)	
† Johnson, Dame Diana ( <i>Kingston upon Hull North</i> ) (Lab)	
† Lynch, Holly ( <i>Halifax</i> ) (Lab)	Stella-Maria Gabriel, <i>Committee Clerk</i>
† Merriman, Huw ( <i>Minister of State, Department for Transport</i> )	† <b>attended the Committee</b>

**The following also attended (Standing Order No. 118(2)):**

Cherry, Joanna (*Edinburgh South West*) (SNP)  
 McDonnell, John (*Hayes and Harlington*) (Lab)  
 Stephens, Chris (*Glasgow South West*) (SNP)  
 Whitley, Mick (*Birkenhead*) (Lab)

# Third Delegated Legislation Committee

Monday 27 November 2023

[SIR EDWARD LEIGH *in the Chair*]

## Draft Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023

6 pm

**The Minister of State, Department for Transport (Huw Merriman):** I beg to move,

That the Committee has considered the draft Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023.

It is a pleasure to serve under your chairship, Sir Edward. The regulations will be made under powers conferred by the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by the Strikes (Minimum Service Levels) Act 2023. The purpose of the regulations is to set minimum service levels that can apply to specified services during passenger rail strikes. These minimum service levels are designed to balance the public's need to make important journeys and the impact of rail strikes on the economy on the one hand, with the ability of rail workers to take strike action on the other. It is my hope that strike action can be avoided, but the regulations will mean that when strikes take place, the rail industry can provide an improved and more consistent service, in a way that is proportionate and fair for all parties.

Let me give some background to the regulations. Strike action in the rail sector has occurred frequently in recent years, and has a significant impact on people's ability to travel. Since 2019, there has not been a single day when there has not been either a strike on our railways, or mandates for strikes outstanding. The result has been many periods of disruptive strike action, in some cases resulting in the suspension of all rail services on affected routes. Between June 2022 and November 2023, there have been 42 days of widespread disruption caused by strikes. That can have considerable consequences for the passengers and communities affected. People often struggle, or are unable, to travel to work. Others have difficulty accessing vital services, such as education and healthcare. Businesses and the wider economy suffer. Enabling a minimum service to operate during rail strikes is a means of protecting against disproportionate impacts of strike action.

The Strikes (Minimum Service Levels) Act, passed on 20 July this year, establishes a clear framework for implementing minimum service levels. The Act amends the Trade Union and Labour Relations (Consolidation) Act 1992 to give the relevant Secretary of State the power to make regulations setting minimum service levels for specified services in six key sectors, including transport. In addition, the strikes Act sets out the framework through which minimum service levels can be deployed. It gives employers the ability to issue a work notice to a trade union if a strike is called on

a service specified in the regulations. The work notice must set out the staff whose are reasonably necessary if the minimum service level set out in the regulations is to be met, and the work that those staff must undertake. The trade union must take reasonable steps to ensure that the trade union members identified in a work notice comply with its requirements.

The regulations for passenger rail specify three categories of service that minimum service levels apply to, and the associated minimum service levels. Category A is train operation services. Category B is infrastructure services, and category C is light rail services.

**John Spellar (Warley) (Lab):** The Minister says that the trade union should ensure that its members comply with the work notice. What mechanism should it use to ensure that?

**Huw Merriman:** I will come back later in the debate to the right hon. Gentleman's point about the action that we would require trade unions to take—or rather, not take—to ensure that the standard is met.

Let me explain categories A to C. Category A covers train operation services provided by passenger train operators under agreements with the UK Government, including services provided as operator of last resort, and by devolved Governments, and local transport authorities and executives. It therefore excludes services provided by open-access and freight operators; heritage and tourist services; and international train services that start or finish outside Great Britain. The minimum service level for train operation services is the provision of those services necessary to deliver the equivalent of 40% of the operator's timetabled services, as shown in the most recently published National Rail timetable, during the strike.

**Vicky Ford (Chelmsford) (Con):** My constituency of Chelmsford has a particularly busy train station. Indeed, I am told it is the busiest two-platform train station anywhere in the country outside London. It is used by many people to commute to work, and by many young people to get in and out of schools and colleges. I am absolutely delighted to support the regulations, because train strikes have made those people's life an absolute nightmare. Does that 40% figure mean 40% across the whole day, or will the 40% rate apply in the rush hours, so that my young people can still get to school or college?

**Huw Merriman:** I thank my right hon. Friend for her point. The 40% of train operation services is 40% of services across the train operator's timetable as a whole. It applies for as long as that timetable runs. I will go on to talk about category B, because that is hours-specific guidance.

Category B covers services listed in the regulations that are provided by infrastructure managers. During strikes by railway infrastructure workers, the minimum service level is the provision of services between the hours of 06:00 and 22:00 on the priority routes that are listed in the regulations, and on certain enabling infrastructure within a 5-mile radius of the priority routes, including connections to depots, sidings, and rail freight terminals.

Category C covers train operation and infrastructure services provided on the 11 light rail systems specified in the regulations. The minimum service level is the provision of services necessary to deliver, during the strike, the equivalent of 40% of timetabled services as shown in the most recently published timetable issued by the operator of the light rail service.

We have designed the minimum service levels to address appropriately the type of strike action that we typically see, and to ensure that the levels are operationally viable for employers. The minimum service levels are intended to achieve a suitable and proportionate balance between delivering benefits to passengers and the wider economy, and workers' ability to strike. Our work has been informed by extensive consultation and engagement, including a public consultation between 20 February and 15 May of this year, and consultation with train and infrastructure operators, passenger representative groups, unions, and a wide range of other stakeholders.

Once in force, the regulations will apply to any future strikes, even if the mandates for those strikes predate the primary legislation, which received Royal Assent on 20 July this year. That will allow employers in the rail industry to use these regulations as soon as they come into force, should they choose to do so. The Government have identified passenger rail as a priority for minimum service levels. These regulations deliver on that commitment, and deliver on the 2019 manifesto.

**John Spellar:** Will the Minister give way? He said he would.

**Huw Merriman:** I am not giving way. I said I would come back before the end of the debate on the points the right hon. Gentleman made.

The regulations mean that train operators will be able to provide the equivalent of 40% of their timetable during strikes, whereas on some recent strike days, a number of companies have been unable to run any effective service at all. During full-day infrastructure strikes, priority routes can be open for 16 hours, instead of the 11 hours provided for under the industry's current contingency arrangements, with some additions to the routes normally provided. Importantly, this will enable industry to encompass both the morning and evening peaks, so passengers will have more certainty around getting to work and returning home in the evening. These regulations are a positive step towards addressing the impact of rail strikes in a proportionate way. I commend them to the Committee.

6.9 pm

**Stephen Morgan** (Portsmouth South) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward. I thank the Minister for his explanation of the purpose and content of the legislation. Labour does not support the passing of this instrument. The Government's failed approach to industrial relations has led to the worst strikes in decades, and this legislation will do nothing to solve those issues. Last December, the Transport Secretary admitted that minimum services for rail is "not a solution", and that the way to get a better service was to "resolve the disputes". The Government's own impact assessments on this legislation in the transport sector admitted that the plans could increase strikes, disruption short of a

strike, and chronic staff shortages. Even the architect of the law, the former No. 10 adviser Andrew Gilligan, said the plans may

"promote more industrial action than they mitigate",

and will not ensure smooth services. The chief executive of the Rail Safety and Standards Board said the proposals "won't make the slightest bit of difference".

Minimum service levels do not stop strikes in Europe. Countries such as Spain and France lose far more days to strikes than the UK. In Spain, minimum service levels have led to messy legal battles and delayed solutions to industrial action. It often takes the courts around a year to solve disputes on MSLs.

The impact assessment for the statutory instrument was first submitted on 12 October for scrutiny by the regulatory policy committee, which found that it was not sufficiently robust and identified areas where improvements should be made. The RPC confirmed that the points that it raised would generate a red-rated opinion, if not addressed adequately. The legislation is so rushed that the RPC has not been able to provide an assessment of the updated impact assessment, which was submitted only earlier this month. Given that the legislation has safety-critical implications and involves complex arrangements, it is absolutely staggering that the Minister is refusing to produce the impact assessment before Parliament has the chance to vote on the regulations. This is dreadful policymaking practice, with potentially serious consequences.

**John Spellar:** In my earlier exchange with the Minister, was there not a clue to the reason why he cannot provide the impact assessment? It is because he does not have a clue what the impact will be. Fundamentally, he does not know how the regulations will work. That may not be his fault; it may be the fault of whoever drafted the regulations. I am not saying that such measures could not work, but there is nothing I can see in the documentation that indicates how the regulations could work effectively.

**Stephen Morgan:** I thank my right hon. Friend for that scrutiny, and I agree with him. This is the challenge we face with this Government: they are not willing to listen or take on board our concerns about the legislation. Where was the response to the point my right hon. Friend raised earlier? That raises the question of why the Government are not willing to wait for the impact assessment to be reviewed before pushing this legislation through; they realise how poorly thought-through these plans are.

Over the past 13 years, the Conservatives have consistently attacked rights at work, including through the Trade Union Act 2016, the Strikes (Minimum Service Levels) Act 2023 and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022. Labour will repeal all of them to give trade unions the freedom to organise, represent and negotiate on behalf of their workers. A Labour Government would ensure that trade unions could get on with their job of standing up for working people, and ensuring that industrial relations are based on good-faith negotiation and bargaining. That will end the Conservatives' scorched-earth approach to industrial relations, ushering in a new partnership and co-operation between trade unions,

[Stephen Morgan]

employers and Government, and putting us in line with high-growth economies that benefit from more co-operation and less disruption.

We need clarity from the Minister on a number of issues. First, when will he receive the regulatory policy committee's review of the impact assessment? Why has this Committee been scheduled for today, ahead of this review being published? The rushed nature of the legislation has created significant legal grey areas, so workers and employers will be uncertain about where they stand. As the TUC has stated, that is particularly troubling because the consequences for unions and workers of falling foul of the legislation could be enormous, with unions potentially facing damages of up to £1 million.

We need clarity on how many people will effectively be denied the right to strike. The headline is that 40% of rail services will run during strikes, but delivering that is likely to require a lot more than 40% of staff, once consideration has been given to issues such as cover staff. Will the Minister confirm how many staff will be denied the right to strike by the legislation? How will the issue be managed across the network? For example, what happens if there is a strike by multiple operators and Network Rail on the same day? How many signallers would be needed to ensure that 40% of those operators' services could run? All sorts of safety concerns could be created. In theory, could all signallers be given work notices on a strike day? What would happen if a driver named on a work notice refused to operate a service because of safety fears, such as severe overcrowding? Would such a refusal be treated as a breach of the work notice?

Finally, will the regulations extend to the freight sector via the back door, given that freight services and workers are often used by passenger operators and Network Rail to ensure a good service on the network—for example, on recovery services?

This statutory instrument is being rushed through without proper scrutiny and raises far more questions than answers. Labour has been consistently clear that this shameful assault on the rights of working people will do nothing to stop industrial action on the network, and we oppose it. Indeed, as the Government themselves admit, it could make industrial action worse. This unworkable legislation could have very serious safety implications, which the Government have steadfastly refused to address.

The fact remains that only the Secretary of State getting around the table will solve the ongoing rail dispute—something he has refused to do this whole year. Rather than launch yet another attack on workers' rights, is it not time that the Conservatives showed some responsibility, went back to negotiations and sorted out this dispute?

6.16 pm

**Gavin Newlands** (Paisley and Renfrewshire North) (SNP): It is a pleasure to serve under your chairmanship, Sir Edward. I very much look forward to hearing the Minister's full response to the questions from the Labour Front Bencher. Also, given the intervention from the right hon. Member for Chelmsford (Vicky Ford), will the Minister say whether Chelmsford is covered by the

priority routes in the regulations? I will stand corrected if it is, but I have looked through the routes a couple of times and cannot see Chelmsford. I do know whether that will help the right hon. Lady's constituents.

A breakdown in industrial relations in a train operating company can, as elsewhere, result in disruption for the long term, as workers who volunteer for rest-day working decide to take their rest days, overtime is knocked back, and good will disappears. No doubt some service managers think that they will be able to use the regulations to bully staff back to work, but the fact is that they would cause longer-term damage to the rail network and the industry. The Government are facilitating that damage through their legislation and the regulations that are before us.

Do the Government seriously think that when the industrial action is over, the workforce will be keen to go back to working under the managers and decision makers who threatened them with criminal charges if they did not comply? It does not take an expert in industrial relations to work out that the legislation could only harm relations between management and staff, and in turn harm our rail network and the wider economy. Perhaps that is why the industry has repeatedly expressed its reluctance to get involved. While the primary legislation was passing through Parliament, the Rail Freight Group told the Transport Committee—after the Minister's time as its Chair—that

“our members who are private companies wish to manage their relationships with the trade unions directly rather than with any legislative overlay.”

Transport Focus said:

“There is no substitute for good, modern industrial relations in any industry where changes and terms and conditions are negotiated, and agreement is reached. You want to have workers who want to come to work.”

The Government have repeated their proportion of 40% in order to give the impression that the majority of striking workers will still be able to avail themselves of their human rights, but given the nature of work on the railway network—signalling, station management and maintenance, dispatch, ticket gates, public safety and so on—the reality is that far more than 40% of staff will be ordered to work.

The Scottish Government continue to regard the legislation as unnecessary, unwanted and ineffective. It seeks to undermine legitimate trade union activity and goes against the principles of fair work, the interests of the Scottish public, workers and employers, and the delivery of public services in Scotland. The UK's record on employment rights, and indeed basic human rights, is exemplified by the International Trade Union Confederation's annual report on workers' rights, which this year ranked the UK alongside such champions of workers as El Salvador, Angola and Qatar.

Further to the points about the efficacy of minimum service levels in other countries, let us say hypothetically that the Scottish Government supported this idea. A look at the priority routes I mentioned to the right hon. Member for Chelmsford proves that Mick Lynch was right when he said the Government and the Department for Transport do not care about Scotland or Wales. The most northerly station covered by these priority routes is Cowdenbeath, which is barely one third of the way up mainland Scotland and 170 miles as the crow flies, or

270 miles and three train journeys, to the most northerly station, in Thurso. Therefore, even if we supported these priority routes, they would mean nothing to vast swathes of Scottish passengers.

To be crystal clear, the Scottish Government are not interested in using any of the powers the UK Government have grabbed for themselves. The Cabinet Secretary for Wellbeing Economy, Fair Work and Energy has made it clear that the Scottish Government will not co-operate in establishing any minimum service orders in Scotland over which Holyrood has competence, which is nearly all of them.

I am grateful to the Government for highlighting through their regulations the continued illogical control of Network Rail in Scotland by Westminster and the DFT. The UK Government cannot impose minimum service levels on ScotRail or the Caledonian Sleeper, because both are under the auspices of the Scottish Government—better still, they are publicly owned by the Scottish Government. However, because Network Rail remains undeveloped, these regulations can be applied to track and infrastructure. So we have laws being applied to force employees to work, and trade unions to take part in that coercion under pain of criminal penalty, in order that train tracks, signalling and stations remain open and semi-functional to serve trains that will not run, because the Government who run them actually respect individual human rights. What complete nonsense! It is another nail in the coffin of the idea that Network Rail in Scotland should remain outwith the control of Scotland. Given that no services will run on all the routes I have just mentioned, will the Minister confirm that a higher proportion of Network Rail staff in Scotland will be able lawfully to withdraw their labour compared with their counterparts south of the border?

The truth is that the overwhelming consensus in Scotland—among three quarters of Members of the Scottish Parliament, over 85% of MPs, and trade unions serving Scotland—is that these work regulations are wrong, like much of the UK Government's attitude to workers' rights. Indeed, polling shows that the strongest opposition in this island to minimum service levels comes from people in Scotland. So when Ministers say that this legislation is what the people want, I am not so sure that that is true south of the border, but it certainly is not true in Scotland. That is just one reason why we will vote against the regulations this evening.

**John Spellar** *rose*—

**John McDonnell** (Hayes and Harlington) (Lab) *rose*—

**The Chair:** John—John McDonnell.

**John McDonnell:** Whichever John you want, Sir Edward.

**The Chair:** Either one—you are both charming. [*Laughter.*]

**John Spellar:** No one has ever said that about me before.

6.23 pm

**John McDonnell:** I am not sure I want that on the record.

The Minister has responsibility for transport, but I do not think that any Transport Minister, including him—when we have gone through lengthy industrial relations problems on rail and many of them are being concluded, and when we might be entering a period of relative industrial peace on rail—wants to carry out such a hugely provocative act, which could pour petrol on the fire and start the problems up all over again, but these proposals could do that, because people will be angry.

As has been mentioned, the reality is that a number of staff, because of the safety-critical role they play, will lose their basic right to strike, against all the international conventions and international agreements we have signed up to and against the human rights legislation we have endorsed over the years. They will lose their right to strike.

In addition, if we take the evidence that has been put before us all the way through this debate from those in the industry, the train operating companies, when they have been consulted, have clearly said that this legislation and its implementation in this sector will increase disruption. Even the Government's own original impact assessment said that, and we can see why. It is because the Government are interfering in the basic right of trade unions to represent their members—the very reason they were formed.

But it goes further than that. This statutory instrument is retrospective. We in this House understandably have concerns about retrospective legislation, as most people feel it is unreasonable and irrational, but this legislation, in particular, will apply to current disputes, where ballots have taken place quite lawfully and the dispute is going ahead.

In addition, the onus placed on individual trade unions will almost undermine the operation of the Government's proposal. Let us take just one example. The employer has to give seven days' notice—fair enough. The trade union is then required to identify which workers are in the notice and whether they are its members, and it then communicates with them directly. But the employer can come back on the fourth day and vary the order, either to delete or include other workers. To be frank, I think the administrative burden on trade unions is such that it will place the whole process in jeopardy.

There is another element, which I had not noticed before, because it was not debated when the original legislation was brought forward: the introduction of Government control of picket lines in a way that was never rehearsed in the original debate. I do not know how many Government Members have been on picket lines—but we are expecting trade unionists to supervise the picket line and behaviour in relation to communication with members of staff, and to have before them and check through the full list of all those who have been identified as being required to work, when it comes to whether the picket line members can just talk to them.

**Chris Stephens** (Glasgow South West) (SNP): It is even more perverse than, isn't it? Some of the people identified in the varied work notice could be trade union representatives—those we would expect to be on the picket line maintaining good order. It is a real concern that trade unionists are going to be identified, picked on and bullied through this legislation.

**John McDonnell:** It is a recipe for further conflict—I think for disaster—at every stage.

The Conservative party prides itself on the defence of civil liberties: not interfering in civil society organisations because that is an intrusive step by the state. But under this statutory instrument and the draft guidance, the Conservatives are actually telling trade unions how to write the letter to their members encouraging them to comply with the legislation and go to work. Now, unions will be almost forced to comply with that draft guidance, because if they use other language, as we have seen in the past, lawyers acting on behalf of the train operating companies or others will pick through it in precise detail. I have never seen this before: the state actually dictating the language to be used in a civil society organisation's communication with its members. This has gone a step beyond anything we have seen in the past.

Let me explain the reality of industrial relations: if the Government try to prevent people from taking strike action, they will find other mechanisms. We have seen wildcat strikes in the past in our country; we have tried not to encourage them, because we want industrial relations to be orderly, but if people are told to go to work, instead they will go sick, they will work to rule, and they will not be as committed in the job as they should be. It is obvious that that will happen when the industrial relations climate is soured like that.

We have been trying to get absolute clarity from Ministers on whether the use of this legislation by companies is discretionary, and we have been given assurances that it is. But the reality in the rail industry at the moment is that it is not the companies that are engaged in the industrial relations conversations; it is the Government that are determining the industrial relations decisions, so it will be up to the Government, not the TOCs, to decide whether to employ this strategy to defeat the unions or to try to constrain the unions to reform in some way.

The Government should be careful what they wish for. To introduce this legislation and put petrol on the fire at this stage, just when there is the potential for negotiated settlements, a period of industrial relations co-operation and the development of a new spirit in the industry, could be completely counterproductive. The Government should think before they act in this way. I would rather the Minister wait for the impact assessment, which we have been promised but which has not been delivered, so that we can properly consider all the implications of this statutory instrument, and just hold back. What is the rush, particularly when negotiations to resolve some of the final disputes are taking place, and when the Government have withdrawn their plan for the closure of ticket offices, which was one of the major contentious elements of the dispute? This measure is precipitous and provocative, and it is dangerous for the future of our industry in the coming period. I urge the Government to think again.

6.31 pm

**John Spellar:** I thoroughly agree with my right hon. Friend the Member for Hayes and Harlington—people do not hear that very often.

I may be being a bit unfair to the Minister but, as colleagues have indicated, there is a question as to whether his heart is in this, or whether it has been

dreamed up by political pointy-heads in No. 10 who think they can run the next election on “Who runs the country?” I merely caution the Minister that the historical precedents for that are not encouraging. That is exactly what Ted Heath did in 1974, to which the response of the Great British public was, “Not you, mate.” These things can blow up, and what are thought of as weapons turn out to be boomerangs.

My right hon. Friend rightly identified one of the core problems, but the other is the way in which the railways were privatised. I am not getting into the argument about whether they should have been privatised, although, interestingly enough, Margaret Thatcher did not privatise rail, for the very good reason of all the practical complexities that it would entail. The creation of separate companies meant that negotiations dealt with one company after another and that, in fact, rail workers' wages went up significantly. The Government seem to be trying to deal with that by sitting behind the negotiators—not at the table, but behind the curtain—and putting the arm up the back of the rail companies, preventing them from reaching an agreement that, as I understand it, they would not be averse to. The Government seem to want the dispute to go on, possibly for political reasons, even though they have settled in other parts of the economy. This measure would actually bring the Government right into the negotiations. Why not do things in the sensible way, by being part of the negotiations to try to reach a settlement, especially given that, as was mentioned, the industrial action seems to be largely receding?

I come back to the question I posed to the Minister: how does he think this will work? Even during the second world war, with the Defence of the Realm Act 1914, order 1305, all the powers and a national emergency, the Government could not prevent strikes from taking place. When there were strikes in the mines, it was rightly said that we could not dig coal with bayonets. That does not mean that we should not try to resolve the strikes or that we should give in to every strike, but the blunt instrument of legislation has proved ineffective time and again, partly because of the ingenuity of the members, who will find ways around it, and partly because it starts to run up against the public's concept of fair play. We saw that with the Pentonville five and the docks dispute, for example. I come back to my question, and I hope the Minister has had a note to tell him how this legislation will work—he can even intervene if he wants. What mechanism is the trade union supposed to use to ensure that enough workers attend to get to the 40% service? Is it expected to expel members, who will then go off and form an independent union? We would then have more multi-union competition going on.

The Minister will be pleased to know that, because I have a bad cold and my voice is giving out, I am about to conclude. The final point I will make is that the Government put a lot of weight in their relationship with the United States, including the possibility of a transatlantic trade deal. Given that this is the most pro-union Administration since Franklin Roosevelt's, if the Government think that introducing anti-union legislation will in any way endear them to the US Congress and the White House, they have another thing coming.



6.36 pm

**Mick Whitley** (Birkenhead) (Lab): I refer Members to my entry in the Register of Members' Financial Interests and my membership of Unite the union.

The passengers' representative Transport Focus told the Transport Committee:

"There is no substitute for good modern industrial relations in any industries where changes and where terms and conditions are negotiated, and agreement is reached because you want to have workers who want to come to work."

That is the view shared by the majority of the public, as well as by the Scottish and Welsh Governments, which have said that they will decline to enforce minimum service levels. Will the Minister explain why the UK Government—in stark contrast to the devolved Administrations—are so singularly incapable of engaging with trade unions in good faith and instead feel the need to resort to these repressive, anti-democratic measures?

Rail is a safety-critical industry, with the vast majority of rail staff having some safety-critical element to their role. The Government's deliberately divisive measures, which would compel workers to cross their own picket lines or else jeopardise their own and their colleagues' most basic employment protections, risk causing serious damage to the spirit of co-operation and trust that is central to the safe running of our rail network. Does the Minister accept that if the Government took the time to listen to rail workers, they would recognise that, far from improving the service provided to commuters, these measures actually risk undermining passenger and staff safety?

There are few things harder for a trade unionist to contemplate than being forced to cross their own picket line. Does the Minister accept, as the Rail Safety and Standards Board has, that many union members who have been instructed to go to work despite having voted to take strike action may simply go off sick, and that this will make the planning of minimum services chaotic and unpredictable and increase risks to passengers?

These regulations risk creating a situation where a guard who has been issued a work notice might feel compelled to take out a train that they believe to be unsafe, when they previously would not have. Does the Minister share my concern that these regulations risk creating a conflict between rail workers' responsibility to work safely and the requirements to comply with work notices or else lose vital employment protections?

6.38 pm

**Joanna Cherry** (Edinburgh South West) (SNP): I am grateful for the opportunity to make a few comments about the human rights aspect of the regulations in my capacity as acting Chair of the Joint Committee on Human Rights. When the Committee published a very full legislative scrutiny report on the parent Act in March, we raised serious concerns about the Act's compatibility with the UK's obligations under international law, in particular the rights to freedom of assembly and to freedom of association under article 11. We share those concerns in relation to these regulations and the way in which they have been framed. As the Minister is aware, the European convention on human rights is, thankfully, still part of our domestic law, due to the survival of the Human Rights Act 1998. Article 11 does not refer expressly to the right to strike, but it has been interpreted as covering the taking of strike action—in a case brought against the Russian state, ironically.

When the Joint Committee on Human Rights took evidence from international law experts, the only country in the whole of Europe they could think of that had similarly draconian legislation to the United Kingdom was Hungary, as well as Russia, of course, although Russia has now left the ECHR—rightly so, after the invasion of Ukraine. I am not sure that the UK Government should want to be in the same grouping as the Government of Hungary, but by bringing in this draconian legislation, they are.

Article 11, as I said, has been interpreted as covering the taking of strike action. The European Court of Human Rights has also referred to requirements set down by the International Labour Organisation when assessing compliance with article 11. I know from my recent meeting with the TUC that it has reported the Government to the ILO in relation to the parent legislation, and it is also concerned about these draft regulations. In legal terms, a qualified right to strike is also provided for by article 8 of the international covenant on economic, social and cultural rights and article 6.4 of the European social charter, both of which bind the United Kingdom in international law.

Compliance with article 11 of the ECHR requires that any restrictions on strikes are

"in accordance with the law",

which includes a requirement that the consequences of the law must be foreseeable for those it affects—we heard earlier that perhaps that is not so in the draft regulations. The restrictions must also be

"necessary in a democratic society"

to meet a "legitimate aim". That condition requires the restrictions to meet a "pressing social need" and for them to be

"proportionate to the legitimate aim pursued".

I very much question whether these draconian regulations are proportionate to the aim being pursued.

The Committee might recall that at the tail-end of the year before last, the Government introduced a Transport Strikes (Minimum Service Levels) Bill, which had an alternative mechanism in it. That was going to be based on negotiation and independent resolution of disagreements about minimum service levels. That kind of approach would reflect standards set out by the International Labour Organisation, and would involve less interference with article 11. It would therefore be more likely to meet the requirement of proportionality.

The Government have never adequately explained why they went from initially proposing negotiation and an independent resolution of minimum service levels to the draconian imposition of them. I will be interested to hear if the Minister has been able to come up with an answer to that.

As I said, the Joint Committee on Human Rights had similar concerns about the draft regulations as we did about the Act. Last week, in my capacity as acting Chair, I wrote to the Secretary of State for Business and Trade setting out our concerns about the regulations. In doing so, I was very conscious of the fact that the consequences of employees failing to work as required by a minimum service level imposed through a work notice, and of trade unions not taking reasonable steps to ensure that their members complied, would include a loss of automatic protection against dismissal for participating in a strike. That is a big deal.

[Joanna Cherry]

Sometimes, Government Front Benchers talk about the rights of the public as though somehow those rights were in conflict with the rights of trade unions in exercising the right to strike, but trade unionists and workers are members of the public. They face very straitened times at the moment, with the cost of living crisis, and some people are struggling to make ends meet. If people are struggling to make ends meet and their wages are not being raised in line with inflation, in particular in relation to energy bill inflation, the only option they have is to withhold their labour in a dispute. It is a fundamental part of our democracy that they should be able to do that.

**Chris Stephens:** I am grateful to my hon. and learned Friend for her excellent speech. She is correct to say that the Government do not support decent wages for workers. I go back to the point that she made about protections from dismissal, because she is articulating the fact that, under this legislation, anyone could be dismissed without the right to an employment tribunal. Can she name any other groups of workers who do not have that basic right?

**Joanna Cherry:** The Joint Committee made that point in our initial report. A trade union's involvement in an illegal strike could result in damages of up to £1 million. Any individual worker who participated in a strike that was found to have been illegal could be dismissed. The difficulty with these draft regulations is that workers and trade unions may not be able to foresee the legality of action, which is why the penalties are particularly concerning. We pointed out that lesser penalties for individuals—suspensions rather than dismissals—would make interference with the right to strike more proportionate.

**John McDonnell:** Let me try to give a concrete example of what the hon. and learned Member is talking about. An employer can take a union to court and argue that it has not performed its role of encouraging workers to go to work. As a result, the strike is rendered illegal. Any individuals who participate in that strike would therefore lose their legal protection against unfair dismissal. We could have employers using this as an opportunity to sack a large number of their workers. They could shed workers at will.

**Joanna Cherry:** To be frank, these are the kinds of laws and consequences that workers in Russia and Hungary face. We do not want them here in the United Kingdom.

Of course there should be minimum service levels; I am not arguing against that. However, they should be reached through negotiation. When negotiations between unions and the employer break down, there should be arbitration. That is what happens in a lot of other European countries.

I am concerned that the regulations on passenger trains would allow an employer to require 40% of timetabled services to run. That would allow some employees to participate in strikes, but infrastructure services such as signalling would have to be provided

between 6 am and 10 pm for a substantial number of priority routes. That gives rise to a risk that employees working on those lines would be effectively prevented from striking.

I have met the TUC to discuss its concerns about these draft regulations. It made a number of points, some of which have been covered already, so I will confine my remarks to those that have not been covered. It said the rail industry is highly complex, so the effect of the draft regulations on the right to strike is difficult to quantify without access to industry information. The impact of any work notice will depend on how an employer seeks to deploy it. The TUC is concerned that the regulations will prevent many workers from taking industrial action. It says that providing 40% of a service is likely to require a lot more than 40% of staff once consideration has been given to cover staff, for instance.

The TUC also fears that many infrastructure staff on priority routes, including signal operators, will be denied the right to strike completely because their presence is necessary for the routes to run. It shares the concern I articulated in my letter to the Secretary of State for Business and Trade.

The TUC also made the point that the Government seem to have given little consideration to safety and the role of transport workers in ensuring that passengers are safe. Overcrowding could be a real issue when only a partial service is running. Rail workers need to know that they can apply “work safe” principles and, if necessary, stop working. It needs to be clear that, in those situations, staff would not face legal consequences—or political opprobrium from the Government.

The TUC also raised the significant uncertainty over whether the draft regulations include or exempt those working on freight services. Will the Minister clarify that?

The main point I want to raise with the Minister, and on which I want an answer, is this: what assessment have the Government made of the extent to which the article 11 rights of those working on passenger rail infrastructure on priority routes would be protected in cases when services must be provided between 6 am and 10 pm on strike days? A proper, full assessment with regard to the law is required to have been made in that respect in order for this to be proportionate interference with rights under article 11. I do not believe that that has been done, and I do not believe this is proportionate interference.

6.50 pm

**Huw Merriman:** I thank all right hon. and hon. Members for their points. I should start with the right hon. Member for Warley, given that I said I would come back to him. His question was along the lines of what steps will be required. It is a generic test—it is a legal definition that one would look at. I can read it to him. It is not off a blue Post-it note; it is actually in the guidance. To paraphrase, when a work notice has been issued by a relevant employer, a trade union is under an obligation to take reasonable steps to ensure that its members named in the work notice comply with its requirements. In that regard, there is not that much of a role to play. I should make it absolutely clear—I think there were errors in some hon. Members' starting points—that a work notice makes no differentiation between

whether an employee is a member of a trade union or not, or whether they want to work or not. It is a generic test in that sense.

On the point made by the hon. and learned Member for Edinburgh South West, certain individuals may therefore find themselves on a work notice more than others, so some regard will be given to ensure that if a work notice has been given to an employee in one particular industrial action, they are not taken up the next time to ensure they have their right to strike. To go back to the right hon. Member for Warley, it is more that the trade union should not take any steps to stop that individual coming to work under a work notice, rather than it being required to do anything, but it is a test. I worked as an in-house lawyer for 18 years, and I often looked at what reasonable steps meant and how I would interpret that. There is enough precedent in court to do that.

**John McDonnell:** It is absolutely critical to get this clear. If a trade union leader engages in a debate during a dispute and argues that the offer from the employer is not satisfactory, and therefore that there should be a strike and people should take industrial action, does that influence the requirements of taking reasonable steps, or does it go beyond reasonable steps?

**Huw Merriman:** What the right hon. Gentleman is describing is the calling of industrial action in the first place. The idea behind these regulations, of course, is that, when industrial action has been called and an employer chooses at their discretion to issue a work notice—I will come back to that, because it is key that it is not the Government but the employer who decides—that is where the determination comes in. It is whether the trade union, after the work notice has been issued, is taking reasonable steps, so I would differentiate in that regard.

**John McDonnell:** So if that debate takes place while the strike is on, and the trade union general secretary urges their members to continue with the strike, does that influence it? Is that part of undermining and encouragement?

**Huw Merriman:** Well, I am going into a lot of detail here, and that would ultimately be for a court to determine. I suppose the right hon. Gentleman is asking what happens if a person is known to be on a work notice and somebody reads out, “X must ensure they are taking industrial action.” The courts might argue that that is not a reasonable step, but hopefully our examples have given enough clarity.

Again, I want to be absolutely clear on this point. I have a great deal of respect for the hon. Member for Paisley and Renfrewshire North, and I was interested in the point he made about Scotland. It is absolutely clear that it is down to each individual employer to determine whether they wish to issue work notices or whether they are able to gain enough traction from the workforce without the issuance of work notices. That is not a matter for Government; it is down to the employer. I was intrigued that the hon. Gentleman made it pretty clear that he would not give the same freedom to employers when it comes to ScotRail, because he seemed to intimate that it would not be taking part. He seems to be taking more of a forthright view of what the employer should do than the Government.

**Gavin Newlands:** ScotRail is owned and operated by the Scottish Government, who have been very clear in their attitude to this legislation: they will not issue work notices. While I am on my feet, I want to quickly ask about Network Rail, which is obviously a reserved issue that comes under the auspices of the Department for Transport, but it operates slightly independently in Scotland. Some of its workforce will potentially fall under a work notice for DfT, but obviously a lot of network in Scotland is used only by ScotRail. How will that work?

**Huw Merriman:** There are interesting parallels. When I talk about train operators, I also mean the operators of last resort: Southeastern, the east coast main line and TransPennine Express. They are under the same control that he referenced the Executive in Scotland having. We, as the Government, will treat those with the exact same autonomy, and will not be autocratic; we will not tell them what they must and must not do. There is talk of this legislation being controlling, but we are demonstrating that we are not being controlling, whereas the hon. Gentleman is demonstrating that he would perhaps intervene, which is obviously a policy matter for him.

Network Rail is, of course, an arm’s length body. It will be down to Network Rail across the whole of Great Britain to determine whether it wishes to use the work notices, when it comes to category B. That will be a matter for Network Rail in Scotland, as it will be in England, and not for me, the hon. Member or the Scottish Executive.

I want to come back to a point that the hon. Member for Portsmouth South and others mentioned: safety. Let me be absolutely crystal clear—this is why we have the safest railway in Europe—that there will be no compromise when it comes to safety and these regulations. Those are not just words. Everyone needs to remember that we already have a minimum service; it is the key route strategy, and it operates right now, but our contention is that it does not operate to the same extent—it is about 20%. Safety is the most important ingredient during a strike day, as it is during a non-strike day. There will be no difference to that, as far as the regulations are concerned; safety will always be paramount in the railways.

**Jess Phillips (Birmingham, Yardley) (Lab):** I wonder whether the reason that we have one of the safest railways in the world is the same reason that my family and I do not have fingers missing from industrial accidents. Maybe the people we should thank for that are the trade unions.

**Huw Merriman:** Of course I pay tribute to everybody on the railway who takes safety so seriously, but it is fair to say that we had trade unions when we did not have such a safe railway, and we have them now that there is a safe railway. That seems to suggest that it is the entire railway family that makes railways safe. We have the independent Rail Safety and Standards Board, and we will ensure that safety is paramount on the railways.

I will touch on freight. Freight is not included in the regulations. That was part of the consultation; the freight industry did not wish to be included, but, of

[*Huw Merriman*]

course, freight benefits from the regulations. If there is an infrastructure strike and more of the key route network can be opened up, that means that more freight can be delivered, as well, which is important.

I come back to a point made by the hon. Member for Portsmouth South that was slightly contradicted by other hon. Members. That was that the Secretary of State should get to the table and deal with the trade unions. Of course, we have had some deals with the trade unions. According to the right hon. Member for Warley, the Government want the industrial action to continue, and the right hon. Member for Hayes and Harlington said that the Government ultimately control all train operations. If we are both controlling and making deals, that must mean that the Government have got round the table and had those discussions; I certainly know about the discussions that I have had. Or perhaps the right hon. Gentlemen pluck out arguments that suit them. When it comes down to it, we want industrial action to be settled. We welcome Transport Salaried Staffs' Association and Unite the Union settling their industrial action, and it looks as though—we will find out on Thursday—the RMT has settled its action as well.

We do not want to use these regulations, because we would rather there were no strikes at all. The Opposition claim to be the party of the workers when it comes to the rail workers, but not the workers who use the trains. A train driver is paid £60,000 for a 35-hour, four-day working week—we have an offer on the table to increase that to £65,000—but people on those trains who earn a lot less are inconvenienced, and cannot get where they are going, because there is no proper minimum service. I have a constituent who writes to me to say, “I’m on a zero-hours contract; when train drivers go on strike, I don’t get the opportunity”—

**Jess Phillips:** Why don’t you ban those contracts, then?

**Huw Merriman:** The key is to ensure that those individuals have the right to go to work. It may be asked, “Why don’t you ban zero-hours contracts?”. I am pleased to hear that that is now Labour policy. We want to ensure that those who want to go to work, and who are not as well paid as train drivers, have the choice to do so. That is the balance, and the measures are proportionate.

**Mark Eastwood** (Dewsbury) (Con): I should declare that, surprisingly, I am a member of a trade union—a moderate one, I have to say. I have heard a lot of noise from the Opposition about safety and workers’ rights, but not much about the passengers. Does the Minister agree that the only thing Labour cares about is the flow of money from their union paymasters?

**Huw Merriman:** My hon. Friend has said it, and obviously he has the experience to do so. It is a fair point that needs to be considered. Through the regulations, we are taking a proportionate approach that still allows those who wish to strike the right to do so. Equally, it allows those who wish to go about their lawful business—to

go to work, go to school, get skills or go to their health appointment—the right to do so. Those people deserve that right. We should be on the side of people who really need train services.

**Jess Phillips** *rose*—

**Chris Stephens** *rose*—

**Huw Merriman:** I will not give way. I have been very generous with my time.

It has been suggested that the regulations will just cause rail workers to go off sick. Obviously, that is a contractual employment matter; no one is allowed just to go off sick under the terms of their contract. It will be down to employers to determine whether to use the work notices. They will then determine how the work notices operated, see how they worked, and decide whether individuals’ behaviour needs to be looked at, but I would not expect anyone in the rail industry, good people as they are, to go off sick unless they were sick. I am sure that everybody on the Committee would agree on that.

I will address the points made by the hon. and learned Member for Edinburgh South West. With regard to article 11, there has to be a proportionate approach. That will be a legal test, and we believe that the test is met. I believe that she also referred to the RPC impact assessment not being published. As requested, we provided further work to that body on 7 November. The RPC is now considering the input we made, and we wait to hear from it. A view was taken that information on matters relating to the umbrella Act would not need to be provided under the regulations, because that was for the umbrella Act. The RPC wanted more information, and we were happy to provide it. The impacts on small and medium-sized businesses, which will differ across the rail network, was another matter to be addressed. We take impact assessments seriously in the Department; we have a very good record of delivering them, and will continue to work to ensure that they are delivered.

The regulations make possible a considerable improvement in the service that can be delivered during rail strikes. They will support passengers who are making important journeys, including to work and to access vital services, and will limit strikes’ impacts on the economy. However, that is carefully and proportionately balanced with workers’ ability to take strike action. Although I am sure we all hope that strike action can be avoided, when they do take place, the regulations will provide a means of addressing the disproportionate impacts that strikes can have on the public, communities and businesses. I hope that the Committee will join me in supporting the regulations.

7.3 pm

**Stephen Morgan:** I thank the Minister for his response. However, it is still not clear why the SI is being pushed through without proper scrutiny. As we have heard said tonight, what’s the rush? This is dreadful policymaking practice, with potentially serious consequences, and it seems that the Government have not thought through how the arrangements will be managed across the network and how many staff will be denied the right to strike. The fact remains that only the Secretary of State’s getting round the table will solve the ongoing rail dispute—

something that he has refused to do throughout the year. For that reason, we will vote against the SI this evening.

*Question put.*

*The Committee divided: Ayes 10, Noes 7.*

**Division No. 1]**

**AYES**

Atherton, Sarah  
Bradley, Ben  
Carter, Andy  
Clarkson, Chris  
Eastwood, Mark

Ford, rh Vicky  
Hart, Sally-Ann  
Merriman, Huw  
Mohindra, Mr Gagan  
Smith, Royston

**NOES**

Antoniazzi, Tonia  
Johnson, rh Dame Diana  
Lynch, Holly  
Morgan, Stephen

Newlands, Gavin  
Phillips, Jess  
Spellar, rh John

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023.

7.6 pm

*Committee rose.*





