

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fifth Delegated Legislation Committee

DRAFT IMPORTANT PUBLIC SERVICES
(HEALTH) REGULATIONS 2017

DRAFT IMPORTANT PUBLIC SERVICES
(BORDER SECURITY) REGULATIONS 2017

DRAFT IMPORTANT PUBLIC SERVICES
(FIRE) REGULATIONS 2017

Wednesday 1 February 2017

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Sunday 5 February 2017

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

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| † Afriyie, Adam (<i>Windsor</i>) (Con) | † Gray, Neil (<i>Airdrie and Shotts</i>) (SNP) |
| † Barclay, Stephen (<i>Lord Commissioner of Her Majesty's Treasury</i>) | † James, Margot (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| † Benyon, Richard (<i>Newbury</i>) (Con) | † Lord, Jonathan (<i>Woking</i>) (Con) |
| † Chalk, Alex (<i>Cheltenham</i>) (Con) | † Mak, Mr Alan (<i>Havant</i>) (Con) |
| † Creasy, Stella (<i>Walthamstow</i>) (Lab/Co-op) | † Morton, Wendy (<i>Aldridge-Brownhills</i>) (Con) |
| † Debbonaire, Thangam (<i>Bristol West</i>) (Lab) | Robinson, Mr Geoffrey (<i>Coventry North West</i>) (Lab) |
| † Field, Mark (<i>Cities of London and Westminster</i>) (Con) | † Stephens, Chris (<i>Glasgow South West</i>) (SNP) |
| † Fletcher, Colleen (<i>Coventry North East</i>) (Lab) | † Timms, Stephen (<i>East Ham</i>) (Lab) |
| † Furniss, Gill (<i>Sheffield, Brightside and Hillsborough</i>) (Lab) | Gavin O'Leary, <i>Committee Clerk</i> |
| † Gove, Michael (<i>Surrey Heath</i>) (Con) | † attended the Committee |

Fifth Delegated Legislation Committee

Wednesday 1 February 2017

[MR ADRIAN BAILEY *in the Chair*]

Draft Important Public Services (Health) Regulations 2017

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Margot James): I beg to move,

That the Committee has considered the draft Important Public Services (Health) Regulations 2017.

The Chair: With this it will be convenient to consider the draft Important Public Services (Border Security) Regulations 2017 and the draft Important Public Services (Fire) Regulations 2017.

Margot James: It is a great pleasure to serve under your chairmanship, Mr Bailey.

The Trade Union Act 2016 modernises the UK's industrial relations framework to better support an effective and collaborative approach to resolving industrial disputes. It ensures that strikes can happen only as a result of a clear positive decision by those entitled to vote. The Act received Royal Assent in May 2016. Today we are debating three statutory instruments that implement a 40% threshold for ballot mandate approval for important public services in the health, border security and fire sectors. As well as the requirement that 50% of union members who are eligible to vote do so, 40% of all eligible members will have to agree with the proposed mandate. That is a robust threshold.

We propose that the 40% threshold for the three sectors comes into force on 1 March. At the same time, we will bring into force a number of other provisions in the Trade Union Act, including a 50% turnout threshold for those who are eligible to vote, as I mentioned; additional information to be provided about the result of any ballot; two weeks' notice of industrial action to be given to employers; new requirements to manage picketing; and new reporting requirements. That ensures that the key changes to the way official industrial action is decided on and implemented are prioritised and come into effect as a single package.

The purpose of the ballot thresholds is to rebalance the ability of union members to strike with the interests of the general public, non-striking workers and employers. The Trade Union Act takes proportionate action to redress the balance and ensure that unions in those sectors have a democratic mandate before they take strike action. Strike action in important public services in the health, border security and fire sectors can have a significant impact on the public. For example, during the NHS strike action that was taken by health unions in 2014, people with less serious conditions faced lengthy delays for an ambulance, yet that strike had the support of only 11% to 18% of union members.

Neil Gray (Airdrie and Shotts) (SNP): Yesterday, when we discussed other areas covered by similar instruments, I asked the Minister what direct discussions her Government had had with Ministers in the Scottish Government and other devolved Administrations. Although she could not provide an answer then about direct contact, has she had a chance, 24 hours since, to check up on what consultation has taken place?

Margot James: I can confirm that Ministers in what was the Department for Business, Innovation and Skills did have discussions with their counterparts in the Scottish Government.

As I was saying, strike action in important public services in the health, border security and fire sectors can have a significant impact on the public. That is why we have introduced a 40% approval threshold, which is to apply to important public services such as health, border security and fire, in addition to the requirement for a 50% turnout threshold.

Chris Stephens (Glasgow South West) (SNP): Have the Government considered that part of the role of public sector workers—because of their role profiles and job descriptions—may be covered under the regulations, whereas some aspects of their work may not be? If so, how do the Government seek to address that with the trade unions?

Margot James: This is not a blanket coverage of every worker and every job description in the public service categories that we are debating. The regulations pertain to listed job descriptions within those important sectors. They do not encompass every single worker; they encompass workers whose work has a direct impact on the public in those sectors. If the hon. Gentleman wants a more specific answer on exact job categories, I can provide that, but not at this juncture.

During the passage of the Trade Union Bill last year, the Government consulted on the services within the public service categories set out in the legislation that should be subject to the 40% threshold and on how the threshold should operate in practice. We analysed more than 200 responses, reviewed the available evidence on the impact of strike action across different public services and listened to stakeholders' views. The Government response to the consultation was published in January last year, when we also published the draft regulations. The substance of those draft regulations was discussed in Parliament during the passage of the Trade Union Bill. The regulations limit the application of the threshold to those services in the health, border security and fire sectors where there is the most compelling evidence of the impact of strike action. The regulations will ensure that the scope of strike action is proportionate.

What does that mean for the sectors affected? The pressing social need that we are addressing in the health sector is the risk to life or injury to the public in the event of industrial action. We have therefore focused the impact of the threshold where reduced service levels can have the most immediate impact on the lives and safety of patients and the public. That is why the regulations cover emergency and urgent health services. That includes—this goes some way to responding to the hon. Member for Glasgow South West's question—

ambulance staff, accident and emergency medical staff in hospitals, services that are provided in high-dependency units and intensive care in hospitals, and psychiatric, obstetric and midwifery services provided in hospitals for conditions that require immediate attention to prevent serious injury, illness or loss of life.

In the fire sector, our aim again is to protect the public against the risk to life or injury. In the light of that, we have focused on firefighting services, including co-ordination of the emergency response, because those services are critical to ensuring that fires are dealt with promptly and effectively to protect the public.

Neil Gray: The Minister rightly talks about the protection that workers in these sectors provide for all of us. They risk their lives and dedicate their lives for us on a day-to-day basis in all the sectors we are discussing. Given the dedication, the risk and what they are putting on the line for us, can she explain how the restrictions to the capacity of their right to strike are proportionate?

Margot James: I think I have already explained that, but if the hon. Gentleman requires me to restate it, we are seeking to rebalance the rights of those workers to strike with the rights of the public, particularly in the case he mentioned. For patients facing critical illness or emergencies, those two rights have to be balanced, and that is what the legislation is all about.

In the Border Force, we are addressing the significant risks to public safety in the event of disruption to border controls. We have focused on services in respect of the entry and exit of people and goods, as those are central to the carrying out of checks and to preventing illicit commodities and other threats to our security from entering the country.

Members of the public will agree that strikes in those important public services should take place only when there is a strong level of support and a justifiable mandate. I hope I have reassured Members that the regulations are justified and proportionate to our objective.

Stella Creasy (Walthamstow) (Lab/Co-op): The Minister talks about balancing the rights of the public against the rights of people in employment to withhold their labour. Over the past decade, we have seen a decline in the number of days taken in industrial action. None of these powers has been necessary. Before she finishes, will she tell us what assessment the Government have made of whether there are alternative, more constructive ways of resolving their concerns, which do not restrict people's right to withhold their labour when they feel under pressure?

Margot James: I will deal with the hon. Lady's points in this way. Working days lost vary from year to year. For example, 170,000 working days were lost to industrial action during 177 stoppages in 2015. That number was less than some recent years and more than others, but I think most people would agree that that is a significant amount of time lost to strikes. The point is that this measure is not at all designed to attack a person's right to strike. It is designed to ensure that, when the right to strike is exercised, it has a strong and democratic mandate from the people who vote for strike action.

Michael Gove (Surrey Heath) (Con): I declare my interest as a former member of the National Union of Journalists. Following on from the intervention of the hon. Member for Walthamstow, is it not the case that the declining overall number of days lost to strikes over the past six years is a reflection of the faith that most working-class people have in the effective and competent stewardship of the economy by Conservative Chancellors of the Exchequer?

Margot James: I agree strongly with my right hon. Friend.

Stephen Timms (East Ham) (Lab): Of course, it was a Labour Government who presided over the reduction that my hon. Friend the Member for Walthamstow drew attention to. Will the Minister tell us when was the last time that there was industrial action in the Border Force?

Margot James: I am afraid I cannot tell the right hon. Gentleman that, but I will certainly seek out that information.

Stephen Timms: The Minister certainly has not convinced me that these regulations are necessary. I am not aware of industrial action in the Border Force, and I wonder whether there is a real problem here or whether these regulations are unnecessary.

Margot James: I do not know whether that indicates that the right hon. Gentleman sees the need for the regulations for the health service and fire workers—perhaps he does, and to that extent I am encouraged. I will get the information about the Border Force for him, but the regulations were introduced in recognition of the very serious nature of any threat of industrial action in the border services and make provisions as a preventive measure, at the very least.

Surveys taken during the consultation indicate that the public agree with our proposals. There was, of course, a manifesto commitment.

Stephen Timms: Will the Minister give way?

Margot James: I will not give way for a third time. I will make some progress.

Before I conclude, I would like to address the Secondary Legislation Scrutiny Committee's comments on the regulations. In relation to the three regulations on the 40% threshold, the Committee pointed out that the Government committed to issue guidance to clarify which workers will be captured by each of the important public services listed in order to assist unions and employers when they are assessing how a ballot should be conducted. Its view was that the need for such guidance raises a question about whether the regulations are sufficiently clear and understandable by those affected. Furthermore, it regretted the fact that the Government failed to publish that guidance in early December when we laid the draft regulations before Parliament.

I am grateful for the Committee's scrutiny, and I can confirm that the Government have now published guidance to provide advice to unions on applying the 40% threshold

[Margot James]

in practice and on examples of workers who will be covered by each of the regulations. In drafting the guidance, we engaged with key stakeholders affected by the provisions to understand how the guidance can be most helpful. We listened carefully to their views and reflected them in the guidance. The Government believe that the regulations are proportionate, and I commend them to the Committee.

2.44 pm

Gill Furniss (Sheffield, Brightside and Hillsborough) (Lab): It is a great pleasure to serve under your chairmanship, Mr Bailey. As the Minister outlined, the Trade Union Act 2016 introduced a requirement that at least 50% of eligible union members must vote in an industrial action ballot for it to be lawful. In addition, union members in sectors that the Government define as providing “important public services” will be subject to the requirement that any ballot for industrial action must achieve a 40% threshold of support.

Five sets of draft regulations determine the sectors covered by that additional 40% restriction. Today we are considering the health sector, namely emergency, urgent and critical healthcare services; fire and firefighting services, including the co-ordination of emergency response; and border security and border functions for the control of entry and exit of people and goods into and from the UK.

I will not overly repeat the many issues that the Opposition have with the Trade Union Act as a whole and with these specific regulations, because I spoke to them at length yesterday when we considered their application to the education and transport sectors. However, it is important to reiterate that the regulations on voting thresholds for certain groups must be seen in the wider context of the Trade Union Act, which is a broad assault on working people and the right to strike.

The Government claim that, by imposing additional regulations on certain groups, industrial action is made more democratic and accountable. If they are so concerned about the democratic ability of unions, why did they delay and frustrate the implementation of electronic balloting for union members? I remember from yesterday's debate that the Minister told us that e-balloting is under review. She initially said that the review would be published later this year, but then said that it would be published “soon”. I would like to know the answer today. I am pleased to hear that there may yet be progress on this initiative, but I think that it betrays the Government's real motivations, which are to hamper the ability of working people to bargain collectively.

When strike action in the UK is already at an all-time low, and trade unions already take great care to maintain a level of essential service, loading an incredibly highly restrictive set of activities with further red tape is clearly ideologically motivated, and that is not good for governance.

Stella Creasy: It is unusual and telling that such a restriction is being brought in. I know that the “r” word referendum is not a popular one in this House with many people, but were we to impose such a threshold on referendums, or indeed on general elections, I am sure that there would be debates about that. No such

arguments have been made, yet when it comes to people's working rights, somehow the Government feel that such measures are entirely appropriate. What does my hon. Friend think that says about their approach to democracy and genuine engagement with people?

Gill Furniss: That is a very good point and we should all think about it.

The Government's actual intention in introducing the regulations, which they expressed in their impact assessment of the Trade Union Act, is to reduce number of days lost to strikes by two thirds. However, Office for National Statistics figures show that, in 2015, fewer working days were lost to strikes—it is the second-lowest annual total since records began in 1891.

We in Labour believe that the right to strike is a fundamental human right that should be applied equally to all workers. The International Labour Organisation's Labour Relations (Public Service) Convention 151 also provides that public servants must enjoy the same political and civil rights as other employees. The regulations clearly fly in the face of that convention.

Midwifery staff in hospitals would be affected by these regulations. Yesterday, I quoted Cathy Warwick, chief executive of the Royal College of Midwives, who wrote shortly after the first ever strike by the RCM since its foundation in 1881. She said that

“women needing urgent and emergency maternity care were getting it because midwives had sat down with management in advance of the day to ensure that a safe service would still be running, staffed by midwives, regardless of the strike.”

The new laws are unnecessary. They undermine the right to strike and are unlikely to be effective and the Government are dragging their feet on measures that would actually improve union democracy. I am very tested by the fact that we will still have to wait for the introduction of e-balloting. A lot of good points about people's rights to withdraw their labour were made in yesterday's debate, and about that being fundamental for working people. Above all, I want to reiterate the damage the measure could do to industrial relations in those areas of work. Rather than things becoming more democratic, with more people allowed to participate, there will be more union officials running about trying to get the numbers rather than talking and seeking compromise or whatever results we try to get in industrial relations negotiations.

I repeat that I will not support the measure. I should like an answer on e-balloting and want the Minister to take on board the fact that we already have evidence that striking is a last resort. Strikes happen when agreement cannot be reached. We already have evidence that the services we are discussing today will always ensure that the public are not unduly affected by their strike action.

2.50 pm

Adam Afriyie (Windsor) (Con): I will just say a few words. I welcome the regulations, which are made under the Trade Union Act 2016, which passed through the House with a majority. We are talking about the right of people to live—to survive and live their daily lives—versus the right of a small group in a union to withdraw their labour. We all respect and value the trade union movement, as I have often said. However, there must be circumstances pertaining to important and essential public services

when rights must be expressed with a clear voice, as opposed to what happens in instances such as the teachers' strike in 2014, when just 22% voted to strike. There have been many occasions like that.

We must take heed of the sector we are talking about, and the impact on people's right to enjoy their lives.

Chris Stephens: The hon. Gentleman mentions the teachers' dispute, and claims that 22% voted in a particular way. Surely the education trade union involved must have made an assessment of whether enough people would take part in industrial action. Did 22% of teachers go out on strike, or more than that?

Adam Afriyie: I do not know the figures for how many came out on strike, but I know that 22% expressed the desire to strike, which means that the overwhelming majority did not. The question at that point is whether it is right that one in four or one in five people can force a strike on others while disrupting people's education and the entire education system for a time.

Stella Creasy: Hon. Members appreciate that policy based on evidence is helpful. The impact assessment states clearly that there are number of sectors where it may be difficult to ascertain what 40% is, and therefore where the policy can be implemented. Does the hon. Gentleman have any concerns about that? The evidence is on the Table, and I am happy to get him a copy. It is clearly set out on page 36 that there may be problems in some units as to what the 40% threshold is—*[Interruption.]* We all know that the former Education Secretary is a proud defender of experts and the importance of data. I do not know why Members laugh at that.

On the point about restrictions on people, if it is not clear who might be affected, is the hon. Member for Windsor concerned that there might be an unnecessary effect on people's basic human right to withdraw their labour when they are put in conditions they consider unacceptable?

Adam Afriyie: There are always grey areas and challenges. I have looked closely at the impact statement. The number of days lost to strikes in this country is amazing—that is on page 29, and even Border Force is there. In 2014, 2,985 days were lost to strikes. Despite some concerns about the edges of the regulations, it is right that those who want to strike, and unions wanting to try to force a strike, should reach a threshold. I am sure that the hon. Lady's concerns will be addressed in time, given that I am sure trade unions will consider how they can carefully register voters and ensure that all members can vote in the ballot.

I wanted only to say one or two sentences, so I shall continue. It is a question of balancing workers' rights to withdraw labour—trade unionism is a great movement that I have always supported—and people's right to use public services and avoid risks to life. The important aspect of the regulations is that the provisions step across into the private sector. When the private sector provides services to public services and important services in the economy, it is caught by the regulations. That important point was made from the Opposition Benches a few moments ago.

In the context of the regulations, I urge the Minister to look a bit further afield. Let us look at all infrastructure. Today, with digital infrastructure, and with people's alarms system connected and with tele-medicine and telehealth, there are important health and security industries that have an impact on people's healthcare—and, dare I say, border security issues—but which would not automatically be seen as important sectors in the economy. My question for the Minister is whether the Trade Union Act 2016 gives scope to add further functions or job descriptions to those we are tackling today, in terms of increasing the low thresholds for strike ballots.

2.55 pm

Chris Stephens: It is a privilege to serve under your chairmanship, Mr Bailey.

There will probably be six main themes to my remarks this afternoon, which will probably be in a similar vein to those I expressed yesterday. Just like yesterday, the debate in the main Chamber today is about the proposal to trigger article 50 and leave the European Union. As the hon. Member for Walthamstow has said, we have calculated whether the leave vote in the UK reached the 40% threshold and the answer is no. Some 37.4% of the UK population voted to leave the European Union—to apply the same test to the referendum as the Government wish to apply to trade unions—so it seems to be double standards all round from some on the Government Benches.

Michael Gove *rose*—

Chris Stephens: Perhaps this is a good time to accept an intervention from the right hon. Gentleman.

Michael Gove: Speaking as someone who was involved in a successful referendum campaign, may I point out that, had a 40% threshold been required, I am absolutely certain that people would have been more than enthusiastic enough to vote? However, we recognise that, with the economy of effort that is appropriate to the task in hand, we got just enough votes to win.

Chris Stephens: I remember the right hon. Gentleman's ashen-faced performance at the press conference after the referendum result. He will be aware that Scotland was trapped into a 40% vote in an earlier referendum, which caused great upset and anger at the time.

Mark Field (Cities of London and Westminster) (Con): As a slightly more serious riposte to the point being made, surely there is a distinction? Union membership is generally a voluntary matter, but being on an electoral register is compulsory. Therefore, the 40% threshold for union members is somewhat different from thresholds for other elections.

Chris Stephens: I do not accept that distinction, because it is not quite compulsory—we are not in Australia, where everyone has to register and everyone has to vote. I do not accept the distinction, because an industrial action ballot with a 49% turnout could have wider support than one where turnout is over 50%, but the result is just a narrow win. It makes no sense in those circumstances to apply a threshold.

[Chris Stephens]

The difficulty we have on the Opposition Benches is that we are seeking assurances from the Government on workers' rights as we exit the EU. These regulations do not fill those of us in the Opposition with confidence that workers' rights will be safeguarded as we exit the European Union. There are a number of other difficulties, one of which relates to the question I asked the Minister.

Adam Afriyie: I am not sure I follow the hon. Gentleman's point. Is he saying that the Trade Union Act 2016 was against European legislation? That is what he seems to be implying.

Chris Stephens: No, the point is the trend of the Government, who say one thing and do completely another thing. I remember writing an article in the *Morning Star*, with which the hon. Gentleman may be familiar, in which I described being in this place and the arguments being presented by the Government as "bizarre", "surreal" and "Orwellian", and I think we have seen evidence of that today. This is a general problem, because the Government are suggesting that they wish to protect workers' rights, but what we see with the Trade Union Act 2016 and now these regulations is an entirely different matter.

Stella Creasy: I am not a regular reader of the *Morning Star*, because I prefer fact to fiction. Does the hon. Gentleman agree that as Government Members have already suggested that they would like to extend the 40% threshold to other industries but cannot clarify what the bargaining units might be, or whether they have considered other proportionate ways to resolve industrial disputes so that people's rights are not curtailed, and given that we have no guarantees that any of the legislation on employment rights that they claim they will bring back from Europe will remain in UK legislation, this is a very worrying time for working people? That is why these regulations should be treated with extreme caution.

Chris Stephens: I agree. The point is well made, and there is a distinction that must be made clear. The Government always seem confused in these debates, and about trade unionism in general, because they seem to think that after a ballot result is announced, whether the turnout is low or not, trade union activists, including full-time officials, develop Jedi-like powers to persuade other workers. It is as if the trade union officials wave a hand and say, "This is the strike you are looking for." That is not what happens in trade union organised workplaces; I can say that as someone who was a trade union activist for 20 years before my election.

Neil Gray: Following on from the point made by the hon. Member for Windsor about days lost to strike action in these areas, although he used the word "alarming", my understanding is that those figures have improved. Given my hon. Friend's extensive experience in this area, does he think that these regulations will go any way towards improving workplace relations between trade unions and employers?

Chris Stephens: I, too, was surprised to hear that the statistic for the number of days lost, which has been as low as it is for a long time, was "alarming". That was a rather strange comment to make. There is a real sense that these thresholds will undermine constructive employment relations because trade unions will need to spend time ensuring that they meet these regressive regulations rather than entering into constructive discussions. There does not seem to be any incentive for employers to seek early resolution of a dispute.

Another concern I have relates to the question I asked the Minister: who exactly is covered by the regulations? For example, as I said earlier there are workers in what have now been described as "important public services" who have multiple duties, different role profiles or different job descriptions. Some will have administrative duties. Will admin workers in the ambulance service, for example, be covered by the regulations? What about admin support in the Border Force? It would be handy to know that.

Another concern is about the discrimination aspect of the regulations and their disproportionate effect on women workers. The figures presented to me suggest that more than 70% of workers in what have been classified as "important public services" are women. There seems to be a complete disregard for that, and while I would certainly like to see the equality impact work done on these regulations, there is no question in my mind but that they have a discriminatory effect on women workers.

I have two final concerns. First, there are other regulations and statutory instruments that we have not yet considered, and the first concerns e-balloting. As the Minister announced yesterday, the e-balloting consultation ends in December but the Government want to push through this statutory instrument from 1 March. We went through the process on the Trade Union Act, and as someone who led for the Scottish National party right from the start, it was clear to me that the Government accepted, I thought in good faith, Lords amendments that made it quite clear that e-balloting had to be considered before we considered introducing thresholds. We need to discuss at the same time how we can make it easier for trade union members to participate in ballots, particularly industrial action ballots, if we are going to meet thresholds. If e-balloting were introduced or—I would like to go further—secure workplace balloting, which is allowed for trade union recognition ballots, these thresholds would be met every time; there would not be a concern about that. Our concern is that under the current Trade Union Act, it is a postal ballot only. The number of post offices and post boxes has reduced sharply in the past five years, making it difficult for trade union members to participate in a ballot.

My last concern is that the Government have yet to introduce a statutory instrument on the check-off arrangements, which will equally impact on these ballot mechanisms. The trade unions will now be asked to pay a proportion for the check-off arrangements, and it will take a considerable time for them to meet that regulation.

My final point is that the Minister confirmed that, at the time, the hon. Member for Grantham and Stamford (Nick Boles), the then Minister for Skills, had discussions with the devolved Administrations. I hope that the hon. Member for North East Cambridgeshire has passed on my good wishes to the former Minister for Skills for a

speedy recovery. There should really have been discussions with the devolved Administrations since then about the impact of these statutory instruments on the devolved services that they concern. I have very deep concerns about the Government's direction of travel. It is a pity that they rushed through the statutory instruments that were discussed yesterday and will be considered in the Chamber later today, when so many questions are outstanding. I will therefore vote against these regulations today.

3.7 pm

Stephen Timms: I start by associating myself strongly with the case my hon. Friend the Member for Sheffield, Brightside and Hillsborough made against the regulations and agreeing with many of the points that have just been made by the spokesman for the Scottish National party. It is absolutely right that it is unwise to legislate in this area, encroaching on rights at work. It is certainly not a good idea to be doing so in the absence of any compelling case for why such legislation is needed. That is the aspect of this debate that I want to open up a little in my brief remarks. The Minister, when I asked her, could not tell us whether there had ever been industrial action in the Border Agency. I hope that by the time she stands up again, she will be able to tell us whether there has or not.

I am certainly aware of occasions, although not many, when there has been industrial action in the fire service and in the national health service. We have not been told how many such instances in the fire service and the health service would have been avoided if this legislation was on the statute book at the time. The case that the Minister made to the Committee sounded to me like, "It would be a good idea to legislate to avoid a possible problem one day in the future." We certainly have not been given any information to explain that this is a current problem that needs to be addressed. I hope, if that is the Minister's view—if there is a current problem that needs to be addressed—that she can tell us when she winds up the extent of that problem, how many instances there have been over the past year, two years, three years or whatever information she has available, and how many of those instances would have been avoided if this legislation had been on the statute book.

The great danger here—my hon. Friend the Member for Sheffield, Brightside and Hillsborough made this point in opening for the Opposition—is that by legislating in this area one does not make industrial relations better, one makes them worse. We are often told that there is a natural Conservative reticence about legislation unless there is a very strong case for legislating. That reticence has not been apparent in this instance: we have not been told that there is a serious problem that needs to be addressed here, yet the Government are rushing in with hobnailed boots to introduce legislation.

From what we have heard so far, I do not think the Committee has any basis for believing that the legislation will tackle a serious problem, or make that problem less serious than it currently is. I find it difficult to see how Committee members from any party could support legislation in this area without a compelling case for introducing it. I hope that the natural Conservative tendency of reluctance to legislate that we often hear about will apply in this case as in so many others.

Adam Afriyie: I am listening closely to the right hon. Gentleman. Conservatives also have a great passion for democracy. It seems to me that this is not only about a worker's right to withhold their labour; it is about a worker's right to go to work and not be sacked if a small minority from a union have voted for a strike.

Stephen Timms: I hope the hon. Gentleman also shares a passion that many in the House have for freedom and for being reluctant to legislate to curtail people's freedoms and rights. As parliamentarians we are obliged to protect the rights of individuals and to be extremely reluctant to legislate to reduce and curtail those rights. Sadly, that is exactly what we are being encouraged to do this afternoon.

Chris Stephens: Will the right hon. Gentleman confirm that in his experience, after a ballot result has been provided a trade union will then make an assessment of the likelihood of successful industrial action? On occasion, for ballots with low turnouts, trade unions have decided not to proceed further.

Stephen Timms: The hon. Gentleman is absolutely right; that is the normal practice. When opening the debate for the Opposition, my hon. Friend the Member for Sheffield, Brightside and Hillsborough gave the example of the Royal College of Midwives. I think I heard her correctly when she said that it recently had its first strike since its creation in 1880-something. Why on earth are we legislating to make it harder for them to strike in future? Unless we believe a huge zeal for industrial action that we have not seen in the past is about to hit us, why on earth are we legislating? I am genuinely puzzled.

Stella Creasy: I am in the odd position in which I agree with the evidence put forward by the former Education Secretary, the right hon. Member for Surrey Heath. He said that there has been a reduction in the number of strike days—although that is not because the legislation was introduced. One of the problems with the debate is that it almost sounds as though striking is the only things that unions do. Good employment relations help good organisations to thrive. Legislation such as this risks that relationship, which helps with so many issues, whether changes in the workplace or helping people with learning and development, being lost in the fog of this almost provocative attitude from the Government in saying that all trade unions want is to strike.

Stephen Timms: My hon. Friend is absolutely right; that is exactly the danger that we face here. If there is evidence of a serious problem, or of x incidents of industrial action over the past three or five years that would have been avoided if the legislation had been on the statute book, will the Minister tell us what it is? If there is no such evidence, I hope the Committee will echo the natural reluctance to legislate often urged by Government Members and vote the regulation down.

3.14 pm

Gill Furniss: Opposition Members are clear in what we believe. In conclusion, I go back to the example of the midwives. They have had one strike in more than

[Gill Furniss]

100 years; the next could be in the next century. It seems bizarre that we are setting legislation for the next century, not for here and now. The legislation seems draconian and confrontational to members of trade unions because there is no evidence of any particular problem. As has been stated over and over again, we have lost the lowest number of days to strike since records began, so why are we doing this? It affronts me that the Prime Minister, only recently when in America or wherever, keeps going on about workers and says, "I'm all for workers' rights." Well, she is not, is she? No Conservative Members are, because if they were, this draconian legislation would not have been brought before the Committee.

Michael Gove: Speaking as someone who was deprived of employment because I chose to support a strike and to take industrial action, the attribution that none of us care about workers is entirely misplaced. More than that, is the hon. Lady really arguing that the industrial relations landscape is so perfect that we need no amendment and that working people who do not happen to be members of trade unions should receive no protection from strikes in vital public services?

Gill Furniss: I would argue that trade unions are already under very strong measures and have to prove everything that they do. As my hon. Friends have already said, trade unions are not just about strikes—Conservative Members must get used to that—because that is the last resort of any workforce. They lose wages and their families go without food. Many, many years ago, we saw such long strikes, where workers struggled. It is a big struggle for many people and—

Adam Afriyie: Will the hon. Lady give way?

Gill Furniss: No, I will not. What most people want is meaningful negotiations, where they can get issues resolved, and that is what is wanted by the management of most organisations, and required by the workforce. We do not have workforces crying to go out on strike; we have workers who want to be respected, who have good working conditions and are not at the mercy of zero-hour contracts or having to have three jobs at once just to support themselves. If we provide good working arrangements for people that would eradicate strikes, would it not? However, there must always be a fundamental right to withhold one's labour. That is the right of everyone wherever they are from.

Chris Stephens: I agree with everything that the shadow Minister has said. Can she also confirm that trade unions play a vital welfare role in the workplace? For example, my trade union, Unison, has a welfare fund that has helped many low-paid workers across the UK.

Gill Furniss: My hon. Friend makes a good point. I was a health and safety representative for many years, and it is a vital role to work alongside management to point out any hazards and actually prevent accidents from happening in the workplace, which could be costly to any organisation in compensation.

Adam Afriyie: I am finding it really hard to grasp why the hon. Lady would not wish to stand up for those people who are members of trade unions who are forced to go out on strike in effect or lose their union membership merely because a very small percentage of people vote to do so.

Gill Furniss: The point you make is a point I know you believe in, but it is about an individual's democratic right to strike. The legislation that you have introduced and the lack of a decent impact assessment reveal no evidence of any ongoing problem. What grieves me is e-balloting, because it seems so unfair that the review of that proposal is sometime in the future. Surely it would have been natural justice to have had that review and the legislation running side by side so that at least unions could have organised properly and quickly to take on board likely future legislation. That is another example of the unfairness and confrontational nature of the regulations before us.

The Chair: I remind Members to address other Members by their constituencies and not to refer to "you", because that addresses me.

Gill Furniss: I apologise, Mr Bailey.

3.19 pm

Margot James: I thank hon. Members for their contributions. Positive industrial relations are the backbone of a productive economy, and the Government believe that trade unions can play a constructive role in maintaining such relations. The Government are equally clear that modernising reforms were required to ensure that strikes only happen as a result of a clear, positive decision. The regulations implement the provisions of the Trade Union Act in relation to the 40% threshold alone. A number of specific points have been raised, which I will go through as quickly as I can. First, the shadow Minister mentioned e-balloting. That review, under the chairmanship of Sir Ken Knight, should be published by December this year. I trust that the hon. Lady, bearing in mind that these provisions will not be implemented until 1 March, will not think that that is too long. In answer to the right hon. Member for East Ham, the last strike to take place in Border Force was in October 2014.

The advice that the Government have is that the provisions are not inconsistent with our international obligations under the European convention on human rights and the International Labour Organisation. That is because they do not undermine the right to strike, but merely redress the balance of rights between people taking industrial action and the public who depend on those vital services.

The hon. Member for Glasgow South West raised the issue of a grey area in some sectors where jobs are covered by these provisions. The alternative would be to take a more blanket approach, automatically including all workers in each of these three sectors, irrespective of the impact of their work on the public, to which Opposition Members would probably object even more. The Government have consulted on the distinctions between different groups of workers in this context and have provided guidance, which I trust unions and employers will find useful.

I cited in my opening remarks a strike that would have been averted had this legislation been in place—the strike by health unions in 2014. If the right hon. Member for East Ham wants another example, I draw his attention to a strike by the NUT in 2014 that led to the closure of 3,000 schools. That strike cost children their education and disrupted the lives of many parents on a turnout of just 27%, with the support of just 22% of those eligible to vote. I have explained that the purpose of the 40% ballot threshold is to rebalance the ability of union members in the three sectors under discussion to strike with the interests of the general public, non-striking workers and employers.

The pressing social needs we want to address in these regulations are to ensure the maintenance of public safety and security and the protection of life. Strike action in important public services in the health, border security and fire sectors can have a significant impact on those social needs. The regulations support the Government's commitment to delivering a modernised industrial relations framework, better to support an effective and collaborative approach to resolving industrial disputes. I believe they are fair and appropriate, and I commend them to the Committee.

Chris Stephens *rose*—

The Chair: Order. The Minister's speech does not have to be the last one, so if the hon. Gentleman is standing in order to speak, he may.

3.23 pm

Chris Stephens: The Minister has not covered a number of points. I hope she will do so, because it is important she is given that opportunity prior to a Division.

I ask the Minister to check the records. I am clear that the House of Lords passed amendments on e-balloting in direct response to the Government's wish to implement thresholds. Thresholds seem to be being implemented seven or eight months before we even know the outcome of the review on e-balloting. The Minister needs to explain why that is the case. Many Opposition Members have new fears that e-balloting will fall as a result. I hope she will also reflect on the fact that there has been no discussion with the devolved Administrations since the Trade Union Act was passed. Finally, I say to her that there is one alternative to introducing blanket bans to cover other workers: not doing this at all.

The Chair: Minister, do you wish to reply?

Margot James: I think I have dealt adequately with the points made, particularly on discussions with the Scottish Government, so I will not respond further, Mr Bailey.

Question put.

The Committee divided: Ayes 9, Noes 7.

Division No. 1]

AYES

Afriyie, Adam	James, Margot
Barclay, Stephen	Lord, Jonathan
Chalk, Alex	Mak, Mr Alan
Field, rh Mark	Morton, Wendy
Gove, rh Michael	

NOES

Creasy, Stella	Gray, Neil
Debonnaire, Thangam	Stephens, Chris
Fletcher, Colleen	Timms, rh Stephen
Furniss, Gill	

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Important Public Services (Health) Regulations 2017.

**DRAFT IMPORTANT PUBLIC SERVICES
(BORDER SECURITY) REGULATIONS 2017**

Motion made, and Question put,

That the Committee has considered the draft Important Public Services (Border Security) Regulations 2017.—(*Margot James.*)

The Committee divided: Ayes 9, Noes 7.

Division No. 2]

AYES

Afriyie, Adam	James, Margot
Barclay, Stephen	Lord, Jonathan
Chalk, Alex	Mak, Mr Alan
Field, rh Mark	Morton, Wendy
Gove, rh Michael	

NOES

Creasy, Stella	Gray, Neil
Debonnaire, Thangam	Stephens, Chris
Fletcher, Colleen	Timms, rh Stephen
Furniss, Gill	

Question accordingly agreed to.

**DRAFT IMPORTANT PUBLIC SERVICES
(FIRE) REGULATIONS 2017**

Motion made, and Question put,

That the Committee has considered the draft Important Public Services (Fire) Regulations 2017.—(*Margot James.*)

The Committee divided: Ayes 9, Noes 7.

Division No. 3]

AYES

Afriyie, Adam	James, Margot
Barclay, Stephen	Lord, Jonathan
Chalk, Alex	Mak, Mr Alan
Field, rh Mark	Morton, Wendy
Gove, rh Michael	

NOES

Creasy, Stella	Gray, Neil
Debonnaire, Thangam	Stephens, Chris
Fletcher, Colleen	Timms, rh Stephen
Furniss, Gill	

Question accordingly agreed to.

3.29 pm

Committee rose.

