

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Third Delegated Legislation Committee

DRAFT TRADE UNION (LEVY PAYABLE TO THE  
CERTIFICATION OFFICER) REGULATIONS 2022

DRAFT TRADE UNION (POWER OF THE  
CERTIFICATION OFFICER TO IMPOSE  
FINANCIAL PENALTIES) REGULATIONS 2022

*Tuesday 25 January 2022*

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**Saturday 29 January 2022**

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

*Chair:* †PHILIP DAVIES

- |  |   |
|--|---|
| † Barker, Paula ( <i>Liverpool, Wavertree</i> ) (Lab)    | † Mackinlay, Craig ( <i>South Thanet</i> ) (Con)  |
| † Begum, Apsana ( <i>Poplar and Limehouse</i> ) (Lab)    | † Morden, Jessica ( <i>Newport East</i> ) (Lab)   |
| † Buchan, Felicity ( <i>Kensington</i> ) (Con)           | † Scully, Paul ( <i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i> ) |
| † Duffield, Rosie ( <i>Canterbury</i> ) (Lab)            | † Spellar, John ( <i>Warley</i> ) (Lab)   |
| † Fell, Simon ( <i>Barrow and Furness</i> ) (Con)        | † Stephens, Chris ( <i>Glasgow South West</i> ) (SNP)   |
| † Garnier, Mark ( <i>Wyre Forest</i> ) (Con)             | † Whittaker, Craig ( <i>Lord Commissioner of Her Majesty's Treasury</i> )                                     |
| † Gideon, Jo ( <i>Stoke-on-Trent Central</i> ) (Con)     |   |
| † Green, Chris ( <i>Bolton West</i> ) (Con)              | Guy Mathers, <i>Committee Clerk</i>   |
| † Gullis, Jonathan ( <i>Stoke-on-Trent North</i> ) (Con) |   |
| † Hollinrake, Kevin ( <i>Thirsk and Malton</i> ) (Con)   |   |
| † Hussain, Imran ( <i>Bradford East</i> ) (Lab)          | † <b>attended the Committee</b>   |

## Third Delegated Legislation Committee

Tuesday 25 January 2022

[PHILIP DAVIES *in the Chair*]

### Draft Trade Union (Levy Payable to the Certification Officer) Regulations 2022

9.25 am

**The Chair:** May I remind Members that they are expected to wear face coverings and to maintain social distancing as far as possible, in line with current guidance from the House of Commons Commission. Please give each other and members of staff space when seated and when entering and leaving the room. I remind Members that they are asked by the House to have a covid lateral flow test twice a week if coming on to the parliamentary estate. That test can be done either at the testing centre in the House or at home. *Hansard* colleagues will be grateful if Members send their speaking notes to [hansardnotes@parliament.uk](mailto:hansardnotes@parliament.uk). Similarly, officials in the Gallery should communicate electronically with Ministers.

9.26 am

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

That the Committee has considered the draft Trade Union (Levy Payable to the Certification Officer) Regulations 2022.

**The Chair:** With this it will be convenient to consider the draft Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022.

The Minister will speak to both statutory instruments. At the end of the debate I will put the Question on the first motion and then ask the Minister to move the second motion formally.

**Paul Scully:** It is a pleasure to serve under your chairmanship, Mr Davies.

The purpose of the regulations is to enact the reforms made by the Trade Union Act 2016 to the powers of the certification officer—the regulator of trade unions and employers' associations. The regulations were commented on by the Secondary Legislation Scrutiny Committee in the Lords in its 25th report, on grounds of policy interest. Before I explain the content of the regulations, it is important that I provide Members with some context to the reforms.

Unions play an important role in effective industrial relations. They also play a significant role in our workplaces and in wider society. There is therefore a legitimate public interest in trade unions running their affairs according to what is required of them. It is necessary that they have a responsive and diligent regulator. It is vital that we all have confidence that those affairs are conducted properly. The provisions in the 2016 Act are about proportionate and effective regulation. We are bringing the current powers of the certification officer up to date with the situation that we accept as completely normal in other sectors.

The 2016 Act brings in three reforms to the role of the certification officer. The first enhances the CO's investigatory powers. Those reforms were implemented in commencement regulations made in December 2021, and they will commence in April. As they are not the subject of the regulations before us, I will only briefly explain the Government's intentions.

The current system largely relies on union members bringing complaints to the CO—for example, on the conduct of elections. The 2016 Act gives the CO the same powers to investigate all breaches that she currently holds for financial matters and the register of members. That will enable her to act without having to rely on a complaint from a member. That is a wholly reasonable power for a regulator.

**Chris Stephens (Glasgow South West) (SNP):** There are at least two Members present who served on the Trade Union Bill. Can the Minister remind us who can make a complaint to the certification officer?

**Paul Scully:** I will come back to that in my closing remarks. The CO will be able to take up her own views on a matter when there is a breach. It is a wholly reasonable power for a regulator and works on the basis of similar regulators.

**John Spellar (Warley) (Lab):** I declare an interest as a 50-year member of Unite and its previous unions. How will unions protect against vexatious complaints from individuals who have a political axe to grind, whether from the extreme right or the Conservative party, as opposed to dealing with the members, who are supposed to be the people most concerned?

**Paul Scully:** This is not a political move. This is not politicising the regulator at all. The regulations are simply designed to bring the regulator in line with other regulators.

**Apsana Begum (Poplar and Limehouse) (Lab):** The Minister may say that, but the regulations are effectively a tax on trade unions. Does he recognise that other bodies do not pay a similar tax? Broadcasters do not pay tax for Ofcom, and data processors do not pay tax for the Information Commissioner. Why does he feel that the regulations bring the trade unions in line with other sectors?

**Paul Scully:** I am glad the hon. Lady has brought the focus to the regulations rather than the wider scope of the 2016 Act, which was discussed in Committee and during the passage of previous regulations. On finances, the work of the certification officer at the moment is funded through fines and other fees but the regulations will wrap them up in a levy, which will be proportionate and affordable, because we responded to the consultation and made some changes accordingly.

**Kevin Hollinrake (Thirsk and Malton) (Con):** Does my hon. Friend agree that it is quite common for industry to pay for its regulator? For example, the Financial Conduct Authority is funded directly by the banks, as are other financial schemes. That is quite a common way of funding such activities.

**Paul Scully:** My hon. Friend is absolutely right. The regulations in no way attack; they are simply designed to fund the work of the regulator. Most regulators get their costs paid for by the people they regulate. That is eminently reasonable.

The regulations we are considering today bring into effect the second and third reforms set down in the 2016 Act, relating to financial penalties and the levy. We consulted separately on both reforms in 2017 and we conducted a further engagement exercise on the levy last year. The majority of respondents to both consultations and the further engagement exercise were trade unions. I know that they are concerned about the measures, as we have heard, but we have listened to their concerns and I will explain the measures in the regulations.

**Chris Stephens:** The Minister is being very generous in giving way. On the consultation in 2017, we should note that there have been two general elections since then, so why are the Government proceeding now?

**Paul Scully:** Because we have proceeded as quickly as we can, given the circumstances of parliamentary time. We wanted to make sure that, in response to the consultation, we could reflect the views of the trade unions by making some changes to the regulations. I will outline them in a second, but I repeat that this is the right time to be making the changes.

Under the financial penalties regulations, the certification officer's enforcement powers are strengthened by allowing her to impose such penalties against organisations that breach their statutory obligations. The maximum amount of penalty will vary by the type of obligation breached and will be banded into three groups to take account of the severity of the obligation breached. That approach found support during the consultation.

The most important statutory obligations required of trade unions relate to political funding, the proper conduct of union elections and personnel propriety considerations. Those obligations are serious matters and I believe that the maximum penalty of £20,000 should be made available to the certification officer. That is in line with the penalties imposed by other bodies, such as the Electoral Commission.

For other failures of statutory governance requirements, a lower level of maximum penalty, £10,000, is appropriate, and that includes the requirement to keep the membership register up to date. Where breaches do not relate to failures of governance as a whole but to requirements to provide information, comply with investigatory requirements or breaches of internal union laws, the regulations limit such fines to a maximum of £5,000.

**John Spellar:** I apologise for taking the Minister back to the previous issue, but I have quickly scanned the explanatory notes. How will the levy be distributed between trade unions and employer associations? On what basis?

**Paul Scully:** I will talk about the distribution in a second.

The regulations also provide for a reduction in the maxima by 50%—bearing in mind that we are talking about the financial penalties—for unions whose membership is under 100,000. That means that no small

or medium-sized unions will pay more than £10,000, £5,000 or £2,500, depending on the type of obligations breached. The Government took heed of consultation responses that charging interest would unduly penalise small unions, so we decided not to charge interest for the late payment of penalties.

The Trade Union (Levy Payable to the Certification Officer) Regulations 2022 provide for a levy on unions and employers' associations to fund the certification officer's work. It is no longer acceptable for the taxpayer to fund the regulation of these organisations. As my hon. Friend the Member for Thirsk and Malton said, a levy is one of the ways used to fund such regulators. The regulations establish a framework for the levy that is equitable, affordable, predictable and simple.

First, the time that the certification officer spends on each of the different categories of regulated organisations, which are non-federated trade unions, federated trade unions, non-federated employers' associations and federated employers' associations—

**Chris Stephens:** We know from the Trade Union Bill Committee that the net cost of the certification officer's work was about £500,000. Can the Minister tell us what it is today?

**Paul Scully:** I will go through the structure in a little more detail shortly.

To make the levy equitable, the certification officer will be able to broadly apportion the levy between the different types of organisations according to how much time she spends on them.

Secondly, I know that many hon. Members and unions are concerned about the affordability of the levy. That is why the certification officer must exempt lower-income organisations from the levy entirely. No organisation will pay more than 2.5% of its annual income, as set out in its annual return to the certification officer.

Thirdly, it is important that a levy is predictable, so the Government will continue to fund the cost of any internal inspectors that the certification officer hires, as the use and cost of those can vary significantly. That was discussed during consideration of the Trade Union Act 2016. For the same reason, the Government will also fund the cost of any external legal advice that the certification officer may seek. That was not identified during consideration of the Act, but the Government believe that that approach will allow for a fairer levy.

Finally, the Government have taken steps to ensure that the levy is simple and transparent. The certification officer will need to aim to ensure that income from the levy matches expenditure over a three-year period, as well as explain how she calculated the amount of levy each organisation is charged. A number of the certification officer's existing fees will be abolished and subsumed into the levy. That will be the subject of separate regulations, which will be made under the negative procedure, and we intend them to come into force at the same time as the levy.

**Imran Hussain (Bradford East) (Lab):** Does the Minister accept that as the instrument stands there will be no cap on the amount of the levy and it could well run into millions of pounds?

**Paul Scully:** The amount of levy paid will be capped to 2.5% of the union's income, and it is the certification officer's work that is being paid for—

**Imran Hussain:** Sorry, perhaps the Minister did not understand the point I am making. Does he accept that there is no cap in the instrument on the overall levy that the certification officer can charge and it could well run into millions of pounds? It will be completely at the discretion of the certification officer.

**Paul Scully:** The certification officer's work will be charged accordingly, and the levy will be distributed at a level that is capped for each union and employers' association. It will be for the certification officer to demonstrate what she has been doing in that regard and how those costs are broken down.

In response to requests by trade unions during consultation, two fees will be preserved—the fee for listing as an organisation and the fee for a union to be granted a certificate of independence. The costs of dealing with those applications will not be recoverable under the levy.

I recognise that these are significant changes for the organisations involved, albeit that they are the clear and required implementation of the Trade Union Act 2016. That is why we announced the reforms in June 2021, to allow trade unions and employers' associations time to prepare before they are implemented in April 2022. That also allowed the certification officer time to put the systems in place to determine and charge the levy.

**Craig Mackinlay** (South Thanet) (Con): I declare that I am a member of the Institute of Chartered Accountants in England and Wales. That body does similar things to those that a union might do: it represents its members, makes representations to Government and ensures that the regulated activities that we undertake as members are properly monitored and controlled. There has never been any issue that the Government should somehow pick up the bill for those things—

**Chris Stephens:** The taxpayer.

**Craig Mackinlay:** Or the taxpayer, absolutely. So I am quite surprised that there is huffing and puffing over this. The Minister has made it clear that 2.5% is the maximum. Has he calculated whether, if that 2.5% maximum levy, which I doubt will apply in many cases, were applied across the income of all the trade unions that are registered, it would cover the true cost of the certification officer's work, or would there still be a shortfall that taxpayers were expected to make up?

**Paul Scully:** My hon. Friend makes some good points. As I say, there are exceptional cases when the taxpayer will be paying, in terms of the consultants that the certification officer may pay and the legal advice that she may require, because that will give unions and employers' associations the certainty that they need. That is part of the proportionate approach that we have taken. None the less, the distribution that I have here, which I can share with the hon. Member for Bradford East, who asked about it earlier, assumes an estimated total levy of £1.15 million for the next financial year, based on the work that the certification officer has been doing.

**Mark Garnier** (Wyre Forest) (Con): I may have missed this, but can the Minister confirm that any fines that are levied go back into the income of the certification officer, so that they subsidise future levies from unions?

**Paul Scully:** I will respond to that in my concluding remarks so that I am accurate for my hon. Friend.

The two sets of regulations will modernise the role of the certification officer so that she can continue to function as an effective regulator of trade unions and employers' associations. It is not about constraining the ability of the unions and employers' associations to do their valuable work. The certification officer has always operated independently of Government and that will continue.

These reforms are about giving the certification officer the tools she needs to do the job as effectively as possible and ensure that the taxpayer no longer foots the whole bill, but that unions and employers' associations that can afford—

**Jessica Morden** (Newport East) (Lab): How is this proportionate, given that in her annual report for 2021 the certification officer stated that she investigated only 34 complaints—one complaint for every 200,000 union members—and no enforcement was taken?

**Paul Scully:** The certification officer has had a number of complaints. She has investigated some and dismissed some. Yes, only one enforcement was taken, but that is not the sole purpose of her job. She does not look at that single case; there is a lot of work that leads up to that. As I say, this is proportionate. If she is not doing that much work, then the levy will be cheaper because she will not have that much to do. The levy is to cover the cost of the work. The certification officer is not having holidays to the Bahamas and making a juicy profit out of this. The levy is just covering the cost of the regulator. That is what is proportionate about it and why it is appropriate for the regulator to do it, rather than the taxpayer.

**Jo Gideon** (Stoke-on-Trent Central) (Con): On a point of order, Mr Davies. We have had five speakers from the Opposition and only one has declared an interest as being a member of a trade union. I thought it was necessary to declare an interest, especially in this debate, and I seek clarification on that.

**The Chair:** It is a matter for each individual member to declare their interests as they see fit. It is not for me to tell them whether they should or should not make a declaration, but for them to decide if they have an interest that they feel they need to declare.

**John Spellar:** Further to that point of order, Mr Davies. Should Members on the Government side also declare whether they are members of trade unions?

**The Chair:** What I said applies to both sides of the House.

**Jonathan Gullis** (Stoke-on-Trent North) (Con): Further to that point of order, Mr Davies. Following on from the point made by the right hon. Gentleman, I have not yet had a chance to speak but I am more than happy to

declare that I am a member of the NASUWT and was a trade union representative in the last two schools in which I worked.

**The Chair:** I am sure we are all grateful for that. If we could get back to the debate, I think we would all be very grateful.

**Paul Scully:** In my concluding remarks I will try to pick up any questions that I have not answered. I commend both statutory instruments to the Committee.

**The Chair:** I now call my constituency neighbour, Imran Hussain.

9.45 am

**Imran Hussain:** I first declare an interest as a proud member of Unite the union, Unison and GMB.

For well over 100 years since the founding of modern organised labour, trade unions have been at the forefront of improving the pay, terms and working conditions of ordinary people across our country. It is because of the struggle of trade unions, even in the face of opposition, obstruction and oppression at the hands of big business and Governments, that working people today have statutory sick pay, which means they are not left completely out of pocket when illness strikes, a minimum wage, which helps to provide a basic floor against poverty, and high safety standards, which ensure that dangerous work places are no longer the death traps they once were.

Yet despite the immense improvements that they have made for working people over the past century, our trade unions are as important today as they have ever been. Working people are still exploited by unscrupulous employers and our trade unions still provide the only real bulwark against even greater exploitation. That has been made all too clear over the last two years of the coronavirus pandemic, with bad bosses, for example, using the dishonest tactics of fire and rehire to take advantage of the workforce.

It seems, however, that the Government do not recognise the value and importance of our trade unions.

**Chris Stephens:** Is the shadow Minister not as curious as I am that, four years since the Government started a consultation and after four years of promises of an employment Bill, there is no employment Bill, but there is now this levy being imposed on trade unions? Does that not say all about how this Government view workers' rights in this country?

**Imran Hussain:** The hon. Gentleman is absolutely right and adds to the point that I was beginning to make. It is clear that the Government do not recognise or value the importance of our trade unions. Instead, as we see with the measures before us today, they choose to attack rather than support those who are fighting for working people.

**Jonathan Gullis:** Does the hon. Gentleman share my concerns that trade unions such as the National Education Union were found potentially to have broken the Trade Union and Labour Relations (Consolidation) Act 1992 for the £505,000 spent in the 2019 general election on adverts that were overtly party political, attacking the

Conservative Government, which would obviously have disenfranchised Conservative members whose hard-earned money had been paid into that trade union?

**Imran Hussain:** It is clear that the hon. Gentleman misses the point. There are regulators today and, while I do not know about that specific example, breaches of any kind should of course be investigated, but that is not the matter before us today. This is not a new body that is being set to investigate breaches, so I think the hon. Gentleman will perhaps understand that his point is not relevant to the debate today.

**John Spellar:** It might be helpful if we heard whether the hon. Member for Stoke-on-Trent North or other members of the union actually made a formal complaint to the certification officer.

**Imran Hussain:** That is a matter for the hon. Member for Stoke-on-Trent North, and I will give way if he wants to respond—or perhaps not.

As I was saying, this is an ideological, deliberate attack by the Government on our trade unions, our workers and their rights. Sadly, however, this attack is not without precedent. While they no longer send armed soldiers in to crush striking workers, this Tory Government are no less—[*Interruption.*] Conservative Members laugh, but they may want to check history and see that those are real events from the turn of the last century. It is not a laughing matter; it is a very serious matter, and if they choose to laugh at that, so be it. This Tory Government are no less opposed to unions.

On that point, let us remind ourselves of this Government's record. Over the last decade, they introduced the draconian Trade Union Act 2016, eroding the ability of working people to take collective action, imposed illegal employment tribunal fees that priced people out of obtaining justice, and presided over a disgraceful rate of statutory sick pay, which is one of the worst in Europe. They have also broken a promise made during the passage of the Trade Union Act by backtracking on their commitment on electronic balloting, with the Government-commissioned Knight review, published in December 2017 and still awaiting a response from Ministers—more than four years later. It therefore comes as no surprise that Ministers have introduced these anti-union statutory instruments, as well as a further ministerial direction to once more attack working people.

**Mark Garnier:** The hon. Member is right about the trade unions, and I would echo that: I think they have done an extraordinarily good job. I worked with the Community union in my constituency at jobs fairs.

One of the characteristics of this change is that it makes the unions more independent. By giving the certification officer an independent form of financing, it means that the Government have less leverage over them, thereby ensuring more independence of the whole union movement, not less.

**Imran Hussain:** Certainly, I agree with the hon. Gentleman's first point—that unions do a fantastic job—but unfortunately I do not agree with the rest. I am sure the hon. Gentleman is not saying this, but one could interpret from what he said that somehow,

[*Imran Hussain*]

if the Government were to pay an independent regulator, they could tell that regulator what to do. We know that is not the case—of course it is not.

Again, that is not the issue today. As I said to the hon. Member for Stoke-on-Trent North, at the heart of this—I will come to this at greater length—are two points. The first is suddenly charging a levy—I know the Minister wants to say that there are other organisations where regulators are paid for in the same way, but unions are not profit-making organisations. It is almost as absurd as saying that charities should pay for the Charities Commission. The argument that the Minister made did not answer any of the questions posed from this side of the Committee, and I hope that he will do so when he sums up.

The first statutory instrument deals with the financial levy that the Government intend to impose on trade unions. That levy would impose unnecessary and disproportionate costs on trade unions, and would take money out of the funds used to fight for better pay terms and conditions. That is the crucial point. Any money that is taken from trade unions cannot be spent on defending their members. It is fine saying that it is 2.5% but, by the way, the overall figure is not capped.

That raises another interesting question: who makes up for the shortfall? If, for example, the certification officer says in two to three years that their costs will run into the millions—this instrument does not stop that; if the Minister disagrees, he can intervene—and we are saying that the cap on unions is 2.5%, who will make up for the shortfall?

**Kevin Hollinrake:** I guess the answer in the current situation is the taxpayer. Surely the only question here is: who should pay for the regulator? Should it be the trade unions and their members, or the taxpayer? That is the choice we are making. The Government have no money, so would the hon. Gentleman prefer the taxpayer to fund trade unions, many of whom do not benefit from trade union activity, or should it be the people who benefit from it?

**Imran Hussain:** The current known cost of the certification officer as it stands is about £700,000, which is paid by the taxpayer. There is, however, a principle: trade unions are there. I have just gone through some of the huge achievements of our trade union movement—which I am sure Conservative Members agree with me about—not just in this country but internationally, for workers in some of the poorest and most squalid conditions around the world. Our internationalist trade unions have gone and done that. Now, on the other hand, we are saying that the draft regulations are not for the good of workers. Trade unions help our workforce with their rights and conditions. Therefore, the principle is that of course this should be paid for by the taxpayer.

**Jessica Morden:** I declare an interest as a long-standing member of a trade union. My hon. Friend is making an excellent speech. Is it worth stopping and recognising at this point that those trade unions have been flat out in supporting our nurses, shopworkers and transport workers, who have been on the frontline in the pandemic, during this difficult time?

**Imran Hussain:** Absolutely. My hon. Friend makes the point perfectly about the great work of our unions at this most difficult time. Over the past two years, we have seen the real values of our trade unions.

**Paula Barker** (Liverpool, Wavertree) (Lab): I declare an interest as a member of Unison and Unite the union. Does my hon. Friend agree that those on the Government Benches are treating trade union members as if they are not taxpayers in our society? They are taxpayers—

**Kevin Hollinrake:** Not all taxpayers.

**The Chair:** Order. Carry on.

**Paula Barker:** Nothing has been said about the money that the trade unions save the economy every year.

**Imran Hussain:** Again, a point well made that needs no further explanation by me. The value of our trade unions is a good point—again, Government Members are nodding. They accept the value of the trade unions. I do not think that there is a debate about that.

To go back to my point, in imposing the levy, the Government have deliberately misunderstood the role of trade unions, treating them not as a voice of working people but as profit-making companies. Let me be clear: this Government know full well that trade unions do not exist to make profits for themselves; they exist for the betterment of their members and the workforce as a whole in this country. I have already made this point, but given that we would not think to force charities to pay such a high levy to the Charity Commission, it is frankly outrageous to ask the trade unions to do so.

The Government have also failed to set out a real case for why they need to impose the levy. As democratically accountable organisations in their own right, trade unions have high compliance rates with their legal duties. As my hon. Friend the Member for Newport East pointed out, the certification officer dealt with just 34 complaints against trade unions, not one of which ended up with an enforcement order being pursued.

The reality is that if this draft statutory instrument passes, trade unions will have to meet the costs—my hon. Friend made this point—of politically motivated, malicious, vexatious and unsubstantiated investigations into them. Those investigations will almost certainly be initiated by those who have long-standing opposition to our trade unions. That is why we must vote the instrument down today.

**Craig Mackinlay:** The hon. Gentleman is making an impassioned speech about unions, and I do not think there would be any argument from the Government side about the value of trade unions. However, does he have a view about some of the very well-paid officers that many unions have, who earn in excess of six figures in some cases? Could he not apply some pressure through his good offices to try to suppress some of those excessive salaries and fees?

**Imran Hussain:** The hon. Gentleman is somebody who I have time for and who normally makes some very good points. However, pay structures within organisations are pay structures within organisations—again, that issue is not relevant here. I take the point; he wants to make a political point. Again, I do not see the relevance of that issue in this debate.



The second statutory instrument deals with the financial penalties that the certification officer can impose. As the Minister pointed out, these can range up to £20,000 for a level 1 breach and closely resemble fines imposed in a criminal setting. However, the burden of proof is much lower, which means that the certification officer, in a politically motivated complaint, can impose a huge fine with a much lower evidential threshold. As I have pointed out, trade unions have high levels of compliance, with just one complaint for every 200,000 union members. As my hon. Friend the Member for Newport East pointed out earlier, the question is: what is the need for greater financial penalties when there has been no need for them in years gone by? This is a deliberate attempt by the Government to squeeze every last penny that they can from our trade unions, preventing them from putting funds forward, representing their members and fighting for working people. That is another reason why these statutory instruments must be voted down today.

The Minister also referred to the expansion of the certification officer's investigatory powers—although that is not included in these SIs, Mr Davies, I do not think we can have this debate without discussing it. This expansion, giving the certification officer new and wide-ranging powers, will allow for the initiation of investigations against a trade union even if there are no complaints from within the union itself, allowing anti-union organisations to submit vexatious and politically motivated complaints against trade unions. Even if no such complaint is upheld, the damage to the trade union will already have been done, with valuable time, money and resources being spent on fighting vexatious complaints rather than unscrupulous employers.

**Chris Stephens:** I am grateful to the hon. Gentleman, because he is emphasising the point that was made repeatedly in the Trade Union Public Bill Committee, namely that this process could include far-right organisations attacking trade unions for their fine anti-racism campaigning work. Does he believe, as I do, that if the Government are consistent, the people who make these sorts of vexatious and malicious complaints should have a levy and a fine imposed on them if they make these sorts of complaints against trade unions?

**Imran Hussain:** I absolutely agree with the hon. Gentleman, and I hope that Government Members also agree. We believe this measure is politically motivated, but even if they do not, surely they would accept that it widens the scope and allows for far-right organisations to make malicious or vexatious claims, which at the very least will have to be investigated, and somebody will have to pay for that.

That is the issue at the heart of this debate. This legislation is not well thought out, as the hon. Member for Glasgow South West has said. We maintain, of course, that it is politically motivated. I ask hon. Members to think about that and I particularly ask those who are members of trade unions to accept that point at least. This ministerial direction, which has huge implications, has also had a concerning lack of scrutiny, as it will never receive a proper debate in Parliament or a vote involving all Members.

That takes me to the lack of scrutiny that these measures as a whole have had. Rather than holding a debate on the Floor of the House, the Government have

chosen to tuck these SIs away and try to pass them in Committee, which begs the question: why the avoidance of scrutiny? Why the avoidance of debate? The reality remains that the Government know that this is anti-union, anti-workers and anti-rights legislation. They want it passed in Committee rather than exposed in the full House.

Having looked at the clock, I will bring my remarks to a conclusion. Again, I say in the most respectful manner to the Minister—I do not envy him his job; he often gets rolled out in some of the most difficult to defend places—that I hope he answers some of the questions that have been raised by Opposition Members. Thus far, he has not answered any of them; he has said that he will deal with them in his concluding remarks. I ask him to address the serious concerns that have been raised by Opposition Members; set out why he believes that these regulations, which so clearly impede the ability of trade unions to represent working people, should be introduced, especially at a time of great economic uncertainty when working people are facing one of the greatest assaults on their rights in the workplace; and announce when he will fulfil the promise to give trade unions the power to hold ballots electronically by delivering the pilots that were announced half a decade ago.

When trade unions are empowered, working people are empowered, wages rise, conditions improve and productivity soars, so if the Government have any intention of fulfilling the promises they have made to working people, they will pull these regulations and repeal the Trade Union Act 2016. The Labour party has a proud history of standing up on the side of working people and those across the country who fight to protect them and their rights, and we will never shirk those responsibilities. We will therefore be voting against these regulations today.

10.7 am

**Chris Stephens:** It is a pleasure to see you in the Chair, Mr Davies, and I wish everybody a happy Burns day—the day of our national bard. As you know, Mr Davies, 90% of the world claims Scottish heritage; the other 10% are not trying hard enough. In discussing this legislation, I was reminded of the national bard's poem "Address To The Toothache". What I have heard so far from the Government—their excuses for trying to force through this levy—reminds me very much of that poem.

I am proud to declare my membership of Unison's Glasgow City branch, my role as chair of the Public and Commercial Services Union's group in this place, and my role as a trade union activist for 25 years before I came to this place. I am a proud trade unionist, and I always will be. I am proud of the work that trade unions have done across these islands.

As someone who sat on the Trade Union Bill Committee, I think it is important to give some context for some of the difficulties that the Government have found themselves in over the past four or five years, and that they still find themselves in. They are attempting today to impose fees on trade unions—a tax on trade unions, as was mentioned earlier—for complaints that could be made against them. At the same time, the Government tried to stop trade unions paying employers to take their subscriptions off under the check-off regulations. The Government ended up having to abandon that part of the Bill. They also had to abandon the holding of lists of those who were picketing an industrial action, because of concerns

[Chris Stephens]

over breaches of human rights. At the time, they voted down attempts to introduce e-balloting for industrial action and internal trade union elections while they were using e-ballots to decide their own parliamentary candidates and their candidates for London Mayor—you really couldn't make it up.

In the four years that we have been waiting while the Government have held the consultation—as I mentioned earlier, there have been two general elections since the consultation started—they have been promising an employment Bill, but where is it? We now know: when the Government were asked at the last Queen's Speech where the employment Bill was, they admitted publicly that it was not a priority. Dealing with zero-hours contracts, short-term shift change notices and all the other abuses that we see in the workplace is not a priority, but imposing a tax on trade unions somehow is.

I have real concerns. I deliberately asked who makes a complaint for the certification officer to look at. In my view, it should be a trade union member. Trade union members have the right to go to the certification officer and raise a concern that they have with trade unions. However, I am sure the Minister will confirm that under the current Trade Union Act, with the new powers that have been issued to the certification officer, any organisation or member of the public can make a complaint against trade unions.

As the right hon. Member for Warley and the shadow Minister mentioned, that can include far-right organisations. Far-right organisations can make complaints against trade unions for their spending on anti-racism work. The trade unions have been one of the drivers in the fight against racism in this country, and I am proud of that, but we can have far-right organisations making vexatious complaints about funding for organisations such as Show Racism the Red Card—I declare that I chair the showing racism the red card all-party parliamentary group—and Hope not Hate.

Of course, we might have other organisations, such as that friend of the Conservative party, the TaxPayers Alliance, making vexatious complaints. It is somewhat ironic that the biggest cost to the taxpayer has been vexatious freedom of information requests, on occasion, from the TaxPayers Alliance, which could make vexatious and malicious complaints against trade unions.

**John Spellar:** I think the hon. Gentleman has slightly misnamed that organisation. Given that it will not reveal the sources of its income and that there are credible reports that many of them live abroad, should it not be the "TaxAvoiders Alliance"?

**Chris Stephens:** I stand corrected. The right hon. Member is absolutely correct: it should indeed be the TaxAvoiders Alliance. I can assure him that if we continue to refer to that organisation in this debate, I will use the appropriate term.

There are real issues with who should be allowed to make a complaint. My view has always been that I do not have a problem with a trade union member going to the certification officer with their concerns, but I will have a real concern if members of the public are allowed to do so.

We keep being told the cost to the taxpayer, but it is not a lot of money—£500,000 or £700,000. I have in front of me the transcript of the debate on the certification officer in the Trade Union Bill Committee. It is a good eight pages of reading, and it is very enlightening as to the arguments against fees and against increasing the powers of the certification officer, and the Government's excuses about that. However, I have real concerns that what is at the heart of this legislation is an attempt to curb the work of trade unions in this country by imposing a financial cost on them.

**Mark Garnier:** Will the hon. Gentleman give way?

**Chris Stephens:** I will just finish this point and then I will give way.

The trade unions have worked to ensure that people are not on exploitative zero-hours contracts, and they have fought against short-term shift change notices. By the way, all those things are covered by my Workers (Rights and Definition) Bill, which the Government could pick up at any time.

**Mark Garnier:** I ask this question out of curiosity rather than to try to make a political point. We hear that the certification officer is costing around £750,000 a year, which could increase. What would that be as a proportion of the total revenue generated by the trade unions through membership fees? I am afraid that I just do not know the total collective income of the unions. It would be helpful if we knew what proportion that £750,000 is of total union revenue across the United Kingdom.

**Chris Stephens:** I do not know what the trade union revenue is in the whole of the United Kingdom, but I can tell the hon. Member that I was the treasurer of the Glasgow City branch of Unison and its revenue certainly was not anywhere near £700,000. If he wants to see the accounts of that organisation, I am sure I can provide him with a copy.

**Imran Hussain:** The hon. Gentleman is making an excellent speech. The issue here is not the revenue that trade unions generate; it is that any money taken away from the trade unions is money taken away from helping working people—helping to improve their terms and conditions and fighting for their rights.

**Chris Stephens:** I agree with the shadow Minister. He will recall, because he referred to it, the attempt to impose fees at employment tribunals, which the Government ended up losing. That was also costing trade unions money, because they were having to pay to defend their members at employment tribunals.

Returning to the legislation at hand, I have a real concern that it curbs the basic work of trade unions in fighting for dignity in the workplace. Over the last two years, during the pandemic, we have seen a real exploitation of workers. That shows why we need an employment Bill, which we have been promised for the last four years. That is why the priorities are all wrong.

In addition, the Government have international obligations here, and they are not following them by taking this route. Thompsons Solicitors is clear that the International Labour Organisation conventions and article 6 are being breached. Extending the certification

officer's investigatory powers and imposing a levy would effectively make the certification officer the complainant, the investigator, the prosecutor and the judge. That is in contravention of article 6 of the European convention on human rights and in breach of International Labour Organisation standards. That is a very real concern. Once again, the Government find themselves outliers when it comes to international labour standards.

The Minister will try to present the regulations as standard practice, but I believe that they are ideological, they are an attack on the trade union movement and they are in breach of international obligations. Once again, the Government find themselves with their priorities all wrong. Will the Minister indicate whether he will accept my Workers (Rights and Definition) Bill, which would go a long way towards ensuring fairness in the workplace, or can he tell us when the Government will finally introduce their employment Bill to deal with so many issues affecting workers in this country?

10.18 am

**John Spellar:** I want to differ slightly from my hon. Friend the Member for Bradford East, who said that he did not envy the Minister his job. Surely, this must be a blessed relief from being put up on the "Today" programme to defend the Prime Minister's latest peccadillos.

I declare that I have been for 50 years a member of the Unite union and its predecessors—in that time, I have been a branch chair, a branch secretary, a delegate to the trades council and a national officer of the union—and I am proud to be a trade unionist today. In spite of the behaviour of some trade union leaders, union officials and shop stewards work with employers every day to improve wages, improve conditions and deal with the many personnel issues that do not have to get to industrial tribunals because they are resolved through normal procedure. They are part of the engine that keeps our economy running. They were especially so during the pandemic, when all sorts of changes to rotas, rosters and working arrangements had to take place, particularly for those in public-facing roles who were not able to work from home, who kept society running, often at risk to themselves.

Good employers recognise that role and the importance of their engagement with unions, because they often face unfair competition from unfair employers—those who cut corners, who underpay, who abuse their workforce, who employ people illegally, and so on. Many of those good employers are on employers' associations, by the way, and we are still not entirely clear how the balance of costs will be allocated. Even a company such as Uber, which initially fought against proper recognition of employment, is working with the unions to regulate that industry, not only here but in the United States. I will return to the international aspect in a little while.

One of the questions we have to address is, "Why now?" Why, particularly, is this coming up now? It has been four years or so in the making. Is this part of Operation Red Meat to throw something to the rabid, foaming Back Benchers of the Tory party, whose leitmotif—one of their articles of faith—is their hatred of trade unions to the benefit of employers, because they know that workers organised will recognise that they need to advance through politics too?

**Jo Gideon:** I would like to challenge the statement "hatred of trade unions". My hon. Friend the Member for Stoke-on-Trent North and several other hon. Friends have already spoken about their massive support for trade unions, and I declare that in a previous role I was a member of Unite and was supported fantastically through that union. Making statements like that does not help us to have this discussion in a professional manner.

**The Chair:** Before the right hon. Gentleman resumes his speech, can I make a plea? This is not a general debate on trade unions, interesting though that may be; it is a debate about specific proposals, which we must stick to. We have a time limit, so if we could stick to the proposals before us, that would be helpful.

**John Spellar:** Thank you, Mr Davies. I certainly do not intend to run beyond the time limit in my contribution, and nor would you let me. We are talking about specific proposals, which will bring in additional costs in order to undermine unions. In dealing with the background of that—

**Mark Garnier:** With apologies the right hon. Gentleman, may I provide an update on my intervention on the hon. Member for Glasgow South West? I have had a look at the numbers on Google. These may not be accurate, but the total revenue for unions is just under £1.3 billion a year. Spread among 6.4 million members—according to these figures—that works out as £195 per year. If, through the levy, we are going to pay the certification officer £1 million a year, which is more than we are expecting, that works out at 15p per member per year. I cannot think of anything that can be bought for 15p, anywhere—not even a KitKat—so the levy is tiny in proportion.

**John Spellar:** Of course, it is symbolic for the Tory party, but it is also part of a pattern. The union learning fund, which was mentioned previously; industrial tribunal fees; access to industrial tribunals—it is all part of a drip, drip, drip, wearing away at the ability of trade unions to represent their members.

I am slightly surprised that the Minister prays in aid a time of austerity. Did he not see what happened yesterday in the House of Lords, when his noble Friend Lord Agnew resigned from the Government, saying that they have paid out nearly a billion pounds to banks claiming the state guarantee, and that they estimate that about 20% of that was fraud? Lord Agnew went on to say:

"Total fraud loss across government is estimated at £29 billion".—  
[*Official Report, House of Lords, 24 January 2022; Vol. 818, c. 21.*]  
Rather than address that, they want to have another go at the trade unions.

In the same way, the Home Office was found in court to have broken the law by charging excessive amounts—grossly overcharging—to register children as British citizens, yet the Government still have not responded to that by introducing legislation. Again, we ask why not.

**Chris Stephens:** The right hon. Gentleman is making an excellent contribution. Does he see the irony in these regulations coming from a Government who preach deregulation in almost all sectors of the economy except for trade unions, which are subjected to massive regulation? It goes from laissez-faire to Stalinism with nothing whatsoever in between, does it not?

**John Spellar:** I have no objection to the regulation of trade union activities. I think it perfectly proper—many other countries do it—but what we are seeing is steadily undermining trade unions' ability to operate at work, as we have seen over many years, and putting increasing burdens on them.

Let us take the example of vexatious complainants, which are covered by the regulations. There are no protections in the event that somebody comes along and says, "I read in *The Daily Telegraph* or the *Daily Mail* that this has happened, and I am lodging a complaint to the certification officer." Quite apart from the cost of the certification officer, that puts a great burden on the unions, which will have to defend themselves against complaints not from members or even employers, who have other routes to make complaints about union behaviour, but from somebody sat in his armchair, picking up on a story in his newspaper. Why is that included in the regulations?

**Kevin Hollinrake:** I want to clear up one point. Personally—I probably speak for one or two others on this side of the Committee—I am not against trade unions, but I am for a fair balance between workers' rights and the rights of business. I am also after a fair balance in who pays for that. In the UK, there are 6 million members of trade unions, but 10 million retired people and 6 million self-employed people. Why should those taxpayers pay for the people who benefit from trade union activities?

**John Spellar:** I think that applies to all sorts of activities. Of course, the hon. Gentleman is assuming that those 10 million retired people were not trade unionists when they were at work—a great majority were. They may actually believe in trade unions and think that there were very good in their time, and may regret that the role of trade unions has been diminished by persistent attack from Conservative Governments and employers.

**Paula Barker:** Does my right hon. Gentleman agree that some retired people are still members of trade unions, participate fully in their structures, and benefit from them?

**John Spellar:** My hon. Friend makes a very good point.

In addition, even those who are not union members benefit from union activity. If they work in an establishment, they will benefit from a pay rise. If they move from employer to employer in an industry that is mobile in and of its nature, such as the construction industry, union agreements underpin their terms and conditions. Interestingly, in Western Australia, when the Conservative Government was trying to bring in very rigid regulation of unions, many well-paid non-union members in the mines recognised that their terms and conditions and balance of power with the employer were underpinned by trade union activity and organisation. Basically, when unions are working well, everybody benefits—not just workers, but the economy and good employers.

What we have seen with the international attack led by the Republican right in the United States, as indeed with their so-called voting regulations—again, to address non-existent problems—is the labour share of gross

domestic product around the world steadily declining in the face of those attacks, and that directly reflects the decline in union influence in the workforce.

Of course, that plays into the economy as well, because what we see then is a demand deficit in the economy. As money has been put into the economy, particularly during the era of covid, the amount of money that has been skewed towards the ultra-rich and super-rich has been going up while living standards have been kept down. Again, we saw that with Thatcher-Reagan and—

**The Chair:** Order. I have given the right hon. Gentleman considerable latitude, but I do not want a history lesson on the 1980s. I want us to come back to what we are actually debating today. I trust he will do that.

**John Spellar:** You are right to bring me up to date, Mr Davies, because today, from the Government's point of view, these sorts of regulations, which will be seen as anti-union not only in this country but elsewhere, will not help us in our relations with the United States, where there is an Administration that is strongly pro-union. We are trying to get a trade deal, and trade and workers' rights are not unconnected. If we look, for example, at the import of personal protective equipment into the United States, a firm in Malaysia has been found guilty of unfair labour practice—forced labour. The United States then says, "We are barring that company from selling into the USA."

**Craig Mackinlay:** The right hon. Gentleman is offering a great exposé of the history of the trade unions locally and internationally. We are talking here about a sum across the entire trade union movement of approximately £1 million at best, with an income, as highlighted by my hon. Friend the Member for Wyre Forest, of about £1 billion. I have just looked up some donations to the Labour party in 2019: £3.5 million for the election from Unite and £425,000 from the CWU. Is the right hon. Gentleman suggesting that by saving some of the administration costs to the union movement, it can recirculate more to the Labour party? Is that the core of his arguments?

**John Spellar:** That is a pretty poor argument because that would be in breach of very long-standing trade union legislation whereby members make a donation through the political levy to the political fund, which is protected. If the hon. Gentleman has one shred of evidence of administrative general fund money being channelled through into the political fund, even under the current law he can go straight down, because someone is not required to be a member in order to make that sort of payment. He might be a bit more sensitive about political donations and spending, but we will leave that on one side.

**Craig Mackinlay:** On a point of order, Mr Davies. I like political debate. I was acquitted in a court of law, and the right hon. Gentleman wishes to raise that in this debate. I find that disgusting, Mr Davies.

**The Chair:** That is not really a point of order. As I have pleaded before, we must stick to the issue before us today. If the right hon. Member for Warley will not stick to the issue before us today, I will move on to

someone else who might. I urge him to stick to what we are debating today. He will have no further latitude because I have already given him plenty.

**John Spellar:** Thank you, Mr Davies. I am arguing that these measures are not only wrong but, even from the Government's own point of view, ill-advised, particularly because, as I have indicated, the United States has a new Administration with a very different perspective on labour-union rights. They have made that explicitly clear in policy, but also in appointments and in the decisions of the National Labor Relations Board.

I very much support a trade deal with the United States, as I supported the transatlantic trade and investment partnership, unlike some in my own party. However, if our Trade Secretary is seen as pleading for a trade deal, and we are seen as moving further and further into anti-union territory, into the old Republican right, that will count against us, because Joe Biden will be President for the next three years.

The Minister ought to have discussions with the Department for International Trade to ascertain whether petty, sneaky actions that nibble away at trade unions will actually benefit not just the Conservatives, but this country in securing a very desirable trade deal. It is clear from President Biden's statements that he very much believes that when unions prosper, the middle class prospers and America prospers. That is true in the States; it is true here. The Government better get the message that there is a new sheriff in town, and these sorts of actions are not going to help them—or Britain either.

10.36 am

**Paula Barker:** Listening to the debate, it is literally like going back to the future. Such is the obsession of this Conservative Government, like every one before them, with taking a sledgehammer to trade union power—what little there is left in 2022—that anyone would think that it is 1979.

Let us be clear: this measure represents a further attack on our civil liberties, for which the governing party has little regard anyhow. In this instance, the very organisations that defend workers' rights and advance the call for better conditions are now in line for a further degradation of their powers. Trade unions have always sought to resolve conflict as a first resort. They balance the scales of the unequal distribution of power in our labour market, and are a force for overwhelming good in eradicating the inequalities that are deeply embedded in our society.

This statutory instrument represents a tax on trade union activity. It will give rise to the perverse situation that a trade union will have to pay its own regulator to regulate its activities.

**Mark Garnier:** I would like to correct an earlier intervention. The tax actually works out at 1.5p per member per year. I apologise for getting my maths wrong earlier, Mr Davies. I was an investment banker for 17 years.

**Paula Barker:** I did not make any comment about how much the tax is; I simply said that it was a tax.

**Jessica Morden:** The proposals treat trade unions like profit-making companies. Political parties do not pay for the Electoral Commission, and charities do not pay for the Charity Commission, so why should trade unions pay for their regulator?

**Paula Barker:** My hon. Friend makes a really good point. No other organisation with social activities pays a levy of this sort, and it is wholly inappropriate for trade unions to do so.

This tax is unjustifiable, and is set to be grossly exaggerated by the certification officer's own distorted valuations. The trade union levy will become the double levy, going far and beyond covering the base operational costs—the TUC estimates £415,000 in the year 2022-23. Some £1.15 million to cover £700,000 worth of costs simply does not add up. I do not know how the Government can justify that.

The levy is a double tax, with little safeguard, scrutiny or accountability. Trade unions will have to pay for potentially vexatious investigations, initiated by friends like the "TaxAvoiders Alliance", as my right hon. Friend the Member for Warley called it, or the Institute of Economic Affairs. I know at first hand that our trade unions have a long-established reputation of complying with their legal regulations. I have been a member of the trade union movement for over 30 years. I was also an activist for over a decade before taking my place in this House—[*Interruption.*] Mr Davies, I think it would benefit Conservative Members to actually listen to what is being said.

**The Chair:** Order. I think the hon. Lady is absolutely right, to be perfectly honest. There are some very loud conversations taking place opposite the hon. Lady. It is distracting to me and completely disrespectful to her. Please can we listen to what she has to say? It is the least she can expect.

**Paula Barker:** Thank you, Mr Davies. We have to ask what could possibly be the motivation for such continued, sustained attacks from the Tory Government. The certification officer's annual report for 2020-21 shows that she dealt with 34 complaints last year. That is one for every 200,000 union members, and not a single enforcement was imposed. It does not take a genius to work out that political ideology rather than good governance is the driving force behind the trade union levy.

Not satisfied with stringent balloting laws, interference with trade union democracy and outlawing acts of solidarity, the Government are now trying to bring in a new tax with criminal-like fines to boot. It is worth reiterating what has been stated several times today by hon. Members: other issues stemming from the Trade Union Act 2016—most significantly electronic balloting—remain outstanding. Why is that? Up and down the country, working people are feeling the pinch. Inflation is at 5.4%. There are rising energy prices. This is a real cost of living crisis. What are the Government doing? They are here, saying that valuable parliamentary time is better spent in this Committee Room today than actually dealing with the cost-of-living crisis that is affecting so many working people in this country.

As the hon. Member for Glasgow South West said, we are waiting on the Government to bring an employment Bill. I want to place on record that I had a private

[Paula Barker]

Member's Bill, and the Minister was extremely generous with his time. We had very cordial and constructive conversations. We talked about the employment Bill coming to the Floor of the House. We talked about the fact that low-paid care workers, predominantly women, were not being paid what they are legally entitled to.

It is not about what these care workers could be paid or what the trade unions could negotiate, it is written in law that they should be paid travel time between visits. Are the Government addressing those sorts of issues? No, they are not. They are looking to bring back anti-trade union laws to this House. Quite frankly, I think that is morally reprehensible. My final question to the Government is: where does this all stop? Will the Government not stop until they finally outlaw the trade unions?

10.43 am

**Apsana Begum:** I would like to declare that I am a proud member of Unite the union and Unison. The regulations before us are punitive and cynical. They are an assault on the ability of working people to organise. That is what they are about. They are an attack on human rights. We must be clear that trade union rights are fundamental human rights. All of this is being done through secondary legislation. The Government's increasing use of such legislation raises important questions about the quality of the law itself—its clarity, accessibility and democratic legitimacy.

Beyond this small Committee Room off one of the richly decorated corridors of Parliament, outside in the real world we know that there is a real sense of dissatisfaction—even despair—in workplaces across Britain. Despite working longer hours than those in all other EU countries, except Greece and Austria, millions cannot afford to make ends meet. With soaring in-work poverty, many workers are already facing the brutality of the cost of living squeeze.

On top of that, there is an extra poignancy to the disturbing nature of today's regulations. I believe that it is particularly important to have in the forefront of our minds the enormous contributions that workers have made during the pandemic, despite the failures at all levels that have contributed to thousands of staff dying across all sections of various workforces. Now, the Government are trying to attack what is all too often their only means of challenging injustices. When thousands of workers were being pressured to return to their jobs even when they were still at risk of spreading covid-19, were being forced to work in unsafe conditions or were being fired and rehired on worse conditions, it was trade unions and trade unionists all over the country that stepped up. However, the Government's refusal properly to engage with trade unions over and over again during the covid-19 crisis has resulted in an astonishing litany of failures, including but definitely not limited to inconsistent and unclear regulations, the failure to ensure that all workers have access to PPE, the failure to protect workers from unsafe working conditions and the failure properly to support workers to prevent them from being pressured into difficult situations or being forced to decide between economic welfare and their health, given the inadequacy of sick pay.

I could go on, but I will conclude by saying that trade unionism is one of the most fundamental responses to the injustices that workers invariably face. It is the best way to see one's pay increase, to see a safer environment at work, to feel freer to express one's opinion and to have one's rights realised. I will always stand in solidarity with the trade union movement and oppose this Government's cynical attacks on working people through these instruments.

10.46 am

**Paul Scully:** I am grateful to the Committee for its consideration of both sets of regulations and for Members' valuable contributions to the debate. As I said in opening the debate, unions play a really important role in industrial relations and have a significant impact on our economy. That is why it is imperative that the public have confidence that they are being regulated effectively and fairly, and these reforms ensure just that.

It is a shame that there was a job lot of questions, because I now have eight minutes to answer all of those. Actually, we have just been re-rehearsing the arguments that were made on the overall premise, which was agreed in relation to the Trade Union Act itself. I will answer some of the questions. Clearly, the employment Bill, as the hon. Member for Glasgow South West knows, is primary legislation. It will be announced, when it comes forward in parliamentary time, in the Queen's Speech. This measure—what we are addressing today—is completing previous legislation and therefore does not have to go through the same process. The certification officer has received 62 complaints in the last few years. Not all of those had to be investigated, because they could be dismissed. Eight were upheld, and there was one enforcement notice. That is what comes through to—

**John Spellar** *rose*—

**Chris Stephens** *rose*—

**Paul Scully:** I will not give way, because unfortunately I now have so little time to respond that I need to plough on.

In terms of vexatious complaints by third parties, third parties will not have a right to make a formal complaint or have them investigated, but clearly the certification officer may consider their representations in deciding whether to launch an investigation. The certification officer, unlike with a complaint from a union member, will not be required to take action in response to a third party's concern. She will have the decision to do so. And the certification officer can conclude that she will take no action. That is why I do not believe that the arguments about the far right are relevant in this case.

In terms of the net budget that we have heard about, the £700,000, and where that money is coming from, that is the net budget, as I said. That is the money given by ACAS after accommodation, IT and a lot of the other fixed costs. It does equate currently to about £1 million; £1.15 million—that is the estimate according to our figures—is given to the certification officer, based on those current accounts. The certification officer can only charge for expenses incurred over a three-year

period. Clearly, there are tests that are required, as it is a public authority, to ensure that she has sight of them at a reasonable level.

The right hon. Member for Warley talked about how the levy is calculated and who will be paying. The total levy, which is clearly needed to pay the expenses for the financial year, will be worked out by the certification officer. Approximately 50% of her time and functions relate to all organisations. That is covered in the basic levy. Small organisations will be exempt when the basic levy exceeds 2.5% of their annual income. The remaining 50% of the certification officer's time is taken up by regulations that apply to non-federated trade unions. That will be divided out in the additional levy. The total shortfall in the amount collected by the basic and additional levies due to organisations that are exempt from paying will be divided equally among all higher-income organisations. That will support the enhanced levy. There are 21 employer associations and 40 non-federated trade unions that will be totally exempt from the levy, and 59 non-federated unions will be at that top level of the basic, categorised additional and enhanced levy.

We have talked about whether this is compliant with the European convention on human rights. Trade unions, as I have said, play an important role in our workplace and society. It is perfectly reasonable for the Government to legislate to ensure that they act democratically, transparently and within the rule of law. We are satisfied that regulation by the state, as set out in the Trade Union Act 2016, is entirely consistent with the ILO conventions and the European convention on human rights. This is not an attack on trade unions. This is not politicisation. No aspect of the decisions of the certification officer is subject to any pressure from a Minister of the Crown, and that will not change at all. This measure is simply modernising it.

My hon. Friend the Member for Wyre Forest asked what happens to the fines. They go into the Treasury's consolidated fund. They do not subsidise the certification officer, and neither will she be able to profit from them. That will keep things on a level playing field and she will fine people based only on what is in front of her. This provides no temptation, albeit as a public authority she should clearly not be going down that road anyway.

It has been said that a higher evidential standard should be applied to the higher fines. Clearly, the burden of proof standards are lower than those applied in criminal investigations, but this is a civil action, so they equate and are comparable to other civil payments.

Accusations have been made comparing the £1.15 million to the fraud that was talked about in the other place yesterday. No fraudulent claims for bounce back loans have been written off. In fact, nearly £2.2 billion-worth of potentially fraudulent claims for bounce back loans were stopped and recovered just last year.

We have also talked about valuing workers organising. Clearly, we on the Government side value workers organising. Indeed, we valued that in December 2019, especially when workers in Stoke organised to vote in droves for two fine Conservative Members.

**Jessica Morden:** Why is it that the Minister is introducing these statutory instruments today but has not responded to the e-balloting review?

**Paul Scully:** We are currently considering that review. In 2019, we were required by section 4 of the Trade Union Act 2016 to consult relevant organisations, including professionals from expert associations, to seek their advice and recommendations. We have done that and are now finalising our consideration of Sir Ken's recommendations. We will issue our response later this year.

The Trade Union Act contains a significant safeguard that requires the certification officer to aim to ensure that the total amount levied over a three-year period does not exceed expenses. We continue to believe that that will ensure that the levy remains predictable. The reforms will bring the certification officer in line with the powers and funding arrangements of comparable regulators. It is not a tax; it is, as we have heard, a proportionate measure to bring it in line with other regulators and to ensure that the regulated organisations have a proportionate levy. Indeed, many of them, as I have outlined, will be exempted entirely. The certification officer has always gone about their duties in an independent and impartial way, and that will continue.

The Government believe that there is a strong public interest in appropriately regulated trade unions. These reforms are about modernising the certification officer, to ensure that she can continue to deliver her duties. I commend both sets of regulations to the Committee.

*Question put.*

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

#### Division No. 1]

##### AYES

Buchan, Felicity	Gullis, Jonathan
Fell, Simon	Hollinrake, Kevin
Garnier, Mark	Mackinlay, Craig
Gideon, Jo	Scully, Paul
Green, Chris	Whittaker, Craig

##### NOES

Barker, Paula	Morden, Jessica
Begum, Apsana	Spellar, rh John
Duffield, Rosie	
Hussain, Imran	Stephens, Chris

*Question accordingly agreed to.*

*Resolved,*

That the Committee has considered the draft Trade Union (Levy Payable to the Certification Officer) Regulations 2022.

#### DRAFT TRADE UNION (POWER OF THE CERTIFICATION OFFICER TO IMPOSE FINANCIAL PENALTIES) REGULATIONS 2022

*Motion made, and Question put.*

That the Committee has considered the draft Trade Union (Power of the Certification Officer to Impose Financial Penalties) Regulations 2022.—(Paul Scully.)

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

#### Division No. 2]

##### AYES

Buchan, Felicity	Gullis, Jonathan
Fell, Simon	Hollinrake, Kevin
Garnier, Mark	Mackinlay, Craig
Gideon, Jo	Scully, Paul
Green, Chris	Whittaker, Craig

**NOES**

Barker, Paula  
Begum, Apsana  
Duffield, Rosie  
Hussain, Imran

Morden, Jessica  
Spellar, rh John  
Stephens, Chris

*Question accordingly agreed to.*

10.57 am

*Committee rose.*