

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

**DRAFT STRIKES (MINIMUM SERVICE LEVELS:
BORDER SECURITY) REGULATIONS 2023**

Monday 27 November 2023

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Friday 1 December 2023

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The Committee consisted of the following Members:

Chair: JULIE ELLIOTT

† Bradshaw, Mr Ben (<i>Exeter</i>) (Lab)	† Mann, Scott (<i>Lord Commissioner of His Majesty's Treasury</i>)
† Daly, James (<i>Bury North</i>) (Con)	† Morrissey, Joy (<i>Lord Commissioner of His Majesty's Treasury</i>)
† Fletcher, Colleen (<i>Coventry North East</i>) (Lab)	† Percy, Andrew (<i>Brigg and Goole</i>) (Con)
† Fletcher, Katherine (<i>South Ribble</i>) (Con)	† Thewliss, Alison (<i>Glasgow Central</i>) (SNP)
† Glindon, Mary (<i>North Tyneside</i>) (Lab)	† Timms, Sir Stephen (<i>East Ham</i>) (Lab)
† Hammond, Stephen (<i>Wimbledon</i>) (Con)	Tomlinson, Justin (<i>North Swindon</i>) (Con)
† Hodgson, Mrs Sharon (<i>Washington and Sunderland West</i>) (Lab)	† Villiers, Theresa (<i>Chipping Barnet</i>) (Con)
† Jenrick, Robert (<i>Minister for Immigration</i>)	Kevin Maddison, <i>Committee Clerk</i>
† Johnson, Gareth (<i>Dartford</i>) (Con)	† attended the Committee
† Kinnock, Stephen (<i>Aberavon</i>) (Lab)	

The following also attended, pursuant to Standing Order No. 118(2):

Butler, Dawn (*Brent Central*) (Lab)
 Cherry, Joanna (*Edinburgh South West*) (SNP)
 Johnson, Kim (*Liverpool, Riverside*) (Lab)
 McDonnell, John (*Hayes and Harlington*) (Lab)
 Morris, Grahame (*Easington*) (Lab)

Second Delegated Legislation Committee

Monday 27 November 2023

[JULIE ELLIOTT *in the Chair*]

Draft Strikes (Minimum Service Levels: Border Security) Regulations 2023

4.30 pm

The Minister for Immigration (Robert Jenrick): I beg to move,

That the Committee has considered the draft Strikes (Minimum Service Levels: Border Security) Regulations 2023.

It is a pleasure, as always, to serve under your chairmanship, Ms Elliott. I welcome the opportunity to discuss these important draft regulations, which were laid before the House on 7 November.

The draft regulations will introduce new powers for the Secretary of State to create regulations that will prescribe minimum levels of service for certain sectors during strike action. Employers may issue a work notice in order to deliver those minimum service levels. The powers are available to the Secretary of State across a range of sectors, including health, education, transport, fire and rescue services, and border security.

The ability of staff to take strike action is an integral part of industrial relations. The security of our borders, however, is something that we cannot and will not compromise. To maintain services at our borders is essential to our security and prosperity as a nation. We depend on our skilled professionals to ensure that, 24 hours a day, 365 days a year, our borders are strong and effective.

We must also consider the disruption caused to and costs incurred by passengers and businesses, who expect essential services they pay for to be there when they need them. We also have to consider the impact on those called in to cover for staff going on strike, including on members of our armed forces who, commendably, have stepped up to fill vital roles during recent industrial action. It would be irresponsible to rely on such short-term solutions indefinitely to protect our national security.

The Government assess that, in the event of strike action by those charged with securing our borders, there are significant risks to the safety of our communities. Criminals might seek to take advantage of strike action to enter our country or to move illicit commodities through our ports and airports. People smugglers might seek to exploit gaps in our patrol activity to land illegal migrants on our shores. For those reasons, the Government decided to include border security in the scope of the Strikes (Minimum Service Levels) Act 2023.

These draft border security regulations have two essential purposes: first, to make provision for minimum service levels during strikes regarding relevant border security services; and, secondly, to define those relevant border services. The regulations set out that border security services should be provided at a level that means they are “no less effective than they would be if the strike were not taking place”.

The draft regulations set out that passport services such as those that “are necessary in the interests of national security” will be

“provided as they would be if the strike were not taking place on that day.”

They also define the relevant border services that must be provided as

“the examination of persons arriving in or leaving the United Kingdom...the examination of goods...imported to or exported from the United Kingdom, or...entered for exportation or brought to any place in the United Kingdom for exportation...the patrol of ports, and the sea and other waters within the seaward limits of the territorial sea adjacent to the United Kingdom...the collection and dissemination of intelligence for the purposes of the services...the direction and control of”

those engaged in providing those services; and such passport services as may be necessary for national security reasons.

Once the employer has decided to engage the new provisions, the Act enables them to issue work notices to trade unions during strike action. A work notice is a notice given in writing that levels of service as set out in the minimum service regulations are to apply.

Grahame Morris (Easington) (Lab): Will the Minister give way?

Robert Jenrick: If I may finish the next paragraph, I will certainly come back to the hon. Member.

The trade union must then take reasonable steps to ensure that its members do not take strike action. It is important to note that the Act forbids an employer, when setting a work notice, from having regard to whether an employee is a member of trade union, has taken part in trade union activities or has used its services in the past. If a union fails to take reasonable steps, it may lose its legal protection from damages, claims and injunctions. The Department for Business and Trade will bring forward separate statutory guidance on “reasonable steps”.

Grahame Morris: The Minister said that this is a significant piece of legislation intended not to outlaw strikes, but to ensure minimum service levels. Quite a number of people disagree with the Government’s intent and whether the legislation is the appropriate vehicle to achieve that, but I am asking for a point of clarification on the draft regulations. Beforehand, I was looking through the impact assessment and our obligations as a country under international law. Concerns have been expressed by the trade unions—I should add that I am a member of the PCS parliamentary group, so I declare an interest—to suggest that this legislation is in breach of article 11 of the European convention on human rights; article 3 of the freedom of association and protection of the right to organise convention No 87 of the International Labour Organisation; article 8 of the international covenant on economic, social and cultural rights; and paragraph 4 of article 6 of the European social charter, which came into force in the year of my birth, 1961. I am interested in the Minister’s view of whether we are in breach of international law.

Robert Jenrick: We would not introduce the draft regulations if we believed that we were in contravention of our legal or international obligations. We do not

believe that to be the case. It is worth stating that restrictions on the right to strike are common across Europe and signatory countries to the European convention on human rights. Minimum service levels exist in a range of countries in the EU and globally—

Joanna Cherry (Edinburgh South West) (SNP): On that point, will the Minister give way?

Robert Jenrick: If I can finish the point, I will come back to the hon. and learned Lady.

Minimum service levels are a legitimate mechanism to implement necessary restrictions to balance the ability to strike with the needs of the general public. I could give examples of countries that have taken similar steps in recent years such as Portugal, France, Spain and others.

The second point to make in answer to the hon. Member for Easington is that nothing in the draft regulations will prohibit the ability of those working in border security to go on strike. The regulations will limit it, and ensure that a minimum level of service can be conducted. There is no general prohibition on the right to strike; we have said, however, that it is absolutely in the interests of the general public—for the free flow of goods and services through a port—and of national security that at all times we maintain a minimum level of service.

As the Minister responsible for border security during recent strike action, I thought it was extremely important to the country that we kept each and every one of our ports open and that we did not compromise national security. That is why I worked closely with the Secretary of State for Defence to ensure that military personnel were available at our ports. They did a fantastic job of achieving that, but it is not a sensible, long-term solution to ask members of our armed forces to step in on such occasions to protect our border security. It is right to put a sustainable solution in place.

Joanna Cherry: To take the Minister back to the legal point made by the hon. Member for Easington, he will recall that the Joint Committee on Human Rights produced a report on the Act under which the draft regulations are being made. In an analysis of the law, we in the Committee pointed out that the European Court of Human Rights—in a case, somewhat ironically, against Russia—was clear that article 11 protects the right to strike. The Minister is perfectly right to say that other countries have minimum service-level laws, but they have different legal arrangements from us, with many providing a constitutional right to strike. The real question for the Government should not be whether other countries have minimum service-level regulations, but whether the United Kingdom Government are meeting their human rights requirements under article 11 of the ECHR.

Robert Jenrick: The hon. and learned Lady knows that article 11 is a qualified right. We strongly believe that, although there must be a right to strike, it must be balanced—qualified—by the need to protect the general public and ensure national security, and that is the crux of the argument. It is also worth saying that we will

introduce compensatory measures, in the form of non-binding conciliation, to compensate the personnel who will be affected for interfering with that qualified right. Taken together, we believe that all of that satisfies our legal obligations.

The regulations stipulate that border security services can be provided only by those who already provide border security services or the relevant passport services required in the interests of national security, which means we will no longer need to rely on outside resource to provide cover. As I have said in answer to interventions, in the past we have used civil servants working elsewhere and, above all, members of the armed forces. We acknowledge and appreciate the efforts of colleagues who provided that cover, but we also recognise that that is not a long-term solution.

Grahame Morris: Can I draw the Minister's attention to his comments about the use of the armed forces? I fully understand what was done in the pre-Christmas period last year because of the enormous queues that built up at airports and ports, but I have been told anecdotally that, because members of the armed forces could not operate the technology—they did not have any choice about this, and they were instructed to do it—they were simply waving people through. Anybody could have come in—people smugglers or anyone. If that is the last resort, surely the best solution is to negotiate with the trade unions to ensure that we have the right number of trained staff at our ports and airports and that an efficient service is operating for passengers and in the interests of national security.

Robert Jenrick: First, I strongly refute what the hon. Gentleman has just described, which does a disservice to those members of the armed forces who served throughout the year and particularly over Christmas. I, for one, met members of the armed forces last Christmas Eve and saw the work they were doing; they gave up their Christmas to serve the general public, and I do not want to see that happen again in future.

However, the hon. Gentleman's point is valid in so far as it is obviously preferable to have properly trained individuals doing this task, which is precisely why we need these minimum service levels. It is not just about operating the primary control points at our airports, but about ensuring that we have proper counter-terrorism responses; that all the goods that enter and exit our country are properly checked, so that we have counter-narcotics operations in place; and that we have the resources in place in the short straits, so that if there are issues with small boat arrivals, lives can be saved and individuals can be met appropriately upon arrival in the UK. This could not be a more important subject, which is why we need the proper processes in place, and it is only by maintaining a minimum service level among permanent personnel that we can achieve that on behalf of the public.

To conclude, the public rightly expect us to ensure there is a fair balance between maintaining a secure border and the ability of workers to strike. These new border security minimum service levels will ensure that we have that balance between delivering the best possible service to the travelling public, maintaining a secure

[Robert Jenrick]

border and the ability of workers to strike, as is already the case in a range of countries in Europe and beyond. I commend the regulations to the Committee.

4.43 pm

Stephen Kinnock (Aberavon) (Lab): As always, it is a pleasure to serve under your chairship, Ms Elliott.

The ink is barely dry on the primary legislation under which these regulations are being made, yet the Government are already telling us quite a different story from the one they set out in the arguments made during the passage of the Bill—now an Act—through Parliament. As Members will recall, one of the Bill's primary stated purposes was to give Ministers the power to define, in secondary legislation such as this, the scope of the definition of the relevant services covered and the particular minimum service levels that will apply to the services in question.

On the first issue, we were led to believe during the Bill's passage that the only services for which the Home Office is responsible that were likely to be covered by the legislation were those relating to border security—namely, roles carried out by Border Force employees. The regulations go much further than that. Their scope will also include some Passport Office employees, but we have no idea how many or which roles, because the Government are not saying. The impact assessment tells us only that what is likely to be a small number of employees of HM Passport Office will be covered. This apparently last-minute addition to the draft regulations is so poorly defined that it is impossible to scrutinise, and the Opposition will never accept that.

In the absence of the key data from the impact assessment, perhaps the Minister could tell us now exactly—or even approximately—how many HMPO staff are likely to be required to meet the service levels the Government intend to impose, and exactly which roles in HMPO are likely to be included. If he cannot answer those questions, would he accept that bringing that agency into the scope of the new minimum service levels today is at best premature and at worst impossible to justify.

These questions matter because the consultation process that the Act requires, as part of the process of setting new minimum service levels, made no mention of any prospect that HMPO staff would be included. In a foreword to the consultation document, published over the summer, the previous Home Secretary suggested that other services under her remit could potentially be included alongside Border Force within the scope of the new rules. She asked for views from the stakeholders consulted as to whether any additional services should be included and if so, which ones. According to the Home Office, the majority of the responses it received said that only Border Force staff should be subject to minimum service levels among the Department's employees. There were no suggestions from any stakeholders that Passport Office staff should be included.

The first and most obvious question is when the decision was made. Beyond that, can the Minister explain the rationale for HMPO to be brought into scope, and can he explain why his Department failed at any stage to consult the trade unions and employees who stand to be significantly affected by the regulations?

More broadly, some of the most obvious questions and concerns are conspicuous by their absence from the Government's impact assessment. In other words, it seems that the Home Office is simply ignoring the questions that it does not wish to answer. For instance, have the Government made any assessment of how the introduction of the proposed minimum service levels might affect the ability of both Border Force and HMPO to recruit and retain the qualified and experienced staff that they need? If so, information on any such assessment is not included in the impact assessment. Why is that?

I am sure the Minister is aware of statements that several trade unions have made to the effect that they may adopt a strategy of deliberate non-co-operation or non-compliance with the proposed changes. With those unions responding with understandable anger to the changes under discussion, does the Minister accept that the Government's heavy-handed approach to setting the minimum service levels we are discussing—and, particularly, his Department's wilful refusal to carry out the most cursory of consultation processes with its own employees—risk seriously undermining his ability to bring union members to the table for negotiations in good faith on any potential disputes in the future? In so doing, have not the Government made even more likely the kind of industrial unrest that the legislation is supposed to be aimed at preventing? In light of our profound concerns about the regulations, I confirm that Labour will seek a Division this evening and will vote against them.

4.49 pm

Alison Thewliss (Glasgow Central) (SNP): It is a pleasure to see you in the Chair, Ms Elliott.

The SNP will likewise oppose the regulations. We are very concerned about their impact on people's fundamental right to withdraw their labour. Strikes, by their very nature, are supposed to be disruptive. If the Government are saying that Border Force should be no less effective than if a strike were not taking place, they would undermine the very point of a strike. The very point is that people should know that staff have withdrawn their labour, because they are concerned about their terms and conditions or the way their employer—in this case, the Government—are treating them.

Gareth Johnson (Dartford) (Con): The hon. Lady is right that strikes are designed to be disruptive—that is their purpose—but they are not designed to be dangerous to the public. Strikes by Border Force are dangerous to the UK public, and that is the reason behind the legislation.

Alison Thewliss: The point the hon. Gentleman makes would be more correct if the Government were not determined to keep ports and airports open during strike action. That is a choice they have made. They want ports and airports to stay open, therefore they want a minimum service level. If the Government had said, "If you withdraw your labour, we will only be able to open the airports to an extent", people would notice that. We notice when French air traffic controllers go on strike because it has that effect. It causes disruption and people realise there is an issue. If we have a service that is essentially no different when a strike takes place, the very nature of strike action is undermined.

The TUC has described the regulations as "a draconian piece of legislation that attacks individuals' fundamental rights while doing nothing to improve industrial 'relations'".

I remind the Minister that strikes have been more common under this Government because industrial relations have not been in a great place. That is why they are cracking down on people who wish to withdraw their labour and go on strike. It is a punishment for those people for having the temerity to exercise their fundamental rights.

I would also be very interested to know how the regulations will affect the Passport Office. I have a Passport Office in my constituency. I am not clear from the regulations how many people who work in the Passport Office in Glasgow will be affected because they are regarded as “mission critical” for national security. That is not defined in the regulations. The Government could say that everyone who works in the Passport Office is subject to the legislation, or perhaps it would be just a few people working on very sensitive passports. They have not defined that at all, and that is worrying for those who work in the Passport Office, because they do not know what their rights will be.

The issue is not just about security, as the hon. Member for Dartford suggests. The Government have talked about the free flow of goods. That is not national security: the free flow of goods is about commerce. Which is it? The Minister is disingenuous if he says it is only about national security.

On the consultation, I was surprised that we have not had a list of respondents. The consultation was open for just over a month only, from 11 August to 21 September, with 69 respondents, including employees of Border Force, industry partners and members of the public. I would be interested to know the exact mix. A further nine written responses were received from organisations such as trade unions, port operators and airlines. Again, it would be interesting to hear more about those responses. Is there a reason why those were not published ahead of the proceedings today? It would be interesting to learn about the balance of the responses. Were they from people saying they wanted their right to strike, or from people saying that nobody should ever be allowed to strike? We cannot tell from what has been provided to us.

The impact assessment contains a list of risks associated with the policy. It will have a disproportionate impact on some smaller ports and airports—mostly found in Scotland. Page 29 states:

“As Border Force staff numbers based at some smaller ports and airports are very low, Option 2”—

the Government’s preferred option—

“could mean that staff based at these locations are more likely to receive work notices, thus they are less likely to be able to undertake strike action, when compared with other staff.”

That seems to me to be discrimination: some people are not able to exercise their rights because they are seen as more critical in their roles than somebody at a much larger facility, perhaps. Take a small airport in Scotland compared with Heathrow. That is a huge difference in the number of people able to effectively exercise their right to strike.

The impact assessment goes on to say:

“Similarly, the requirement to maintain particular Border Force security functions during strike action could mean that officers trained in critical functions are less likely to be able to undertake strike action than those who have not taken the training. This IA has not assessed the impact...on staff willingness to be located at smaller Border Force outposts or to undergo the training necessary to carry out critical border security functions.”

Again, this becomes an issue of recruitment and retention in those specialist roles and those smaller ports right across these islands. What assessment has the Minister made of the impact that might have on recruitment and retention in these roles and those locations? If there are difficulties in recruiting at those locations, that is surely much more important to national security than the sledgehammer to crack a nut that the Government are bringing forward this evening.

My hon. and learned Friend the Member for Edinburgh South West referenced reports from the Joint Committee on Human Rights. The Government like to bandy about that other European countries do similar things, but they are not comparing like with like. What is being removed and undermined in this legislation is the right to strike, which is protected in some countries under their legislation. We are starting from a very different point and on a very different basis. This country does not have a formalised constitution. I argue very much that in a country that wishes to be independent and to have a formalised constitution these rights should be enshrined and protected and that the right to strike should not be undermined by a Government without a mandate to do so.

4.56 pm

Grahame Morris: I am grateful for this opportunity to raise some points about this important legislation. As I mentioned earlier, I am a member of the PCS parliamentary group—and virtually every other trade union group, as a matter of fact.

I want to place on the record the concerns of PCS and the broader trade union movement about the implications of this legislation, which threatens to strip thousands of Border Force workers—and, we now learn, an as yet undetermined number of Passport Office workers—of their fundamental right to strike. That right should be protected not only by our own domestic laws but by international agreements. I raised that point earlier with the Minister, and it has been reinforced by the hon. and learned Member for Edinburgh South West and the hon. Member for Glasgow Central.

The work undertaken by Border Force and the Passport Office is undeniably crucial, but a substantial body of opinion in the trade unions and beyond believes that this legislation is contrary to international law. It is both dangerous and reckless. We find ourselves at a crossroads. By introducing such a measure, our Government seem to be turning a blind eye to our international commitments on the right to strike.

Fundamentally, it is imperative to acknowledge that the right to strike is enshrined in the Human Rights Act 1998, article 11 of the European convention on human rights, the International Labour Organization’s convention 87, and article 6, clause 4 of the European social charter. By pushing ahead with the legislation, the Government are unfortunately disregarding those vital international agreements.

I want to take issue with the Minister’s comments about what was happening in Europe and their legislation to restrict strikes. I happen to know from personal experience that French rail workers are part of an agreement; they have a different system of sectoral agreements. They staged a strike that had a paralysing effect on Eurostar services at the weekend, despite the

[Grahame Morris]

legislation in place. The solution, I suggest, is not draconian legislation but negotiation and discussion to find an amicable solution.

We should not forget that the UK already has some of the strictest anti-trade-union laws in Europe. With the introduction of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014—I believe that you served on the Bill Committee, Ms Elliott—the Trade Union Act 2016, and regulations permitting the recruitment of agency workers during strikes, the Government have already placed significant restrictions on workers' rights and have significant powers in their toolbox. This year, not surprisingly, we have witnessed widespread industrial action because of the cost of living crisis—not because people have been staring at a full moon. Ordinary working people are really struggling to make ends meet and to pay increased fuel and electricity bills. The price of butter and basic commodities, as well as rents, have increased, which has prompted workers across the economy, in both the public and private sectors, to go on strike.

The regulations, however, appear to be a crude attempt to undermine the effectiveness of trade unions and limit the ability of Border Force and Passport Office workers to take any effective industrial action. They could even lead to the absurd position of trade unions and their officials having to tell members who voted to withdraw their labour that they must come in on strike days.

Make no mistake: this is an authoritarian crackdown on human rights completely alien to progressive European rights and the notion of freedom of expression. If the regulations are really about service to the public they should address some of the more fundamental issues such as understaffing on non-strike days. The undeniable truth is that workers in both Border Force and the Passport Office play a vital role in the functioning of the United Kingdom and indeed, as Government Members have pointed out, in relation to national security. Rather than restricting their rights, the Government should consider proper remuneration as a means to recognise and appreciate their contributions.

The draft statutory instrument proposed by the Government, indicating that border services must remain as effective on strike days as on non-strike days, is not only restrictive but raises a legal question about the proportionality of such a measure. The impact assessment on border security minimum service levels warns that some people's right to strike will ultimately be affected. Border Force staff numbers based at smaller ports and airports, as the hon. Member for Glasgow Central indicated, especially in Scotland, are very low, so staff based at these locations could be more likely to receive work notices and less likely to be able to undertake strike action compared with other staff.

There is an impact on those who have caring responsibilities and those who have disabled relatives. There are also issues of religion. Those are protected characteristics that a good employer would recognise, even on non-strike days, and seek to accommodate in staff rotas. The Government have estimated that 70% to 75% of staff at Border Force will be required to work on a strike day, which is three out of four workers. The Minister must explain why that level of minimum service is proportionate and why it does not amount to a complete ban on the right to strike.

The regulations on border security present the most restrictive minimum service levels to date, even when compared with other sectors mentioned by the Minister. This is not just an attack on the rights of workers but a departure from the progressive principles of European rights and freedom of expression. The Government and the Minister must provide a clear and proportionate justification for the measures, keeping in mind their obligations under international law and the rights of our citizens.

5.5 pm

Joanna Cherry: It is a pleasure to serve under your chairpersonship, Ms Elliott, and a particular pleasure to follow the speech of the hon. Member for Easington.

I am grateful for the opportunity to make a few remarks about the regulations in my capacity as acting Chair of the Joint Committee on Human Rights. Back in March, we published a legislative scrutiny report on the Strikes (Minimum Service Levels) Bill, as it then was, and raised a number of serious concerns about the Bill's compatibility with the United Kingdom's obligations under international law, including in particular the right to freedom of assembly and association guaranteed by article 11 of the European convention on human rights, which of course is part of our domestic law by virtue of the Human Rights Act. As I said in my intervention on the Minister, although article 11 does not expressly refer to the right to strike, the European Court of Human Rights has interpreted it as covering the taking of strike action, for example in the case of *Ognevenko v. Russia*.

During the passage of the Bill, there were many references to arrangements in other European countries, as there have been today. To my knowledge, no European countries apart from Russia and Hungary impose minimum service levels from the top down, without negotiation or arbitration, in this way. I suggest that that is not company that the United Kingdom Government should wish to keep.

The draft regulations continue to cause the Joint Committee concern. We need to remember that, as we discuss in our report, the consequences of employees failing to work when required to do so by employers that impose minimum service levels through work notices, and of trade unions not taking reasonable steps to ensure that members comply with the work notices, include a loss of automatic protection against dismissal for participating in a strike. That is a major consequence for any individual worker, particularly in today's climate, which was so ably described by the Member for Easington. In our original report, we expressed concern that such severe consequences may amount to a disproportionate interference with article 11. Having considered the draft regulations, we remain of the view that they could impose a disproportionate interference with article 11.

At the end of last week, in my capacity as acting Chair, I wrote to the Secretary of State for Business and Trade to raise concerns about the border security regulations and the other regulations being debated today. In particular, the border security regulations permit an employer to serve a work notice that requires border services to be "no less effective" on a strike day

"than they would be if the strike were not taking place".

That kind of defeats the purpose of holding a strike, and therefore arguably completely undermines the right to strike. The Joint Committee on Human Rights recognises the crucial service carried out by border service staff and applauds them for it. But the proposed minimum service level raises a question not only about the ability of many individual employees to participate in a strike, but about the extent to which the strike could serve any purpose at all. As we have heard, particular concerns arise in respect of small ports and airports, where “no less effective” services could result in staff teams being effectively prevented from striking at all. As my hon. Friend the Member for Glasgow Central said, that would have a particular impact in Scotland, which has a number small ports and smaller airports.

The Trades Union Congress is rightly very concerned about the implications of both the Act and the draft regulations. I met with them a couple of weeks ago, after the regulations were laid, to discuss its particular concerns about the border security regulations and the other regulations. The TUC made the point that, in contrast to the other regulations, the border security regulations are very short, but they are very strict. They will mean that probably only one in four workers in this field will be able to go on strike and that services must remain as they are on non-strike days.

The regulations set out that border security services should be provided at a level that means they are no less effective. That will include the examination of people and goods, the patrolling of ports and airports, and the collection and dissemination of intelligence. It goes beyond security issues.

Grahame Morris: I am not a barrister or a lawyer, but I do think this is a really important point. Is there an analogy between reasonableness and proportionality? Would it be reasonable to have an independent arbiter of what constitutes a reasonable proportion of the workforce, rather than a Minister?

Joanna Cherry: That is what happens in many other European countries. Of course, any interference with the article 11 rights has to be proportionate, and given the extent of these regulations, there is a very real argument as to whether the interference is proportionate. I believe that it is not.

I note—and the TUC drew to my attention—that the Government estimate that the regulations will mean staffing levels of around 70-75% of Border Force. Only one out of four people working for Border Force will be able to exercise their right to strike; that strikes me as rather disproportionate. As my hon. Friend the Member for Glasgow Central said, this is all because the Government say

“all ports and airports should remain open on a strike day.”

As I understand it from the TUC, the Government are committing that they will agree to engage in conciliation for national disputes in relation to border security. Where the relevant unions agree, that would be helpful, but it is not written into the regulations. I wonder why that is not written into them; will the Minister address that?

The impact assessment for the border security minimum service levels warns, not surprisingly, that some people’s rights to strike will be effected. It says:

“As Border Force staff numbers based at some smaller ports and airports are very low, Option 2”

—the one the Government opted for—

“could mean that staff based at these locations are more likely to receive work notices, thus they are less likely to be able to undertake strike action, when compared with other staff. Similarly, the requirement to maintain particular border security functions during strike action could mean that officers trained in critical functions are less likely to be able to undertake strike action than those who have not taken the training.”

The point the TUC made to me is that it is unacceptable that such a profound effect on a fundamental right—that of the right to strike—should not be subject to a more detailed analysis than it has been in the impact assessment.

I have already raised a couple of questions that I want the Minister to address, and I will add two more. The Minister said in response to my earlier intervention about the law that the Government are satisfied that border security workers, particularly those at small ports and airports, will be able to exercise their article 11 rights if these regulations are passed, and the minimum service levels contained in them are imposed. Having regard to the points I have made about the numbers of people who would be prevented from exercising their right to strike—it looks like 75%, and indeed 100% at small ports and airports—will the Minister explain—

Katherine Fletcher (South Ribble) (Con): Will the hon. and learned Lady give way?

Joanna Cherry: I will just finish the point.

Will the Minister explain how he is satisfied that preventing 75% of workers across the force, and all workers in certain ports and airports, from striking is a proportionate interference with the right to strike?

Katherine Fletcher: I am listening carefully to the hon. and learned Lady’s exposition on the rights of the workers of Border Force. I am just wondering where she thinks the balance is with the right of the British public to be safe. We know that we have some problems with criminality in the UK. Perhaps, for example, a drug dealer realises Border Force is on strike, and he thinks, “Fantastic, I will go to that small port and put 20 kg of children-killing heroin through it.” How can we find the balance of everybody’s rights?

Joanna Cherry: It is not for me to say what the balance should be; that is for the law. For the time being—thank goodness—this country is a signatory to the European convention on human rights. For the time being—thank goodness—we still have the Human Rights Act. The jurisprudence of the Court is pretty clear. As I said, it is normally countries such as Russia and Hungary that are taken to the European Court of Human Rights, not this country. We actually have a pretty good record in the European Court of Human Rights—*[Interruption.]* Let me just expand on this point. That will not continue to be the case if we pass these regulations.

It is a question of proportionality. The right to strike is not absolute; it can be restricted in accordance with law, but it has to be a proportionate interference. My point—

Katherine Fletcher: What about the rights of people in this country?

Joanna Cherry: The hon. Lady is going on about the rights of the public. Yes, of course the public have rights. The public have the same rights as the workers—in fact, many members of the public are workers. There is

[Joanna Cherry]

not some sort of strange grouping called “trade union members” and “workers”, and then the “public”. Many members of the public in this country are still trade union members. Many of my constituents are trade union members. Many of the hon. Lady’s constituents will be trade union members. These rights are rights of members of the public.

I think the hon. Lady is talking about the rights of the service users. Yes, the law does balance the rights, but it has to be a proportionate interference. My point is that when some workers are being prevented from striking altogether, and when in other cases 75% of the workforce are being prevented from striking, that is not a proportionate interference. We will not see such interference in other European democracies unless we care to dignify countries like Russia and Hungary with the word democracy—I do not think many of us would. That is the company we will be keeping. This is draconian. To suggest otherwise is simply, factually incorrect.

Grahame Morris: The hon. and learned Lady is making an excellent point, and making it far better than I could. I would like to reinforce the point. Article 11 states:

“Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”

The right for trade unions to take industrial action is further enshrined in the International Labour Organisation’s convention 87 and article 6(4) of the European social charter. The legislation seems to disregard those legal obligations.

Joanna Cherry: I am grateful to the hon. Gentleman for that intervention—[*Interruption.*]

The Chair: Can we keep the volume down? I am struggling to hear the contributions.

Joanna Cherry: Thank you, Ms Elliott.

Article 11 goes on to say that there can be an interference with that right only in accordance with law in a way that is “proportionate”. The whole point that I am trying to make is that this is not a proportionate interference with the right to strike. I am not saying that there should not be minimum service levels, and there are minimum service levels across Europe. We already have minimum service levels imposed by sectoral agreements in various areas of public service across the United Kingdom. We should be trying to reach those minimum service levels by agreement, and where agreement cannot be reached between the unions and the employers, then there should be arbitration. That is the proportionate way in which to do it.

I would like to wind up. If anyone is interested in the balance of rights, we addressed it in some detail in the Joint Committee on Human Rights report published earlier this year. First, how is the Minister satisfied that the regulations are a proportionate interference with the right to strike, when in some cases they will prevent all workers from striking, and in some cases it will be 75%? Secondly, what assessment have the Government made of the extent to which effective strike action is still possible in cases where services must be no less effective

than if no strike were taking place? On what basis does the Government conclude that restricting strike action in this way amounts to a proportionate interference with article 11, both generally and specifically for those individuals identified in a work notice?

5.18 pm

John McDonnell (Hayes and Harlington) (Lab): I declare the same interest as my hon. Friend the Member for Easington, which is that I am a member of the PCS parliamentary group. Just so that everyone is absolutely clear and for the record, PCS is not affiliated with the Labour Party—there is no financial relationship to the Labour Party or any of us. We are in the group because we receive information from the union about what is happening on the ground, and it helps us to communicate in debates.

I have a particular interest in being a member of the PCS parliamentary group because Heathrow is in my constituency, and quite a sizeable number of the people employed by Border Force are my constituents. If Members present from all parties have the opportunity, it would be worth their sitting down and talking to some of those people. It is important that we recognise who we are dealing with here: trained professionals who understand that the role they play is important in protecting this country. They do so out of professional commitment and a deep sense of patriotism. In some instances, they put themselves at considerable risk, particularly in dealing with the drugs issues raised by Members on the Government side. They do not go on strike lightly. I find it ironic that emphasis is being put on the importance of the role that they play, yet when it comes to their wage negotiations that does not seem to be reflected in the offers they have had. That is why they have taken industrial action: because they could not find any other route to secure a wage settlement that in some way meets the challenges they face in the cost of living crisis.

My constituents live in an area where it is very difficult for most of them to afford housing, or even get on to the housing ladder, because of the increase in the valuation of properties. We must be honest and straight with people when we legislate. The reality is that three quarters of my constituents will not have the right to strike, if the level is 75%. That is the first thing. The other quarter will not have the right to have an effective strike, so in effect we are removing the right to strike from the bulk of them, if not all of them. Regulation 3(1) states that the level of service in relation to

“strikes as respects the border services is that, on each day of the strike, the border services are no less effective than they would be if the strike were not taking place”.

That undermines the whole effectiveness of industrial action and why people take it.

In addition, if Members look at the procedures set out in the SI and the draft guidance, they will see that so far there is no specific reference to the conciliation offered by the Minister. Not to bring forward this SI in particular alongside conciliation is almost an act of provocation, because it gives no succour to people who could argue, “At least we have something to fall back on to resolve our disputes.” That is not the case here. It places an onus on the trade unions themselves. The employer gives a week’s notice under the SI and can, up

to the fourth day, change that notice and include different members of staff in it. The onus then falls on the trade union, not the employer, to contact them.

It is then up to the trade union to send out the letter—the draft letter is set out in the guidance for unions to use. Although it is only a guidance letter, we know from past experience that when there is interference with an organisation and the way in which it communicates with its members, it is often used in legal actions by others if people do not follow the exact wording. In addition, there is even guidance on how pickets are to be supervised. That goes well beyond what was discussed in the debate about the main legislation. The SI goes well beyond the main thrust of that debate and the legislation itself.

We need to get into the real world here. Imposing legislation like this undermines the industrial relations climate and worsens it significantly, particularly among this group of people, who feel they have done everything they possibly can. They have been forced into industrial action, they have a settlement, and now they just want to get on with their job. If this is enforced, it will undermine the morale of those staff. Do not think that people do not find other ways of taking action. There are real warnings from most of the consultations going on: if morale collapses and people get fed up, what do they do? They do not co-operate in all sorts of different, informal ways. Sickness levels will rise. People will find a way of protesting if they feel that they are being treated badly. That is the reality. It happens in every workforce if people think that the managers or employers are not treating them properly.

My big fear is that if the SI is implemented, when the first trade unionist who is identified and told that they must go into work says no, it will act as a spark to a tinderbox across the industrial relations scene in our country. That is not what we want, but the first time a trade unionist or trade union is fined, it will be seen as an act of provocation. I do not think that is the sort of society we want to construct. We need to try to get back to the process of negotiations, agreements and, accepting that there will be differences, finding a route to resolve them. Legislating people out of the right to take industrial action will result not only in inevitable legal challenges but, as we have seen historically, in wildcat action that is well beyond the control of any trade union. No union would seek to control its members in that way.

I say to the Government: be careful what you wish for. This is a hugely retrograde step and I think, knowing the workforce in the way I do, that it will undermine the service that the Government seek and that we all want the workforce to provide. It will impact on recruitment and the retention of existing staff, and on the overall service. I oppose this statutory instrument totally, and I also oppose the general thrust of the way the Government are developing industrial relations policy. I hope that wiser heads prevail in the Government. I hope they step back and postpone any form of implementation of the regulations, even if they go through, so that there are no provocative Government actions that impose on these professionals a duty or responsibility that makes matters worse rather than improves them.

5.26 pm

Robert Jenrick: I will try to respond swiftly. I will first make a general point and will then come to some of the specific questions that were asked.

The general point is this. In some of the speeches we have just heard, although not all, there seemed to be a casual disregard for some of the issues we are dealing with. We are talking about how to maintain our national security and stop terrorists who, if allowed to enter our country, might pose a serious and credible risk to our fellow citizens. We are talking about how we ensure that, even on a strike day, we intercept sizeable quantities of drugs, weapons and contraband. We are talking about how we ensure safety at sea. We are talking about ensuring that migrants crossing in small boats do not drown and that when they arrive at Western Jet Foil and Manston, there are Border Force officers to do national security checks on them to protect the general public.

Even though it may not seem important to some, we are also talking about the queues at our airports, which all our constituents think are extremely important. Since I have been a Minister, few things have filled my mailbag as much as out-of-control queues at airports ruining people's holidays and trips abroad, and making it difficult to do business travel.

What we are talking about today is not some incidental policy: it is absolutely critical to our country. As the Minister responsible for combating the strike action over the past year, I took the view, along with the Prime Minister and the Defence Secretary, that each and every one of those things matters immensely to our constituents.

Grahame Morris *rose*—

Robert Jenrick: I will not give way to the hon. Gentleman.

That is why we deployed members of the armed forces. We asked young men and women to give up their Christmas holidays, often on pay and conditions substantially less than those of the Border Force officers whose places they were filling, to keep this country safe. That is why this measure is so important. I will not compromise on that, and I think it raises questions of fitness to govern if Labour Members do not consider these things to be important to our constituents and our country.

There was an extraordinary suggestion that we should respond just by closing ports. In what world would it be good for the United Kingdom to declare that the Port of Dover or Felixstowe is closed, or that there will not be any security checks at a small Scottish port because they do not matter? Well, they do matter: they matter to business, to national security and to the protection of the general public. The Government believe it is absolutely critical that every port in this country, large or small, stays open every day of the year, and that is why we are taking this action.

I turn to some of the specific points that have been raised, starting with the question of smaller ports. We take this issue seriously, and staffing requirements will depend on the exact nature of the strike. We will assess this on a case-by-case basis, depending on the circumstances, and we will take decisions to ensure that we are compliant with our legal obligations. To give an example of how we might do that, Border Force officers invariably move between ports on a regular basis. When we managed the recent strikes, we asked Border Force officers who were willing to come into work to deploy to ports where they would not ordinarily work, and in many cases they were willing to do so, so I am confident that that issue can be managed appropriately and in line with our legal obligations.

[Robert Jenrick]

With respect to the question about introducing the regulations without having a voluntary arrangement for minimum service levels, we first sought the support and engagement of the unions, as one would expect, but they declined to engage with us. It was only when they declined that we decided to proceed with the policy. With respect to the question about the scope of the arrangements under the regulations, I go back to my earlier remark: those wanting to limit their scope need to say which things do not matter. Which of these things do they not want to be open on any given day? Is it that they do not want counter-terrorism activities to be happening? Do they want very large queues at our ports? Do they want goods no longer to be checked at the Port of Dover? That is what one has to think through, and we took the view that each and every one of those things matters, which is why we need to have the level of minimum service that we have set out in the regulations. However, I will caveat that by saying that the test is that the system should be no less effective. Not all border services are in scope—just those identified in the regulations—and we have not set out exactly which services would be operating on any given day, precisely because it would be extremely naive to signpost to terrorists, smugglers and criminals which activities would be stood down on any given day. We do not do that, we have not done it on recent strike days, and we do not intend to do it with the passage of the regulations.

With respect to the question about the Passport Office, we are applying the regulations only to those services that are integral to national security, and I hope that everyone across the House supports us in that regard. We estimate that that is no more than a dozen individuals, so with all due respect, I think the hon. Member for Easington is getting ahead of himself on that. The sorts of functions we are talking about include identifying stolen passports and forged documents, and I would not want to be the Minister for Immigration on a day on which we were not able to identify either of those things, because they are integral to the security of our borders.

Mary Glendon (North Tyneside) (Lab): I declare that I am an associate member of the PCS union and a member of the all-party parliamentary group. I am saddened by the Minister's assertion that the Opposition do not care about security. Border Force and the unions have stressed over and over again that they do not take strike action without careful consideration and heavy hearts, but it has been necessary. Does he think threatening to bring in other people to do the work and criticising people for striking, when it is the very last resort, is a way of engaging with the unions in future?

Robert Jenrick: I suspect I have a higher regard for people working in Border Force than some of those who contributed to the debate. It is precisely because

what it does is critical to our security that I want to ensure that a minimum service level is maintained on every day of the week. I think Border Force is akin to a uniformed service. I do not think it is doing a basic service stamping passports and letting people through our airports. It is protecting the public, which is why we need to ensure that we maintain the service every day of the week. I do not think the regulations will impact on recruitment and retention. In fact, we are enlarging all the relevant organisations, including the Passport Office, Border Force and allied organisations such as Immigration Enforcement and the Small Boats Operational Command. In most, if not all, of those cases, the jobs are oversubscribed, because thousands of our fellow citizens want to take part in this important work on behalf of the general public. With that—

John McDonnell: Before the Minister concludes, will he give way?

Robert Jenrick: I will not give way to the right hon. Gentleman.

John McDonnell: Will he answer the question on conciliation?

Robert Jenrick: I have already said that the Government have made a clear and unambiguous commitment to have non-binding conciliation services with regard to the regulations. That is the offer we have made to the unions, and we intend to follow it through. I commend the regulations to the Committee.

Question put.

The Committee divided: Ayes 9, Noes 7.

Division No. 1]

AYES

Daly, James	Mann, Scott
Fletcher, Katherine	Morrissey, Joy
Hammond, Stephen	Percy, Andrew
Jenrick, rh Robert	Villiers, rh Theresa
Johnson, Gareth	

NOES

Bradshaw, rh Mr Ben	Kinnock, Stephen
Fletcher, Colleen	Thewliss, Alison
Glendon, Mary	Timms, rh Sir Stephen
Hodgson, Mrs Sharon	

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Strikes (Minimum Service Levels: Border Security) Regulations 2023.

5.36 pm

Committee rose.