PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT CODE OF PRACTICE ON REASONABLE STEPS TO BE TAKEN BY A TRADE UNION (MINIMUM SERVICE LEVELS)

Monday 27 November 2023

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not later than

Friday 1 December 2023

The Committee consisted of the following Members:

Chair: Caroline Nokes

† Ansell, Caroline *(Eastbourne)* (Con)
† Coyle, Neil *(Bermondsey and Old Southwark)* (Lab)
† Dalton, Ashley *(West Lancashire)* (Lab)
Fysh, Mr Marcus *(Yeovil)* (Con)
† Henderson, Gordon *(Sittingbourne and Sheppey)* (Con)
† Hollinrake, Kevin *(Parliamentary Under-Secretary of State for Business and Trade)*
† Hopkins, Rachel *(Luton South)* (Lab)
† Linden, David *(Glasgow East)* (SNP)
† Longhi, Marco *(Dudley North)* (Con)
† Lord, Mr Jonathan *(Woking)* (Con)
† Lynch, Holly *(Halifax)* (Lab)
† Madders, Justin *(Ellesmere Port and Neston)* (Lab)
† Smith, Greg *(Buckingham)* (Con)
† Stephens, Chris *(Glasgow South West)* (SNP)
† Stevenson, Jane *(Wolverhampton North East)* (Con)
† Throup, Maggie *(Erewash)* (Con)
† Wood, Mike *(Lord Commissioner of His Majesty's Treasury)*

Liam Laurence Smyth, *Committee Clerk*

† attended the Committee

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

Burgon, Richard *(Leeds East)* (Lab)
Corbyn, Jeremy *(Islington North)* (Ind)
Grady, Patrick *(Glasgow North)* (SNP)
Maskell, Rachael *(York Central)* (Lab/Co-op)
Whitley, Mick *(Birkenhead)* (Lab)

First Delegated Legislation Committee

Monday 27 November 2023

[Caroline Nokes *in the Chair*]

Draft Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels)

4.30 pm

The Parliamentary Under-Secretary of State for Business and Trade (Kevin Hollinrake): I beg to move,

That the Committee has considered the draft Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels).

It is a pleasure to serve under your chairmanship, Ms Nokes. It is good to see such a well-attended Delegated Legislation Committee.

The Government firmly believe that the ability to strike is an important part of industrial relations in the UK, and it is rightly protected by law. We understand that an element of disruption is inherent to any strike. However, strike action across our public services over the past year has highlighted the disproportionate impact that strikes can have on the public.

Taking that into account, earlier this year Parliament passed the Strikes (Minimum Service Levels) Act 2023, which seeks to balance the ability of workers to strike with the rights and freedoms of the public to go about their daily lives, including getting to work and accessing key services.

David Linden (Glasgow East) (SNP): The Minister makes the point that he understands that people have the right to strike, but he says that strikes should not disrupt others. How does he reconcile that view with the fact that under Boris Johnson's Government, scores of Ministers resigned at once and the Government almost ground to a halt? How does he reconcile that with what he proposes to this Committee?

Kevin Hollinrake: I do apologise, but I did not quite get the hon. Member's point. Will he repeat it so that I can understand it?

David Linden: Does the Minister not understand that in the dying days of Boris Johnson's Government, scores of Ministers withdrew their labour from the Government? Why is it one rule for the Tories and one rule for the workers?

Kevin Hollinrake: I cannot speak on behalf of my colleagues, but I kept doing my daily job, as I am sure the hon. Member did.

Chris Stephens (Glasgow South West) (SNP): Will the Minister give way?

Kevin Hollinrake: I have not finished responding to the intervention from the hon. Member for Glasgow East. I kept on doing my daily duty, as I am sure the hon. Gentleman did. I will make a little progress, if I can.

The Strikes (Minimum Service Levels) Act 2023 amends the Trade Union and Labour Relations (Consolidation) Act 1992 to enable regulations to be made specifying minimum service levels and the services to which they apply. Where minimum service levels regulations are in force, if a trade union gives an employer a notice of strike action under section 234A of the 1992 Act, the employer may issue the trade union with a work notice that identifies persons who are required to work and the work that they are required to carry out during the strike to secure minimum levels of service.

Chris Stephens: The Minister mentions employers. For reasons that are unclear to me and perhaps beyond my understanding, we are discussing only one piece of delegated legislation today. Where is the code of practice for employers, and when is it likely to come before a Delegated Legislation Committee?

Kevin Hollinrake: We did not think it necessary to develop a statutory code of practice for employers, but we are producing guidance for employers on how they can comply with their regulations and engage with their workforce in such situations.

To comply with section 234E of the 1992 Act, which was inserted by the 2023 Act, trade unions should take reasonable steps to ensure that their members who are identified in a work notice comply with that notice and do not take strike action during the periods in which the work notice requires them to work.

Rachael Maskell (York Central) (Lab/Co-op): How will the employer be compliant with GDPR requirements in a multi-union environment where lists will be going to different unions and where the employer itself will not know which unions individuals belong to? How will the Minister ensure that the names of employees will not go to unions that do not organise those particular workers?

Kevin Hollinrake: The hon. Lady may be confusing two things. The employer and the unions both have a legitimate interest in the individual they are speaking to. The employer must speak to their workforce, and I am sure the unions will speak to their members. But this is all set out in both the statutory code of practice and guidance for employers. She will see more when she sees the guidance for employers.

Rachael Maskell: I am specifically talking about a multi-union environment. Where a number of trade unions are involved, how will the Minister ensure that GDPR requirements are met?

Kevin Hollinrake: It is not my responsibility to make sure that GDPR requirements are met.

Rachael Maskell: They can't be!

Kevin Hollinrake: Will the hon. Lady listen to my answer? The employer has a relationship with the employee —without doubt, that is a legitimate interest—and the union has a relationship with its members. I am sure we can give the hon. Lady more detail if she would like me to write to her on the point, but I do not think that there is a complicated situation here. I think she will find that it works perfectly well in practice.

Rachel Hopkins (Luton South) (Lab): Maybe the Opposition can enlighten the Minister about workplaces in which there are multiple unions within the same work unit, representing different members. How can he assure us that the proposals set out in the code will not put employers in jeopardy of breaking the GDPR by sharing information about employees with the "wrong" union?

Kevin Hollinrake: As I say, I do not think that it is a complicated situation. As I set out to the hon. Member for York Central, the employer has a responsibility to contact their employees and union members, but I am happy to give more detail on that if the hon. Member for Luton South wants further clarification.

David Linden: Can I ask the Minister for clarification? As I understand it, the Minister said in response to my hon. Friend the Member for Glasgow South West that there will not be a need for the Government to introduce a code of practice or guidance for employers. But in response to the hon. Member for York Central, the Minister has just said that it will be provided. Which of the two is right?

Kevin Hollinrake: I do not think the hon. Gentleman was listening very carefully. I said that there was no need for a statutory code of practice for employers, but there will be guidance. We are debating the statutory code of practice for this legislation.

During the final stages of the parliamentary passage of the Strikes (Minimum Service Levels) Bill, the Government committed to introduce a statutory code of practice to provide more detail on the reasonable steps that a trade union should take. In accordance with section 204 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Secretary of State consulted ACAS and, on 25 August, published a draft code of practice, enabling trade unions, employers and other interested parties to contribute their views.

Following careful consideration of those views, a number of changes were made to the draft code, and the updated draft code of practice was laid before Parliament on 13 November. It sets out four reasonable steps that a trade union should take to meet the legal requirements under section 234E of the 1992 Act. Although the code does not impose legal obligations, it is admissible in evidence and is taken into account where a court or tribunal considers it relevant.

Richard Burgon (Leeds East) (Lab): When we strip it down, is this not really about trying to set up a whole series of complicated and uncertain hurdles so that employers or the Government can say that strike action has taken place illegally or unlawfully, and then set about trying to fine trade unions and scupper the democratic right to strike? In the Conservative party, there is a tradition of trying to avoid what it would call heavy-handed state interference in matters. Is the Government's approach not heavy-handed state interference in the management of independent trade unions? They are trying to determine what picket supervisors and pickets will and will not say to people who have voted for strike action.

Kevin Hollinrake: The answer to the first question is no. The answer to the second question is that the legislation balances the rights of individuals to access vital public services with the rights of people to go on strike. That is the simple balance that we are trying to strike. At times the Government have to step in, and we should always use legislation as a last resort. I totally agree with the hon. Gentleman that that has been our political philosophy, but bearing in mind the hundreds of thousands of hospital appointments that have been cancelled and the billions of pounds in costs for the hospitality sector, particularly over last winter, it is right to have a better balance between the rights of individuals and the rights of workers in this area.

I will summarise the reasonable steps. First, a trade union should identify the workers who are its members in a work notice. That will enable the union to take reasonable steps regarding those workers. Secondly, trade unions should send an individual communication or notice, known as a compliance notice, to each member identified in a work notice to advise them not to strike during the periods in which they are required by the work notice to work, as well as to encourage them to comply with a work notice. Thirdly, trade unions should instruct picket supervisors to use reasonable endeavours to ensure that, so far as is reasonably practicable, picketers avoid trying to persuade members who are identified in a work notice not to cross the picket lines at times when they are required by the work notice to work.

Mick Whitley (Birkenhead) (Lab): Does the Minister agree that the requirement that a trade union, with perhaps as little as four days' notice, identify its members that have been issued with work notices in disputes potentially involving hundreds of thousands of workers across hundreds of workplaces is entirely impracticable? It risks exposing even the trade unions that work 24/7 to fulfil their obligations under the code of practice to a disproportionate and unfair penalty.

Kevin Hollinrake: No, we do not agree. The provisions and the code of practice are workable. As I have said, we undertook a consultation to make sure that that was the case, so we believe the proposals are workable.

Richard Burgon: I am sorry to draw a political parallel, but sometimes the parallel between politics and industrial practice is useful. It is the job of the Conservative party, in my area and others, to convince people to cast their vote for the Conservatives; it is the job of the Labour party to persuade local people to cast their vote for the Labour party. Is the requirement for trade unions to write to their members to tell them not to strike the industrial equivalent of requiring the Conservative party, in my constituency or others, to write to their own members telling them to vote Labour, or vice versa? Is it not a perverse interference to change the role of trade unions in a really authoritarian and heavy-handed way? The state interference here on behalf of employers in industrial disputes is quite appalling.

Kevin Hollinrake: More an intervention than a perverse interference, I would say, but the hon. Member is entitled to his view, which I respect. He may decide, as we have done on this subject, that we should agree to disagree.

Finally, once a work notice is received by the union, the trade union should ensure that it does not do other things to undermine the steps that it takes to meet the reasonable steps requirement. Actions taken to undermine the steps could include, for example, communicating with members whom the union knows is identified in a work notice, to induce them to strike. Where the trade union becomes aware of such actions to undermine the steps, the union should take swift action to negate any actions of union officials or members that seek to undermine the steps that the union has taken or will take to comply with the requirement in section 234E of the 1992 Act.

If a trade union failed to take reasonable steps as required by section 234E, that would mean that the strike is not protected under section 219 of the 1992 Act. As I have said, a court or tribunal could take the code into account in deciding whether reasonable steps had been taken. If the union protection is lost, the employer could seek damages from a trade union or an injunction to prevent the unprotected strike. Further, an employee taking part in a strike would lose the automatic protection from unfair dismissal under section 238A of the 1992 Act.

It is important to stress that the underlying requirement for a trade union is to act reasonably. For example, failure by a trade union to identify a small number of members, and the consequent missing out of those members from subsequent steps, may not constitute a failure in carrying out the overall obligation to take reasonable steps, as long as the trade union made a reasonable attempt to identify such members. Similarly, where the union takes steps to send promptly a compliance notice to members identified in a work notice, an accidental failure to reach a small number of identified members is unlikely to be a failure to take reasonable steps. In those scenarios, that would be for a court to determine, based on the facts of each case.

The code of practice under the Committee's consideration has been designed to balance the objectives and benefits of the 2023 Act with the potential burdens of undertaking the reasonable steps, while providing guidance about a clear recommended route for trade unions to maintain their protections during strike action. It will help to provide clarity to employers and union members on what to expect leading up to, and on the day of, strike action where a work notice has been given to secure a minimum service level. It will also provide a greater level of assurance for trade union members who have been required to work as part of a work notice and will be encouraged to do so by the trade union, and therefore increase the likelihood that minimum service levels will be achieved.

If Parliament approves the code, it will be issued and brought into effect by the Secretary of State in accordance with the procedure set out in section 204 of the 1992 Act.

Neil Coyle (Bermondsey and Old Southwark) (Lab): Can the Minister give us a ballpark figure for how many trade unions and how many private sector employers have been engaged in the development of the code?

Kevin Hollinrake: I do not have those figures to hand, but perhaps I will be able to give them to the hon. Member by the time of my closing speech. I would imagine that quite a number of trade unions were engaged. *[Interruption.]* It is quite a controversial piece of legislation, as the hon. Member knows, and it attracted a lot of attention. [Hon. Members: "Ah!"] Is that surprising?

The Government's intention is for the code to be in effect before the regulations implementing minimum service levels come into force. To achieve that, the Government are planning for the code to come into effect shortly after the commencement order relating to it is laid.

4.45 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair this afternoon, Ms Nokes. I draw the Committee's attention to my membership of the GMB and Unite trade unions.

I thank the Minister for his introduction. However, it will come as no surprise to him that the Opposition will oppose the code of practice. He described it as controversial, which is an understatement. We remain clear in our view that the Strikes (Minimum Service Levels) Act is fundamentally unworkable and places undue limitations on an individual's freedom of association. These freedoms have been fought for and won over many decades, and they deserve much better than to be chipped away and undermined in the way that we see before us today. Labour has promised to repeal the legislation when we get into government, and we stand by that pledge.

"Reasonable steps" is a pivotal phrase that jumps out at anyone reading the Act. It stands out so much not only because it is vague and is left undefined in the primary legislation, but because the phrase's definition carries hugely punitive consequences for those who get it wrong. It determines whether a union's actions could leave it liable to proceedings in tort for sums that would be likely to bankrupt it. It could also see an individual worker's protections against unfair dismissal removed. Those are not issues that as legislators we can ignore.

How "reasonable steps" is defined is a fundamental part of the legislation. As the Bill progressed through the House, we repeatedly asked for greater clarity as to what it meant. Time and again, we asked what constituted "reasonable steps". In response, all we got from the Minister was that it would be for a court to decide.

Richard Burgon: My hon. Friend and I have many things in common, one of which is that we were both trade union lawyers, which Government Members perhaps think are not a good thing. Why are the Government so keen to give so much business to employment lawyers? The code of practice's use of the phrase that my hon. Friend has just mentioned—"reasonable steps"—is a lawyer's dream, whether they be on the employer's side or the workers' side. In legal libraries across the country, there are fat books of case law to determine what is and is not reasonable in various employment situations. The code is a recipe for further clogging up the courts, and it will cost further money for both trade unions and employers. Does my hon. Friend agree that it is absolutely ridiculous?

Justin Madders: Yes. We both have some industrial experience of how this works, so we can see what is going to happen. There has been no regulatory impact assessment for the code of practice. If there had been, it would have produced some eye-watering numbers on what it will mean for legal costs not just for trade union members, but in the end for the taxpayer, because a lot of the disputes will involve public sector employers.

During the passage of the Bill, the Minister's refrain was that it is for the courts to decide, but even after the code of practice is issued, it will still be up to the courts to decide. There are still so many ambiguities and unanswered questions. The fact that we had to vote on such an important piece of legislation without any clarity about what "reasonable steps" meant shows that this debate is taking place 10 months too late. As elected legislators, we really should have known what this all meant before being asked to vote on a Bill that was passed into law. That is no way to go on, and it is by no means the only example of this Government rushing through legislation without an adequate opportunity for scrutiny.

Let us be honest: we were told at the time that there was an urgent need for this legislation, and that it needed to be rushed through a Committee of the whole House in just one day. That was back in January. We are now in November, so in reality we could have had a proper Bill Committee stage and evidence sessions in which these issues were properly debated and voted on. Will the Minister tell us whether the rush at the start of the year was because the Government did not want scrutiny of the Bill? Or was it because they were making it up as they went along?

The provisions before us are at odds with expectations about what the Act was meant to deliver. The code of practice does not alleviate any of our concerns about the workability of the legislation. Actually, it adds more levels of concern, complexity and ambiguity. It contains provisions that go well beyond what was discussed and included in the Act, and it contains language that is at odds with ministerial comments at the Dispatch Box. Many important elements are left undefined, presumably for the court to pass judgment on at some point—not to mention the inconsistencies in the code's guidance, which I will come on to. Unreasonable expectations are also being placed on unions to police the behaviour of their members, and there are excessive diktats on the language to be used in communications between a trade union and its members.

The Minister says that measure has been produced as a result of consultation, but we know that most of the employers' organisations, never mind the trade unions, think that this is a complete mess. The reason why it is still before us today shows us everything about where the Conservative party is coming from with this legislation. The document deliberately defines the phrase "reasonable steps" in a way that is designed to infringe on a trade union's actions to a degree that is not in line with the Act's stated policy aim, which is to reduce disruption during strikes. Put simply, we believe that the code seeks to further restrict the right to strike and limit the lawful actions of trade unions during a period of industrial action.

Turning to the first recommended step—the "identification of members"—it is clear that the interpretation that the code offers is unduly burdensome on unions. It imposes tight deadlines and has the effect of creating confusion. That is before we look at whether this can be done in a GDPR-compliant manner. The Minister did not really address the concerns that several hon. Members raised about what happens in a workplace where more than one trade union is recognised by the employer. Of course, that is quite commonplace.

Paragraph 19 is the most important part of this section of the code of practice. It states:

> "Unions should begin identifying their members who are subject to the work notice as soon as reasonably practical after receiving a work notice".

That means that with potentially as little as seven days' notice, a union would have to comb through a list—most likely just a list of names—and pick out its members who could be involved in a particular industrial dispute. But not only that: due to an employer's right to vary a work notice up to four days prior to strike action, that work could be in vain. I will return to that issue shortly. To me, this responsibility seems particularly onerous. We should remember that the sectors in which work notices can be introduced have vast workforces and can be national in scope. It is quite possible that an industrial dispute could involve hundreds of thousands of workers across the country and potentially impact hundreds of different workplaces.

For example, the RMT has highlighted that during a multi-train company dispute, similar to the one that has taken place over the past 18 months, a number of employers could send more than 10,000 names, comprising 100 different grades working at 100 different locations. To provide unions with a matter of days to sort through such an expansive list and identify which members could be impacted by the strike is an enormous undertaking. I am sure that if such an obligation was placed on a business, Ministers would be jumping up and down about all the extra red tape, but we know that this Government do not judge trade unions by the same standards.

One could even take the view that this expectation is designed to be completely impossible, especially given that there is no guarantee that employers will provide defining characteristics alongside the names. That means that the union may not be able to differentiate between two people with exactly the same name or a similar surname, for example. The guidance addresses that by stating that unions "may wish" to engage with employers ahead of strike action on how work notices can be designed to avoid that. That will depend on employers' co-operation, although, as we have heard, they will be subject not to a statutory code of practice, but to non-binding guidance, which gives us no guarantee that they will co-operate at all.

What steps will the Minister take to address that? Will action be taken against employers that fail to engage with unions to help them to differentiate workers? How will the Minister ensure that any union conducting strike action in the short term will receive work notices that allow them to differentiate names on the list? Will they be offered dispensation if they are unable to identify any workers within a very tight deadline?

Paragraph 20 of the code offers guidance on employers' ability to vary work notices at four days' notice. It is hard to understand how that provision could not be deliberately designed to cause confusion and undermine trade unions. What will happen if an employer varies a

[Justin Madders]

notice over a bank holiday weekend, or even at Easter, when there is a bank holiday either side of the weekend? Are trade unions expected to have people perpetually on call during such periods just in case another notice is issued? The code makes no mention of bank holidays and weekends, so might a union be asked to respond to hundreds of varied work notices at two days' notice—or even one day's notice—with no leeway given?

Neil Coyle: If employers are not compelled to share information, is this dog's dinner of legislation even remotely workable?

Justin Madders: The overwhelming response to the consultation on the measure, and to that on the original Bill, was that the process will be very difficult in practice. That is because it is not about providing minimum service levels, but about trying to stop trade unions from exercising their lawful and democratic right to take industrial action.

The instruction at paragraph 25 of the code of practice that a union should send its compliance notice to its members "by electronic means" is the biggest irony in all this, because the Government have sat on a review on e-balloting for industrial disputes for some five years, yet made no attempt to implement it. Does the Minister finally accept that it might be reasonable to allow trade unions to enter the 21st century, with industrial action communications sent by email? Does he accept that that should include the actual balloting for industrial action? It is inconsistent, to say the least, that the code of practice specifically instructs unions to contact members about industrial action electronically, yet the law specifically prohibits them from balloting their members by email. I know that the Minister has had a lot of practice in e-balloting from his party's leadership contests, so does he now accept that it should be possible to ballot trade union members on industrial action electronically?

Paragraph 25 further states that

"if the union is aware that any member will be unlikely to access electronic communications before the…strike"

it should send notice by "first class post" instead. What on earth does that mean? Is a union to require a read receipt from every member to form a view of whether they are likely to access their emails? Does the Minister realise that even four days' notice would be asking rather a lot of Royal Mail, leaving aside bank holidays and weekends, because the latest stats on the delivery of first-class mail show that it is well below its performance targets?

The most problematic aspect of the code is probably paragraph 20, given its provisions on varying work notices. Anyone tasked with ensuring that all the right members are contacted within the incredibly tight timescale of seven days will experience a logistical nightmare, and that would only be exacerbated by the option of amendment only four days out.

Sadly, the provision leaves the door open to employers to deliberately and purposefully issue erroneous work notices in the first instance, only to vary them closer to the relevant date with a view to undermining industrial action. Members should not forget that "four days before" can start at 11.59 pm on the relevant day, effectively leaving three days. While the motivation might not be malevolent—it could be due to negligence—the practical effect of the requirement will be that a union would be expected to contact an employee to encourage them to attend work on the day of a strike, but then say to them a couple of days later, "Actually, you don't need to attend," while telling a whole new set of people that they need to attend. It is not hard to see how that could be abused to create an air of confusion on the part of the worker as to whether they are meant to be on strike or at work. When the consequences for making a mistake are so great, it is understandable that a worker would be likely to err on the side of caution and attend the workplace. Of course, all the energy and time expended on deciding who needs to get a notice and who does not could be spent on trying to resolve the dispute.

All those problems are compounded by a contradiction in the code of practice. Paragraph 19 indicates that, under the duty, a union is expected to take reasonable steps to contact members included in a work notice as soon as is "reasonably practical".

Mick Whitley: Does my hon. Friend share my confusion about why the onus for communicating with members who have been named in work notices has been placed on unions, rather than on employers, which routinely communicate with their employees as a matter of course? Does he also worry, as I do, that given the difficulties that unions often encounter in contacting members, the measure greatly increases the likelihood of workers being subject to disciplinary action and even dismissal?

Justin Madders: My hon. Friend is absolutely right that the code puts the onus on trade unions. How odd is it that we are in a world in which a Government instruct a trade union to tell employees to attend the workplace? I cannot think of anything more bizarre. But the measure is not actually about ensuring that people attend work; it is about undermining collective industrial action. From what we have seen today, it is clear that that is exactly the Government's intention.

The trade union's duty to take reasonable steps to contact members as soon as is "reasonably practical", contained in paragraph 19, is contradicted in step 2 of the code, which provides guidance on how to encourage members to comply with a work notice. In this step, the code states that once a union has identified all its members, it should communicate this to them via a compliance notice. Paragraph 23 states that the union

"should send the compliance notice before the strike action"

but that it would be "reasonable" to send the notice

"once it is clear that the work notice will not be subject to variation by the employer—either because the last day on which the employer can vary the work notice without the union's agreement has passed or because the employer has notified the union in writing that it will not vary the work notice".

That is completely inconsistent with what the code of practice states earlier—that the union should contact its members as soon as is "reasonably practical". They cannot both be right. Given the consequences of getting this wrong for both the trade union and the individual, the code of practice really ought not to contain such a mixed message. Will the Minister therefore confirm whether a union is supposed to wait until the conditions in paragraph 23 are met, or just get on with it as soon as is "reasonably practical", as paragraph 19 suggests?

Beyond that issue, the code's recommendations on encouraging members to comply with a work notice are plainly unreasonable, misleading and complex. Step 2 of the code contains stipulations that are drafted in such a way that grounds for legal challenge will inevitably be opened. Paragraph 26 and annex A, in particular, can be seen to do this. Paragraph 26 includes a list of eight features that a compliance notice must state "clearly and conspicuously", and annex A contains a pro forma template for unions to use, which is recommended for use by unions at paragraph 27. Paragraph 27 states that a union can amend the template but that the compliance notice must retain

"the overall substance and effect of the notice".

So why go down this road at all? Why go to the trouble of drafting a template letter and then say that unions can vary it? Is that not just inviting trouble?

We know that the slightest transgression in an industrial action ballot can lead some employers to seek injunctions, even though the practical effect of that transgression is nil, so there is a concern that any deviations from the template will invite legal challenge from employers. The TUC believes that deviations

"will almost certainly lead some employers to seek to legally challenge unions".

Does the Minister agree with that point of view? How does he think that such satellite litigation will aid the resolution of industrial disputes? Can he also explain the rationale for including a pro forma template on top of the guidance contained in paragraph 26?

Unfortunately, that is not the only way in which the code could instigate legal challenge. Plenty of areas in the code appear to allow for challenges if the union makes an error. Paragraph 39, for instance, states:

"communicating with members whom the union knows are identified in a work notice to induce them to strike"

could constitute an act that undermines steps taken to comply with a work notice. Taken literally, that means that for the period of the work notice, the trade union cannot contact any member subject to one at all with any information on the industrial action. Is the Minister saying that on certain occasions, for a certain period, a trade union cannot contact some members to tell them what is happening with the strike? The mere mention that a strike is taking place could be considered an inducement to strike. I am interested to hear what the Minister says about that, because to me it looks like a fundamental attack on democratic freedoms.

If the Minister does not accept that that is the intention behind paragraph 39, does he accept that there could be a real problem in some circumstances—for example, where there is a technological or administrative error in distributing emails on a mailing list that could risk some of the wrong members receiving that email? Trade unions in those circumstances would lose their protection from liability in tort and employees would lose their automatic protection from unfair dismissal. Is that really what is intended with the code of practice, because that is what paragraph 39 seems to suggest?

The stakes are far too high for such an error to constitute a breach of the code, especially given that the names included in the work notice are liable to change, often at short notice. As there is already guidance in the code stating that compliance notices should include statements telling those on work notices to ignore calls to take part in strikes, paragraphs 38 to 40 seem excessively punitive and unnecessary. The only conclusion that one can draw from such a communication—a blackout around strikes—is that this is a deliberate attempt to undermine trade unions and impact the effectiveness of industrial action.

I will return briefly to the annex and paragraph 26; this is an example of the state trying to dictate the contents of a union's communications with its members. First, according to the stipulation in paragraph 26(f), unions are expected to encourage workers to undertake the work set out in the work notices. We think it is inappropriate for a union to encourage a worker to comply with a work notice, as it could undermine the collective endeavour of industrial action. Yes, a union must advise a worker of the possible consequences of failing to comply with a work notice, but it is not the role of the state to instruct a union to do that in an enthusiastic way, as is implied in the code of practice.

What does "encourage" even mean? Is it like a football supporter encouraging their team from the terraces and cheering the team on? Is it sending text messages to a mobile phone with affirming messages such as "Please go to work today. I know you've got this"? It seems a very odd thing to request that a trade union encourage its members to go to work, given that presumably on every other day, the employee does not require such encouragement to turn up and do their job.

Chris Stephens: Is there not another concern that trade unions have flagged up? Trade union representatives will be identified in the work notices, so the trade union representative will be the one who is picked to, effectively, bust their own industrial action.

Justin Madders: Yes, I will get on to that—there is a bit more, I am afraid, Ms Nokes, because there is an awful lot to talk about. The measure fundamentally pits trade unionists against their core beliefs and principles. That does not seem to register with Government Members, but it really is doing that.

The requirement to encourage members to turn up for work is an odd thing to request, given the failure to explain the legal issues with the necessary accuracy in paragraph 26, which states that unions are advised to tell members that they should receive from the employer

"a statement that the member is an identified worker…and must comply with the…notice given to the union."

But there is no obligation under the Act for an employer to communicate with workers named by the work notice. Employers need do so only if they want to keep open the option for dismissing them for not attending work. If not, they can let the trade union do all the work.

The code also states that the compliance notice should contain a comment stating that two notices should be received from the employer and that if the member receives both, they

"must carry out the work during the strike or could be subject to disciplinary proceedings which could include dismissal".

However, the Act gives neither the employer nor the Government the power to compel people to attend work. What it actually does is state that a worker who has been notified by the employer that they are named in the work notice may be dismissed and denied the automatic right to protection from unfair dismissal for

[Justin Madders]

taking part in the strike. The code does not highlight that a worker who was dismissed might still be able to bring an unfair dismissal complaint under the general law.

The code and template letter are therefore misleading. But why do they have any reference to dismissal at all? The template requires the union to warn a member that

"you could also be dismissed as a result"

of not following the work notice. However, that is not what the Minister told us would happen. When he was at the Dispatch Box on Monday 22 May 2023, he said:

"The reality is that nobody will be sacked as a result of the legislation."—[*Official Report*, 22 May 2023; Vol. 733, c. 103.]

If that still stands, why does the code of practice require unions to warn people of something that is not going to happen? Why would the Minister ask unions to write to their members about something that he said at the Dispatch Box would not happen? I invite him to withdraw his comments or, ideally, withdraw the whole draft code.

The compliance notice template in annex A states:

"The work required of you should be work which you normally do or work which you are capable of doing and is within your contract of employment."

Can the Minister tell us whether the notice remains effective if it requires someone to undertake a role with which they are not familiar? After all, many contracts of employment have a catch-all clause requiring employees to undertake whatever duties their employer sees fit. At the very least, there ought to be some guidance on what the employee should do if they face such a request. That point also raises the question of what happens if a non-union member is included in a work notice, but the employer fails to contact them. Would they be subject to disciplinary procedures as well? Both those examples show how far the code is from providing certainty; it just adds more complexity and confusion.

The code of practice's guidance on picketing is an element that came as a surprise, as there was no mention of it at all in the Act. It is covered by different legislation and a different code of practice. There was next to no discussion of picketing when the Bill passed through Parliament, so its inclusion in the code of practice is another example of the way in which this Government have sidestepped scrutiny at every opportunity. I see no legitimate reason for its inclusion; it seems that it is an attempt to expand the scope of the legislation via the back door. That is at complete odds with the purpose of a code of practice that is supposed to put flesh on the bones of how an Act works, not to expand its reach.

Step 3 of the code is simply titled "Picketing". It sets standards on the union to instruct picket supervisors. Paragraph 33 states that

"the union should…use reasonable endeavours to ensure that picketers avoid, so far as reasonably practicable, trying to persuade members who are identified on the work notice not to cross the picket line at times when they are required by the work notice to work."

The irony of a code of practice explaining what is meant by the term "reasonable steps" by using the phrase "reasonable endeavours" is certainly not lost on me. It is not exactly a great leap forward, is it? Using "reasonable endeavours" not to do something is a novel concept: it is usually a concept applicable where there are positive obligations on someone to act. I struggle to see how that translates into a negative obligation.

Certainly, nothing that I have heard today explains what that means in practice. But that is the point, isn't it? This and many other areas in the code of practice leave important questions open to interpretation by the courts. It will take a case making its way to court, and probably several levels of appeal, before it becomes clear what "reasonable endeavours" a union must actually take to prevent members persuading those on a work notice not to cross a picket line. The weight of the punishments that the union and its workforce could be forced to pay will doubtless mean that unions will be cautious about how this works in practice.

This is a legal nonsense. It is quite blatantly a tactic from the Government to attack a union's right to strike by blunting some of its most effective tools. However, it is a tactic that will add to court backlogs, as we have heard, and will cost the taxpayer, unions and businesses large sums of money when all these issues end up being litigated. Ultimately, it will do absolutely nothing to improve industrial relations in this country.

I will return to the crux of the extract from which I quoted: that picketers should not try to persuade workers listed in a work notice to join them on strike. It is clearly drafted to completely undermine the role of a picket, to the extent that it will be unworkable and difficult to enforce. How is a picket supervisor supposed to know who is on a work notice, especially if the notice runs to hundreds or even thousands of people? Are they expected to know them by appearance? Unless they are told otherwise, picketers are therefore going to have no idea who is bound by the work notice and who is not.

It is completely unclear how the picket supervisors, who are expected to execute this duty and enforce this measure, will be able to do so in practice. The aim of the picket is to encourage compliance with the strike, but the picket supervisor is expected to undertake duties well beyond ensuring that a worker named in a work notice simply is not hindered in going into work. It is another fundamental attack on the role of trade unions. Does the Minister understand that he is asking trade unions to turn on their core beliefs and jettison the very essence of what they stand for?

It is also unclear whether the Government have considered the case of Ezelin *v.* France, as the TUC's submissions recommend. In that case, the European Court of Human Rights found that requiring a lawyer to disassociate himself from a demonstration infringed his rights under article 11 of the European convention on human rights? A response on that issue from the Minister, either in his closing speech or in writing after today's proceedings, would be appreciated.

Other hon. Members wish to speak, so I will draw to a conclusion. We are being asked to vote on a code of practice that goes far beyond the legislation that it is meant to explain. It places potentially insurmountable burdens on unions, leaves important legal questions unanswered, requires unions to be the mouthpiece of the state and expects unions to enforce a draconian piece of legislation that goes against the very essence of their values. To top it all off, there is the threat, should unions not follow the guidance to the letter, of having

to pay out exorbitant costs through proceedings in tort and of leaving all their striking workers vulnerable to being sacked.

It is clear what the code of practice seeks to achieve. As we said of the Act throughout its passage, it is an attack on trade unions and their members, and it undermines the fundamental right to strike. We cannot vote for it. No one who believes in freedom of association can vote for it in good conscience. The Government need to go back to the drawing board and redraft the code of practice—or, better still, get rid of the Act altogether.

Several hon. Members *rose—*

The Chair: Order. A number of Members wish to speak. I will call members of the Committee first. Our deliberations have to conclude by 6 pm.

5.17 pm

Chris Stephens: Thank you, Ms Nokes. I am surprised to have been called so early in the debate, because I was expecting finally to hear some sort of philosophical introduction or support from Government Back Benchers, but as we saw during the passage of the Bill, Government Back Benchers usually walk out and take their own industrial action—but without a ballot, I hasten to add, unlike the trade union movement. I thought that some Government Back Bencher would try to bind the Strikes (Minimum Service Levels) Act and the code of practice together through some sort of philosophical introduction or ethos, so I am disappointed.

Even more incredible than what the Minister said to me was what he said to my hon. Friend the Member for Glasgow East. The Minister said that there was no requirement for guidance for employers. Then, in reply to an intervention from the hon. Member for York Central, he said that there would be guidance but that it would not be statutory guidance. That is utterly ridiculous. If a Government were even-handed, they would have two statutory instruments together—one for trade unions and one for employers—so that everybody was clear.

We know what the game is here: to allow employers to use the legislation to bust industrial action. The Government know that the game is up. What is it about workers having decent wages that the Government are so repelled by? Why are they so repelled by workers standing up for good terms and conditions and having those wages to support their families? Is it because, if we had had consistent Conservative party rule since the 1800s, we would still have children going up chimneys? Or is it because, in the 1990s, as we all remember, the Conservative party bitterly opposed the original minimum wage legislation and that, after an acrimonious debate—

Jeremy Corbyn (Islington North) (Ind): Can I bring the hon. Member slightly more up to date? Could he cast his mind back to the 1970s, when industrial relations legislation introduced by the Heath Government ended up with five dockers being put in prison? They were then released. It was a headlong clash with the trade union movement, and it resulted in mass strikes all over the country.

Chris Stephens: The right hon. Gentleman is correct. The Conservative party never forgave the trade union movement for defeating the Heath Government in the ’70s. It still remembers. As my hon. Friend the Member for Glasgow East said, it has not legislated for Government Ministers. When they decided to go on strike—when they all walked out together—they did so without a ballot, let us remember. That was inconveniencing the public, was it not?

Kevin Hollinrake: I just want to point out that there is a difference between going on strike and resigning, though the hon. Gentleman might not understand it. There are no restrictions in the code or anywhere else that stop someone from resigning, which is what those Government Ministers did.

Chris Stephens: I think the Minister will find that it was co-ordinated action and that, unlike trade union action, no ballot was required.

David Linden: My hon. Friend will be aware that it was actually worse than that. What those Ministers were doing was practising fire and rehire: they resigned, and many of them were then reinstated in their previous job. I am thinking of the hon. Member for Hexham (Guy Opperman), for example. Perhaps the Minister may be just a little bit out of touch with what went on.

Chris Stephens: I say this charitably: as good-natured as the Minister can be, he is often accused by me and others of not understanding what actually takes place in an organised workplace. It is quite clear that Government Ministers collectively organised to leave their posts, causing huge inconvenience to the public, but I do not see delegated legislation to impose minimum service levels on Government Ministers.

Neil Coyle: Isn’t that because the public could not tell the difference between when they were in office and when they resigned?

Chris Stephens: That may very well be the case. The hon. Member makes an eloquent point.

Rachael Maskell: Every single day this Government are in office, they are unable to maintain minimum service levels across a vast array of our public services, so why does the hon. Gentleman think they are requiring more workers to attend work on strike days than the rest of the year?

Chris Stephens: That is a magnificent point. This has been debated on various occasions on which we have asked the Government—perhaps the Minister will rise to his feet; I will take his intervention right now—why minimum service levels are necessary on industrial action days, but not at any other time. If there were statutory guidance and a code of practice for employers, one would certainly ask the question: would employers demand that there be more workers on shift on days of industrial action than on a normal working day? The Minister knows this, because it has been raised consistently when we discuss these things that employers are always at it.

[Chris Stephens]

I was a proud trade union activist. I refer to my entry in the Register of Members' Financial Interests: I am a proud member of the Glasgow city branch of Unison. We had to negotiate life-and-limb cover for strike days—yes, the legislation sets out that there has to be life-and-limb cover—and employers would ask for more people on shift on days of industrial action than on normal working days. I will take an intervention right now if the Minister can give us an assurance that no employer across these islands will ask more workers to be at work on days of industrial action than on normal working days. I am more than happy to take an intervention from the Minister right now.

I note for the record that the Minister has not risen to his feet.

Since the passage of the anti-strike Act, there have been suggestions that the Act's provisions on minimum service levels would be similar to the norms of Europe. Well, no, they are not. I will not repeat all the clarifications that I and others have offered on what actually happens in Europe, as those fell on deaf ears. I will, however, repeat our warnings that this nasty legislation will prove to be severely counterproductive and damaging overall to society. Taking a negotiated, voluntary and successful approach to minimal service levels and mutating it into an imposed, coercive and ultimately failed system is very foolish, but it is unsurprising from those who choose not to listen or learn.

Let me comment in detail on one sector in particular: the health sector. I will do so by referring extensively to the TUC's consultation response on minimum service levels for hospital services. I will also refer to the views of the British Medical Association and the Royal College of Nursing.

The TUC believes that the Act

"is unfair, undemocratic and likely in breach of our international legal commitments."

Its view is that it is

"the fundamental right of a worker to take industrial action to defend their pay and conditions"

and that

"secretaries of state are to be given enormous power to define and introduce minimum service requirements".

It says the Act is

"draconian: it could lead to individual workers being sacked for taking part in industrial action that was supported in a democratic process",

with trade unions facing large damages if deemed to be non-compliant with this code of practice. Perhaps the Minister will answer the question with which he was challenged by the shadow Minister, the hon. Member for Ellesmere Port and Neston. The Minister was quoted as saying that no one would be dismissed as a result of this legislation, but where does it say that?

According to the TUC, the Act is "unnecessary"—it is "custom and practice" to agree "life-and-limb cover"—and "counter-productive". That, however, is not the view of only the TUC, which points out that the Government's own impact assessment suggests that

"industrial disputes are likely to become more protracted and prolonged as a result of introducing minimum service levels".

In summary, the TUC believes the approach is unacceptable, anti-democratic, draconian and, ultimately, both unnecessary and counterproductive.

Given the purpose of this Delegated Legislation Committee, a further quote from the TUC might prove to be the undoing of the code of practice:

"Given the fact that the services subject to MSLs are to be determined by Secondary Legislation, there remains a number of uncertainties around (a) the extent to which the policy would restrict the right to strike, (b) the relationship between the ability to strike and the strength of workers' ability to bargain on terms and conditions of employment through collective bargaining, and (c) the value workers place on collective bargaining relating to terms and conditions of employment."

Those comments are also derived from the Government's impact assessment.

Conservative Members may simply choose to disregard the findings of such an impact assessment. They would find interesting backers in doing so, as the Government's own Regulatory Policy Committee judged the impact assessment of the Act

"red-rated as not fit-for-purpose",

and found that the Government make

"use of assumptions in the analysis which are not supported by evidence"—

here is us thinking that the Boris Johnson days were gone. There are other, less parliamentary ways to describe making use of assumptions that are not supported by the evidence, which I will leave to the imagination of Members.

Let us now explore the views of the British Medical Association and the Royal College of Nursing. Agreement among health sector unions is clear, as the BMA also considers the proposals for minimum strike levels to be

"counterproductive, undemocratic, unworkable, and draconian".

The legislation seems to be little more than a smokescreen. Instead of addressing the state of the NHS, which currently compromises patient safety on a daily basis, or the underlying reasons why doctors and other healthcare staff have been striking in some parts of the UK, if not in others, the Government are trying to paint healthcare workers as the villains of the piece, rather than the victims of governmental action and inaction. I specifically mention striking "in some parts of the UK," because a different and more respectful approach to public service employees in Scotland has resulted in something closer to industrial harmony. Perhaps others should watch and learn from what the Scottish Government are achieving in public sector relations.

Throughout these islands, a long-standing history of constructive joint working between NHS employers and trade unions at a local level has patient safety at its heart. The introduction of minimum service levels in hospitals would poison those industrial relations. It would replace a system under which those who understand the local situation tailor their response to the needs of hospital service users with a national service level mandated from Whitehall and designed by those who arrogantly assume that they know better.

Although the Government's consultation seemed to find that several critical incidents arose due to strike action, data from a freedom of information request suggests otherwise. It is unclear whether any were a direct result of action being called. Rather than demonstrating

that patient safety was compromised due to industrial action, the data shows the importance of tackling the stresses that the NHS faces on a daily basis.

The BMA has repeatedly raised concerns that the "reasonable steps" that unions would be required to take to comply with the Act would force unions to act in a way that undermines their responsibility to represent their members. It is not "reasonable" to expect unions to take any steps that would undermine legitimate strike action, for which they will have passed a high threshold to have a lawful mandate under trade union legislation.

Mick Whitley: I declare an interest as a member of Unite the union. The hon. Member is making an excellent speech. Does he share my concern that by allowing employers to amend work notices up to the end of the fourth day before industrial action commences, the code risks allowing unscrupulous employers to create formidable and unnecessary bureaucratic hurdles for trade unions to overcome, thereby giving employers the opportunity to intentionally undermine entirely legitimate and otherwise lawful strike action?

Chris Stephens: I agree with all that. I know that this will surprise some Conservative Members, but I do believe that there are unscrupulous employers out there. I believe that unscrupulous employers already use existing anti-trade union legislation to try to stop industrial action taking place with some daft minutiae over lists of members and so on. The point I was making is the Government have already imposed extremely high thresholds that trade unios must cross before industrial action takes place.

The draft code of practice does not achieve the necessary clarity of what the duty will mean in practice for trade unions. Instead it presents issues for trade unions over how they will be able practically to implement the proposals. It creates incredibly unrealistic timescales on unions, requiring them to start identifying members "as soon as reasonably practical" after receiving a work notice. Such weasel words threaten vindictive penalties for being unable to guess what a Conservative Minster thinks is "reasonable".

I will refer to some surprising comments from the Royal College of Nursing. They are surprising because the RCN was advised that the legislation would not affect it at all, but perhaps it was not too surprised to discover that that was not the case. A Minister at the Dispatch Box told nurses that the Strikes (Minimum Service Levels) Bill was "not about nurses." That was always flagrantly untrue, as the RCN clearly stated at the time. Specifically, the Leader of the House said on 26 January 2023 that the Bill was "not about nurses", and that it was "wrong" to suggest that it was.

Through its draft regulations for NHS ambulance services and the NHS patient transport service, the Government are now explicitly seeking to impose minimum service levels that apply specifically to nursing staff in ambulance services. The RCN asks that Parliament, including Members present here, should hold the Government to their words and reject regulations that would impose minimum service levels on nursing staff.

Patrick Grady (Glasgow North) (SNP): Like my hon. Friend, I am a member of Unison in Glasgow. All the concerns that he has raised about how the code applies to the NHS, and particularly how it applies to nurses, have been raised with me by constituents. They are incredibly concerned about the pernicious nature of the Government's legislation and their actions more generally. My hon. Friend was right to say earlier that the way to avoid strike action in the NHS and across our public services is to have decent industrial relations, to invest in them properly, and to welcome people into this country who are willing to supplement the workforce, which is so desperately crying out for more pairs of hands.

Chris Stephens: My hon. Friend makes an excellent point. I hope that the Minister takes that on board because good industrial relations mean a happy workforce, and there is actually less industrial action when we have good industrial relations.

I will conclude, Ms Nokes, with some comments about Scotland. That will not surprise you, nor anyone in this Committee. I have already referred to how a different and more respectful approach towards public service employees in Scotland has resulted in greater harmony and far fewer strikes. The RCN explicitly recognised that the imposition of the proposed code of practice on Scotland and Wales would be additionally problematic, as it would explicitly contradict the wishes of the elected devolved Administrations. We will look to see whether the UK Government can echo a similar respect for Scottish rights and autonomy as that shown by trade union colleagues south of the border.

5.35 pm

Rachel Hopkins: I am grateful, Ms Nokes, for the opportunity to speak. I congratulate my hon. Friend the Member for Ellesmere Port and Neston on his excellent speech, which set out all the problems with the Strikes (Minimum Service Levels) Act 2023, the draft regulations and the code of practice that we are considering today. I agree that the measure is draconian, unnecessary and unworkable. Indeed, as the Minister himself said, it is controversial.

The right to strike is protected by the Human Rights Act 1998, article 11 of the European convention on human rights, the International Labour Organisation's convention No. 87 and paragraph 4 of article 6 of the European social charter. Fundamentally, those standards are flouted by the whole set-up of the regulations, the Act and the code of practice. In the middle of a cost of living crisis, when public services are struggling and many are on their knees, this Government have chosen to play politics and attack a fundamental right of workers through the introduction of these minimum service levels. That is solely to undermine collective bargaining and collective organisation, as set out by others.

Many of the details of my concerns have already been laid out in this debate, but I would like to flag up a couple of areas about not only the principles but the unworkability of this whole set-up. We have heard much about taking reasonable steps and issuing directions to employers on work that they are expected to do on strike days, but the code of practice itself interferes with a democratic trade union's communications with employees.

As we have heard, disputes may involve many different employees in different workplaces, who may be members of different trade unions or none, yet we have not had

[Rachel Hopkins]

real assurances that data will be protected, particularly under GDPR. We must remind the Minister that a person's trade union membership status is a particularly special category of data, so I would like assurances that he has understood the implications of the complexity of this code of practice, which is still very opaque and, in fact, confused.

On timescales, we have heard how, given the amount of notice given and the ability later to amend the work notice, the measure could leave unions with three days to reach their members, and that could be over a weekend or a bank holiday. How does the Minister expect that to work in practice, or is he, again, just going to let that all fall through to be dealt with by the courts? It is disappointing to see the speed with which the Minister expects this to come into force. Usually employers have a six-month period to get used to legislative change, yet we are led to believe that this process will be in place from 7 December—that is in barely a week.

While we will obviously want trade unions to be able to meet their obligations if this measure is passed—I put on record my desire to vote against it today, and I hope that we will all get the ability to vote against it as a whole House—I ask the Minister why it has been brought in so quickly. Not only are we dealing with a very opaque set of regulations and code of practice—even more time than usual is needed to consider how things will actually work in practice—but I believe that the Minister is setting employers, trade unions and indeed the Government themselves up for failure by bringing in legislation with such speed and without a real ability for all parliamentarians to scrutinise it thoroughly. I would really like to hear the Minister's view of how employers are going to respond on 8 December when they are faced with having to deal with this alone. Does he have any thoughts on how trade unions will deal with this?

I would like some clarity on the stated design of the code of practice. It is the Government's recognition of their own failure to just say, "That can be settled by the courts." There is no confidence that the legislation is actually fit for purpose, but the Government are already washing their hands and saying, "We'll let the courts decide." Can we have clarity from the Minister about any Government assessment of the cost of litigation for trade unions, employers and, indeed, the Government themselves? So many questions have not been answered about the lack of clarity in this opaque code of practice. As I said, it is an admission of failure to leave so much to the courts, and far be it from me to say, but there will be plenty of employment lawyers taking up the work, sadly. Is that really a metric of success? I would argue that it is not.

I also want to reiterate the point so well made by my hon. Friend the Member for Ellesmere Port and Neston and the hon. Member for Glasgow South West about ministerial comments in the Chamber that nobody will be sacked as a result of this legislation and that other disciplinary measures can apply. If that is the case, why is there a requirement for trade unions to warn their members that dismissal is an option? The Minister has said that that will not be the case, so can we have some clarity from him on how he reconciles those two points? I reiterate my question about the definition of reasonable endeavours with regard to picketing. It is thoroughly unclear—though, again, I presume that it will just be left for the courts to decide.

I appreciate that other Members want to speak, so I will conclude. This is not actually about a situation that the Government are trying to settle. It is fundamentally about attacking individuals' right to strike, not improving industrial relations. As I said, I will be voting against the code.

5.43 pm

David Linden: It is a great pleasure to serve under your chairmanship, Ms Nokes. As others have done, I declare my trade union membership—I am a member of Unite. I found it mildly ironic that in the course of a debate about minimum service levels, at least one Conservative MP disappeared for the majority of the sitting only to come back, presumably to vote. I will not go as far as identifying that individual.

Before I go any further, I will pose a question to official Opposition Front Benchers. Can we get a commitment that any incoming Labour Government would repeal today's legislation within their first 100 days? I am not the only one who has been slightly alarmed by the deviation of the current Labour leadership in terms of its commitment to workers' rights. I think it is important to get that on record.

We find ourselves scrutinising this delegated legislation because earlier in the year, the Government brought forward a measure for a reason we all know: to have a pop at the likes of Mick Lynch. We know what happens when Governments try to legislate on the hoof as a result of press coverage: legislation tends to be rushed through and in the form of a dog's dinner, and they then come forward with delegated legislation to try to tidy it up. I rather suspect that we will not be surprised to see further legislation at some point down the track. Members have outlined holes that are already in this code, and that is within only 75 minutes or so of scrutiny.

The first thing that concerns me is that the commencement of the regulations will come straight after approval from both Houses. The code of practice has to come into effect; that would be in mid-December, which is only a matter of weeks away. The very idea that Parliament, which we were told during the Brexit process was somehow taking back control, is having this kind of thing foisted upon it in a Delegated Legislation Committee raises a number of questions.

The regulations impose an effective strike ban. I do not want to detain the Committee for too long, but I draw attention to annex A of the draft code, which is absolutely wild. I do not know how many members of the Committee have actually looked at the Government's draft code, but the idea is that a trade union official would be compelled to send a letter to its members, suggesting that they are required to work—the word "required" continues throughout the letter—beggars belief. The letter says:

> "[Name of union] advises you not to strike…You should ignore any call to strike…we encourage you to notify the picket that you are required by the work notice to work at that time."

The idea that the trade union official, who will probably be the picket supervisor, would be asked to send a copy of this letter, or a variation of it, really does beggar belief. It strikes me that whoever drafted this in Whitehall

has absolutely no understanding whatever of trade union organisation, although that might not come as a surprise to many.

Patrick Grady: Is my hon. Friend concerned about the increasingly authoritarian approach of this Government? People are now required to turn up to polling stations with photo ID, and now they will need a slip to allow them to cross a picket line. Is this the kind of libertarian approach that people had originally expected from the Conservative party?

David Linden: My hon. Friend makes a good point. It was not that long ago—only a couple of weeks back—that we had a Home Secretary who called for insurrection in Whitehall. The reality is that this Government have a questionable record when it comes to libertarian values, whether it is these restrictions, the—frankly—voter suppression mechanisms that they have brought forward, or the Public Order Act 2023, which seeks to curtail people's basic rights to assemble and to demonstrate. We know that many provisions in the Government's legislation have been criticised by the ILO for the fact that they go against the basic and most fundamental right for an employee to withdraw their labour.

I have particular concerns about the identification of members. The Strikes (Minimum Service Levels) Act mandates extremely tight timelines for the identification of members in work notices. Even Conservative Members struggled to keep a straight face when confronted by the contradiction of requiring a postal ballot for taking part in industrial action, but the issuing of work notices within the space of three or four days. That rather suggests that the Government are on shaky ground. The Minister would do well to reflect on that in his summing up.

Where union members do not have an email address, or have not shared their email address with the union, the union is expected to rely on sending information via the postal service. The code does not recognise that challenge. Given the way Royal Mail has decided to run its business in recent months and years, it is not uncommon for there to be a postal strike. We could have something of a perfect storm there.

The code states that unions should also tell a worker who is named in a work notice that they must

"carry out the work during the strike or could be subject to disciplinary proceedings which could include dismissal".

I know that it is perhaps not normal for Conservative Members to be completely au fait with how the trade union movement works, but the absolute nonsense of a trade union writing to a member who has joined that trade union to collectively organise being threatened with disciplinary proceedings or dismissal really does make a mockery of the situation.

Many other hon. Members have referred to the fact that the original legislation, which was rushed through on the Floor of the House, made absolutely no reference to pickets. Yet—surprise, surprise—we get legislation that is pushed into a Delegated Legislation Committee. A rather stuffy delegated legislation Committee, in which I suspect most people are either playing Candy Crush or considering what to write in their Christmas cards, is debating legislation about strikes and picketing, when we were promised on the Floor of the House that that would not be the case.

The Strikes (Minimum Service Levels) Act 2023 is draconian legislation that attacks individuals' fundamental rights while doing nothing whatever to improve industrial relations. At a minimum, the associated regulations—the provision that we are looking at now and the regulations that we will be looking at this evening—intended to implement it should be subject to proper scrutiny. Parliament must be given more time, sufficient time, to examine each of the regulations in proper detail and to consider the analysis of the Regulatory Policy Committee.

All of this makes the point that my hon. Friends the Members for Glasgow North and for Glasgow South West and I, and indeed many other SNP Members in this place, have been sent here to stand up and make the argument for stronger workers' rights. We were promised during the period of the Brexit referendum that Brexit would not be a bonfire of workers' rights. Six or seven years down the line we are once again served up legislation in here that Scotland did not vote for, that Scotland opposes at every turn, and that I suspect in about six or seven minutes' time will pass, because there is a democratic deficit in this place—and that makes the case for Scottish independence.

The Chair: I want to bring the Minister back in at about five minutes to 6. I call Rachael Maskell.

5.51 pm

Rachael Maskell: Thank you, Ms Nokes; I will keep my comments incredibly short. I refer to my declaration in the Register of Members' Financial Interests.

I am completely shocked and baffled as to why the Minister has brought forward these provisions today when he does not even understand the context of the impact that this will have on a multi-union workplace and the breaches of the GDPR that the employer will be subject to in sharing sensitive information about their employees with different trade unions. They will be able then to identify the people who are members of other trade unions. Therefore there will be a complete breach, which will clearly be challengeable in the courts. *[Interruption.]* The Minister shakes his head, but that will be the consequence.

I am also completely baffled in relation to the timetable. When it comes to balloting for industrial action, it takes months to organise an industrial action ballot. We are talking about complex public sector ballots on the whole. As a result, it is important to get the information accurate and permissible under the law. However, an anti-union employer will have only four days in which to provide the information to a trade union, and then it will be a case of cross-matching, getting a notice out by post, because obviously the union does not need to collect information on the email addresses of its members, and then giving the notification. It is an employer who has the responsibility for whether a worker goes to work or not. I say to the Minister that that obligation should not be placed on trade unions.

The Minister has not said what will happen to the worker's protection if the worker does not receive the notice, and whether their protections will be removed and, as a result, they could end up with a dismissal, with no right of restitution at all. It is really important that the Minister brings clarity as to what will happen in those circumstances and, indeed, what will happen to

[Rachael Maskell]

the trade union if it makes efforts to comply with the legislation but is unable to do so because of the format and the way the data is provided. The Minister makes a lot of assumptions that the employer knows their workforces and who will be taking industrial action or not. I have to inform him that that is often not the case in these complex industrial environments.

The Minister is above this. I think the fact that he has brought this measure forward today just shows that he has not taken the time to understand the way industrial action ballots actually work and the consequences of this legislation.

5.53 pm

Kevin Hollinrake: The Strikes (Minimum Service Levels) Act balances the ability to strike with the rights of the wider public, ensuring that lives and livelihoods are not put at risk. I will respond to one or two points; I probably will not be able to respond to all the points raised in this debate.

I say to the hon. Member for Bermondsey and Old Southwark that there were 46 responses: 10 from members of the public and 36 from organisations, including trade unions, employers and local government representatives. That includes, on the union side, the TUC, ASLEF, the British Medical Association, the Fire Brigades Union, Unite, the RMT, Unison and the RCN.

The hon. Member for Luton South was absolutely right to mention the cost of living crisis. To respond to her point about why we are legislating at this point in time, it is because industrial action has an impact on other people's jobs and livelihoods. There have been 4 million days lost through industrial action, 2 million appointments cancelled in the NHS and £3.5 billion in costs to the hospitality sector. That is why we are legislating as we are.

It is right that points were raised about ensuring that both unions and employers are able to identify people who have union membership so that unions can understand who has been named in a work notice. Paragraph 18 clearly sets out the opportunity for unions to engage with employers to establish the rules on how they will identify different individuals, such as using job title, name and place of work. We do not see that it will cause a problem. Employers and unions can go further than that and enter into a data sharing agreement, which is good practice within GDPR rules.

The shadow Minister, the hon. Member for Ellesmere Port and Neston, referred to paragraph 39 and the work notice requirements. We do not feel that it is an onerous practice at all. It is quite clear that the union could communicate with its members not only about work notices but about the strike itself. The rules are set out clearly. He knows the courts very well; I cannot see anybody not being able to understand the rules in a way that would create an opportunity for somebody to challenge them in court. It is not complicated at all, in my view.

On the point about sacking, I am happy to make a clarification in terms of what I said on the Floor of the House at the time. I was quite clear in my opening remarks that protections are removed from disciplinary action against workers who do not comply with a work notice. It is our expectation that nobody would need to lose their job as a result of this legislation. There are other measures that can be taken in terms of disciplinary action. If people comply with this legislation, clearly nobody will lose their job.

Several hon. Members *rose—*

Kevin Hollinrake: I am sorry, but I will not have time to conclude the debate if I take interventions, which use up a lot of time during speeches. It is right that I conclude the debate.

If the hon. Member for Glasgow South West checks *Hansard*, he will see what I said in response to his intervention, which was that there is no need for a statutory code of practice for employers, but guidance has been issued; it was published on 16 November. That is our view. I advise him to check *Hansard*. On his point about minimum service levels effectively requiring an increase in service levels, if he checks the guidance that we have put together for rail, it clearly stipulates 40% of the normal timetable. We are not expecting an increased level of service; we are just expecting a service.

To help to secure minimum service levels, it is vital that trade unionists take reasonable steps to ensure that their members who are identified in a work notice comply with that notice and do not take strike action during the periods in which it requires them to work. It will help to provide a greater level of assurance that trade union members who are required to work as part of a work notice will be encouraged to do so by the trade union, and therefore increase the likelihood of minimum service levels being achieved.

Ultimately, the code will help all parties to achieve minimum service levels where they are applied, and moderate the disproportionate impact that strike action can have. I commend the code to the Committee.

David Linden: On a point of order, Ms Nokes. I beg to move, That the Committee sit in private.

The Chair: No, we are not going to do that.

Question put.

The Committee divided: Ayes 9, Noes 7.

Division No. 1]

AYES

Ansell, Caroline	Smith, Greg
Henderson, Gordon	Stevenson, Jane
Hollinrake, Kevin	Throup, Maggie
Longhi, Marco	Wood, Mike
Lord, Mr Jonathan	

NOES

Coyle, Neil	Lynch, Holly
Dalton, Ashley	Madders, Justin
Hopkins, Rachel	Stephens, Chris
Linden, David	

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels).

5.59 pm

Committee rose.