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Public Bill Committee

EMPLOYMENT RIGHTS BILL

Seventeenth Sitting

Thursday 9 January 2025

(Morning)

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Monday 13 January 2025

The Committee consisted of the following Members:

Chairs: Sir Christopher Chope, Graham Stringer, Valerie Vaz, † David Mundell

† Bedford, Mr Peter *(Mid Leicestershire)* (Con)
† Darling, Steve *(Torbay)* (LD)
† Fox, Sir Ashley *(Bridgwater)* (Con)
Gibson, Sarah *(Chippenham)* (LD)
Gill, Preet Kaur *(Birmingham Edgbaston)* (Lab/Co-op)
† Griffith, Dame Nia *(Minister for Equalities)*
† Hume, Alison *(Scarborough and Whitby)* (Lab)
† Kumaran, Uma *(Stratford and Bow)* (Lab)
Law, Chris *(Dundee Central)* (SNP)
† McIntyre, Alex *(Gloucester)* (Lab)
† McMorrin, Anna *(Cardiff North)* (Lab)
† Madders, Justin *(Parliamentary Under-Secretary of State for Business and Trade)*
† Midgley, Anneliese *(Knowsley)* (Lab)
† Murray, Chris *(Edinburgh East and Musselburgh)* (Lab)
† Pearce, Jon *(High Peak)* (Lab)
† Smith, Greg *(Mid Buckinghamshire)* (Con)
† Tidball, Dr Marie *(Penistone and Stocksbridge)* (Lab)
† Timothy, Nick *(West Suffolk)* (Con)
† Turner, Laurence *(Birmingham Northfield)* (Lab)
† Wheeler, Michael *(Worsley and Eccles)* (Lab)

Kevin Maddison, Harriet Deane, Aaron Kulakiewicz, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 9 January 2025

(Morning)

[David Mundell *in the Chair*]

Employment Rights Bill

11.30 am

The Chair: Would everyone please ensure that all electronic devices are turned off or switched to silent mode? We will now continue line-by-line consideration of the Bill. The grouping and selection list for today's sittings is available in the room and on the parliamentary website. I remind Members about the rules on the declaration of interests, as set out in the code of conduct.

Sir Ashley Fox (Bridgwater) (Con): On a point of order, Mr Mundell. It is a pleasure to serve under your chairmanship. I seek your guidance on the status of a document circulated to Members by the Scrutiny Unit. It says it is submitted by a Professor Mitie, but I believe that the document is in fact from Mitie, the organisation, and perhaps we do not know its author. Could I ask that we be told who the author is? It is Professor Somebody Else, I suspect. The document also has tracked changes in it, and I seek your guidance on whether those are comments inserted by the Scrutiny Unit or, perhaps, by the author. It is sometimes difficult to know when documents are circulated at the last minute.

The Chair: Thank you, Sir Ashley, for giving notice of that point of order. The issue you have raised is obviously on the record. It will be raised with the Scrutiny Unit and there will be a report back to the Committee on the outcome of that inquiry.

Clause 72

Enforcement of labour market legislation by Secretary of State

The Parliamentary Under-Secretary of State for Business and Trade (Justin Madders): I beg to move amendment 84, in clause 72, page 79, line 15, at end insert—

"(4A) Accordingly, in the case of the exercise by an enforcement officer of an enforcement function of the Secretary of State, any reference in an enactment to the Secretary of State in connection with that function is to be read as, or as including, a reference to that officer or any other enforcement officer."

This amendment ensures that, where an enforcement officer is exercising an enforcement function of the Secretary of State by virtue of clause 72(4), references in legislation to the Secretary of State in connection with that function will include references to enforcement officers, so that the legislation will apply in relation to the enforcement officer as it would apply to the Secretary of State if the Secretary of State were exercising the function.

It is a pleasure to see you in the Chair this morning, Mr Mundell. I start by making the customary reference to my declaration in the Register of Members' Financial Interests.

Clause 72 is the first in relation to the fair work agency, and it is one of the building blocks of the agency. I will explain the main elements of the clause, as that will help us to understand the amendment. The clause confers an overarching function on the Secretary of State to enforce certain legislation set out in part 1 of schedule 4, which the clause introduces. The clause provides flexibility for the Secretary of State in how to deliver that overarching enforcement function. It enables them to appoint enforcement officers to carry out the function on their behalf, and it provides that enforcement officers will be able to exercise any of the enforcement functions of the Secretary of State and will have the enforcement powers conferred on them as set out in the terms of their appointment by the Secretary of State.

As I said, the Secretary of State has the function of enforcing the legislation set out in part 1 of schedule 4. The legislation contains references to the Secretary of State having functions and powers in connection with the enforcement of the rights set out in that legislation. It is important that those references can be read as references to the enforcement officers the Secretary of State appoints to act on their behalf; otherwise, enforcement officers may not be able to properly exercise the enforcement functions of the Secretary of State. That would make their appointment, and potentially their enforcement activity, less effective.

Government amendment 84 inserts a new subsection after clause 72(4) to ensure that references to the Secretary of State are read as references to enforcement officers where necessary. The practical effect is that the legislation will apply to enforcement officers as it would to the Secretary of State. This is a technical change, but I hope that Members will see that it is necessary.

Greg Smith (Mid Buckinghamshire) (Con): It is a pleasure to see you in the Chair once more, Mr Mundell.

Government amendment 84 looks to us like a drafting correction. We will not rehearse the arguments we have had so many times in the Committee about drafting corrections, but I would be grateful if the Minister could confirm whether the powers in the Bill, which are directly related to the amendment, for enforcement officers to enter and search business premises are any wider in scope than current enforcement powers and, if so, how and why.

Justin Madders: I am grateful to the shadow Minister for not rehearsing the arguments, as we may end up having them every five minutes, given the number of technical amendments we will deal with today. He raises an important question about the enforcement powers and powers of entry. There are a number of clauses that deal with that. My initial understanding is that, generally speaking, we are not seeking to widen the remit of current enforcement powers. I will endeavour to write to him if there are any changes or exceptions to that. It may be something that becomes apparent when we debate the clauses in question.

Amendment 84 agreed to.

Question proposed, That the clause, as amended, stand part of the Bill.

Justin Madders: Clause 72 is important, as it sets out the principles of a major part of the Bill. The UK's labour market enforcement system is fragmented. The enforcement of core rights such as the minimum wage,

domestic agency regulations and the gangmasters licensing scheme is split between three different agencies. That often means that workers do not know where to go when they think they might not have received what they are due. That makes enforcement ineffective. It is not fair for workers or businesses.

Clause 72 is a vital building block in the creation of the fair work agency. It is worth noting from the outset that the FWA will be established as an executive agency of the Department for Business and Trade, which means that it will not have its own distinct identity in legislation. The Bill therefore vests responsibility for enforcement of labour market legislation in the Secretary of State. The Secretary of State intends to discharge those responsibilities through the fair work agency, which will be created in administrative documents.

Clause 72(1) places responsibility for enforcing a set list of labour market legislation on the Secretary of State and introduces part 1 of schedule 4, which sets out the list of relevant labour market legislation that the Secretary of State will be responsible for enforcing. There is a general power in clause 118(3) to make regulations that commence different aspects of the Bill at different points. Exactly when the Secretary of State will take on responsibility for enforcement will depend on the detail of those commencement regulations. However, creating the fair work agency is about more than simply moving things around; the agency will also take on the ability to enforce workers' right to paid holiday and their entitlement to statutory sick pay.

Clause 72(2) explains that part 5 of the Bill confers powers on the Secretary of State and enforcement officers to carry out the purpose of enforcing the labour market legislation in schedule 4. Clause 72(3) makes it clear that an enforcement officer includes anyone whom the Secretary of State has appointed to carry out enforcement of that legislation on his behalf, and clause 72(5) clarifies that enforcement officers appointed by the Secretary of State have only the powers conferred on them when they are appointed. Practically speaking, that means that whether the Secretary of State or an enforcement officer is carrying out this work, they will have the enforcement and investigatory powers they need to do the job effectively. Those powers are set out in later clauses.

Clause 72(5) is also a particularly important safeguard. As I have already said, the responsibility for enforcing legislation and the powers to carry it out will be vested in the Secretary of State, and the Secretary of State will then confer them on the enforcement officers he appoints. However, the FWA's remit will also include the serious issue of modern slavery and labour abuse, for which certain specially trained enforcement officers will have extensive police-style powers, as set out in section 114B of the Police and Criminal Evidence Act 1984. Certain officers in the Gangmasters and Labour Abuse Authority are trained to use those powers, which are subject to additional oversight, including by the Independent Office for Police Conduct. The powers should continue to be reserved for tackling the most serious issues handled by the FWA. That is why we have included clause 72(5), through which the Secretary of State will specify what powers enforcement officers will have access to when appointing them. We will ensure that powers are conferred only on officers who are sufficiently qualified to use them and who genuinely need them to do their job.

Sir Ashley Fox: The Minister is talking about granting officials of the state extensive powers currently reserved to police officers. Can he tell us how many additional officials will be granted those additional powers?

Justin Madders: What we are doing is transferring existing powers and responsibilities from the existing agency. There are no new police-style powers being created for these officers; it is simply a transfer over to the fair work agency.

Clause 72 is key to delivering the much-needed upgrade to the enforcement of workers' rights so that it is more effective and fair for workers and businesses. It brings together enforcement functions currently split between several different enforcement agencies and gives the fair work agency the flexibility to respond to a rapidly changing labour market. I commend the clause to the Committee.

Greg Smith: A lot of the detail is in the clauses that follow this one; as the Minister said, this is very much a building-block clause. Although I totally understand and appreciate the rationale for taking enforcement powers that are currently fragmented across multiple different agencies and consolidating them into one, the devil is always in the detail.

Although it might seem sensible to consolidate the powers that are currently so spread out into one agency, this is very much a centralisation of power. The crux of clause 72 is about directly providing the Secretary of State with the overall function of enforcing labour market legislation. Whenever I see such provisions in any legislation, I cannot help but be reminded of the late, great President Reagan's famous quote about the nine most terrifying words in the English language:

"I'm from the Government, and I'm here to help."

As my hon. Friend the Member for Bridgwater suggested in his intervention on the Minister, the serious detail is about the practical workings of the fair work agency as it is set up. What will be the total number of enforcement officers, employees and ancillary staff required—admittedly, some will be brought across from other agencies—to form it? What will be the cost to the taxpayer of putting that together? How many people are we actually talking about? I think that, as opposed to the powers that they will hold, was the crux of my hon. Friend's intervention.

As I said, we accept the rationale for bringing these powers together under one agency, but whenever such powers are granted to a Secretary of State, no matter what the field, there is always uncertainty and scope for never-ending expansion of the new agency, and of the size of the state, to do what is, in many cases, important enforcement work—I do not doubt that. Given the presumption that the Bill will become an Act of Parliament and that the agency will be set up in the way envisaged in clause 72, it would be good to have clarity about the plan for just how big the agency will be and whether the Secretary of State will put any cap on that from the get-go. How far does the Minister envisage the agency going?

Steve Darling (Torbay) (LD): It is a pleasure to work under your chairmanship, Mr Mundell. I broadly welcome the bringing together of powers under the fair work agency. I note that the Secretary of State is due to

[Steve Darling]

publish an annual report, but I am sure that businesses in Torbay would be interested to know where in the Bill the critical friend is to hold the Secretary of State to account and ensure that they are being light of foot and driving the agenda we all want to see in this area, so I would welcome the Minister's sharing that.

Michael Wheeler (Worsley and Eccles) (Lab): As is customary, I draw the Committee's attention to my declaration in the Register of Members' Financial Interests. I am a member of the Union of Shop, Distributive and Allied Workers and the GMB.

I warmly welcome this clause and the subsequent clauses, and the establishment of the fair work agency. I remind the Committee of the evidence we heard of the broad support for the agency, including from Helen Dickinson, the chief executive of the British Retail Consortium, who said:

"I think everybody is supportive of and aligned on proposals like a single enforcement body."—[*Official Report, Employment Rights Public Bill Committee,* 28 November 2024; c. 99, Q95.]

Jamie Cater, the senior policy manager for employment at Make UK, said:

"The important thing for levelling the playing field is the fair work agency, and making sure that we have an approach to enforcement of labour market policy and regulation that is properly resourced and does have that level playing field."—[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 54, Q53.]

Jim Bligh, the director of corporate affairs for the Food and Drink Federation, said:

"For me, it is about enforcement and having a really strong, well-resourced enforcement agency."—[*Official Report, Employment Rights Public Bill Committee,* 26 November 2024; c. 55, Q53.]

11.45 am

It is clear that there is support for the fair work agency across industry. I warmly welcome it. However, while rights for workers are incredibly important, rights are nothing without enforcement. Enforcement is incredibly important, but enforcement does not work without resources. That is to acknowledge that in setting up the fair work agency, which has broad support, we must ensure that it has adequate resources to do its job well and fulfil its function.

Laurence Turner (Birmingham Northfield) (Lab): As always, it is a pleasure to serve under your chairship, Mr Mundell. As is customary, I draw attention to my declarations in the Register of Members' Financial Interests and my membership of the GMB and Unite trade unions. It is a pleasure to follow my hon. Friend the Member for Worsley and Eccles. I will make two brief complementary points.

First, the establishment of a single enforcement body was one of the core recommendations of the Taylor review. We were told over the last two Parliaments that an employment Bill was coming. Now that it is here, it is welcome that that recommendation is being acted on.

Secondly, in the Australian system of industrial relations, the Fair Work Commission is a long-standing and effective enforcement body that has survived multiple changes of governing party, so there are good international comparators to draw on, as well as the support we heard in the evidence sessions. The resourcing questions that have been raised are valid, and I am sure that those of us who come at this from a trade union background and point of view also take a close interest in the resourcing of the fair work agency. I make those two additional points in support of this measure.

Nick Timothy (West Suffolk) (Con): I want to add my support in principle for the idea of a single labour market regulator. I have written about that in the past in different ways and can claim a small amount of credit for the commissioning of the Taylor review into the gig economy when I was working in 10 Downing Street. These issues are very important to me. Hopefully that will reassure the Minister and Labour Members of my cross-party credentials when that might be necessary.

We can all think of ways in which different kinds of labour market exploitation—non-payment of the national minimum wage or living wage; breaches of terms and conditions, health and safety or holiday rights; and illegal working, among many other examples—can be difficult to address if the laws are tough but the enforcement is poor. Those on both sides of the Committee can agree on that.

I want to add to the questions that have already been raised. I think the Minister said that the idea is that no additional powers will be granted and that this is just a consolidation. My understanding is that the fair work agency will not be a single monolithic agency; it is more about different strands of work being brought under a single leadership. If that is the case, presumably the different agencies that exist will do so until this legal change comes into effect. Presumably, the powers of the officers in each of those agencies differ in certain ways. Will that remain the case under the one body, or will there be interoperability and transfer of officers within the different sections under the single regulator? Or is the idea that the officers across those different entities will all assume the maximum powers that exist at the moment so that they can operate across all the different responsibilities of the new agency? I think that would still mean a net increase in powers across those people. What work has been done in the Department to give us an idea of the numbers we are talking about? If the Minister could answer that and then write to us with some more detail and statistics, I would be grateful.

Justin Madders: It is pleasing to hear generally broad support for this measure. As my hon. Friend the Member for Birmingham Northfield pointed out, and as the hon. Member for West Suffolk will know better than most, this was previously a Conservative party manifesto commitment, and we are pleased to be able to move it forward.

Some detailed operational questions were asked. At this stage, how the agency will work in practice is still being fleshed out. The current understanding in the impact assessment is that this is about the consolidation of existing resources and having a single point of leadership. Members will recall that, in her evidence to the Committee, Margaret Beels, the Director of Labour Market Enforcement, talked about how her role would be much easier if she were able to combine the powers of different agencies.

The shadow Minister asked whether we will require extra staff. That will be part of discussions with the Treasury. As he will know, there is a spending review on

the horizon and Departments have been asked to look at savings. Clearly, we hope that the combining of resources will lead to some efficiencies, but there is certainly a view from a number of stakeholders that enforcement is not at the level it ought to be—

Greg Smith: I fully acknowledge and appreciate the Minister's point about negotiation with the Treasury, but even if we take it as read that it is right to bring powers into a single enforcement agency, there is always a cost to creating anything new, even if it is a consolidation. Surely, the Department for Business and Trade has a cost for that. There is legislation live, in front of us right now, that seeks to create the agency, so surely he must know the broad cost of setting it up and consolidating those powers.

Justin Madders: Yes, the impact assessment sets out the one-off set-up costs. I am sure the shadow Minister can spend the lunch break looking at the detail. In terms of the current enforcement framework, as I say, there is a view that more needs to be done. Of course, we will be adding holiday pay and social security to that, and there is a power to add further areas. We know that generally, when resources are combined, we can deliver more—the sum is greater than the parts.

The Liberal Democrat spokesperson, the hon. Member for Torbay, asked about the critical friend. This Government are always ready to have critical friends—more on the "friend" side than the "critical" side. We will come shortly to a clause about an advisory board, which will have a broad range of stakeholders able to take that role.

Greg Smith: Does the Minister not agree that for any power held by any Secretary of State in any Department, the critical friend is a very simple concept? It is called Parliament—it is all of us.

Justin Madders: Indeed it is, and the usual parliamentary scrutiny will apply, but I was talking specifically about the role of the fair work agency. There will be that role, and no doubt as more detail emerges there will be more parliamentary opportunities to talk about the role and functions of the agency.

My hon. Friends the Members for Worsley and Eccles and for Birmingham Northfield talked about the broad support for the agency's establishment, as indeed did the hon. Member for West Suffolk. I have a list of all the supportive witnesses at the oral evidence sessions, and it is a broad and impressive cast. It includes the CBI, the British Chambers of Commerce, the British Retail Consortium, the Chartered Institute of Personnel and Development, the Recruitment and Employment Confederation, the Food and Drink Federation, the Co-op, Margaret Beels, and of course all the trade unions. There is support across the board for this single enforcement body.

Mr Peter Bedford (Mid Leicestershire) (Con): It is a pleasure to serve under your chairmanship, Mr Mundell. There are a few points about the creation of the agency that I would like the Minister to address. I am broadly supportive of synergies and of the rationalisation of public bodies, particularly to ensure that the taxpayer is getting value for money, but have the Government considered the cost of this new body and whether it will result in savings for the taxpayer? Will they consider locating it outside London so that it is more broadly reflective of the country at large?

Justin Madders: As a regional MP—a north-west Member—I am always looking to see where we can get more Government agencies out into the rest of the country. It is probably too early to say, but those kinds of decisions are being looked at.

At the moment, His Majesty's Revenue and Customs deals with minimum wage enforcement. Moving such a specific task across to another body will take some time, so there may well be a period during which HMRC continues to undertake that work, albeit that it is within the remit of the fair work agency. Such operational details will be discussed and dealt with in due course.

The hon. Member for West Suffolk made a point about the powers of individual officers. Initially, we envisage that officers will move into, effectively, their existing roles. It will be a matter for operational consideration in due course whether it is beneficial to extend people's remits. It will not be required of anyone without sufficient training and safeguards in place, but as the agency develops, it may well be considered advantageous to broaden the role of enforcement officers. One of the rationales for the body is that there are often several aspects to an employer's breach of obligations, so we want the fair work agency to be able to tackle these things as a whole. However, that is an operational matter that will be dealt with in due course. I commend the clause to the Committee.

Question put and agreed to.

Clause 72, as amended, accordingly ordered to stand part of the Bill.

Schedule 4

Legislation subject to enforcement under part 5

Justin Madders: I beg to move amendment 169, in schedule 4, page 127, line 29, leave out paragraph 3 and insert—

"3 Section 151(1) of the Social Security Contributions and Benefits Act 1992 (employer's liability to pay statutory sick pay).

3A Regulations under section 153(5)(b) of that Act (requirement to provide statement about entitlement)."

This amendment clarifies the specific obligations relating to the payment of statutory sick pay which will be enforceable under Part 5 of the Bill.

The Chair: With this it will be convenient to discuss Government amendment 170.

Justin Madders: As we have discussed, the current enforcement system for workers' rights is fragmented. By creating the fair work agency, we intend to bring enforcement into one place. We have been clear that we also want the fair work agency to enforce individual rights to statutory sick pay, because we want to upgrade the enforcement of workers' rights and stand up for the most vulnerable in our workforce, including those who are unable to work owing to sickness. That is why part 1 of schedule 4 to the Bill, as introduced on 10 October 2024,

[Justin Madders]

includes part 11 of the Social Security Contributions and Benefits Act 1992—one of the main pieces of legislation setting out the statutory sick pay regime—in the body of relevant labour market legislation. Government amendment 169 further clarifies the obligations concerning the payment of statutory sick pay under the Act and regulations made under it, which will be enforceable under part 5 of the Bill.

However, there is a wider body of statutory sick pay legislation containing details about the entitlements bestowed on workers and the duties of employers. After further work, we noted that some of those provisions needed to be included under the fair work agency. That led us to amendment 170, which will add the following legislation to part 1 of schedule 4: regulations made under section 5 of the Social Security Administration Act 1992, in so far as they relate to statutory sick pay, which deal with claims for, and payment of, benefits; section 14(3) of the Act, which establishes the duty on employers to provide employees with certain information about their sick pay entitlement; and regulations made under section 130 of the Act, in so far as they relate to statutory sick pay. Those provisions will be considered relevant labour market legislation, which makes them part of the Secretary State's enforcement function. We will proceed with them once the fair work agency is ready to enforce them effectively. Amendments 169 and 170 are therefore necessary for the fair work agency to deliver its remit on statutory sick pay.

12 noon

Greg Smith: Amendment 169 clarifies the specific obligations relating to the payment of statutory sick pay that are enforceable under part 5. Similarly, amendment 170 will ensure that those additional obligations relating to statutory sick pay that are imposed on employers by the Social Security Administration Act 1992 are enforceable under part 5. This goes back to our old friend, drafting errors being corrected that should really have been sorted out before the Bill was presented to Parliament in the first place.

Justin Madders: We will probably have this conversation a number of times. It is probably a little harsh to say that this was an error, but it would be fair to say that, given the complexity of social security legislation, not every provision was identified when the Bill was first introduced.

Amendment 169 agreed to.

Amendment made: 170, in schedule 4, page 127, line 30, at end insert—

"Social Security Administration Act 1992

3B Regulations under section 5 of the Social Security Administration Act 1992 (regulations about claims for and payments of benefit), so far as relating to statutory sick pay.

3C Section 14(3) of that Act (duty of employers to provide certain information to employees in relation to statutory sick pay).

3D Regulations under section 130 of that Act (duties of employers), so far as relating to statutory sick pay."*—(Justin Madders.)*

This amendment ensures that additional obligations relating to statutory sick pay that are imposed on employers by the Social Security Administration Act 1992 are enforceable under Part 5 of the Bill.

Greg Smith: I beg to move amendment 118, in schedule 4, page 128, leave out lines 11 to 16.

This amendment is consequential on NC20 and removes those regulations from the list of legislation subject to enforcement under Part 5 of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 119, in schedule 5, page 130, leave out lines 16 and 17.

This amendment is consequential on NC20 and removes an enforcement authority within the meaning of regulation 28 of those Regulations from the list of persons to whom information may be disclosed under Clause 98 of the Bill.

New clause 20—*Revocation of the Working Time Regulations 1998—*

"(1) The Working Time Regulations 1998 (S.I. 1998/1833) are revoked.

(2) The following regulations are also revoked—

(a) the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I 2003/3049);

(b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (S.I. 2004/1713);

(c) the Cross-border Railway Services (Working Time) Regulations 2008 (S.I. 2008/1660);

(d) the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (S.I. 2018/58).

(3) In consequence of the revocations made by subsection (1) and (2)—

(a) omit the reference to regulation 30 of the Working Time Regulations in Schedule A2 to the Trade Union and Labour Relations (Consolidation) Act 1992 (tribunal jurisdictions to which section 207A applies)

(b) omit section 45A of the Employment Rights Act 1996 (protection from suffering detriment in employment: working time cases);

(c) omit section 101A of the Employment Rights Act 1996 (unfair dismissal: working time cases);

(d) omit section 104(4)(d) of the Employment Rights Act 1996 (assertion of working time rights);

(e) omit section 18(1)(j) of the Employment Tribunals Act 1996 (which refers to regulation 30 of the Working Time Regulations among proceedings to which conciliation is relevant);

(f) omit section 21(1)(h) of the Employment Tribunals Act 1996 (jurisdiction of the Employment Appeals Tribunal in relation to the Working Time Regulations);

(g) omit the reference to regulation 30 of the Working Time Regulations in Schedule 5 to the Employment Act 2002 (tribunal jurisdictions to which section 38 applies);

(h) omit the reference to regulation 28 of the Working Time Regulations in Schedule 1 to the Immigration Act 2006 (person to whom director etc may disclose information);

(i) omit paragraph 141(h) of Schedule 7A to the Government of Wales Act 2006 (specific reserved matters), but this omission does not confer any jurisdiction on the Senedd or Welsh Government.

(4) The power of the Secretary of State to make consequential amendments under section 113(1) must be exercised to make such further consequential amendments as are necessary in consequence of subsections (1) and (2)."

This new clause revokes the Working Time Regulations 1998 together with other Regulations which give effect to the Working Time Directive in UK law, and makes consequential provision.

Amendment 117, in clause 118, page 105, line 20, at end insert—

"(3A) But if the provisions of section [*Revocation of the Working Time Regulations 1998*] have not been fully brought into force before the end of the period of 12 months beginning with the day on which this Act is passed, that section (so far as not already in force) comes into force at the end of that period."

This amendment is consequential on NC20 and provides that the revocation must have effect within a year of the passing of this Act.

Greg Smith: I rise to speak to amendments 117, 118 and 119 and new clause 20, which stand in my name and in the name of my hon. Friends on the Committee. I make it clear that they are probing amendments; it will become clear over the next couple of minutes why we seek to probe the Government on the issue.

The amendments would repeal the working time directive within one year of the Bill's coming into force. Our reason for tabling them is not that we intend to abolish entitlement to holidays, lunch breaks and so on—far from it, and nobody is suggesting that. However, the working time directive has had a troubled history. One example is the difficulties that occurred between the Commission and member states when the Court of Justice of the European Union ruled that employers—all of them public health and emergency services—did not calculate time spent on call as working time, when they should have done. The CJEU consistently declared that practice incompatible with the directive, arguing that inactive time spent at the disposal of the employer must be counted in its entirety as working time. Then, in 2019, the Court ruled:

"Member States must require employers to set up an objective, reliable and accessible system enabling the duration of time worked each day by each worker to be measured."

The result of that judgment was never formally brought into British law, but as a result of the European Union (Withdrawal) Act 2018, it became part of retained EU law.

Last year, the Conservative Government legislated to clarify that businesses do not have to keep a record of the daily working hours of their workers if they are able to demonstrate compliance without doing so; to amend the WTR so that irregular hours and part-year workers' annual leave entitlement is pro-rated to the hours that they work; to introduce an accrual method for calculating holiday entitlement for certain workers; to revoke the covid regulations—it seems odd that we are still saying that—and to introduce rolled-up holiday pay for irregular hours and part-year workers. Consultation requirements under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to allow smaller businesses to consult directly with employees would be another measure. That is just the start of how it might be possible to simplify the working time directive. I would be grateful to hear the Minister's thoughts on how well the working time regulations are working, and on whether any further changes might be made for the benefit of businesses to enable growth in this country.

Justin Madders: The working time regulations have had a relatively long history in our legal framework. They provide vital rights: a maximum working week of 48 hours, rest breaks of 20 minutes every six hours, rest periods of 11 hours each day and at least 24 hours each week, and 28 days of annual leave each year. The regulations implement the EU working time directive; the then Government deliberately designed them to provide maximum flexibility for both employers and workers. For example, workers can choose to opt out in writing from the 48-hour week maximum. We believe that the regulations have benefited millions of workers and their families over the years. They afford workers a better balance between work and other responsibilities, as well as improvements in health and wellbeing.

A 2014 review by the previous Government of the impact of the working time regulations on the UK labour market found that since 1998 there had been a decline in long-hours working in the UK and a general trend towards shorter working hours, which is probably not a surprise. The findings also suggested that the impact of the regulations was mainly through increased employment of workers doing shorter working weeks, rather than through a reduction in total hours worked. Annual leave entitlements have increased since the introduction of the working time regulations; many workers now enjoy a more generous leave entitlement than is prescribed by law.

Limitations on working hours and entitlement to a minimum number of days' holiday can contribute to improvements in health and safety. Most employers accept that a minimum holiday entitlement contributes to physical and psychological wellbeing. Reductions in stress and fatigue caused by excess hours can provide many benefits, including less pressure on health services and better performance at work, with fewer accidents. By establishing minimum standards, the working time regulations also support a level playing field that discourages competition that relies on poor working conditions and a race to the bottom.

New clause 20 would revoke the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018, which provide for adequate rest for seafarers and support the management of onboard fatigue and the wellbeing of seafarers. Revoking the regulations would negatively affect the ability of the Maritime and Coastguard Agency to enforce safe and healthy working conditions for seafarers.

The new clause would also revoke the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, which require the UK to implement the International Labour Organisation's work in fishing convention, which underpins the safe operation of vessels. Fishing is one of the most dangerous sectors in the UK, with 50 injuries per 100,000 workers compared with a UK average of 0.4. We believe that the 2004 regulations are critical to ensuring that workers take the appropriate hours of rest to prevent fatigue-related incidents.

The new clause would also revoke the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003. The Maritime and Coastguard Agency is in the process of conducting a post-implementation review of those regulations. The initial responses to the consultation have indicated a generally positive view from stakeholders.

The new clause would also revoke the Cross-border Railway Services (Working Time) Regulations 2008, which provide enhanced rights and worker protections for those engaged in cross-border rail services, such as train crew for Eurostar services through the channel tunnel. The revocation of the regulations would erode those enhanced protections.

The Government believe that the minimum standards in the Working Time Regulations 1998 and other sector-specific working time regulations have supported millions

[Justin Madders]

of workers and their families by enabling them to better balance work and other responsibilities. The Government have no plans to revoke the working time regulations or any of the other sector-specific regulations.

I understand what the shadow Minister says about whether we consider the regulations to be beneficial to businesses, but he will know that there was ample time under his Government to undertake those reviews. Indeed, one was undertaken just over a decade ago, as I said. We have no plans to erode workers' rights in this area; indeed, one of the fair work agency's main functions will be to enforce rights to holiday pay, which evidence to the Committee suggests are not being enforced properly.

The shadow Minister says that he has no intention of revoking the working time regulations and that his amendment is probing, but I can only speak to what is before the Committee. If he had tabled an amendment seeking a review of the operation of the working time regulations, that might have been more appropriate in the circumstances. This feels to me like a dog-whistle amendment, so I am pleased to hear that he will not be pressing it.

Greg Smith: I am always pleased to delight the Minister in these debates. It was a probing amendment, and I can confirm that we will not be pressing amendments 117 to 119 or new clause 20 to a Division. However, I will briefly comment on the Minister's response. I entirely respect him for it, but it was a full-throated defence of the status quo.

Something that goes deep within my view of politics, of government and of public administration is there is always room for improvement in pretty much everything. I say that as much about measures passed by previous Conservative Governments as about those passed by current or past Labour Governments. I refuse to accept that something is as good as it possibly can be and is working as well as it possibly can in the interests of businesses and workers alike. There is some disappointment from the official Opposition that the Government do not seem to want to look again.

Justin Madders: Does the shadow Minister not accept that his party undertook this exercise, which is why regulations were introduced last year to amend the working time regulations?

Greg Smith: I fully and totally accept that, but it is our job as the official Opposition, here and now in January 2025, to press the current Government on further measures that could be taken to work in the interests of everybody in our country—workers and businesses alike. Perhaps I accept the Minister's point; perhaps we could have tabled an amendment to call for a review. Who knows? Perhaps on Report we might. But the fundamental position that I come back to is one that does not just accept the status quo, but is always challenging, always reviewing and always seeking to make things better in the interests of everyone.

When the Minister goes back to the Department and prepares for the remaining stages of the Bill in the main Chamber and in the other place, may I gently urge him to consider in the round, with the Opposition's support, whether there are tyres to be kicked and measures to be improved in the operation of the working time directive? May I also urge him to ensure—now that we are a sovereign country once more, having left the European Union—that this Parliament can make improvements should it so wish? I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Justin Madders: I beg to move amendment 85, in schedule 4, page 128, line 13, at end insert—

"( ) regulations 13 to 15E (entitlement to annual leave, etc);"

This amendment would enable the Secretary of State to enforce the entitlements to annual leave conferred by the Working Time Regulations 1998.

Government amendment 85 will add to schedule 4 the additional holiday pay and entitlement regulations: regulations 13, 13A, 14, 15, 15A, 15B, 15C, 15D and 15E of the Working Time Regulations 1998. It will enable the fair work agency to take enforcement action in relation to incorrect payment or non-payment of a worker's holiday pay and incorrect payment or non-payment in lieu of annual leave entitlement, ensuring that a wider range of complaints can be dealt with more effectively. I commend it to the Committee.

12.15 pm

Greg Smith: This is another example of a tidying-up exercise that we really should not have to be discussing in Committee. It should have been sorted before the Bill was introduced.

Amendment 85 agreed to.

Question proposed, That the schedule, as amended, be the Fourth schedule to the Bill.

The Chair: With this it will be convenient to discuss new clause 23—*Review of the effectiveness of enforcement of labour market legislation*—

"(1) The Secretary of State must establish an independent review providing for—

(a) an assessment of the effectiveness of enforcement of, and compliance with, relevant labour market legislation requirements as specified in Part 1 of Schedule 4 of this Act;

(b) an assessment of the performance and effectiveness of following bodies in enforcing labour market legislation—

(i) Gangmasters and Labour Abuse Authority;

(ii) Employment Agencies Standards Inspectorate;

(iii) His Majesty's Revenue and Customs; and

(iv) Health and Safety Executive; and

(c) recommendations on strengthening labour market legislation enforcement.

(2) The Secretary of State must lay before Parliament a report of the review in subsection (1) not more than 18 months after the day on which this Act is passed and before a new single labour market enforcement body is established."

This new clause would require the Secretary of State to establish a review of enforcement of labour market legislation and to report findings to Parliament before a new labour market enforcement body is established.

Justin Madders: The UK's labour market enforcement system is fragmented, as we know. The enforcement of core rights such as the minimum wage, the domestic agency regulations and the gangmaster licensing scheme

is split between three different agencies, so workers often do not know where to go when they think they might not have received what they are due. That makes enforcement ineffective.

Clause 72 is a vital building block of the fair work agency. Clause 72(1) will place on the Secretary of State a responsibility to enforce a set list of labour market legislation. It introduces part 1 of schedule 4, which sets out the list of relevant labour market legislation that the Secretary of State will be responsible for enforcing—the national minimum wage, domestic agency regulations, the gangmasters licensing scheme, parts 1 and 2 of the Modern Slavery Act 2015 and the administration of the unpaid employment tribunal award penalty scheme.

Creating the fair work agency is about more than simply moving things around. That is why we have also taken steps to enforce workers' rights to paid holiday and statutory sick pay. We tabled two sets of amendments to part 1 of schedule 4 to ensure that the fair work agency delivers the policy intent in relation to enforcing holiday pay and statutory sick pay. As we have discussed, our amendment on holiday pay will ensure that the FWA can take action in relation to incorrect payment or non-payment of a worker's holiday pay and incorrect payment or non-payment in lieu of annual leave entitlement; our amendment on statutory sick pay will ensure that all relevant statutory sick pay provisions that contain entitlements for workers or impose duties on employers are in scope of enforcement.

Part 2 of schedule 4 grants the Secretary of State a delegated power to make affirmative regulations to add new legislation to part 1 of the schedule. The Secretary of State can use the power to bring in scope legislation that relates to the rights of employees and workers, the treatment of employees and workers and requirements on employers, and legislation on trade unions and labour relations. It is a broad power but a necessary one: if we are to deliver the policy intent of genuinely upgrading enforcement, the fair work agency needs to be able to respond to changes in the labour market. We believe that a power to make affirmative regulations, which Parliament will of course have to approve, will ensure proper parliamentary scrutiny for any further changes.

New clause 23 is well intentioned, but it is unnecessary and would be counterproductive. It would impose a lengthy and redundant review process that largely duplicated the statutory duties that are already undertaken by the director of labour market enforcement. She already oversees the enforcement landscape and provides an annual strategy and annual report on the effectiveness of the activities of the bodies that will make up the fair work agency. New clause 23 would do nothing to add to those mechanisms. In fact, it would slow down the creation of the fair work agency.

I turn to clause 75—

The Chair: We will come to that later.

Justin Madders: Okay. I have nothing further to say, except that the shadow Minister's new clause 23 is a duplication of existing requirements that would add nothing to the process.

Greg Smith: I hear what the Minister says about slowing things down, but it would be remiss of me not to comment that if the Government had perhaps taken their time a bit on the drafting of the Bill, we would not be spending so much time in this Committee considering the absolute deluge of Government amendments that tidy things up that should have been right in the first place. Sometimes it is best not to rush things. Sometimes it is better not to dive in head first and just go for the first thing available, but to be cautious, to review and to fully understand all the implications that new legislation such as this will have in the real world.

That is what new clause 23, which stands in my name and those of my hon. Friends, seeks to double-check. It seeks to ensure that the Government are getting this right—not in our interests or those of anyone in the House of Commons, but in the interests of businesses and workers in the real world, trying to get on with their daily lives, get their jobs done and get their businesses growing and providing the growth and prosperity that we all want to see in the country.

As I have said previously, we do not have a problem in principle with the establishment of a new body to oversee the enforcement of labour market legislation. I have made that clear, and hon. Friends who have spoken have made it crystal clear. But we also made a challenge in the previous debate, and that is what new clause 23 is all about. It is about ensuring that we fully understand the scope, cost and effectiveness of this new body.

Any new body, be it a Government body or in the private sector—although the creation of new bodies in the public sector tends to be slower and often cost more than the private sector would manage—will take time and resources, and we would like to be reassured that this is a good use of time and resources. I repeat that our instinct is that it probably is. Our instinct is that it does seem to make sense, but we can never rely on instinct or on that which might look good on paper as the absolute cast-iron test. It is about the real evidence.

Laurence Turner: We heard from the hon. Gentleman earlier in the main Chamber about sustainable aviation fuel; I wonder whether he might share with us the shadow ministerial equivalent that he seems to have discovered, because we are covering a huge amount of ground. I just say this to him. We did have the Taylor review, which looked at these matters, including the functioning of the individual enforcement agencies, so I am just wondering: does he think that something has changed, in terms of their effectiveness, since then? We have already had an assessment of the nature that he is calling for.

The Chair: I think we will focus on the latter part of Mr Turner's remarks.

Greg Smith: Yes, Mr Mundell. I am genuinely struggling to find the connection between my questions in transport orals this morning on sustainable aviation fuel and this Bill. I will gladly offer to have a coffee with the hon. Member for Birmingham Northfield to discuss my passionate view on synthetic fuel in the future, but it really is not relevant to this Bill.

I accept the hon. Gentleman's latter point, about previous reviews, but new clause 23 is specifically looking at the creation of this new body and is about ensuring that that is the right thing to do and that the cost of it will actually bring the benefit that the Minister and other Government Members have explained that they

[Greg Smith]

believe it will. It is incumbent on all of us, whether we sit on the Government or Opposition Benches or for the smaller parties, that we challenge everything put in front of us. Any culture in any organisation that does not challenge what is put in front of it is often weaker for it. That is what new clause 23 is seeking to do.

Inherent in that, notwithstanding the Taylor review, is the aim to ask and double-check whether the rationale takes into account how effectively labour market legislation is currently being enforced and understand what research this Government—not former Governments, but this one—have undertaken on what will be done more effectively or efficiently with the creation of this new body. We would like the Government to assess how effectively the labour market legislation that will be enforced by the new body is currently working in that fragmented sense that the Minister spoke about earlier, and how effective the enforcement of it is, before setting up any new quango.

Generally speaking, new quangos fill me with dread and fear, but this one may be worth while. However, we need the evidence. Will the Minister expand on how matters will change for businesses through the new labour market enforcement authority? What will feel different for them and what changes might they need to make as they prepare for it? New clause 23 tries to get to the heart of that.

Steve Darling: I know from my surgeries and casework in Torbay that discrimination is sadly alive and well. I ask the Minister to reflect on some of the evidence from the Equality and Human Rights Commission, which talked about the provision leading to fragmentation and the possibility of some of its standard work falling between two stools. What reassurances can the Minister give that the good work will proceed appropriately either through the fair work agency, or in a partnership approach with the Equality and Human Rights Commission?

Sir Ashley Fox: I want to speak in support of new clause 23 and to ask the Minister whether he is familiar with Parkinson's law. It states that the number of workers in any public administration will tend to grow over time, regardless of the quantity of work done. The corollary is that work expands to fill the time available for its completion.

Although Conservative Members are in favour of the creation of the fair work agency, there is a risk that, over time, it will seek to have more staff and more power, will consume a great deal more of taxpayers' money and resources, and will impose more on employers' time, without great result. That is why a review is necessary. We want to ensure that any new authority is lean and efficient. We also want the Government to take the same approach to regulations.

Unfortunately, the Bill is a hefty document. It will impose £5 billion-worth of costs on employers, which will probably result in fewer people being employed, higher inflation and lower growth. It is therefore perfectly reasonable for the Opposition to ask the Government to reflect after 18 months and ascertain whether they can find anything in this weighty tome that they could do better or more efficiently.

The working time directive is immensely complicated and imposes burdensome record keeping on employers. In the past, it has resulted in retained firefighters in rural areas having to count the time when they sit at home, not doing anything, as working time. It has been a difficult and troublesome measure, and perhaps my party should have done more to simplify it when we were in office, but that is not an excuse for the Government to say, "Because you didn't do enough, we intend to do nothing." It is reasonable for us to ask the Government, at the end of 18 months, to take another look and see whether they can do anything to reduce the burden on businesses.

Justin Madders: I am beginning to wonder whether the Opposition's support for the fair work agency is as strong as I thought. They now appear to want to make sure that creating it is the right thing do, despite its featuring regularly in Conservative manifestos and despite the support of the breadth of stakeholders who gave evidence to the Committee. The current Director of Labour Market Enforcement made it clear in her evidence to the Committee that the creation of the fair work agency would make her role much easier and more effective. She spoke about the recommendations in her most recent report:

> "The ones that relate to having a better joined-up approach, to greater efficiency and to better sharing of information among bodies are the things that I think the fair work agency will do a lot better."—[*Official Report, Employment Rights Public Bill Committee,* 28 November 2024; c. 153, Q159.]

I think that almost half of the recommendations from her most recent report contained an element of that.

12.30 pm

On Parkinson's law, which the hon. Member for Bridgwater referred to, I am not sure whether that is actually an Act of Parliament; I suspect it is not. But it is fair to say that, while we are consolidating existing bodies—there are no specific plans at this stage to increase the workforce—we know from the evidence that this Committee received that there are still huge issues with payment of the minimum wage. Some 20% of workers on the wage floor reported that they were receiving less than the minimum wage; 900,000 workers reported that they had no paid holiday; and 1.8 million people do not receive payslips. There are huge gaps in enforcement at the moment, which is one of the reasons why the fair work agency is needed.

While the shadow Minister might want to seek reassurance that setting up the new body is the right thing to do, we believe that the issue has actually been pretty settled between both the main parties for a long time that it is the right thing to do. Requiring a report within 18 months—before the fair work agency can actually be set up—is simply going to delay that work by 18 months. He has also added into the amendment the Health and Safety Executive, which will not actually be part of the fair work agency, so that, again, would create some complications.

However, I assure the shadow Minister that there will be a regular review of the fair work agency's performance. I did start to stray into clause 75 in my earlier speech, and I did that, Mr Mundell, because that clause actually deals with the requirements for the agency to provide an

annual report and enforcement strategy, which will be our way of measuring the effectiveness of the fair work agency.

I understand that the shadow Minister wants reassurance that this is the right thing to do, but I suggest that there is more than enough evidence already that it is; his amendment will simply delay our arrival the destination that I thought we had all agreed was the right one. I ask him not to press the amendment.

The Chair: For clarity, the question on new clause 23 will be put at a subsequent point in the proceedings.

Question put and agreed to.

Schedule 4, as amended, accordingly agreed to.

Clause 73

ENFORCEMENT FUNCTIONS OF SECRETARY OF STATE

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 74 stand part.

Justin Madders: Clause 73 specifies which functions are considered enforcement functions of the Secretary of State for the purposes of part 5 of the Bill. It defines enforcement functions widely and then carves out certain functions that are not enforcement functions.

Clause 73(1) specifies that the enforcement functions of the Secretary of State include the following: any functions granted under part 5 of the Bill; functions in the relevant labour market legislation that they are responsible for enforcing; and any other functions that they perform to support enforcing labour market legislation.

Clause 73(2) goes on to set out exceptions. It lists specific functions that are not enforcement functions for the purposes of part 5 of the Bill. These are generally functions that relate to the arrangements for state enforcement of labour market legislation, and the overall governance of the fair work agency. These overarching governance functions include: appointing officers under clause 72; delegating functions under clause 74; setting up the advisory board under clause 75; publishing the annual reports and enforcement strategies under clauses 76 and 77; providing for transfer schemes to move staff into the Department under part 1 of schedule 7; and powers to make subordinate legislation.

The effect of clause 73 becomes clear when it is read in conjunction with clause 72. First, the enforcement functions that are listed in clause 73(1) can be performed by enforcement officers appointed under clause 72. Under clause 72(4), the powers of an enforcement officer include the power to exercise any enforcement function. Those powers can be limited further by the terms of the appointment of those officers.

Clause 74 gives the Secretary of State flexibility about how they carry out the functions of labour market enforcement. It provides the option to delegate functions to another public authority. Clause 74(1) gives the Secretary of State the power to make arrangements with the public authority so that it can exercise the delegable function. It also enables the Secretary of State to make arrangements to appoint a public authority's staff as enforcement officers. The Secretary of State can delegate the enforcement functions listed in clause 73(1), all of which have been highlighted already. Those functions relate to arrangements for state enforcement of labour market legislation or the overall governance of the fair work agency. The Secretary State can also delegate powers relating to the licensing of gangmasters under sections 7 or 11 of the Gangmasters (Licensing) Act 2004. The arrangements the Secretary of State makes with public authorities can also include an agreement to make payments in respect of the performance of any function by either the public authority or their staff.

Clause 74(5) means that delegating an enforcement function does not strip the Secretary of State of responsibility or control in enforcing labour market legislation. The Secretary of State can still carry out functions even when they have arranged for another public authority to do that on their behalf.

The Bill is about bringing enforcement and employment legislation into one place in order to make enforcement more effective and efficient by ensuring the better use of resources. It is about creating the right powers to carry out investigations and take enforcement action where necessary. However, it does not set out a specific approach to implementing that more joined-up enforcement, because operational flexibility will be the key to the success of the fair work agency. The clause helps to provide that flexibility by enabling the Secretary of State to delegate certain functions to other public authorities or to make arrangements for staff of other bodies to be appointed as enforcement officers. Both clauses are integral to the effective functioning of the fair work agency in the future.

Greg Smith: On the face of it, the clauses are not problematic: they are quite clear, and it is important that those things that are considered as enforcement functions are clearly defined. That is all well and good—until we get to clause 74(5), which states:

> "Arrangements under this section do not prevent the Secretary of State from performing a function to which the arrangements relate."

Therefore, a body with certain powers—admittedly in the Secretary of State's name—is created; essentially, a quango is put in place, and people are given the clear job of carrying out the enforcement functions in the Bill. However, if the Secretary of State is not prevented from performing one of those functions, what is the mechanism by which they can overrule the quango they themselves set up to perform them? Of course, the ultimate buck must stop with the Secretary of State, but it is a pretty established convention that where a quango is set up and has powers delegated to it—I think of Natural England within the Department for Environment, Food and Rural Affairs and many other quangos—it is very rare for a Secretary of State to intervene, overrule and perhaps come to a different conclusion from that quango.

We will not oppose the clauses, but I would be grateful if the Minister could reflect on the circumstances in which he believes clause 74(5) would come into effect, to make clear the procedures a Secretary of State would need to follow to bring that subsection into effect.

Steve Darling: I broadly welcome the proposals in the clauses, and I look forward to the Minister's explanation of the issues outlined by the shadow Minister.

Justin Madders: I hear what the shadow Minister says. He is possibly over-egging the pudding or taking us on a ride on the ghost train in terms of what clause 74(5) means. It simply means that if the Secretary of State delegates powers to another body, they are still the responsible person for the overall operation. This is not about overruling different bodies; it is about where the final responsibility lies. I hope I have put the hon. Gentleman's mind at rest to some extent.

Question put and agreed to.

Clause 73 accordingly ordered to stand part of the Bill.

Clause 74 ordered to stand part of the Bill.

Clause 75

ADVISORY BOARD

Question proposed, That the clause stand part of the Bill.

Justin Madders: I know you have been eagerly awaiting this clause, Mr Mundell. It concerns an important part of the fair work agency, and something that the Liberal Democrat spokesperson touched on earlier. The agency has a big job on its hands to restore trust among workers that they will get the rights that they are entitled to and that Parliament has laid down. It also important that the agency is trusted by businesses, and that they know they will be treated fairly and that if they follow the law, they will not be undercut by those who seek to avoid it. That is an important job for the fair work agency and it is important that we get it right. It must reflect the concerns of businesses and workers.

The Low Pay Commission has served the country well since the last Labour Government created it to advise on the national minimum wage. That is because it is a social partnership, comprising equal voices of workers, businesses and independent experts, and can reflect the perspectives of all those bodies when making recommendations. We want the FWA to replicate that success.

The clause requires the Secretary of State to create an advisory board for the fair work agency. Subsection (2) specifies that the board must consist of at least nine members appointed by the Secretary of State. Subsection (3) provides that board members must hold and vacate their position in accordance with the terms and conditions of their appointment. Subsection (4) provides for the advisory board to have a social partnership model, requiring equal representation of businesses, trade unions and independent experts.

We know this is a complex area that is constantly changing, but we believe that the model and approach that has proved so successful with the Low Pay Commission should be replicated here. I therefore commend the clause to the Committee.

Greg Smith: I hear what the Minister says in his explanation of the clause. Often, advisory boards are perfectly good and useful bodies, but I return to my earlier point that where a power rests with a Secretary of State, the accountable body to which any Secretary of State must submit themselves is the House of Commons, where they are a Member, or the House of Lords, in the rare case that they sit in the other place. Parliament is the advisory body—the critical friend—that the Secretary of State should submit themselves to.

However, accepting that an advisory board is going to be established, I want to ask the Minister about its make-up. While the Bill seems to be quite clear, there are some gaps, and some unanswered questions that the public, businesses, employees and the trade union movement will no doubt wish to have answered.

Probably the clearest definition in clause 75(4) is that in paragraph (a):

"persons appearing to the Secretary of State to represent the interests of trade unions".

I think we can all understand that that means representatives of the trade union movement.

Sir Ashley Fox: There are 10 of them over there.

Greg Smith: There is my first question, prompted by my hon. Friend: does that include right hon. and hon. Members of Parliament who themselves are members of trade unions? Could that be the case?

We are less clear on paragraphs (b) and (c). Paragraph (b) states:

"persons appearing to the Secretary of State to represent the interests of employers".

That is a far less easily defined body of people. On the one hand, I can hear some potentially arguing that that is the representative bodies that gave evidence to the Committee, such as the Confederation of British Industry and the Institute of Directors. That would be a legitimate answer, until somebody came forward and made a compelling case that, as an individual employer, they should be considered to sit on the board.

12.45 pm

While I have utmost respect for all the umbrella bodies and representative bodies that seek to represent British business interests and the many employers of all different sizes around our country, the evidence we heard demonstrated that sometimes the representative bodies say something a little bit different from what individual employers say. The gentleman from GAIL's gave us some powerful and compelling evidence. Will the Minister make it clear which individuals he envisages will sit on the advisory board to represent the interests of employers? Will they come from the representative bodies or individual employers? Will the Government put in place some other test to identify those individuals?

Paragraph (c) is even more opaque. It concerns

"persons appearing to the Secretary of State to be independent experts."

For a starter for 10, I would argue that the word "independent" will need to do a lot of heavy lifting. For example—

Michael Wheeler: Will the shadow Minister give way?

Greg Smith: I will be delighted to in one second, when I have finished my train of thought.

Can someone be classed as independent if they are an academic or a university professor, perhaps with considerable knowledge of and expertise in employment law and matters relating to the Bill—someone we should all respect—but also a member of a trade union? Does

their membership of a trade union count towards whether they are independent? Would that be at odds with paragraph (a)?

Michael Wheeler: I apologise for interrupting the egging of the pudding—we were definitely in the "over" area of the egging. Does the shadow Minister accept that despite what we have heard, and despite the picture that he is trying to create, this model works? It is not novel; we have the Low Pay Commission. It is an established fact. Despite the many layers and convolutions that we see being built in front of us, we are actually considering something quite straightforward here.

Greg Smith: I am grateful to the hon. Gentleman for his intervention and for what appears to be his support for the British egg industry. I encourage him to eat as many British eggs as possible and to support our farmers.

Justin Madders: Egg-cellent!

The Chair: We are not going down this route, thank you.

Greg Smith: I always bow to your advice, Mr Mundell. I will try to save the Minister the embarrassment of having that recorded in *Hansard*.

Let me try to return to my point. While I accept that advisory boards of Government Departments often follow this formula, we have a particular definitional problem with this one. The problem is whether, in the example I gave before the intervention of the hon. Member for Worsley and Eccles, the independence of a seemingly independent expert—most reasonable people would say a university academic, professor, doctor or whoever would normally fall into that category—would be influenced if they were a member of a trade union, and whether in that case their membership of the board would be compliant with the provision for an "equal number" of independent experts and those representing the trade union movement on the board.

This is an important problem for the Minister to acknowledge. He must be very clear to the Committee whether the word "independent" in paragraph (c) would disallow anyone who is a member of a trade union from being a member of the board under paragraph (c), for fear of contradicting paragraph (a).

Alex McIntyre (Gloucester) (Lab): I refer the Committee to my membership of the GMB and Community unions. The shadow Minister is keen for us all to stress our trade union membership, and we do so at the start of every sitting. He makes the point about trade union membership potentially impacting independent experts, but he will be aware that many university professors are funded by private limited companies to support their research, just as some Opposition Members are supported by private limited companies and employers for campaign purposes, none of which is declared in this Committee. Would he not say that might impact those professors' independence too? Would that not need to be declared to ensure that the numbers are balanced?

Greg Smith: I understand the hon. Gentleman's point. I believe in freedom; I have no problem with any hon. or right hon. Government Member being a member of a trade union. The point here is clarity and transparency. We have a Bill in black and white in front of us that refers to equal numbers but fails to define whether a member of a trade union could sit as an independent expert or would have to be categorised under subsection (4)(a) as representing the interests of trade unions. This is a matter of information on which the Committee and the general public deserve to have clarity before we allow this clause to become part of primary legislation in our country. As in all walks of life, there will be points of debate on that. I want to hear from the Minister's own mouth whether he deems it to contradict the "equal number" provision. We could dance on the head of a pin all day, but when we are seeking to pass legislation, clarity is very important, and I look to the Minister to give it.

Steve Darling: I am concerned about the heavy weather that colleagues on the Opposition Benches are making of this. For me, this measure is about driving a positive culture in employment, and the board's balance is entirely appropriate. I welcome the clause.

Sir Ashley Fox: I have a number of concerns about the establishment of the advisory board for the enforcement of labour market rules. I do not believe that such an advisory board is necessary and I am convinced that its creation would represent an expensive and bureaucratic exercise that would be redundant at best and a tool to disguise the Government's intentions behind a veil of unnecessary consultation at worst. Let me explain why.

Let us first address the central issue: the need for advice. It is not as if there is a shortage of expert opinions on labour market matters; far from it. If the Secretary of State is seeking guidance from trade unions, he need look no further than the extensive and loud representation of trade union interests on the Benches behind him. There seems to be no shortage of trade union representatives in key positions, be it MPs with close ties to the unions or those with—

Michael Wheeler: Does the hon. Member accept that there is a difference between "member of" and "represents" when it comes to trade unions?

Sir Ashley Fox: Yes, I do. Indeed, "funded by" trade unions is another distinction. The point I am making is that this advice is available for free. There is no need for the Secretary of State to commission a board and pay representatives of trade unions to give him advice. The notion that three members of trade unions are needed on the advisory board seems, to put it bluntly, quite redundant. The Secretary of State can obtain that advice from any number of trade unions, their experts, or any of the MPs that sit on the Government Benches, who will all freely give it. Let us not forget that there are already plenty of independent experts contributing to various public bodies and providing high-level advice to the Government—there is certainly no shortage of them dotted throughout Whitehall.

If the Government require business perspectives, they certainly need not search too far for that advice either. If they wanted to, they could listen to the CBI or, if they preferred, to the Federation of Small Businesses, which provide ample insights and recommendations on policy matters relating to labour and employment. Those bodies

[Sir Ashley Fox]

represent businesses large and small, and have extensive networks of experts available to advise on any issues regarding the labour market. The problem—I suspect the Federation of Small Businesses would agree—is that the Secretary of State does not listen to them, so what difference would it make if he were to put one of them on a board of nine or 12? Do we need more voices from the same sectors giving advice?

Who might we see the Secretary of State appoint to this board? I am sure Sir Brendan Barber would get a look in, or perhaps Baroness Frances O'Grady. I wonder what Len McCluskey is up to these days—I am sure he has vast experience in employment rights matters.

The Chair: Mr McCluskey is now a constituent of mine.

Sir Ashley Fox: Mr Mundell, you are as fortunate as Mr McCluskey.

I am sure that those are just the independent experts that the Secretary of State will be considering appointing to this board. This highlights another crucial point: the Government designation of independent experts is incredibly vague. The Government define "independent expert" as anyone who is neither a trade union representative nor an employer representative. There is no requirement in the Bill for someone to have any particular expertise; they just must not fall into one of those two categories. Nowhere does it say that that expert cannot be a member of a trade union; nowhere does it say that they cannot be a former leader of a trade union; nowhere does it detail what qualifications or experience these experts are expected to bring. Let us not forget that these experts will be paid substantial sums of money—potentially hundreds of pounds per day—and the Government want us to take it on trust that they will be appointing the best people for the job.

As is often the case with such bodies, it is not a risk, but a total certainty that the advisory board will be appointed disproportionately to represent one end of the political spectrum. I suspect the Government will make every effort to ensure that those appointed align with the views they already hold—or, if we have a board of nine, that at least eight of them are firmly in the camp of the Labour party. The most likely outcome in my view is that this board will be packed with individuals whose perspectives on labour markets are perfectly aligned with Government policy and with the trade unions that this Government represent. It might be more straightforward for the Government simply to ask the TUC for instructions on how to go ahead, rather than to go through this cumbersome and expensive process. It would certainly cost the taxpayer less, and I would argue it would be more honest too. The fact is that this board's purpose seems more to provide a cover for a Government agenda that is already in place than to genuinely provide diverse input. It looks like an expensive way to present the façade of consultation without delivering anything meaningful at all.

If the idea of this surplus of readily available advice was not bad enough, we have not started to talk about the cost of setting up this quango and the board. Having served on two public bodies, I know that advisory bodies are expensive and time-consuming ventures that require significant administrative resources in terms of staff, time and finance. Not only do the members of those bodies need to be compensated—perhaps the Minister will advise us whether they will be paid £300 a day, or £400 or £500 a day—but there is also the cost of setting up the selection process, conducting interviews and managing the day-to-day operation of the body. We are talking about at least nine members being appointed—probably more—which will consume considerable amounts of civil service time and taxpayers' money. The selection process alone will involve a long list of procedures: advertising positions, longlisting, shortlisting, interviewing, and ultimately appointing the individuals—all, inevitably, to end up with the appointment of the nine people that the Secretary of State wanted to appoint in the first place.

What will this board ultimately do? It will advise the Secretary of State on drafting a strategy. We all know how these things go: the result will be a glossy document full of attractive photographs, distributed widely to people who will never read it, and it will have little or no practical impact on the ground. It will be yet more time and money wasted by this Government. We do not need more reports or strategies; we do not need an advisory board. Labour market rules are already there and they need to be enforced. The person responsible politically is the Secretary of State. He should take responsibility for the political decisions he makes in enforcing those laws, and not hide behind an advisory body.

Ordered, That the debate be now adjourned.—*(Anna McMorrin.)*

1.2 pm

Adjourned till this day at Two o'clock.