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Trade Union Bill – Committee Stage Report

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Summary

The *Trade Union Bill 2015-16* was introduced in the House of Commons on 15 July 2015.

It received its Second Reading on 14 September 2015. A detailed briefing published prior to the Second Reading debate is available on the Parliament website, here.

The Bill was debated in Committee between 13 and 27 October 2015, across ten sittings. During the first to fourth sittings the Committee examined evidence. The official record of the various stages of the Bill is set out on the Parliament website, here.

The Committee comprised Conservative, Labour and Scottish National Party (SNP) Members. Conservative Members voted with the Government on the Bill; Labour and SNP Members opposed every clause.

Only one substantial amendment was made during the Bill's Committee stage: a clause on the prohibition of check-off in the public sector. This is now clause 14 of the Bill. Beyond that, there were minor technical amendments tabled by the Government and agreed to without division.

The Bill, as originally introduced, is available here; the Bill as amended following the Committee debate is here.

This paper summarises the Committee debate, following a short summary of the debate during Second Reading.

1. Summary of the Bill as amended

Clause 1 defines the *Trade Union and Labour Relations (Consolidation) Act 1992* as "the 1992 Act". The Bill would amend this Act.

Clause 2 would introduce a 50% turnout requirement for industrial action ballots, in addition to the current requirement for a majority vote in favour of action.

Under **clause 3**, industrial action in "important public services" would require a positive vote by at least 40% of those entitled to vote in the ballot. This would be in addition to the 50% turnout threshold and the requirement for a majority vote. "Important public services" would be defined in subsequent regulations, but could fall only within the following categories:

- health services;
- education of those aged under 17;
- fire services;
- transport services;
- decommissioning of nuclear installations and management of radioactive waste and spent fuel; and
- border security.

Clauses 4-6 would require unions to include new types of information on industrial action ballots. Following a ballot, unions would have to communicate more detailed information to union members, employers and the Certification Officer.

Clause 7 would extend the period of notice unions must give employers prior to industrial action, from the current seven days to 14 days.

Clause 8 of the Bill would provide that industrial action ballot mandates would expire after a four-month period; industrial action after this point would require a fresh ballot.

Clause 9 would introduce new legal requirements relating to the supervision of picketing. The requirements would include, for example, that a picket supervisor must take reasonable steps to communicate information to the police. The clause would incorporate into law provisions of the 1992 Code of Practice on Picketing.

Clause 10 would make it unlawful to require a member of a union to contribute to a political fund unless he or she has indicated in writing willingness to do so. This would change political fund contributions from an opt-out to an opt-in arrangement. The opt-in agreement would expire after five years, subject to the possibility of renewal.

Clause 11 would require unions to publish details of political expenditure in their annual returns if this expenditure exceeds £2,000 per annum. The annual return must detail the amount spent on political objects and the recipient(s) of each item of expenditure.

Clause 12 would introduce a power, whereby a Minister may by regulations require a relevant public sector employer to publish information relating to facility time taken by union officials.

Clause 13 would create a reserve power whereby a Minister may make regulations to restrict facility time.

New clause 14 would prohibit the deduction of union subscriptions from the wages of relevant public sector employees. The employers this would apply to would be defined in later regulations.

Clauses 15-18 and **Schedules 1-3** would reform the role of the Certification Officer. They would introduce investigatory and enforcement powers, the power to impose financial penalties of between £200 and £20,000, and the power to, by regulations, make provision for the Certification Officer to require trade unions and employers' associations to pay a levy, to fund the performance of his role.

2. Second Reading

The Second Reading debate on the Bill was polarised, with Conservative Members speaking in support of the proposals, and Labour, together with SNP Members, opposing them.

In broad terms, the Government and Conservative Members argued that the Bill did not seek to prevent strikes nor to disempower unions; rather, it sought to, among other things, ensure strike action affecting the public could only occur on the basis of a clear and recent mandate. Opposition Members argued that the Bill was a politically motivated attack on Labour Party funding and an ideological attack on unions.

In introducing the Bill, the Secretary of State for Business, Innovation and Skills, Sajid Javid, said the proposals would "put power in the hands of the mass membership; bring much-needed sunlight to dark corners of the movement; and protect the rights of everyone in this country—those who are union members and those who are not".[1] Mr Javid argued that one of the main proposals in the Bill, higher ballot thresholds, was necessary in light of the impact on the general public of strike action, for example "childcare costs that might come with a school closure".[2]

Speaking for the Opposition, the then shadow Secretary of State for Business, Innovation and Skills, Angela Eagle, described the Bill as "the most significant sustained and partisan attack on 6 million trade union members and their workplace organisations that we have seen in this country in the past 30 years".[3] Ms Eagle said that "with the number of days lost to strike action down 90% in the past 20 years, there is no need whatsoever to employ the law in this draconian way"[4] and argued that the Bill might not be compatible with international legal obligations.[5]

SNP Members suggested that trade union law should be devolved to Scotland,[6] and questioned why there had not been more consultation, prior to the Bill, with the devolved administrations.[7]

A number of Members argued that the proposals for higher ballot thresholds would be more acceptable if workplace balloting and/or e-balloting were permitted.[8] In response to the e-balloting suggestion, the Secretary of State said:

> I am concerned about fraud and that the identities of people voting in a secret ballot may be revealed. In fact, the Speaker's Commission on Digital Democracy, which looked at the use of

[1] HC Deb 14 September 2015 c761
[2] Ibid., c762
[3] Ibid., c774
[4] Ibid.
[5] Ibid., c779
[6] Ibid., c764
[7] Ibid., c771
[8] Ibid., c761 (Caroline Lucas); 767 (John Woodcock)

> digital apparatus in elections, also shared those concerns. I do not think it would have been appropriate to suggest such changes.[9]

On the political fund, Mr Javid said that the opt-in proposal is designed to ensure that "when people, rightly, give money to any political party, they know that they are doing so".[10] Ms Eagle said that the funds were used for general campaigning as well as for financing political parties.[11] Peter Kyle (Lab) noted that trade unions use the funds to challenge government policies, including those of the Labour Party.[12]

Several Members criticised the Bill's picketing proposals. David Davis (Con) said that he was "offended" by the Bill's proposal that a picket organiser must give his name to the police, and described the measure as

> a serious restriction of freedom of association. It is not the same as getting the organiser of a big demonstration to give his name to the police. There is all the difference in the world between 500,000 people clogging up London and half a dozen pickets shivering around a brazier while trying to maintain a strike.[13]

Andrew Bridgen (Con) said that the events at the Grangemouth oil refinery in 2013, during which pickets allegedly intimidated family members of an employer, might justify the calls for police involvement.[14]

On facility time reporting in the public sector, Conservative Members highlighted the potential savings to the public purse in reduced facility time costs, following reported savings of £17m per year associated with recent reductions in facility time in some areas of the Civil Service.[15] Labour Members argued that facility time saves costs indirectly by, for example, avoiding the escalation of employment disputes.[16]

As to the Certification Officer provisions in the Bill, Rob Marris (Lab) argued that the proposals would politicise the role of the Certification Officer, who had hitherto been viewed by both unions and employers as "a neutral arbiter".[17] Mr Javid responded that the role would continue to be independent and neutral, albeit with added powers and funded by those it regulates (unions and employers' associations).[18]

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[9] Ibid., c767
[10] Ibid., c768
[11] Ibid., c777
[12] Ibid., c768
[13] Ibid., cc799-800
[14] Ibid., c803
[15] Ibid., c770
[16] Ibid.
[17] Ibid., c771
[18] Ibid.

3. Committee Stage

3.1 The 1992 Act (clause 1)

Clause 1 of the Bill is an interpretive provision, which would define the *Trade Union and Labour Relations (Consolidation) Act 1992* – the Act which the Bill would amend – as "the 1992 Act".

In opening the debate, the Minister for Business, Innovation and Skills, Nick Boles, said that he recognised "the deep and passionate disagreements between the different parties on the measures in the Bill".[19] In response, the Shadow Minister for Business, Innovation and Skills, Stephen Doughty, set out the Opposition's intention to oppose clause 1 and every other clause in the Bill:

> given the significant reduction in industrial action over the past 30 years, it is important to question why the Bill even exists in the first place.
>
> …
>
> Let me be clear from the outset: we intend to oppose every clause, because we consider the Bill an affront to civil liberties and the rights of workers up and down the country, and do so starting with this clause.[20]

The Committee voted in support of the clause, by 10 votes to 8. In the ensuing debate, Labour and SNP Members did in fact oppose every clause.

3.2 Ballot thresholds

50% turnout threshold (clause 2)

Clause 2 is one of the main measures in the Bill; it would introduce a 50% turnout threshold for industrial action ballots.

The Shadow Minister criticised the clause for effectively defining "abstentions as no votes",[21] highlighting oral evidence from Thompsons Solicitors (a law firm that represents trade unions) indicating that this is contrary to international law.[22]

Mr Doughty said that the imposition of the threshold "will remove the incentives for employers to seek an early resolution to a dispute"[23] and that strong opposition to the proposal from unions, together with the international law issues, suggested "the Government will face significant legal costs from the Bill".[24]

Julie Elliott (Lab) supported the Shadow Minister's contention that the threshold might exacerbate disputes:

> if the trade union side has to spend so much extra time not only on getting the lists correct, but on making the turnout so high,

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[19] PBC Deb 20 October 2015 c178 (5th sitting)
[20] Ibid., cc178-179
[21] Ibid., c180
[22] Ibid., c183
[23] Ibid., c182
[24] Ibid., c183

> that is time the officials are not spending on talking to the employer and trying to avert strike action[25]

Chris Stephens (SNP) suggested a consequence of thresholds could be a widening of the gender pay gap, as they may discourage female workers from participating in industrial action to achieve equal pay.[26]

The Opposition tabled a number of amendments, which, broadly, sought to prevent the clause from invalidating union ballots that reached the threshold but may have suffered from minor administrative errors (e.g. inadvertently failing to send ballot papers to every union member entitled to vote).[27] The amendments sought to protect unions from "vexatious legal challenges".[28]

In responding to the debate, the Minister highlighted three strikes that had proceeded on the basis of low ballot turnouts (21%, 23% and 16%)[29] and described this as problematic, particularly as strikes can affect members of the public.[30] Mr Boles said that he had written to "Andrew Dilnot, who runs the ONS, requesting that the ONS look into how it can capture the indirect impacts of strikes."[31]

As to the concerns raised by the Opposition about the potential effect of minor errors, Mr Boles said unions were already protected by statute and case law "against challenge over insignificant breaches of the balloting rules"[32] and that measures introduced in other legislation[33] required unions to maintain accurate lists of members, meaning that "they will in future have more confidence that those who are entitled to vote receive the ballot paper."[34]

Following the Minister's assurances that "inconsequential errors of process that have no material impact are not what the balloting rules are designed to address", Mr Doughty withdrew the amendment.[35]

Another amendment tabled by the Opposition sought to remove the requirement for unions to inform members and employers of whether the turnout threshold had been met.[36] The Minister said it was fair to require unions to publish this information, to ensure

> that union members and the employer have information about whether all the conditions that relate to the ballot mandate have been met … Members and employers ought to know whether any subsequent industrial action is valid and legally secure.[37]

Chris Stephens tabled a group of SNP amendments which he described as "the devolved group". In short, these sought to disapply in Scotland

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[25] Ibid., c191
[26] Ibid., c185
[27] Ibid., cc183-184
[28] Ibid., c184
[29] Ibid., c194
[30] Ibid., c195
[31] Ibid.
[32] Ibid., c198; see also cc205-206
[33] *Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014*
[34] PBC Deb 20 October 2015 c199
[35] Ibid., c206
[36] Ibid., c185
[37] Ibid., c201

both the threshold proposals and most of the other clauses in the Bill.[38] Mr Stephens said the Bill was a real concern

> because it ignores, for example, the work of the Scottish Government in setting up the Scottish fairwork convention. They are working in partnership with trade unions rather than seeing them as the enemy of the public[39]

The Shadow Minister tabled similar amendments, arguing that the threshold clauses and the clause on political funds "clearly breach the existing devolution settlement".[40] Mr Doughty referred to evidence provided to the Committee by Professor Keith Ewing:

> I want to turn to the stark comments made by Professor Keith Ewing in the oral evidence session. He was referring to the impact on Scotland, but he said:
>
> "The problem will be if a Scottish public body decides, 'We are not going to comply with this ban on the check-off,' or 'We are not going to publish the facility time arrangements that we give to trade union representatives.' What will happen at that point? We are looking at the question of who will enforce those obligations against Scottish public bodies."
>
> That could be applied to Welsh or English public bodies and local authorities. He continued:
>
> "Are we really saying that the Secretary of State for Scotland will bring a case against a major Scottish public authority to enforce those obligations? The Government are walking, almost blindfolded, into a major constitutional crisis around the Bill."[41]

The Opposition amendments also sought to disapply the political fund and facility time clauses in relation to employees of the Mayor of London; Mr Doughty argued that "it should be for the devolved Governments and the Mayor of London to determine the type of relationships they want to have".[42] In respect of Scotland and Wales, Mr Doughty said:

> Scottish local government is making it clear that it will not implement the Bill. If that is the case, as also appears to be the suggestion of the Welsh Government and other public bodies across the UK, we are heading into difficult territory.[43]

The Minister said the clauses were consistent with the devolution settlement, as employment law and industrial relations

> are clearly reserved matters under the devolution settlements with Scotland and Wales
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> …
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> There is absolutely no question about the full right of the UK Parliament to make laws that affect the whole of Great Britain on those matters. [44]

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[38] Ibid., c208
[39] Ibid., c209
[40] Ibid., c210
[41] Ibid., c210 (see also, PBC 15 October 2015 c129, Q346)
[42] Ibid., c212
[43] Ibid.
[44] PBC Deb 20 October 2015 cc224-225

The Committee divided on the SNP amendments, which were defeated by 10 votes to 2, and then on the clause, which was supported by 10 votes to 8. The Labour amendments relating to devolved matters also concerned other clauses, so they were debated during the relevant stand part debates, and they were all defeated on division.

40% support requirement (clause 3)

Clause 3 would impose a 40% support requirement on ballots in important public services, which would apply together with the 50% turnout requirement.

In opposing the clause, the Shadow Minister reiterated concerns that the proposal would breach international law. Mr Doughty highlighted the clause's application to "important public services" and questioned why the term "essential services" was not used, a term employed by the International Labour Organisation (ILO) and widely understood. The ILO definition of essential services is limited to services "the interruption of which would endanger the life, personal safety or health of the whole or part of the population".[45] To this end, the Opposition tabled amendments that would apply the 40% requirement only to those who work in essential services, as defined by the ILO.[46]

The Minister explained the departure from ILO terminology:

> Opposition Members discussed the difference between important services versus essential services. They are right that the ILO defines "essential services" and that that is an accepted definition, but it does so for the purposes of making it clear that it is therefore allowable to prohibit the right to strike in those services. The right to strike can be entirely prohibited in the sectors that the ILO has deemed to be essential, which include some but not all of the same sectors that we have listed—for example, firefighting services, the hospital sector, air traffic control, public or private prison services, electricity services, water supply services and telephone services.
>
> …
>
> Because of the ILO's definition of essential public services as those where it is permissible to prohibit the right to strike we decided to clarify that clause 3 proposes not a prohibition or a strike ban but simply a threshold of support for a strike. That was intended to clarify that the services listed are not the same as those covered in ILO definition, but are important public services. To be clear, our manifesto named the four most important of those services to which clause 3 applies. We have an absolute manifesto mandate for the inclusion of fire, health, education and transport services. Since then, based on cross-government consultation, we have added border security and nuclear decommissioning.[47]

Mr Doughty stated that the Government's terminology moved away from the international legal consensus on when it is legitimate to restrict the right to strike, and he therefore pressed the amendment to a vote. The amendment was defeated by 10 votes to 8.

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[45] Ibid., c233
[46] Ibid., c232
[47] Ibid., c239

The clause was agreed to on division, by 10 votes to 8.

Workplace and electronic voting

During debate on the political fund provisions of the Bill (see below) the Opposition tabled a group of new clauses relevant to the Bill generally, and particularly to the ballot provisions. The Shadow Minister explained the new clauses:

> Briefly, for the Committee's benefit, new clause 1 would permit trade unions to decide to use electronic voting for industrial action ballots. For example, union members would be able to vote online, on smartphones or via secure phone lines. They would also be able to vote electronically in workplaces using secure laptops or electronic booths. New clause 2 would permit unions to use electronic voting in other statutory elections and ballots, including the election of general secretaries, political fund ballots and ballots on mergers. New clauses 4 and 8 would permit trade unions to decide to use similar electronic means to those in new clause 1, or workplace ballots, similar to those used in statutory recognition ballots, for industrial action ballots. In workplace ballots, union members would be able to vote using paper ballot papers and secure ballot boxes in a secure location at the place of work. New clauses 5 and 6 would permit trade unions to use electronic and workplace ballots for all other statutory elections and ballots.
>
> This comprehensive set of amendments and new clauses is about bringing trade unions into the modern age, as the Government say they want to do, and being able to use modern methods that are already used elsewhere and are seen to be successful.[48]

Mr Doughty set out the Opposition's case for electronic and workplace voting:

> The case for an online option in balloting grows stronger still: e-balloting can be safe and secure, much like online banking. As we heard during the oral evidence sessions, e-balloting is already used for a variety of purposes by organisations in both the public and private sector, such as J.P. Morgan Asset Management, Lloyd's of London, Chevron and, of course, the Conservative party, which recently selected its London mayoral candidate using e-balloting.
>
> Our new clauses contain safeguards to ensure safety. Under each of those, the balloting process, whether electronic or secure workplace balloting, would be overseen by an independent scrutineer. Before the ballot is run, the scrutineer would confirm that the proposed method of voting met the required standard. The standard requires that: all members who are entitled to vote must have an opportunity to do so; votes must be cast in secret; and the risk of any unfairness or malpractice is minimised. That required standard is the same as the one set out in section 54 of the Employment Relations Act 2004.
>
> The new clauses would allow unions to use postal ballots alongside electronic or secure workplace voting if they believed it necessary to ensure everyone has the chance to vote. That would ensure that members who may be absent from work due to sick leave or maternity, paternity or adoption leave can vote. The new clauses would also allow unions to provide members with a choice of voting methods, including postal and electronic balloting and secure workplace balloting. We call that a combination ballot,

[48] PBC 22 October 2015 cc319-320

> where a maximum number of means are used to ensure maximum participation in and engagement with the democratic process the Government say they are so keen to support.[49]

The Minister said the Government were concerned about the risk of fraud associated with electronic voting:

> From the very first time that was raised, the Secretary of State, the Prime Minister and I have made it clear that we have no objection in principle to online voting or e-balloting, as it is sometimes called. Indeed, I would go further: it would be extraordinary if, in 20 years' time, most elections in most countries in the world on most questions of importance were not decided through electronic means of communication. Just as we have been willing to accept freely and openly the principle that that is a desirable state to move towards, it is important for Opposition Members not to be quite so dismissive of the practical objections that were so well highlighted by my hon. Friend the Member for Henley.
>
> It is incredibly important to acknowledge that the Open Rights Group, which gave evidence to the Speaker's Commission on Digital Democracy that only reported in January this year, is not some Tory front organisation. These people are genuinely concerned about a genuine question at hand—the legitimacy, safety and security of voting. It is important that the Opposition do not dismiss those objections out of hand by plucking out examples of very different decisions and transactions. Specifically, the particular matter when it comes to voting is the need to ensure that the system that captures the data does not allow the person casting the vote to be identified. That does not apply to banking transactions. Once someone is inside the secure system, it is fine for any part of that system to know their identity; indeed, it is critical that the system should know their identity, so that the money is transferred out of and into the right account.[50]

On workplace balloting, the Minister said he was less persuaded by this than by electronic balloting, suggesting that union members might be intimidated into voting in a particular way, and might not want to be observed by their employers when voting.[51]

None of the proposed new clauses were agreed to.

3.3 Information requirements in relation to industrial action

Information to be included on a ballot paper (clause 4)

Clause 4 concerns the information unions must set out on ballot papers, including a new requirement to provide a "reasonably detailed" indication of the matters in issue in the trade dispute to which the proposed action relates. Where the paper contains a question about taking part in action short of a strike, the type(s) of action would have to be specified. In addition, the paper would have to indicate the

[49] Ibid., c316
[50] Ibid., cc326-327
[51] Ibid., c328

period or periods within which the action, or each type of action, is expected to take place.

The Shadow Minister tabled amendments for the Opposition, which would have:

- removed the requirement to set out a "reasonably detailed" description of the matters in issue in the dispute;
- removed the requirement to set out the types of action short of a strike; and
- replaced the timetable proposals with a requirement to state whether the action would be continuous or intermittent.

Mr Doughty said the amendments were intended to tease out from the Minister "how he sees this part of the legislation operating in practice".[52] In his view, the Government's intention with this part of the Bill was to "frustrate the rights of trade unions to take action, to provide grounds for vexatious legal challenges".[53] Failure, for example, to provide a "reasonably detailed" description of relevant matters on a ballot paper could lead to an injunction against industrial action:

> What is "reasonably detailed"? It is an oxymoron and it is contradictory. How will both sides of industry know whether something is detailed enough to be "reasonably" detailed or regarded as too detailed? Unions and employers will be in court every single time.[54]

The Minister argued that the requirements would enable union members to make an informed decision about whether or not to participate in industrial action:

> I have a couple of actual strike ballot papers in front of me. They are quite hard to get hold of, so I have not got a huge number. On one, the only statement on the paper was "impact of redundancies", which did not clarify in which workplace, which group of employees was affected or when the strike was proposed. That ballot paper provided a very vague, short description. Another ballot paper provided a vague but incredibly broad statement about
>
> "adverse changes to pensions, workload, conditions of service, including pay and pay progression, and job loss."
>
> Neither statement is particularly helpful to those voting on the ballot because not enough information is given about when that dispute would be resolved, so that is not obvious to the person voting.[55]

As to why the Bill used the words "reasonably detailed" the Minister explained:

> That specific form of words is used in clause 4 to take into account the particular circumstances of each trade dispute. If there is any more detail that a union could reasonably give on the ballot paper, the requirement is not satisfied.

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[52] Ibid., c246
[53] Ibid., c244
[54] Ibid., c247
[55] Ibid., c249

> For example, if the issue is identified simply as "pay", it may well be right to say that there are further details that the union could have included. Those details might include which year's pay offer is in dispute, and which employees are covered by the offer. Again, that links back to our overall objective to ensure that unions provide clarity to their members about what they are being asked to vote for so that there is full transparency in any industrial action ballot.
>
> We think it is much more helpful to union members if a trade dispute that affects them in different ways is articulated in sufficient detail so that everyone knows the point on which they are being asked to make a decision on industrial action and how each individual is affected by the trade dispute. However, we do not want to put unnecessary burdens on unions by asking them to include a long and detailed account of the trade dispute. That would be onerous and would dilute the very clarity that we are seeking to provide.[56]

On the requirements to set out types of action short of a strike, and to indicate the period or periods during which action might take place, the Minister said:

> If we do not require a trade union to state on the voting paper what specific type or types of action it is proposing, a member will not know what action he or she is being asked to back.
>
> …
>
> On the period for proposed industrial action, a union member may be fully supportive if he or she knows that it would take place in late November or early December, but not if it was to take place, say, over the Christmas period. Trade union members may want to consider the proposal in relation to their personal circumstances, as well as their work.[57]

The Opposition amendments were negatived by 10 votes to 8. The Committee then divided on the clause, which was agreed to by 10 votes to 8.

Information to members etc about the result of ballot (clause 5)

Clause 5 would add to the ballot outcome information unions must ensure their members, and relevant employers, are given. The additional information would be:

- the number of individuals who were entitled to vote in the ballot;
- whether or not the number of votes cast reached the 50% turnout requirement; and
- if the 40% support requirement applied, whether that was met.

The clause was not subject to any significant debate, and was agreed to, following division, by 10 votes to 8.

Information to Certification Officer about industrial action etc (clause 6)

Clause 6 would introduce a wholly new requirement for unions to report, in their annual returns to the Certification Officer, on any

[56] Ibid., c250
[57] Ibid., c251

industrial action induced by the union during the return period. Mr Doughty argued that this requirement may prove controversial with both unions and employers:

> This comes down to whether the Government think it is appropriate that an agency of the state, albeit a currently independent one, should gather detailed information about private disputes between employers and unions. Although trade unions have been vocal in their opposition thus far, I believe that many businesses and employers, if they were aware of the full implications of this clause, would object to detailed information about their workplace operations being published online and a permanent record of disputes being retained. We all know about the media organisations that harvest as much information as they can from centrally published databases and so on. I suspect that quite a lot of mischief could be caused by attempting to portray certain employers in ways that I think they would feel uncomfortable with.[58]

Ian Mearns (Lab) supported this point:

> Many employers, where those industrial relations have broken down to such an extent, may be rather concerned to find that the Government are proposing that detailed information about their workplace operations will be open to public scrutiny.[59]

The Minister argued that

> Accurate information presented in a transparent manner about industrial action proposed and taken by a union helps to demonstrate to union members, and to the wider public, that unions are properly regulated and fully accountable for their actions.

The Committee divided; the clause was agreed to by 10 votes to 8.

3.4 Timing and duration of industrial action

Two weeks' notice to be given to employers of industrial action (clause 7)

Clause 7 would replace the current requirement to provide seven days' notice of industrial action with a requirement to provide 14 days' notice. The Shadow Minister described this as excessive and unnecessary.[60] The Minister said that it "allows a longer period of time during which the trade union and the employer can discuss and strive to reach an agreement".[61]

The Committee divided on the clause, which was agreed to by 10 votes to 8.

Expiry of mandate for industrial action four months after date of ballot (clause 8)

Clause 8 would amend the periods during which unions may undertake industrial action following a ballot. It would:

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[58] Ibid., c257
[59] Ibid.
[60] Ibid., c260
[61] Ibid., c262

- allow a longer period during which the union may initiate industrial action (four months, in place of the current four or eight-week time limits); and
- cap the duration of that industrial action at four months – after this, action would require a fresh ballot.

That second aspect of the clause is intended to address the issue of "rolling mandates" whereby, if industrial action is commenced within the current two-week time limit, it may continue for a prolonged period without the need for a fresh ballot.

The Government see rolling mandates as problematic, entitling unions to rely on dated ballots. The Opposition say that compressing to four months the period during which industrial action must occur will lead to intensified action and less constructive negotiation.[62]

The Shadow Minister said that the need to reballot after four months would add to unions' costs, motivating them to sustain industrial action at the outset, as they "try to settle disputes without the need to reballot, given the financial implications".[63]

Jo Stevens (Lab) suggested that

> the clause is designed to allow employers to effectively sit out a dispute and refuse to negotiate in order to force a union to reballot, at considerable cost[64]

Ian Mearns (Lab) said that the proposal would significantly increase the potential for "unwelcome wildcat action, where members' frustrations boil over and they just walk off the job".[65]

In response, the Minister said:

> We simply want to ensure that industrial action is based on a current mandate on which union members have recently voted, and that those members are still working for the employer where the industrial action is proposed. It should not be a legacy mandate based on a vote undertaken many months or years previously.
>
> I would not want to disappoint the shadow Minister by not doing as he anticipated and reminding the Committee of certain recent strikes that caused great disruption to members of the public but were based on very old mandates. There were strikes by the National Union of Teachers in July and March 2014 that were based on mandates from June 2011 and September 2012. In October 2013, there were strikes based on a mandate from November 2011. It just is the case that there is current practice of holding strikes based on very old mandates. That is what we are seeking to address with clause 8.[66]

In light of the argument about intensified industrial action, the Opposition tabled an amendment that would have increased the four-month period to 12 months. Mr Doughty asked the Minister to set out

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[62] Ibid., c264
[63] Ibid.
[64] Ibid., c264
[65] Ibid., c265
[66] Ibid., c266

the Government's reasons for the four-month period. The Minister explained:

> We consider that a four-month period balances the objective of, on the one hand, ensuring that strikes cannot be called on the basis of old ballots and, on the other, allowing sufficient time for constructive dialogue to take place. A period of 12 months would tip the balance too far in favour of the unions to the detriment of everyone else—not just employers, although employers would still have the threat of strike hanging over them for a considerable length of time. Union members should have certainty on the period during which they might be asked to take industrial action. That is particularly important given the consequential effect on their pay. Twelve months is simply too long to expect people to live with such uncertainty. If members have moved jobs, it might not even be the same group of people affected.
>
> …
>
> crucially, the period of four months is not the only period during which negotiations will take place. Indeed, such negotiations should have started long before a union seeks a ballot mandate.[67]

The Opposition amendment was defeated (by 10 votes to 8) and the clause agreed to (by 9 votes to 7).[68]

3.5 Picketing

Union supervision of picketing (clause 9)

Clause 9 concerns union supervision of picketing, imposing as legal requirements provisions currently contained in a non-binding Code of Practice. The requirements would include, for example, that a picket supervisor must take reasonable steps to identify him or herself to – and communicate other information to – the police.

Much of the debate on the clause focussed on proposals for associated regulations, which the Government were consulting on contemporaneously with the Committee debate. The consultation has subsequently concluded; the Government decided against moving forward with most of the – highly controversial – proposals (e.g. those relating to social media plans, and the potential creation of a new criminal offence of intimidation on the picket line).[69]

The Shadow Minister described clause 9's potential to create grounds for legal action against unions:

> Any failure to comply with those overly prescriptive requirements will expose trade unions to legal challenges. Employers will be able to apply to court for an injunction to prevent or impose restrictions on a picket, or even for damages if, for example, a picket supervisor fails to wear an armband or inadvertently misplaces their letter of authorisation.[70]

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[67] Ibid., cc266-267
[68] PBC 22 October 2015 c274
[69] BIS, *Tackling intimidation of non-striking workers: government response*, 3 November 2015
[70] PBC 22 October 2015 c275

Mr Doughty said the proposals would divert "scarce police resources from tackling serious crime".[71] Several Members also expressed concern that the clause could lead to "more blacklisting in the community"[72] given that it would require the picket supervisor to show his letter of authorisation to either a constable or "any other person who reasonably asks to see it".

The Minister said that the provisions of the Code of Practice which the clause would incorporate into law had been in existence "for more than 20 years and no representation has ever been made that expecting people to abide by it represents an infringement on their freedom".[73]

Chris Stephens tabled an SNP amendment which would have:

- removed the reference to "any other person" being entitled to see the letter of authorisation;
- removed the requirement for the picket supervisor to be a union official familiar with the Code of Practice; and
- among other things, required constables who ask to see the letter of authorisation to provide documentary evidence of the request.[74]

Mr Stephens explained:

> we want to remove the words "any other person" from the clause, and we believe that there will be serious consequences if that is not done. It is not clear who that other person is. It could be anyone; but who would it be? It would not be a friend of the trade union movement.[75]

He cited Professor Ewing's evidence to the Committee:

> It is important fully to comprehend what is being proposed by the Trade Union Bill (clause 9), quite apart from the legitimate concern about armbands, badges and the like: A picket supervisor engaged in lawful activity (indeed in Convention protected activity) may be required by a police constable (whether or not in uniform) to produce a written document (the letter of authorisation); It will be necessary for this purpose for the police officer to stop and detain the individual, for as long as it takes for an exchange to take place…The demand may be made by the police officer even though the individual in question has not committed a criminal offence, and is not suspected of having committed an offence.
>
> Failure to provide the letter of authorisation is not an offence, but there is no right on the part of the supervisor to ignore the constable's demand, meet it with a testy reprove, and move on.
>
> This is because failure to provide the letter of authorisation will have legal consequences, in the sense that the picketing may thus be rendered unlawful and actionable at the suit of the employer.
>
> …
>
> Moreover, it is striking that there are no formalities or safeguards to be complied with when the demand is made to see a letter of

[71] Ibid., c277
[72] Ibid., cc280-281
[73] Ibid., cc282-283
[74] Ibid., cc284
[75] Ibid., c285

> authorisation. This contrasts with the stop and search powers in the Police and Criminal Evidence Act 1984 and the Terrorism Act 2000. In these cases the police officer may be required to provide…documentary evidence that he or she is a constable, if the latter is not in uniform; his or her name and the name of the police station to which he or she is attached; the object of the proposed search; the reasons for using the power; and a record of the search after it has taken place. An individual stopped while engaged in lawful and Convention protected activities might reasonably expect to have at least the same level of procedural courtesy as someone stopped while suspected of criminal or terrorist-related activities.[76]

The Shadow Minister said Labour would support the SNP amendment if it were pressed to a vote.[77]

In responding to the SNP amendment, the Minister said:

> The amendment would remove the clarity that the picket supervisor should be an official or a member of the union. It would have the effect of removing the provision that the picket supervisor to be appointed must be an official or trade union member who is familiar with the code of practice on picketing.
>
> …
>
> The other substance of the amendment proposes to insert new requirements for the constable in relation to any entitlement to see the letter of authorisation … All uniformed police officers carry a warrant card as proof of identification and authority. Those generally include a photograph of the holder as well as the holder's name, rank, warrant number and a holographic emblem to mark authenticity. A requirement for a written record would appear an additional and unnecessary burden when considering this in relation to a letter of authorisation for a picket.[78]

Jo Stevens (Lab) asked the Minister whether the information could be conveyed to the police "in writing, or by electronic means"; the Minister clarified that "the picket supervisor can inform the police by any means of written communication".[79]

As to concerns about the entitlement of "any other person" to see the letter of authorisation, Mr Boles undertook to return to the issue on Report:

> We are aware of the sensitivities around union membership. I would like to underline the fact that the entitlement for any other person to be shown the letter is currently restricted to those with reasonable cause, and in my view that arguably means the employer at whose workplace the picketing will take place. It would be very difficult for a random passer-by to show reasonable entitlement … I will reflect on the concerns raised, and I will return to this issue on Report.[80]

The Committee divided on the amendments, which were defeated by 9 votes to 7.

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[76] Ibid., cc285-286
[77] Ibid., c287
[78] Ibid., cc290-291
[79] Ibid., cc290 and 291
[80] Ibid., c294

Labour tabled further amendments which would have, among other things, removed the requirement that the picket supervisor be a person "familiar with" the Code. Mr Doughty said that the provision is

> excessive and creates a risk that unions could again be exposed to legal challenges because a picket supervisor could not answer a random question about the code of practice even though the picket activities they were supervising were peaceful and otherwise lawful.[81]

The Minister clarified the Government's view of the term "familiarity":

> familiarity with the code represents sensible and practical preparation for someone about to undertake the role of picket supervisor. However, familiarity does not mean an ability to quote verbatim every single provision of the code; it means a broad familiarity with the provisions of the code and the reasonable requirements it places.[82]

The amendments were withdrawn. The Committee agreed to the clause, by 9 votes to 7.

3.6 Application of funds for political objects

Opting in by union members to contribute to political funds (clause 10)

Clause 10 would make it unlawful to require a member of a union to contribute to a political fund unless he or she has indicated in writing willingness to do so – changing the current opt-out arrangement to an opt-in arrangement. The opt-in would expire after a five-year period unless renewed.

The Shadow Minister described the clause as a "nakedly partisan attack aimed at damaging the finances of the Labour party"[83] and distinguished the proposal from the practice in Northern Ireland (Northern Ireland already has opt-in arrangements):

> The Minister … might try to dress up the clause as an attempt to bring things into line with the situation in Northern Ireland, but it is important for the Committee to understand that it goes beyond the current practice there, which requires union members to agree to paying into the political fund only once. They are not required to renew their opt-in.[84]

James Cartlidge (Con) responded to the Shadow Minister's criticism of the opt-in proposal:

> He seems fearful that the clause will result in less funding for the Labour party, but if that is the case, there must be people who are currently donating through this mechanism but do not want to.[85]

Mr Doughty said the clause departs from a long-standing consensus on politically partisan legislation:

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[81] Ibid., c292
[82] Ibid., c293
[83] Ibid., c298
[84] Ibid., c298
[85] Ibid., c298

> If the clause stands part of the Bill unamended and the Bill receives Royal Assent, it will mark the abrupt end of the long-standing consensus in British politics that the Government should not introduce partisan legislation unfairly to disadvantage other political parties.
>
> As Members will be aware from the oral evidence sessions, in 1948 Winston Churchill cautioned against taking such steps. He said:
>
> > "It has become a well-established custom that matters affecting the interests of rival parties should not be settled by the imposition of the will of one side over the other, but by an agreement reached either between the leaders of the main parties or by conferences under the impartial guidance of Mr. Speaker."—[Official Report, 16 February 1948; Vol. 447, c. 859.][86]

Labour Members were critical of the three-month transitional period to the new arrangements. Julie Elliott said:

> It is absolutely ludicrous to think that unions could physically sign up, by paper, nearly 6 million people in three months.[87]

Ms Elliott noted that, alongside party financing, political funds are "used for other campaigning measures".[88] Ian Mearns said:

> Let us be clear from the outset: trade union political funds are not and never have been solely about donations to the Labour party. Indeed, a significant proportion of the TUC's member unions—unions such as the Fire Brigades Union, the National Union of Rail, Maritime and Transport Workers, the National Union of Teachers, the Public and Commercial Services Union, NASUWT and the Association of Teachers and Lecturers—are not affiliated with and have no connection to the Labour party. There are, however, many millions of members across such unions.[89]

Chris Stephens (SNP) said:

> our view is that the provisions in clause 10 are a democratic and constitutional outrage, for two reasons.
>
> …
>
> First, it is important for our society that trade unions make a contribution to the political life of the country, and our society has been better for it. We should be looking at political funding arrangements across the board and in consultation with all parties, not just slipping in these measures as part of the Bill, which is why the SNP has tabled a new clause, which we will come to later.
>
> Secondly, to return to the points made by the hon. Member for Gateshead about political funds being used for general campaigning, as it stands, clause 10 is clearly a way of preventing the trade union movement from engaging in such campaigning. It is important to mention some of the other organisations and campaigns that have received trade union funding. There have been health and safety campaigns, which are very important.

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[86] Ibid., cc299-300
[87] PBC 22 October 2015 c304
[88] Ibid., c303
[89] Ibid., c305

> HOPE not hate and other anti-fascist and anti-racist organisations have received the majority of their funding from trade unions. As the general secretary of the PCS trade union indicated, funding has gone to campaigns on public service provision and keeping public services in public hands.[90]

The Minister responded to criticism of the principle of opting in:

> It seems to me odd to suggest that the only way they can secure the donations of union members is by somehow relying on the inertia that prevents a union member from exercising their opt-out.[91]

On the point about renewing the opt-in every five years, the Minister said:

> In this country, it seems that renewing political choices every five years is becoming a normal pattern, which is why we suggest five years in the Bill.[92]

The Government tabled technical amendments to the clause, which were agreed to without divisions. An Opposition amendment, which would have extended the renewal period to 10 years, was defeated on division by 9 votes to 7.

Union's annual return to include details of political expenditure (clause 11)

Currently unions are required to provide members with information about the total income and expenditure of a political fund. The Certification Officer may also require further information. However, there is no specific legislative requirement to provide details of how the money is spent. Clause 11 would require unions to provide this information in their annual returns if their expenditure exceeds a threshold of £2,000 per annum. Regulations may subsequently increase (but not decrease) this threshold. The annual return must detail the amount spent on each of the political objects set out in existing legislation.

The clause was agreed to on division (9 votes to 7) without amendment or substantial debate.

3.7 Facility time

Publication requirements (clause 12)

Clause 12 would introduce a power whereby a Minister may by regulations require a "relevant public sector employer" to publish information relating to facility time (time off for union duties or activities) taken by "relevant union officials".

Lisa Cameron (SNP) tabled amendments that would have modified the reporting requirements. For example, they would have changed the requirement to publish the total amount of employer spending on facility time to a requirement to publish the percentage of spending, the argument being that this provides a clearer picture of the proportion of

[90] Ibid., cc306-307
[91] Ibid., c307
[92] Ibid., c308

expenditure.[93] Dr Cameron said facility time represents significant value for money:

> Workplaces that have good facility time are likely to have better family-friendly policies and more effective equality policies, and indeed they are also likely to be safer workplaces. These workplaces also had lower voluntary exit rates, which led to an estimated saving in recruitment costs for employers of between £22 million and £43 million per annum. Negotiations between employers and unions can also facilitate innovation and change in furtherance of mutual objectives, and trade unions can also play a positive role in promoting skills, upskilling and training in workplaces, which I am sure the Government would wish to see increasing.[94]

The Shadow Minister spoke in support of the SNP amendments:

> research by ACAS found that trade union representatives play an important role in improving workforce engagement and morale, by helping ensure that employees' concerns about their working conditions are listened to and addressed. In turn, that can improve productivity, service quality and ultimately—a crucial point for the Government—the financial performance of organisations. All of those mutual benefits and many more could be at risk if the Government's proposals on facility time are implemented in their current form.[95]

In responding to these points, the Minister argued that they misrepresented the clause, which would not ban facility time but rather impose transparency requirements:

> No one on the Government Benches disagrees with the value that such people add to their workplaces or the extent to which they can help ensure that workplaces are safe, while also offering opportunities for people to advance and progress.
>
> If you listened only to the speeches of Opposition Members … you would have concluded that somehow we were banning facility time. All we are seeking to ensure, however, is that there is transparency about facility time. Conservative Members, previously in coalition and now as a Government on our own, passionately believe in the power of transparency to lead to good decisions. Transparency gives the public who pay our salaries and those of everyone in the public sector—the public should truly be referred to as the employers in the public sector—an ability to make a reasonable judgment about whether public sector bodies are managing their money well.
>
> …
>
> The Government are confident that our proposals will deliver efficiency savings. A reduction in spending on facility time across the wider public sector to levels similar to the civil service currently would deliver estimated savings of around £150 million annually—£150 million that could be spent on employing more nurses, on schools and on better serving the people who elect us to this place.[96]

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[93] Ibid., c338
[94] Ibid., c339
[95] Ibid., c340
[96] Ibid., cc343 and 345

Mr Boles said Ministers could elect whether to enact the regulations in their departments: "For example, the Secretary of State for Health will make regulations imposing publication requirements on NHS employers."[97] Mr Doughty said this exposed a serious problem with the devolution settlement:

> Is the Minister suggesting that the Secretary of State for Health will make regulations that affect facility time in the health services of Scotland and Wales, which are wholly devolved and under the control of Health Ministers in those countries?[98]

None of the amendments succeeded, and the clause was agreed to on division by 9 votes to 6.[99]

Reserve powers (clause 13)

Clause 13 would insert a new section into the 1992 Act that would create a reserve power whereby a Minister may make regulations that:

- set a percentage limit on the amount of facility time taken by relevant union officials at relevant public sector employers (e.g. introduce a cap limiting facility time to 50% of the official's working time); and/or
- set a cap on the percentage of the employer's pay bill that may be spent on facility time.

The Shadow Minister set out three criticisms of the proposal:

> First, the provisions will mean that Government Ministers can use as yet unseen secondary legislation to push through restrictions or repeal trade union rights contained in primary legislation. While hon. Members on both sides of the Committee recognise the important role that secondary legislation plays, many would also accept that it gives Parliament less opportunity to debate and amend such regulations than would otherwise be the case.
>
> Secondly, the provisions could prevent public sector employers, including in Scotland and Wales who have responsibility for a number of wholly devolved areas of public service provision and who have their own democratic mandate, from deciding how to manage employment relations in their workplace and how to engage with their staff.
>
> Thirdly, the provisions mean that the Government can be selective as to which public and local authorities may be forced to impose a cap, introducing an element of significant discrimination on quite wide-ranging powers to behave in a very partisan and nakedly political way over these matters.[100]

An Opposition amendment, which would have prevented regulations from retrospectively rewriting collective agreements and contracts of employment – which Mr Doughty argued would be contrary to Article 11 of the European Convention on Human Rights – was defeated on division.[101]

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[97] Ibid., c346
[98] Ibid., c347
[99] Ibid., c356
[100] PBC 27 October 2015 c360 (9th sitting)
[101] Ibid., c362

On the argument that the provision may be contrary to the Convention (and certain aspects of EU law) the Minister said:

> we are satisfied with the compatibility of all our proposals with all the laws and treaties to which we are signed up. Any cap on facility time will only apply prospectively. It is, on the other hand, possible in theory—though, as I have said, unlikely in practice—that a cap may apply to ongoing, legally-binding relationships; either legally enforceable terms in a collective agreement, or in the contractual rights of individual employees. This is what is flagged in the European convention on human rights memorandum to the Bill. The Government acknowledge, however, that even the potential impacts upon pre-existing contractual arrangements should be fully debated. That is why we considered the affirmative procedure to be necessary to provide the correct level of parliamentary scrutiny.[102]

The Minister said regulations would be a last resort:

> Only if transparency shows unacceptable inefficiencies in relevant employer spending on facility time and poor value for money for taxpayers from existing facility time arrangements with trade unions will Ministers set a cap on the time and money spent on facility time.[103]

The clause was agreed to following division (10 votes to 8).[104]

3.8 Certification Officer

Investigatory powers (clause 14, Schedule 1 and Schedule 2)

Clause 14 would amend the 1992 Act and give effect to Schedules 1 and 2 of the Bill, which include further amendments. The effect of this would be the introduction of new investigatory powers relating to unions' (and, where relevant, unincorporated employers' associations') compliance with a range of legal obligations (e.g. the rules on union elections, and those on political funds). The new investigatory powers are set out in detail in Schedule 1 and include powers to require the production of documents and to appoint inspectors. The powers would be exercisable following a complaint by a union member or without any application or complaint being made (e.g. acting on information of a third party).

The Shadow Minister explained the Opposition's concerns about the breadth of these powers:

> It is important for the Committee to understand that the certification officer will have the power to bring a complaint against a trade union, to investigate the issue, to decide which witnesses will be called, to cross-examine them, to make a decision on the matter, and then to impose a fine on the union that they have investigated and on which they have adjudicated. I cannot overemphasise the point, which was also made by many of our witnesses, that this is simply not consistent with the principles of natural justice or the founding principles of our legal

[102] Ibid.
[103] Ibid., c366
[104] Ibid., cc369-370

> system, which include many checks and balances, not least the separation of powers.[105]

Jo Stevens (Lab) said the powers would "fundamentally change the role of the certification officer from a neutral arbiter of disputes to a state snooper and enforcer."[106]

The Minister argued that the powers were important and not without precedent:

> The idea is nothing new, as the Electoral Commission and the Charity Commission have investigation powers that can be used proactively when they suspect a breach.
>
> The powers are important because we want the certification officer to be able to determine as quickly and efficiently as possible whether there is a problem so that that can be swiftly remedied. If no problem is found, the quicker the doubts, representations and complaints can be dismissed, which is better for everyone concerned, including unions, employers and the public. The Bill therefore extends the certification officer's investigatory powers into a number of areas: political funds; union mergers; union leadership elections; and the appointment of a person to, or the failure to remove a person from, a union office when they have been convicted of certain financial offences.[107]

A number of Members raised concerns that the Certification Officer might in future be a political appointment.[108] In response, the Minister said:

> There is no proposal to change the appointment procedure for the certification officer. As the hon. Member for Cardiff Central reminded us, the appointment is made in consultation with ACAS. I remind the Committee that ACAS is currently run by Brendan Barber, the former general secretary of the Trades Union Congress. The idea that we are going to be able to stuff in some political stooge is somewhat far-fetched[109]

During subsequent debate on a group of Opposition amendments (later withdrawn), Mr Doughty asked the Minister:

> Will he tell the Committee—if he cannot do so now, perhaps he could write to us—how many inspectors would be required, whether there would be a cap on the number of inspectors that the certification officer could appoint, where those costs would be met from, whether there would be any cap on the cost and what sort of qualities would be required in the recruitment and employment of those inspectors by the certification officer?[110]

The Minister undertook to write to the Committee with the information.[111]

The clause and Schedules were agreed to following division on each (all agreed by 10 votes to 8).

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[105] Ibid., c371
[106] Ibid., c373
[107] Ibid., c377
[108] Ibid., c377
[109] Ibid., c377
[110] Ibid., c382
[111] Ibid.

Enforcement by Certification Officer of new annual return requirements (clause 15)

Clause 15 would enable the Certification Officer to enforce annual return requirements relating to details of industrial action and political expenditure. The Government proposed a minor technical amendment, which was agreed to. The clause was ordered to stand part following division (10 votes to 8).[112]

Further powers of Certification Officer where enforcement order made (clause 16 and Schedule 3)

Clause 16 would create a power to impose a financial penalty when an enforcement order has been or could be made. The clause would give effect to Schedule 3, which sets out the details of the power to make penalty orders or conditional penalty orders. The penalty would be set in regulations and could not be less than £200 or more than £20,000.

The clause and Schedule were agree to on division (10 votes to 8) without substantial debate.[113]

Power to impose levy (clause 17)

Clause 17 would create a power to impose a levy on unions and employers' associations, in order to fund the Certification Officer.

The Government tabled technical amendments, which were unopposed.

The Shadow Minister explained his concerns about the clause:

> clause 17 contains a power permitting the Government to levy a charge on trade unions to cover the running costs of the certification officer, which currently stand at approximately £1 million but are expected to rise. I suspect that they will rise under the new regime, given the wide expansion of powers. The levy looks set to apply to employers' organisations—I hope the Minister can clarify this point—including the Engineering Employers' Federation, the Electrical Contractors' Association, the Federation of Master Builders and the National Farmers Union. The measure will apply not only to trade unions but to a whole range of employers' organisations.[114]

The Minister responded:

> It is only fair that the cost of such regulation falls not on the taxpayer, but on those who are regulated. I note that the previous Labour Government introduced an almost identical provision, which I believe all members of the Committee support, in the financial services industry, whereby the costs of financial regulation and the regulator fall on the members of that industry.[115]

He then described how the provision would apply to federated employers' associations:

> The hon. Member for Cardiff Central asked whether federated employer associations such as the CBI will be covered by the levy, and I said no. Indeed, it was narrowly correct to say that because

[112] Ibid., c389
[113] Ibid., c392
[114] Ibid., c393
[115] Ibid.

> the CBI will not be caught by the levy, but it may help the Committee if I provide a little more context to my answer.
>
> Federated employer associations would be covered by the levy, provided that they meet the statutory definition in the Trade Union and Labour Relations (Consolidation) Act 1992. The certification officer keeps a list of employer associations that have asked to be listed, as well as a schedule of those that have not applied to be listed but that the certification officer considers meet the statutory definition. The CBI is not listed, so as it stands the levy will not cover an organisation of that type. It will continue to be left to the certification officer to decide who meets the definition in the future.[116]

The clause was agreed to on division (10 votes to 8).[117]

3.9 General (clauses 18-22)

In keeping with their commitment to oppose every clause of the Bill, Labour and SNP Members opposed the minor and consequential amendments (clause 18 and Schedule 4); the financial provision (clause 19); the extent provision (clause 20); the commencement provision (clause 21); and clause 22, the short title. All were agreed to on division by 10 votes to 8.[118]

3.10 New clause 11 – check-off

As had been announced[119] prior to the Committee debates, the Government proposed a new clause on the subject of check-off in the public sector. Check-off is a system whereby union membership payments are deducted from union members' salaries by their employers and paid over to unions. In light of the fact that the clause was not part of the Bill at the outset, nor debated at Second Reading, the Committee contributions are cited below at length.

The Minister introduced the new clause as follows:

> My right hon. Friend the Minister for the Cabinet Office and Paymaster General announced in August that the Government intended to end the outdated practice of check-off in the public sector. New clause 11 gives effect to that intention. It would prohibit relevant public sector employers in due course from deducting trade union subscriptions from workers' wages and sending these to the unions concerned.
>
> Check-off is anachronistic. It dates from a time when most workers did not have bank accounts and direct debit payments did not exist. Nowadays all public sector workers have bank accounts, and trade union subscriptions can very easily be paid by direct debit. Trade unions themselves agree that filling in a direct debit form is a simple and straightforward task. Even the PCS union's own website currently promotes direct debit, saying:
>
> "It's quick and easy to sign up for direct debit—you can do it online in a couple of minutes. You just need your membership or

[116] PBC 27 October 2015 c399
[117] Ibid.
[118] Ibid., cc400-404
[119] Cabinet Office, BIS and The Rt Hon Matt Hancock MP, Press release: New steps to tackle taxpayer-funded support to trade unions, Gov.uk, 6 August 2015 (accessed 28 August 2015)

> National Insurance number and bank account number and sort code".
>
> Direct debits can even be set up on mobile phones. In addition to its convenience, this way of making payments gives employees the freedom to set up the direct debit arrangement with the trade union of their choice, as well as consumer protection under the direct debit guarantee. Such protection was withdrawn for check-off 17 years ago.
>
> In any case, there is just no need for the relationship between a trade union and its members to be intermediated by the members' employer. Trade unions should have a direct subscription relationship with their members, using direct debit like any other modern member-based organisation. The collection and administration of union subscriptions is no business of the employer. It should be a matter for a union and its members to arrange between themselves.
>
> At a time of fiscal consolidation, taxpayer-funded employers providing the important public services that we all rely on should no longer carry unnecessary burdens. These include the burden of administering check-off on behalf of those trade unions that have not yet modernised their subscription arrangements. This in turn puts employers at risk of an employment tribunal claim if they make a mistake when deducting union dues. Where an employer provides a check-off service, it puts itself under a legal obligation to do so in a particular way under the 1992 Act. An employer that makes a mistake can be taken to an employment tribunal. That should not be at the expense of the taxpayer when it could so easily be avoided by making alternative arrangements to check-off.
>
> The majority of civil service employers have already decided to remove check-off, and trade unions affected by those decisions have been successful in making alternative arrangements for their members to pay their subscriptions by other means. The vast majority of their members have switched to direct debit.
>
> It is important to emphasise that we are not planning to spring this change on public sector employers and trade unions overnight. We recognise that affected unions will need time to implement the change and get their members to switch to direct debit. They have been on notice since we announced the provision in August.
>
> Furthermore, the change will be brought about by affirmative regulations that will build in a reasonable transitional period. That will allow affected unions and their members time to put in place alternative arrangements to check-off, and will be sufficient to ensure that no undue disruption is caused to the unions or their members.[120]

The Shadow Minister said the motivation behind the proposal was to attack union finances:

> I believe that the Government are deliberately targeting trade union finances by making it harder for individuals, including lower paid workers and many women in particular, to get access to trade union representation in the workplace. That is particularly true for dispersed workforces. I was struck by the evidence I received from the Union of Shop, Distributive and Allied Workers, which works in the retail sector, about the many people working

[120] PBC 27 October 2015 cc405-406

in small shops and retail outlets throughout the country who find check-off a convenient way to have their payments taken, without a complicated process. They will struggle because of the new clause.

The move is almost universally opposed, save for the Government and the TaxPayers Alliance, and we all know that the basis of the oral evidence they gave was very flimsy. It is all rather ironic when we consider that the Government's claim that the proposal will save taxpayers' money is, in fact, a red herring, given that many trade unions already cover the cost of check-off services. In some cases, the fees generated in the process and charged by Government employers for check-off provision generate a net gain for the public finances. There seems to be no sense at all in the proposals.

In pressing ahead in spite of the critics, the Government have failed to secure any substantial employer support for their proposals, as far as I am aware. Indeed, many employers, including employers in local government and the health sector—as we have heard with respect to the Scottish and Welsh Governments as well—have expressed concern that the removal of check-off arrangements could undermine constructive relations between managers and unions, which are vital to the quality of public services. Is that any wonder, when employers and trade unions were not even consulted properly?

The proposals have been introduced without a proper consultation process, engagement with the unions, or an assessment of the impact on employment relations. The proposals were not included in the Conservative party manifesto, Her Majesty's Gracious Speech, or the briefing accompanying the speech, although it would have been easy for the Government to do that. The Minister has said that everyone has long been aware of the change and has had time to prepare, but if the Government are so clear about it, why did they not make it clear when they first suggested introducing the Bill? There was no reference to the proposal in any of the BIS consultations or impact assessments that accompanied the publication of the Bill. Instead, the Government announced the plans on 6 August 2015, and published the new clause introducing the ban, which we are discussing now, only a matter of days ago.

That does not strike me as the most transparent, engaging or consultative process. Unfortunately that has been the hallmark of the Bill from start to finish. To date, the Government have failed to publish any evidence justifying the introduction of the ban, or any assessment of the potential impact of the proposal on those who would be affected.

There are also huge implementation issues. Transferring millions of members on to direct debit would create significant organisational challenges for many trade unions, particularly those operating in dispersed work forces. It will therefore be vital, if this goes ahead, that trade unions are provided with ample time to transfer members on to direct debits. We have talked about the potential unwinding of collective agreements and employment contracts in many sectors, but time will also need to be provided for employers and trade unions to renegotiate existing collective agreements, which often include aspects relating to the check-off provision.

I know many are concerned that no timetable for the introduction has been specified in the amendment. The Minister said he wants

> to allow a reasonable period and I hope that when he gets to his feet he will specify broadly what he has in mind. The explanatory note similarly suggests that a reasonable period will be provided, but that has no legal effect.[121]

Several Members noted that payroll deductions were accepted for other purposes, such as charitable donations; repayment of loans; registration fees for professionals; bills; and staff association subscriptions.[122]

Julie Elliott (Lab) noted that the abolition of check-off could create difficulty for unions when identifying a bargaining unit (and balloting constituency):

> one of the consequences—unintended, I am sure—of removing check-off will be that if there is, for instance, an industrial action ballot of a public sector workforce of many tens of thousands, with people working all over the place, it will be even more difficult for people to agree on what the bargaining unit is in that case. If people pay by direct debit—as many trade union members already do—then when they change their place of work, if they are still working for the same employer, their place of work will not necessarily notify their trade union.[123]

Chris Stephens (SNP) cited comments from the ILO Committee of Experts:

> The International Labour Organisation is looking at other countries that have tried the same thing, such as Congo. In 2010 the ILO committee of experts reported
>
> "…deduction of trade union dues by employers and their transfer to the unions is not a matter that should be excluded from the scope of collective bargaining"[124]

Responding to questions about the transitional arrangements, the Minister said:

> My right hon. Friend the Minister for the Cabinet Office has suggested that a transition period of six months from commencement of the provisions on check-off would be appropriate.[125]

An SNP amendment would have introduced a requirement for legislative consent from the Scottish Government, the Welsh Government, the Northern Ireland Executive, the Mayor of London and local authorities in England in their areas of responsibility, prior to the abolition of check-off in those areas. The Minister said the matter was "clearly reserved" and that he therefore saw "no reason why the Government should seek consent before applying those provisions in particular areas".[126] The amendment was defeated on division (10 votes to 7) and the new clause read a Second time (10 votes to 7).

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[121] Ibid., cc406-408
[122] Ibid., cc408-409
[123] Ibid., c410
[124] Ibid.
[125] Ibid., c413
[126] Ibid., c415

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