

Committee on the Application of Standards

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United Kingdom of Great Britain and Northern Ireland (ratification: 1949)

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948
Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

Written information provided by the Government

The Government has provided the following written information.

1. *The Committee expects that the Oh will be concluded in the very near future and requests the Government to provide information on any conclusions arrived at in relation to the above-mentioned allegations.*

The Undercover Policing Inquiry's investigations are ongoing and it would therefore not be appropriate for the Government to comment further at this time. The Inquiry will publish its interim report for Tranche 1, the first three sets of evidence hearings, on 29 June 2023. The full details of the Inquiry's approach and plans, including summaries of evidence hearings and a timetable of its milestones, can be found on its [website](#).

2. *Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes. The Committee trusts that this work will be finalized without further delay and that the Government will provide information thereon in its next report.*

The Government is now finalizing its consideration of Sir Ken Knight's recommendations on electronic balloting for trade union industrial action ballots and will respond in due course. We are unable to provide more details to the Committee at this stage, before our consideration and our response is complete.

3. *The Committee urges the Government to review section 3 of the Trade Union Act with the social partners without further delay in order to ensure that the support of 40 per cent of all workers is not required for a strike ballot in the education and transport services.*

The Government intends to commence the review of the Trade Union Act shortly. This will include reviewing the ballot thresholds. The review of the Act will consider the views of social partners. We anticipate that this review will conclude in time for the next UK report to the ILO.

4. *The Committee once again requests the Government to provide information on the application of this notification in practice, including any complaints made in relation to the handling of this information or its impact on lawful industrial action, and any information on the blacklisting of individuals engaged in lawful picketing. It also requests the Government to provide information on the additional restrictions planned, if any.*

The Government reiterates the response it provided last year. The Government intends to commence the review on the Trade Union Act shortly which we anticipate will conclude in time for the next UK report to the ILO. The review of the Act will consider the views of the social partners. The questions asked by the Committee will be considered as part of that review. The Government would like to stress that blacklisting is completely unacceptable and has no place in modern employment relations in the UK. The Employment Relations Act 1999 (Blacklists) Regulations 2010 made it unlawful for an individual or organization to compile, sell or make use of a blacklist of trade union members or those who have taken part in trade union activities.

5. *The Committee requests the Government to provide its comments on the Trades Union Congress (TUC) observations, as well as detailed information on the reform implemented with regard to the Certification Officer's new investigatory powers, financial penalties that may be imposed, the amount of any penalties that have been imposed since April 2022, and the ceiling on the levy introduced.*

Certification Officer reforms: The Government implemented the Certification Officer reforms in April 2022. There were three aspects to these reforms, as follows:

Enhanced investigatory powers: Until April 2022, the Certification Officer (CO) could only make enquiries following a complaint from a trade union member. Since April 2022, the CO has been given further investigatory powers in relation to political funds, union mergers, internal leadership elections, and appointing or failing to remove from a union office a person who has been convicted of certain financial offences. The CO now has the power to appoint an inspector, and request documents and information. The CO is also able to investigate without a formal complaint being made, including in response to information and concerns raised by third parties.

There are important safeguards. Under the Trade Union Act, the CO will only be able to request the production of documents where there is a good reason to do so and will only be able to appoint an inspector where a higher test has been met – that is the CO must have reasonable grounds to suspect that a union has failed to comply with a statutory duty. As a public authority, the CO is required to act reasonably. Where representations from third parties are groundless or vexatious, the Government would not expect the CO to spend much time on these. The CO will also be required to give a union the opportunity to make representations before taking any enforcement action.

Though the Government would expect unions to cooperate as a matter of course with the CO's investigations, should a union believe that a request for documents is unreasonable or that the CO is acting unreasonably, they can challenge the investigatory process by seeking a judicial review. Alternatively, should the CO need to enforce a request for documents etc. then the CO will need to demonstrate to the Court that they have acted reasonably.

Financial penalties: Where the CO has the power to issue enforcement orders, she is now able to impose financial penalties and conditional financial penalties. Details of the financial penalty amounts are set in regulations within the maximum (£20,000) and a minimum (£200) limits set out on the face of the Act.

The regulations divide the statutory obligations placed on unions into three broad groups, according to importance of obligation, and set the maximum financial penalty that may be imposed for each group. The minimum financial penalty for all groups is £200. The CO is able to set the penalty anywhere within these ranges depending on the circumstances.

"Level 1" financial penalties relate to obligations regarding political funding, the management of political funds, the proper conduct of union elections, and personal propriety

considerations (for example, making sure no one who has a criminal record serves in a senior union position). The maximum financial penalty for Level 1 is set at £20,000.

“Level 2” financial penalties relate to the obligation to keep a union’s membership register up to date. The maximum financial penalty for Level 2 is set at £10,000.

“Level 3” financial penalties relate to obligations for unions to comply with a member’s request for access to accounting records, to provide the requisite details in their annual return to the CO, or to comply with investigatory requirements. The maximum financial penalty for Level 3 is set at £5,000.

For each group, the regulations halve the maximum penalty for unions whose membership is less than 100,000. If a financial penalty is imposed on an individual (such as for failing to comply with investigatory requirements), the maximum penalty is set at £1,000.

An organization may appeal an enforcement decision by the CO to the Employment Appeal Tribunal. The Trade Union Act 2016 also provides greater judicial oversight of the CO’s decisions, by allowing appeals on points of fact as well as law and crucially on the reasonableness of any financial penalty imposed.

The Certification Officer has confirmed that at the time of writing, no financial penalties have been issued under her new enforcement powers.

Levy: The introduction of a levy will bring the Certification Officer in line with a number of other regulators, such as the Pensions Regulator and the Groceries Code Adjudicator. The Government has taken steps to ensure the levy is fair and affordable. This includes provisions for exempting lower income organizations from the levy entirely, and ensuring no organization pays more than 2.5 per cent of their income. In implementing the levy, the Government decided that it will also continue to fund variable costs of the CO, ensuring that the levy is stable. This will help trade unions when budgeting for the levy by preventing large, unexpected increases.

The levy regulations provide that an organization has an obligation to pay the levy once they receive a notice from the Certification Officer. They provide for when each year’s notice may be issued, from when a new organization may be considered in scope to be charged, and the information the CO needs to include in the notice.

They identify the expenses which the CO may recover for the levy. The cost of any external inspectors or external legal advice is excluded (so will continue to be funded by Government). Both anticipated and actual expenses may be considered when calculating the levy, provided they are in respect of the financial year to which the levy relates.

The regulations set the rules within which the CO must set the specific levy amounts. The regulations provide the following.

- The CO must aim to ensure the total amount levied over any three-year period does not exceed actual expenses.
- She must aim to ensure the total amount levied on a category of organization (federated trade union, non-federated trade union, federated employers’ association, non-federated employers’ association) broadly reflects the cost of those functions that each category uses. This is because the CO’s functions are focused on different categories of organization (for example, investigations are currently only carried out on non-federated unions, while the administration of annual returns covers all organizations). In practice, the CO will be able to combine categories if they broadly use the same functions.

- For each category of organization, the regulations stipulate that the CO must aim to establish organizations that are exempt from the levy, and then two levels of levy. In this way, the CO will establish three income bands for each category (or combination of categories): lower income organizations that are exempt from the levy, organizations that will pay one level of levy, and higher income organizations that will pay a higher level of levy. There is a further income band for trade unions to take account of the additional services provided by the CO in their regulation. Details on how the levy should be calculated by the CO can be found in the Trade Union (Levy payable to the Certification Officer) Regulations 2022.
- No organization can pay more than 2.5 per cent of their income.

It is for the Certification Officer, the regulator of trade unions and employer associations, to set the levy amounts and income bands within the framework of the Certification Officer levy regulations.

The Certification Officer has recently issued a levy notice that relates to the first levy period, running from 1 April 2022 to 31 March 2023. In that period, the Certification Officer's eligible expenses were £656,672. The notice sets out the amounts payable as follows:

- All trade unions, federated trade unions and employers' associations with an annual income under £81,574 are exempt from paying the levy.
- Every organization with an income over £81,574 will be liable for the basic levy of £2,039.35.
- All trade unions (except the three federated trade unions) with an income exceeding £191,019 will also be liable for the additional levy of £2,736.13 per organization and this means that trade unions charged the basic and additional levies will pay a total of £4775.48.
- Employers' associations and federated trade unions with income over £151,657 and trade unions with an income exceeding £261,103 will also be liable for the enhanced levy of £1752.08. This means that trade unions paying the basic, additional and enhanced levies will be charged a total of £6,527.56. Employers' associations and federated trade unions paying the basic and enhanced levies will be charged a total of £3,791.43.

Discussion by the Committee

Chairperson – The third and last case on our agenda today is the United Kingdom of Great Britain and Northern Ireland on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). We have more than 17 delegates registered to take the floor therefore the reduction of time from 5 to 3 minutes will apply to the delegates concerned. I now invite the Government representative of the United Kingdom, to take the floor.

Government representative – On behalf of His Majesty's Government, I am pleased to present the formal response of Great Britain, to the Committee concerning Convention No. 87 on freedom of association and protection of the right to organize.

Let me begin by reiterating the United Kingdom's commitment to this process. I would like to thank the Committee of Experts for its careful consideration of our legislation as it relates to the Convention. As a nation committed to upholding and advancing international labour standards, domestically and globally, the United Kingdom highly values the role of the ILO. Most recently, for example, we have led the way in negotiating and ratifying Violence and Harassment Convention (No. 190) – the first international treaty to recognize the right of everyone to work free from violence and harassment. Protecting and enhancing workers'

rights whilst supporting businesses to grow, and balancing the interests of the wider public, is a key priority for this Government. We are seeking to find the right balance between workers' and unions' rights on the one hand, and the rights of employers and members of the public on the other. This is a principle that is well-understood and in line with international Conventions.

The United Kingdom is confident that the balanced reforms under the Trade Union Act 2016 are in line with our international obligations on trade union rights. Specifically, our introduction of ballot thresholds, requiring at least 40 per cent support for striking in important public services, addresses the fact that industrial action affects large numbers of the public who do not get a say in a strike ballot and are not associated with the relevant trade dispute. The United Kingdom is seeking to balance the rights of people who take industrial action and those who are affected by that action. The Trade Union Act aims to modernize industrial relations whilst promoting a more effective, collaborative approach to resolving industrial disputes.

As there are widespread consequences for the public when industrial action adversely affects public services, the Trade Union Act establishes that strikes in specified "important public services" require the support of at least 40 per cent of those who voted, with a 50 per cent turnout requirement on strike ballots. This is to ensure that where industrial action takes place it has the necessary democratic legitimacy and enjoys the clear support of union members.

The Trade Union Act does not intend to, nor does it, prevent industrial action. Rather, it ensures that there is a reasonable level of participation and support to the benefit of union members, employers, and members of the public. We welcome the opportunity to address the issues raised in the Committee of Experts' observations, and will now do so in turn:

First, the Committee of Experts followed up on their previous request for the Government to comment on the allegations relating to police surveillance of trade unions. The Undercover Policing Inquiry is ongoing, and so it would be inappropriate for the Government to comment further at this point. The interim report for tranche 1 of the inquiry will be published later this month, on 29 June 2023.

Second, the Committee of Experts previously requested an update on the measures taken to facilitate electronic balloting. The United Kingdom has said it agrees in principle with the concept of electronic balloting, however, it has concerns about some practicalities. We need to be satisfied that any method of electronic balloting ensures that those entitled to vote have an opportunity to do so; that votes cast are secret and are secure, and that the risk of any intimidation, unfairness or malpractice is minimized. The United Kingdom has set up an independent review of electronic balloting for industrial action ballots. We consulted a group of experts and held a round table with trade unions following the review on 23 January 2020, seeking their views on the independent review's recommendations. The United Kingdom is now finalizing its consideration of those recommendations will respond in due course. I am sorry, therefore, that at this point in time, I am unable to provide more details to the Committee.

Third, I can confirm that the United Kingdom intends to commence a review of the Trade Union Act shortly. This will include reviewing the ballot thresholds. The review of the Act will include consultations with social partners. We anticipate that this review will conclude in time for the next United Kingdom's report to the ILO.

Fourth, I would like to stress that the United Kingdom takes the firm view that blacklisting is completely unacceptable and has no place in modern employment relations. The 2010

blacklisting regulations make it unlawful for an individual or organization to compile, sell or make use of a blacklist of trade union members or those who have taken part in trade union activities. The review of the Trade Union Act will include a review of picketing requirements shortly. I can confirm that questions asked by the Committee of Experts will be incorporated as part of that review which we anticipate will conclude in time for the next United Kingdom's report to the ILO.

And finally, in April 2022, the United Kingdom implemented reforms to the role of the Certification Officer, who is the regulator of trade unions and employer associations. The reforms provide up to date investigatory and enforcement powers in line with similar regulatory authorities. The reforms also introduced a partial levy ensuring that taxpayers do not pick up the entire bill for regulating trade unions and employers' associations. We are confident that these reforms comply with our international obligations, and we realize there are some complex and technical details, and so have recently provided detailed information to the Committee of Experts.

To conclude, the United Kingdom is confident that the provisions in the Trade Union Act pursue a balanced approach and are reasonable and proportionate. The Act strikes a fair balance between the rights of unions and their responsibilities and modernizes trade union law to the benefit of everyone. We look forward to hearing the views of the other Governments, and the United Kingdom's Worker and Employer delegations, and other Employers' and Workers' representatives during this session. I conclude my opening remarks at this point.

Worker members – In this 75th year of the Convention it is worth noting that the United Kingdom was the first ILO Member State to ratify the Convention and our Committee last examined the United Kingdom's application of the Convention in 2016.

No significant improvement has been recorded since. On the contrary, there has been an acute decline ever since and this raises serious concerns. While the Government has provided some information to the Experts on the covert investigatory powers of the police and details of ongoing audits and enquiries, it has failed to comment on the specific allegations made by the TUC in relation to police surveillance of trade unions and trade unionists. As the Metropolitan Police's own records shows the United Kingdom has a long history of covert surveillance of trade unions and for this reason alone the Government must address the TUC's concerns in full.

Turning to electronic balloting for industrial action, we regret that no progress has been made since we last discussed this in 2016. Unions are prohibited from using means other than postal ballots, such as workplace or electronic voting. This is in spite of unions increasingly using electronic balloting technology for indicative votes on pay claims for instance. Six years on from a review of e-balloting that recommended pilots as a first step, there has been no formal response to the review.

The fact that unions are required to give seven days' notice of balloting and then spend time conducting a postal ballot gives a huge amount of time for employers to take measures to reduce the impact of industrial action, and we understand that ministers are proposing now further procedural requirements which would further hinder unions' ability to take effective industrial action. Is it conceivable that in 2023 trade unions only have the option of postal ballots?

Moving on to the Trade Union Act, we deeply regret that the Government has failed to review section 3 of the Act to ensure that the support of 40 per cent of all workers is not required for a strike ballot in education and transport services which are, of course, non-

essential sectors in the strict sense of the term. Not only has the Government ignored the Experts, ministers have indicated an intention to raise the threshold from 40 per cent to 50 per cent and extend this to all sectors.

In relation to picketing, the Government has again failed to provide the information requested by the Experts. The picketing requirements under the Trade Union Act discriminates by placing obligations on trade unions that other organizations do not face. In particular, unions are required to disclose the identity and contact details of activists to the police, which may expose them to blacklisting. Given the history of blacklisting in the United Kingdom, this remains a significant risk and we are also concerned by ministers' stated plans to put additional restrictions on picketing by setting a limit of six pickets at points of "critical national infrastructure". All this at a time when further legal restrictions have been placed on the right to protest. These restrictions on freedom of expression, assembly and association are excessive to say the least.

With respect to the powers of the Certification Officer which is responsible for statutory functions relating to trade unions and employers' associations, the Government has again failed to review the impact of these provisions with the social partners as called for by the Experts. Not only did the review not take place with the social partners in 2021; the Certification Officer was given additional powers. These new powers could end up causing unions to get tied up responding to complaints made by hostile employers or campaign groups, particularly during industrial disputes. New investigatory powers will also allow the Certification Officer to demand documents with sensitive information on the slimmest of basis.

Protection for trade union members who take lawful industrial action only extends to 12 weeks with no guarantee of reinstatement and no prohibition on hiring replacements. Despite an explicit request by the Experts, the Government has not reviewed sections 8 and 9 of the Trade Union Act. To add insult to injury, last year the Government adopted legislation allowing employment businesses to supply agency workers to replace workers taking industrial action in non-essential sectors overturning a practice that had been banned since 1973.

It is worth noting that this change was opposed by both employment agency businesses and trade unions alike. There is simply no defensible reason to repeal the ban on using agency workers as strike-breakers. Allowing it could have no other purpose than to weaken and to prevent workers from exercising their right to take action. It would also make it far more difficult for parties in a dispute to resolve their differences, and create resentment among workers which would last long after the dispute had ended. It would also put agency workers in a difficult, if not impossible, position.

If the current restrictions were not restrictive enough, a bill requiring minimum services in certain sectors is currently being debated in the houses of Parliament. The Minimum Services Bill covers the same list from the Trade Union Act corresponding to the important public services. This legislation gives a Secretary of State unlimited power to determine what a minimum level of service should be in these sectors and therefore the circumstances in which, and the extent to which, workers in these sectors can exercise their right to strike. If a strike takes place, an employer will have the power to requisition workers and issue "return to work" orders. The legislation would also remove significant protection for individual workers exposing them to the risk of dismissal and victimization.

Trade unions will also be required to take reasonable steps to ensure that workers comply with the work notice. This means that unions will be required to take steps to undermine their own actions, not to mention in sectors like rail, where most workers have some critical safety elements to their roles and rely on close teamworking with colleagues to deliver services.

Compelling staff to cross picket lines or be dismissed will bring increased risks because a workforce that depends on cooperation for safe working could be demoralized and divided.

Finally, we also note the TUC's serious concerns relating to the inadequacy of the compensatory mechanisms in place for prison workers and the denial of trade union access by enterprises in the hospitality and other sectors which undermines the right to organize under the Convention.

We urge the Government to halt the introduction of new anti-trade union legislation and immediately undertake a thorough review of its law and with the technical support of the ILO in order to ensure full compliance with the right to freedom of association and the right to organize under the Convention. As I said earlier, the first country to ratify this Convention was the United Kingdom, so we would welcome an exemplary behaviour.

Employer members – The Employer members stress the importance of States' compliance with the Convention, which, as we know, is one of the ten fundamental Conventions.

The United Kingdom, as we have just heard, was the first to ratify the Convention in 1949. We note that, so far, the Committee of Experts has provided 21 observations since 1989. Today is the tenth time that the Committee examines the Government of the United Kingdom's application of the Convention. The last time was in 2016. Since the last Committee discussion, the Government of United Kingdom has undergone a number of leadership changes, something which is not always conducive to systemic stability. Nevertheless, the United Kingdom has long-established and adequate frameworks that allow for matters covered by the Convention to be managed. There are several technical issues relating to this case.

In its 2023 report, the Committee of Experts repeated their earlier request to the Government to review section 3 of the Trade Union Act, with the social partners to ensure that the requirement of support by 40 per cent of the workers for strike ballot did not apply to the education and transport sectors. We note that the Government had provided written information to the effect that the Act, including the ballot thresholds, will be reviewed with the social partners in the future. We urge the Government to complete this work without delay.

We similarly urge the Government to complete the implementation of the recommendations arising from the review of e-balloting conducted in 2017. While, according to the Government, round table consultations on the recommendations were held with experts and with trade unions, there is otherwise little apparent progress. The Government has indicated that details will be provided after the finalization of its consideration of the recommendations. This should occur without further delay.

Last year, the Committee of Experts had requested the Government to provide information on the practice of notifying the police of the identity of activists; the details of any complaints regarding the handling of this information or its impact on lawful industrial action; and information on the blacklisting of individuals engaged in lawful picketing. The Employer members note the Government's indication that the Trade Union Act, including provisions on picketing requirements, will be reviewed in the future, and the Government will take into consideration the comments of the Experts. The Employer members echo this request and ask that the Government provide information on the TUC allegations on the progress of this review and whether or not there are any additional restrictions being planned.

At a more general level, let me be very clear about what Article 3 of the Convention:

“Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof”.

This is the most important element of the Convention and it's the one that underpins all of the rights that flow from it. However, as for the rest of the observations insofar as they affect or relate to the right to strike, we would remind you that the Employers and many governments, including those on the Governing Body, have on numerous occasions stated that a right to strike is not regulated in and is not part of the obligations under the Convention. This being so, we would simply point out that the Government is not actually obliged to take actions requested by the Committee of Experts that are not backed up by the provisions of the Conventions it has ratified. That said, there is nothing wrong with the Government reviewing its own policies on such matters, but any such work should be carried out via social dialogue with the social partners.

Employer member, United Kingdom of Great Britain and Northern Ireland – The UK Employers note the multiple different issues that have been raised in this case both by the Experts and by Worker members. Unlike many cases heard in the Committee, this one appears to be an effort to encourage the Committee to draw broad conclusions about the practice of freedom of association in the United Kingdom based on a wide range of observations rather than one specific complaint. That is not a criticism, but it does make the work of the Committee more complex and raises the prospect of the supervisory mechanism being drawn into multiple areas where the picture may vary.

With that caution in mind, we wish to make the following observations. Let us begin with the obvious. Trade unions have been recognized as lawful in the United Kingdom for over 150 years, as has already been noted, the United Kingdom had no problem ratifying the Convention. The United Kingdom has a strong and free trade union movement, and frameworks that allow for the matters covered in the Articles of the Convention to be complied with.

We also note the increased prominence of trade unions in our national debate over the cost of living. The UK Employers' core position, therefore, is that there is not a fundamental issue with the application of the Convention in the United Kingdom. There are, however, some specifics of the case where we feel there may be merit, and I will come to these later. Before we do that, we wish to recall discussions in previous years on the issue of the Committee of Experts making observations regarding the right to strike in the context of the Convention. It is not necessary to repeat those at length, but we will limit ourselves to noting that:

- there remains no consensus as to whether the Convention includes a right to strike. The Employers' group position on this is well-known, and we align with the position expressed a moment ago by the Employer Vice-Chairperson, particularly in relation to conclusions from this Committee;
- we do support the consensus between the social partners, as expressed in their joint statement of February 2015, that: “[t]he right to take industrial action by workers and employers in support of their legitimate industrial interest is recognized by the constituents of the ILO”.
- the position held by many in the Government group has been that the right to strike is to be regulated at the national level; We agree with this and we note that the national-level

regulation of the right to strike in the United Kingdom has not stopped the past year having the most strike days of any for the previous 30.

- we express our concern again about the fact that the Committee of Experts continues to make observations on the right to strike under the Convention heading and urge the Committee of Experts to reflect upon the tension that such observations continue to create given it has led the Governing Body to considering a new Article 37(1) of the ILO's Constitution referral process to definitively determine this issue.

The work of the Conference Committee is the apex of the ILO supervisory machinery. We believe it is of critical importance that the Experts, the social partners and Governments continue to affirm and take steps to ensure that this role is not replaced by referral to the International Court of Justice.

We draw the Committee's attention to the comments of the (then) Employer Vice-Chairperson of this Committee at paragraph 20 of the General Report. We align ourselves with this view and underline the importance of not creating new obligations that are not reflected in the text of the Conventions. We regard the elements of this case concerning the existence of strike ballot thresholds and industrial action e-balloting as being right-to-strike issues and anticipate that there will not be a conclusion on these in line with the Convention in the Committee.

But I turn now to matters more specifically related to freedom of association and protection of the right to organize as set out in the Convention. Like our Worker colleague from the United Kingdom, we agree that the regulation of trade unions and employers' organizations by Governments must be balanced. We note with interest the points that have been raised by the Workers' group on surveillance of unions, and the potential link to more recent legislation around protests. We believe more information from the UK Government on these issues – including reporting the results of any reviews in a timely fashion – would be worthwhile.

Likewise, a number of points raised in the Committee of Experts' observations reflect a concern that the UK Government may over-reach itself in trying to regulate free associations, in this case of workers – but the same could equally be said of employers' organizations. We note the lack of progress on decisions around e-balloting for union internal elections and the concern raised about the scope of the powers given to the Certification Officer. These are both areas which would benefit from further social partner discussion at national level, and reporting by the UK Government to the ILO supervisory structures. In both of these areas, we do not necessarily agree with the position of our Worker colleagues from the United Kingdom, but they are proper grounds for national social partner discussions, and these have not meaningfully taken place. The UK Government should rectify this.

There are other examples of this lack of consultation. The Worker Vice-Chairperson mentioned one of them. In the summer of last year, the UK Government removed the ban on agency workers replacing striking workers without consultation of the relevant trade union or sector employer bodies. This happened despite the domestic law requiring that consultation to happen and is now subject to a judicial review in a UK court. A decision is pending on that.

The Worker Vice-Chairman also mentioned some further issues not included in the Committee of Experts' observations. I have already referred to one, that may come up being the agency workers and strikes issue. The other major one is the current Minimum Service Levels Bill. We note that this is prospective legislation and is still subject to the parliamentary

process. It would not be proper to take a position on it at this time, and its interaction – if any – with the Convention.

Overall, Chairperson, we remain of the view that the Convention, as drafted by the ILO constituents, is correctly applied in the United Kingdom. Countries vary in implementation legitimately. The Employers' group accept that the Workers' group has tabled some legitimate issues around social partner consultation and certainly we, as a UK Employers, accept that and that regulation and operation of the system in the United Kingdom does merit more domestic discussion and reporting to the Committee. While we do not necessarily share the starting point of Workers on each of the issues which have been raised, there is room for meaningful discussion and further information from the UK Government, delivered to the supervisory structures of the ILO.

Worker member, United Kingdom of Great Britain and Northern Ireland – Sadly, it is clear that the UK Government sees unions as a problem, not partners. This does not have to be the case, during the pandemic the Government worked with workers' and employers' organizations to create the furlough scheme, which prevented an unemployment disaster. But when it passed, they returned to hostile language and a refusal to consult. They introduce oppressive legislation, on top of the most restrictive trade union laws in western Europe, that seeks to undermine the fundamental right to strike, interferes with union independence, and they do nothing to promote a climate in which the right to organize can thrive. But, as we sit here in a tripartite committee in the ILO, we would like to remind the Government that we are social partners, not a social problem.

Strikes were at a historical low when the Trade Union Act of 2016 became law, and the United Kingdom ranked well below the OECD average for days lost to strikes. It was introduced to remedy a problem that did not exist. The review of the Trade Union Act promised by the Government comes as a surprise to us, as the information sent to the Committee was the first we had heard about it. It comes just as the Government is trying to push through yet another bill to restrict the right to strike of British workers: another bill which involved no formal consultation with the social partners. What hope do we have, in this context, that any review will be conducted in better faith and with meaningful engagement with workers' and employers' organizations?

The Committee of Experts have repeatedly, since 2016, requested that the Government engages with the social partners to remove ballot thresholds in transport and education, mandated by the Trade Union Act, that requires 40 per cent support from all those entitled to vote in a workplace for a strike to be legal. No such discussions have taken place. Ministers instead suggested they might consider raising the minimum threshold from 40 to 50 per cent.

The ILO guidance on interpreting the right to strike is clear: it should not be restricted for non-essential services. But the Government is hazy on ILO guidance. Last year, the Secretary of State for Business announced in Parliament that his proposals for minimum service levels (MSLs) were consistent with ILO rules. But the plans are completely at odds with the Committee on Freedom of Association (CFA) decisions on MSLs and ministers ignore the context of a highly restrictive environment in the United Kingdom. They plan for ministers to determine exactly what the minimum service will be, a centralized power grab that clearly goes against all CFA guidance. In their dedication to not speaking formally to unions, they have ensured that their new legislation cannot possibly pass the test of compliance with the CFA, and we look forward to submitting a complaint in the near future. And if government saw unions as partners, not as problems, it would know workers already take steps to ensure that life-and-limb cover is in place during industrial action. Neither workers' nor employers' organizations were adequately

consulted before as my colleague mentioned. The Government abruptly abolished a long-standing prohibition against agency workers being hired to replace strikers. Unions and the employer association for the recruitment industry, issued a joint public statement condemning the law change as “counter-productive, impractical and [putting] workers at risk” our advice should have been sought through formal consultation with the social partners when the idea was first mooted.

Industrial disputes in the United Kingdom are occurring against a backdrop of a cost-of-living crisis unprecedented in recent decades, with inflation averaging over 10 per cent since March 2022.

Union action has won pay rises for workers across the economy that have helped them survive the crisis. Through collective bargaining, firefighters gained a 7 per cent rise. Tanker drivers gained pay rises of 13.5 per cent. Nurses will get a rise of 5 per cent plus a one-off payment of more than £1,500. Lower paid workers at an insurance firm got 10 per cent rises. More than the better-off after members agreed to prioritize those most in need. Some of these rises were achieved with strikes. Still more were achieved simply because strikes were possible. The alternative to workers exercising their power to increase their share of funds is the recent advice of the Bank of England, which advised British workers to “accept you’re poorer.”

We know the right of workers to strike is crucial to our ability to refuse to accept that we are poorer, when we know record profits are being recorded in our country. Returning to the MSL Bill – in their desperation to reduce the power of workers to defend their own interests, the Government proposes grossly abusing union independence. To plug obvious gaps in its unworkable law – which the Government’s own analysis states will lead to more strikes – the Bill requires unions to take “reasonable steps” to ensure that their members – even those who have voted democratically for strike action – go to work. If they do not, the strike would become illegal, risking ruinous fines for the union: the cap for damages was raised last year to £1 million. And legal protections would be withdrawn from all those taking part in the strike action – whether or not they had been ordered into work.

The 2016 Committee asked the Government to review increased investigatory powers for the Certification Officer, or CO – the regulator for trade unions and employer associations – to ensure they were in conformity with the Convention. Although they delayed their implementation for several years, no significant changes have been made. And, once again, no formal consultation with the social partners took place before its surprise introduction in 2021.

We would say the Government was using a sledgehammer to crack a nut, but perhaps in this case they are using a steamroller to crack a sesame seed. Complaints against unions totalled just 30 last year, of which only 4 were upheld. This is the situation that the Government seeks to remedy by introducing a process that will deprive unions of their members’ money to the tune of more than £1 million. We fear that could be deliberately used to tie unions up in time consuming and expensive processes. Promising, as the Government did in its submission to the Committee, that if this happens vexatiously, we can resort to a judicial review – a time consuming and expensive process – is not, perhaps, the reassurance the Government thinks it is. The Convention is very clear – we have the right to elect our representatives without interference. The law – since 1989 – says that all general secretaries, presidents and executive members of trade unions must be elected. Although we should have the right to draw up our own constitutions, as democratic organizations we have no issue with that. However, it goes further and dictates the way in which these elections take place, namely that they should be conducted by post.

The landscape for democratic participation is very different 34 years after this provision was drafted. According to the UK Office of National Statistics, 92 per cent of people in the United Kingdom use the internet. Use of the postal service however is not, for many, a daily experience, and for some it carries many difficulties. It is worth noting that in 2022 the Prime Minister of the United Kingdom was effectively, through a vote of Conservative Party members, elected by an electronic ballot. Subjecting unions to stricter controls than the Prime Minister through an archaic ban on our right to elect our representatives in full freedom is unacceptable. And yet, the Government says of the 2017 Sir Ken Knight review into all forms of union e-balloting, that it "is now finalizing its consideration of [the] recommendations."

This would be more encouraging if they had not used almost the exact same phrase in a letter to the TUC 14 months ago. Given they have now had Sir Ken's review for 6 years, we respectfully request that the Government finalizes its considerations with more urgency.

Sadly – as the Committee of Experts note – the United Kingdom has a long and sorry history of surveillance and blacklisting of trade unionists. A welcome inquiry into the issue of "Spycops" infiltrating unions is ongoing.

With this in mind, we hoped to have legislative guarantees that no such interference would happen again. But when the Government introduced The Covert Human Intelligence Sources (Criminal Conduct) Bill (2021), it opposed an amendment specifically excluding trade unions from its main provisions – namely that undercover agents of the security services can be authorized to commit crimes. It is also in view of this that we have concerns over Trade Union Act stipulations that picket coordinators must hand their details to the police, and that the CO can request sensitive documents.

Viewing unions as a problem perhaps explains why the United Kingdom does not take "all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize", as set out in the Convention. While we note also that the CFA has said: "Governments should guarantee the access of trade union representatives to workplaces... so that trade unions can communicate with workers in order to apprise them of the potential advantages of unionization", in practice in the United Kingdom no such guarantees exist. Paranoia about the intentions of unions, perhaps encouraged by intemperate language of the Government, has resulted in companies in the hospitality and online retail sectors taking extreme measures when they know unions are trying to speak to workers and in one bizarre case, refusing to let real union reps speak to staff, but offering to hire actors to pretend to be union reps to see if workers were interested in unions without actually exposing them to the real thing.

We are frustrated that we have had to return to the Committee to discuss long-standing issues relating not just to the right to strike, but to basic principles of the independence of the social partners.

As the Convention and accompanying guidance make clear, a government's role is to create conditions necessary for workers and employers to form organizations, including by promoting the benefits of doing so. But it is not their role to choose, in any way, what form these organizations decide to take, and it cannot seek to control them. But it can, and should, engage with them, in formal, structured social dialogue, especially on issues connected to the ILO Conventions, including the industrial relations framework in which we operate.

Finally, we hope the UK Government will have listened carefully to our arguments and accept that perhaps there are things it could do better if it was prepared to work with, rather

than against, its social partners, and to seek their advice – and that of the ILO – in keeping within the bounds of its international commitments.

Worker member, Italy – The Committee of Experts has shared concerns over the lack of clarity regarding the application of minimum service levels under the Minimum Services Bill. This legislation would place severe and unacceptable restrictions on the fundamental right of a worker to take industrial action to defend their pay and conditions. It would allow the ministers, by regulation, to impose minimum service levels on services within six sectors.

Italian workers believe that negotiation, sectoral bargaining, and social partnership are always the best way of resolving a dispute. In the framework of the UK industrial relations' systems, imposed minimum services levels would, instead, aggravate and prolong disputes.

The UK Government has declared that the MSL Bill would align national legislation with that of the other European countries. We would like to disprove this. Unlike workers in the UK, workers in Italy enjoy the protection of national sectoral collective bargaining agreements, setting minimum standards on workers' rights for whole industries, covering more than 90 per cent of the workforce in the public and private sectors. These agreements are underpinned by the freedom to take strike action without disproportionate restrictions.

In fact, in Italy Law No. 46 of 1990 provides a general definition of the concept of "essential public service", by focusing on the list of personal rights that should be unfailingly guaranteed through the provision of essential public services. But it is the social partners, through collective agreements, that define the list of minimum services during industrial action. In the event of a disagreement, a national and independent committee examines and assesses breaches of the provision after having heard social partners.

As enshrined in the Convention and clearly outlined in the digest of the cases of the ILO Committee on Freedom of Association, "the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations".

We therefore urge the UK Government to repeal the Minimum Services Bill and create an environment where social partners can discuss and negotiate the terms of the industrial action in a climate free from interference and intimidation.

Miembro trabajador, España - Hablo también en nombre de la Federación General del Trabajo de Bélgica (FGTB). El Reino Unido tiene algunas de las leyes antisindicales más duras de Europa Occidental, y esto significa que los trabajadores y las trabajadoras británicas no pueden ejercer su legítimo derecho a la protesta en la forma que les serían propias. Y vemos cómo este Gobierno quiere cercenar aún más ese derecho y limitar la capacidad de acción de la representación de la clase trabajadora, que son sus sindicatos, de tal forma que esta comisión ha visto la necesidad de hacer numerosos requerimientos al ejecutivo del Reino Unido y sobre su Ley de Sindicatos.

Sonroja ver realidades como las listas negras que, por desgracia, hemos podido tratar en esta comisión en otras ocasiones. Listas negras como las de Guatemala; listas negras como las de Colombia, listas negras como la de Bielorrusia. Listas negras como las España de la dictadura que obligó a mi organización al exilio. Listas negras que ensucian lo que el Preámbulo del Convenio recuerda de la Declaración de Filadelfia y que dice —y cito— que «la libertad de expresión y de asociación es esencial para el progreso constante».

En esta sede del tripartismo, de la negociación y del acuerdo, en la OIT, resulta difícil de comprender a un Gobierno que legisla de manera unilateral sobre cuestiones clave de las

relaciones laborales, incluida la acción industrial, sin tener en cuenta las opiniones de las partes interesadas, evitando el diálogo social que tan excelentes resultados tiene, incluso cuando se trata de un convenio fundamental tan sagrado como el de la libertad sindical y la protección del ejercicio de ese derecho. Como bien ha expresado el Director General de la OIT sobre el caso del Reino Unido que aquí tratamos, «el diálogo social es especialmente importante durante la actual recesión económica». Exactamente la receta contraria es lo que hoy se evalúa aquí.

La forma es contenido. La manera en la que se impone expresa voluntad. Y si antes hablaba de los malos ejemplos, permítame que hable de los buenos, de cómo en España hemos conseguido mediante el diálogo social tripartito revertir legislaciones perniciosas como las que también criminalizaron el derecho de huelga y vuelvo a poner en valor las palabras del Director General, Sr. Houngho, para decir cómo en una concatenación de crisis como las que hemos vivido en mi país no sólo hemos sobrevivido, sino que hemos avanzado. Negociando, con voluntad de los mandantes, trabajando de manera conjunta para garantizar el éxito y la justicia social.

La voluntad que vemos de limitar el derecho a la huelga y de debilitar los derechos de las personas que lo ejerciten ponen en riesgo el Acuerdo de Comercio y Cooperación (TCA) entre Reino Unido y la Unión Europea, que exige el respeto a la libertad de asociación. El TCA obliga al Gobierno británico a cumplir sus obligaciones con la OIT y con el Consejo de Europa. En caso de no hacerlo, habría consecuencias muy negativas para las empresas y para los puestos de trabajo. Frente a los beneficios de la negociación, se opta en este caso por el vacío.

Sirva este caso en el que se cuestiona la vulneración de un convenio fundamental para animar al Gobierno británico a rectificar y apostar por el espíritu de la OIT en pro del avance, la paz y la justicia social que ellos mismos decidieron ratificar hace casi cien años.

Employer member, United States of America – Let me please begin by noting my sincere appreciation for the rich and diverse comments and written submissions in this case. I will keep my comments both brief and targeted. This case involving the United Kingdom of Great Britain and Northern Ireland raises a well-worn matter: whether the right to strike is contained within the text or understanding of Convention No. 87. We wish to reiterate the reality that the text of the Convention does not contain any rules, nor any mention at all, of the right to strike. We also wish to note the reality that including language on the right to strike was quite clearly contemplated by the Convention's drafters, and also that those drafters made the unequivocal and considered decision to leave out any mention of the right to strike in the Convention.

As the applicable report from the 1948 ILC states: "the proposed Convention [87] relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association". The text and legislative history of the Convention are thus eminently clear: the Convention does not, and deliberately so, include the right to strike because, as the Government group shared in their position statement of March 2015, "The scope and conditions of this right are regulated at the national level."

We note our agreement with the Government group. We also thus must recall our disagreement with the Committee of Experts' views concerning the Convention and the right to strike. National governments can and should legitimately determine their own approach to the right to strike, freely guided by their national needs and priorities, and not be held to follow

the Committee of Experts' recommendations. This right need not and should not be prescriptive at the global level, as national governments should – consistent with their sovereign authority – craft regulation that honours this right in a manner that best suits their domestic contexts and within the confines of existing law and practice.

Worker member, Canada – I am speaking today on behalf of the Commonwealth Trade Union group in addition to Canadian unions. Convention No. 87 is vitally important to ensuring the right of workers' and employers' organizations to arrange and administer their internal affairs without interference from the public authorities. Despite assurances of the Government, we remain concerned with the potential for interference in the internal affairs of trade unions contained in the expanded investigatory powers of the Certification Officer.

The officer's investigatory powers will now extend to political funds, union mergers, internal leadership elections and appointing or failing to remove from union office a person who has been convicted of specific financial offences. We note that the officer can investigate without a formal application or complaint being made, including in response to information and concerns raised by third parties. We are concerned that this provides an opportunity for groups motivated by political animus towards unions or individual union leaders, to harass and compel unions to expend energy and resources responding to complaints, particularly, during legitimate industrial disputes. The appointed inspector can require the production of any documents and information the inspector believes may in some way, be relevant to union compliance with an obligation.

We are also concerned that the new levy imposed on unions to cover the expenses of the officer creates perverse incentives that promote interference in internal trade union affairs. Since the levy is structured to cover the officers' expenses, the level and rate of increase of resources available to hire staff, pay remuneration and provide accommodation, equipment and other means, are directly tied to the number of investigations undertaken. The Government also allows financial penalties of up to £20,000 to be summarily imposed in the case of statutory breaches. There are no published criteria for the specific level of penalties to be imposed, with this left completely to the discretion of the officer.

These changes were implemented in April 2022, without warning and after minimal engagement with social partners. We call on the Government of the United Kingdom to engage with the social partners without delay in order to address these concerns and to ensure the Government fully complies with its obligations under the Convention.

Worker member, Finland – I have the honour to speak on behalf of the Nordic trade unions. Unfortunately, the issues under the scrutiny of this Committee today are nothing new. The case covered by the report of the Committee of Experts continues the sad story of anti-union legislation, obstacles for genuine collective bargaining, excessive regulation of industrial actions, and even hostility on the part of the authorities towards trade unions, the same story we have been hearing from over the years.

Many of the points raised by the Committee of Experts deserve attention in their own right. For example, the Government recently increased the maximum amount of fines that can be imposed on unions in relation to strikes that are considered unlawful, in a manner that can only be described as excessive. Fines up to £1 million are more than capable of generating an intimidating effect and inhibit legitimate trade union activities.

Nevertheless, here I would specifically like to address one key aspect of the freedom of association, that is, the consultation of trade unions – or in this case, the lack of it.

As it has been emphasized by the CFA on multiple occasions, the freedom of association should not be interfered with by States. At the very heart of the right is that the social partners should be able to carry out their activities in full freedom. What can, and should be encouraged by the States, is the principle of consultation and cooperation between public authorities and employers' and workers' organizations alike. The most representative employers' and workers' organizations should be consulted at length on matters of mutual interest, including everything relating to the preparation and application of legislation concerning matters relating to them.

This is something we in the Nordic countries are very accustomed to. We share a common experience that genuine trust between the social partners and the Government, along with the enabling atmosphere for collective bargaining, is something that should be pursued instead of being discouraged. Genuine consultation of social partners and mutual respect among all parties is not a threat. It is an opportunity.

Therefore, we are deeply worried about the prevailing circumstances in the United Kingdom. The retained EU Law Bill, which was enacted without a due consultation process, allows for the deletion of secondary legislation derived from EU law with little Parliamentary oversight or influence – not to mention any consultation or direct engagement with the social partners. A significant part of the legislation that is now set out to be brutally eradicated or rewritten, deals with matters affecting trade unions – consultation and union recognition in relation to collective redundancies and transfers of undertakings, just to name a few.

What we find the most concerning is that if such plans are set into motion without due concern for proper consultation with the social partners, such excessive reforms will easily result in incompatibilities with ILO Conventions. We urge the Government to proceed with ultimate caution and to ensure that fundamental rights of workers are still complied with.

Worker member, United States of America – In the United Kingdom unions are legally required to conduct key votes, such as elections of union leaders and whether to take industrial action, by postal ballot alone. As the Committee of Experts' report notes, this restriction is plainly at odds with Article 3 of the Convention which "guarantees the right of workers' organizations to select their representatives in full freedom, organize their activities and formulate their programmes". In our modern digital age, there is no reasonable justification for maintaining this antiquated restriction on unions' internal balloting procedures. The postal ballot requirement also suppresses turnout among young workers or those who are simply away from home for long periods of time. A 2017 government-commissioned review recommended a pilot e-balloting programme, but the UK Government has yet to take any action despite repeated calls by the Committee of Experts.

I would also like to address the steady stream of anti-union comments that have come from high-ranking officials in several UK governments over the past few years. In response to UK trade unions exercising their legal right to strike, several ministers have publicly compared trade unions to terrorists "holding the country hostage" or gangsters "bribing" their members to go on strike. Chair, this kind of anti-union rhetoric poisons the well of social discourse and undermines the spirit of the Convention.

The Sunak Government would do well to end the name-calling and legislative attacks and instead treat UK trade unions like the essential social partner they are. In the United States, we have seen the benefits of a different approach first-hand. The Biden Administration has created a formal task force to promote worker organizing and collective bargaining across the Federal Government and appointed trade unions to a range of advisory bodies from trade policy to artificial intelligence. The result has been unmistakeably positive with a rise in public opinion

of trade unions and greater willingness by the private sector to engage in social dialogue and collective bargaining. To conclude, we call on the UK Government to adhere to the recommendations in the Committee of Experts' report and abandon any legislative proposals that would undermine workers' fundamental rights under the Convention.

Miembro trabajador, Colombia - Esta intervención la realizo en nombre del Movimiento Sindical Colombiano y de la Confederación Sindical de las Américas. Quisiéramos recordar la libertad sindical es un derecho fundamental que tiene por finalidad la promoción y la defensa de los intereses económicos y sociales de los trabajadores y las trabajadoras.

Como corolario de ese derecho fundamental, la huelga es un derecho y no un hecho. Los Estados democráticos independientemente de su nivel de desarrollo, reconocen que el conflicto es natural en una sociedad pluralista, y no deben restringir de manera autoritaria el conflicto, sino que deben garantizar los mecanismos necesarios para su solución. Es decir, deben garantizar a trabajadores y sindicatos el ejercicio efectivo del derecho a la huelga, sin que estos acarreen sanciones de ningún tipo.

En consecuencia, tratándose de la libertad sindical de un derecho fundamental reconocido por instrumentos internacionales de derechos humanos, no es concebible que su ejercicio se someta a una serie de controles y limitaciones policiales que obstaculicen su desarrollo y tiendan a infundir temor en los activistas.

En concreto, es ilegítimo someter las actividades sindicales a la vigilancia policial o disponer la comunicación de la identidad de los sindicalistas, práctica esta que puede facilitar la implementación de listas negras y una absoluta discrecionalidad de parte de la autoridad pública.

Por otra parte, ha sido motivo de observación reiterada por la Comisión de Expertos la necesidad de revisar el artículo 3 de la Ley de Sindicatos para modificar el requisito del apoyo del 40 por ciento de todos los trabajadores a la votación de la huelga en los servicios de educación y transporte. De tal modo que se promuevan estas formas de intervencionismo excesivo en la autonomía de las organizaciones sindicales. El Gobierno del Reino Unido debería de eliminar estas restricciones.

Worker member, Zimbabwe – We are so worried about the intentions of the UK Government to unilaterally make changes to the United Kingdom's strike law by introducing the Minimum Service Regulations. These regulations have the effect of reducing the power of UK workers in making an effective strike. The TUC has estimated that one in every five workers in the United Kingdom will have their right to strike limited. According to the Joint Committee on Human Rights, UK Parliament, "The Strike Minimum Services Bill will place limitations on the right to strike in the relevant services, by requiring that trade unions take reasonable steps to ensure that the persons identified in a work notice given by an employer, do not take part or continue to take part in a strike'.

Workers who are identified in a work notice and ignore that work notice by going on strike would lose their automatic protection against dismissal for taking part in strike action. The law will also obligate trade unions to take what they call "reasonable steps" to ensure that all its members identified in the work notice do not take part in the strike action. If it does not, unions could face an injunction to stop the strike or have to pay huge damages. The ILO principles regarding minimum services require that the determination of minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are

strictly necessary. In this matter, we see the Government's clear intentions to move forward despite opposition from trade unions. The Government does not care about what is being said by the trade unions which are key partners in the United Kingdom's economy. I urge the UK Government to engage with its social partners to resolve the current impasse.

Worker member, Philippines – The workers of the Philippines strongly advocate for trade union representatives to have access to workplaces in the United Kingdom. This access would greatly benefit our Overseas Filipino Workers, especially the approximately 40,000 health workers in the country. With a Filipino population of around 200,000 in the United Kingdom, it is crucial for our workers to have the opportunity to be part of trade unions. The Convention, which states that the Government must ensure the freedom to organize, reinforces the importance of granting workers and employers the ability to exercise this right. Unfortunately, in the United Kingdom, this freedom is hindered by the absence of a framework that allows unions to access workplaces, even for the purpose of addressing workers or engaging in organizing activities.

Without adequate protections, employers who are hostile to unions can easily dismiss their efforts. Union representatives are regularly denied access to workplaces and are even ordered to leave public spaces near workplaces when attempting to distribute leaflets at the end of the working day. Workers face threats simply for accepting a union leaflet. We would like to highlight that the Committee on Freedom of Association has emphasized that governments should guarantee the access of trade union representatives to workplaces, respecting of course the rights of property and management. This access is crucial for trade unions to communicate with workers and inform them about the potential advantages of unionization. However, in the United Kingdom, unions are kept at a distance and have no legal right to engage with workers. An example of this restriction is evident in a situation where a hotel chain called the police on organizers who were distributing union information outside its gates. Similarly, another employer denied access and instead promised to send a senior manager to question staff about their concerns if they requested to speak to a union officer. Within the building, all union material is prohibited, and workers are actively discouraged from discussing unions. Electronic signage throughout the facility is utilized to dissuade trade union membership.

Worker member, Australia – I am speaking on behalf of the Australian Union Movement and the Commonwealth Trade Union regarding the practice of surveillance and blacklisting of unions in the United Kingdom, an egregious violation of the Convention. The Government has previously indicated to the Experts that the exercise of covert investigatory powers under the Investigatory Powers Act, 2016 (IPA) and the Regulation of Investigatory Powers Act, 2000 (RIPA) are subject to numerous stringent safeguards and robust independent oversight. The Government points out that it would therefore never be necessary and proportionate to use investigatory powers merely to interfere with legitimate trade union activity. We note, however, the long-standing practice of surveillance of trade unions and unionists in the United Kingdom by the Government's security service and police; and evidence that this intelligence has been passed on to employers and used to blacklist workers, leading to workers being dismissed and refused work due to their trade union activities.

Following scandals involving the raid of a blacklisting employers' association in 2009 and the subsequent unmasking of a number of spies during 2010–2014, the Government established the Undercover Policing Inquiry in 2015, which is yet to hand down its report. The surveillance and blacklisting of unions was significant enough to warrant the inquiry creating a specific category to investigate hidden state surveillance of trade unions, with the Fire Brigades Union, the National Union of Mineworkers, UNITE, and the rank-and-file campaign

and the Blacklist Support Group as “core participants.” There is evidence that the practice of blacklisting is still current – for example, it was revealed in 2019 that senior managers at a large publicly funded rail project hired a corporate security company to monitor trade unionists who were campaigning against blacklisting across the construction industry. So it is in this context that we note with grave concern that the Government has recently passed the Covert Human Intelligence Sources (Criminal Conduct) Act 2021, which authorizes the police, the security and intelligence services and the armed forces to infiltrate lawful organizations and to authorize those infiltrated to commit criminal offences. The Act allows for criminal conduct authorizations in: (a) the interests of national security; (b) for the purpose of preventing or detecting crime or of preventing disorder; or (c) in the interests of the economic well-being of the United Kingdom. It is clear that these statutory reasons for authorizations could enable the surveillance of trade unions and trade union members. An amendment intended to exclude trade unions from the reach of the Bill was defeated by 59 votes after the Government refused to support it – the UK Parliament effectively repudiating this specific limitation on the powers of the police and security services. Given the evidence of the widespread practice of the surveillance of independent workers’ organizations in the United Kingdom, leading to the blacklisting of trade unionists, we express our serious concerns that the progress claimed by the Government in response to the Experts’ observations in 2018 is vulnerable to future abuses.

Neither trade unions nor trade union members should be subject to the surveillance of the State. We call on the Government to immediately amend the Act to explicitly exclude trade unions and immediately cease the practice of surveillance of trade unions in order to comply with the Convention. We further call on the Government to prohibit the surveillance of trade unions and trade union members by the State and its officials due to their trade union membership or activities, and punish with severe criminal sanctions State officials engaging in such activity.

Government representative – I would like to thank all those who have spoken in today’s session, and who have engaged constructively with this process. The United Kingdom welcomes the scrutiny of the Committee of Experts and this Committee, and we have listened carefully to all the views expressed today and will be taking them forward with relevant colleagues across the UK Government. The United Kingdom is committed to all ILO Conventions we have ratified, including Convention No. 87, and we have a long-established regulatory framework protecting this fundamental Convention. We believe the Trade Union Act takes a measured and proportionate approach that balances the rights of people who take industrial action and those who are affected by that action. It aims to modernize industrial relations while promoting a more effective, collaborative approach to resolving industrial disputes and protecting the continuation of vital services for all in our society.

The United Kingdom intends to commence the review of the Trade Union Act shortly and we anticipate it will conclude in time for the next UK report to the ILO. The review, which will include the ballot threshold and picketing requirements, will consider the views of the social partners, and the questions asked by this Committee and its conclusions will also be part of that review. We thank speakers for their comments on the Certification Officer reforms. This role is critical in ensuring trade unions and employers’ associations are held to the highest standards of governance. The Certification Officer is fully independent of government and the reform specifies this explicitly. There are clear limitations as to how the Certification Officer can use her investigatory powers. She has to act reasonably and cannot launch investigations against unions on a whim. She can only launch an investigation where they suspect there has been a breach of a statutory obligation. Furthermore, the Certification Officer can only request

documents from a union when there is good reason to do so. Our new measures have strengthened safeguards including increasing judicial oversight of her decisions as we detailed in our written response to the Committee of Experts. The reforms have modernized trade union regulation, bringing it into line with other regulators. This is important for securing the confidence of workers, employers and the general public.

I am aware that the Committee of Experts did not ask about the Strikes (Minimum Service Levels) Bill, but I noted it was raised by several delegates, and so I just wanted to reiterate the United Kingdom's principal position that the ability to strike is an important part of industrial relations in the United Kingdom, rightly protected by law and the Government understands that an element of disruption is inherent in any strike. We thank the Workers' and Employers' delegates and members for their comments on the repeal of Regulation 7, on consultations with social partners, and on wider legislative reforms relating to protests, and we will pass these on to the relevant government departments in the United Kingdom. In conclusion, the Government is confident that the UK Trade Union Act is compatible with our international obligations under the United Nations, the ILO and the European Social Charter. The Trade Union Act does not intend to, nor does it prevent, industrial action but ensures it is supported by a reasonable democratic level of participation and support. The Government is confident that the Trade Union Act strikes a fair balance between the rights of unions and their responsibilities towards the rest of society and modernizes trade union law to the benefit of everyone. So let me just end by reiterating the United Kingdom's commitment to continuously improving labour standards and by thanking the Committee and its contributors for their valuable time.

Employer members – We thank the Government of the United Kingdom for its comments and all of the information and, in fact, to all participants for a rich and varied discussion. We are just taking note of the Government's comments around certification offices and balloting and urge them to continue the work that they have begun. I think the primary issue, given that the view of the Employers is that the right to strike per se not regulated by the Convention, that the issues that have been raised are of a practical nature for the Government to deal with. But that being said, they are practical issues, and they should be given the attention that has been requested. With that in mind, we would simply like to recommend that the Government of the UK report to the Committee of Experts in time for the next Committee of Experts' session with information on the application of the Convention in law and practice and with all of the information requested by the Committee of Experts.

Worker members – We thank the Government representative of the United Kingdom for the information provided to our Committee and we also thank all the speakers for their contributions. The infringements on the right to freedom of association and the right to organize in the United Kingdom must be seen in the context of a system in which trade unions are already very highly regulated, as a result of a number of restrictions on trade union freedoms introduced over the last 45 years. The Committee of Experts and the Committee on Freedom of Association have also already critically examined many of these restrictions over the years. This afternoon, we have talked extensively about the inability of unions to use electronic ballots for strikes or even leadership elections while other civil society organizations – and even political parties – are permitted to ballot electronically. This highlights an encroachment on the autonomy of trade unions to draw up their own rules and decide on their own activities.

If we consider restrictions on the right to strike in transport and education, we must also recall other limitations on the right in law and practice. For example, the United Kingdom still has a blanket ban on secondary action. The impact of the ban was made apparent when last

year a major ferry company summarily dismissed 786 of its workers and replaced them with agency workers. It was dismissal by ambush. There was no prior consultation with the unions and since the dismissals were instantaneous, the possibility of industrial action by the workers was denied to them. This, coupled with the fact that unions are absolutely prohibited from calling on other workers to take solidarity action in support of those dismissed, meant that the seafarers were left with no legal or industrial recourse. The plethora of restrictions on the right to strike and actions undermining the autonomy of trade unions and civil liberties of trade unionists amount to serious violations of Articles 2 and 3 of the Convention, read together with Articles 7, 8 and 10, and the principles of Freedom of Association.

Our group is always looking for constructive ways to ensure governments fully comply with their obligations under ratified Conventions. Anti-union statements from government ministers and not engaging in formal consultations is not the way to go – social dialogue is the solution. Indeed, almost every observation made by the Experts in this case highlighted the lack of meaningful consultation with the social partners. This needs to change urgently. We believe that the Government should avail itself of ILO technical assistance, in close cooperation and consultation with the social partners to help bring its existing and proposed legislation into conformity with the Convention and to implement the recommendations of the Experts and our Committee. Social dialogue is at the core of the ILO Constitution and its realization gives meaning to the application of the Convention. In conclusion, we would like to reiterate the critical importance of the fundamental right to strike. For the avoidance of doubt, allow me to say that for the Workers' group, there can be no compromise on the unconditional recognition of the right to strike based on the Convention. This is a fundamental right which is indispensable for ensuring the effectiveness of the rights and freedoms enshrined in international labour standards.

As a responsible Member of the ILO and the international community – as is the United Kingdom – respecting, promoting and fulfilling the expert guidance of its supervisory bodies within the context of their dialogue with Member States regarding the application of ratified Conventions, is paramount and fundamental and we recall that the Government group's 2015 statement was clear that "The Government group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government group specifically recognizes that without protecting a right to strike, Freedom of Association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests cannot be fully realized". We urge the Government to be guided by the long-standing guidance of the supervisory bodies, including the Committee of Experts, with respect to the full exercise of the rights protected in the Convention by workers, including on the right to strike. We urge the Government to engage in meaningful social dialogue on all the issues raised by the Committee of Experts and address them in line with the Convention.

Conclusions by the Committee

The Committee took note of the oral and written information provided by the Government and the discussion that followed.

The Committee noted the centrality of social dialogue to freedom of association and thus to the meaningful application of the Convention.

Taking into account the discussion of the case, the Committee requests the Government to provide information to and facilitate the dialogue between and with the social partners with a view to:

- report on the results of the 2015 Undercover Policing Inquiry and the 2018 Trades Union Confederation (TUC) allegations regarding surveillance of trade unions and trade unionists;
- ensure that existing and prospective legislation is in conformity with the Convention;
- limit and define the investigatory powers of the Certification Officer to ensure that these powers do not interfere with the autonomy and functioning of workers' and employer's organizations;
- facilitate electronic balloting (e-balloting); and
- improve consultation of the social partners on legislation of relevance to them.

The Committee invites the Government to avail itself of technical assistance of the ILO and requests the Government to provide information on progress made on all the above issues by 1 September 2023 to the Committee of Experts.

Government representative – I am speaking on behalf of the United Kingdom. Let me begin by reaffirming the United Kingdom's commitment to this process on the supervisory system as a whole. As a nation committed to upholding and advancing international labour standards domestically and globally, the United Kingdom highly values the role of the ILO. We thank the Committee for its careful and thorough examination of this case and the issues that have been raised. We take due note of the Committee's conclusions and undertake to report back to the Committee of Experts accordingly.