



Department
for Transport

From the Secretary of State
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Màiri McAllan MSP
Cabinet Secretary for Transport, Net Zero
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The Scottish Government
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23 August 2023

Dear Màiri,

Minimum Service Levels for Passenger Rail

Following Minister Merriman's letter to Jenny Gilruth on 20 February, I wanted to write to you now that the Strikes (Minimum Service Levels) Act has received Royal Assent.

The Act introduces new laws to ensure there is a minimum level of service in some of our most crucial sectors during strike action. I, with the support of the Prime Minister, have tasked our officials with implementing a minimum service level for passenger railway services across Great Britain.

The Act gives the Secretary of State the power to lay regulations which, once approved by both Houses of Parliament, set a minimum level of service for some transport services. Our intention is for regulations to take effect before the end of the year for passenger railway services, to ensure that a minimum level of transport services continue to operate during strike action. This is one way of ensuring our transport sector is available for those who need to make vital journeys.

While policy responsibility for industrial relations is reserved to the UK Government, we recognise the Scottish Government's responsibility for certain railway services in Scotland. We are conscious of the need to consider operational practicalities in different parts of Great Britain to ensure we set a minimum service level that is appropriate and workable.

We will continue to consult with relevant stakeholders across the sector, to ensure your government's views are considered and incorporated into our plans.

I recognise that our views are not likely to be aligned on the overall policy framework, but I am keen that there is a discussion on how we can balance the best interests of customers, employees and operators. I am pleased that officials in Transport Scotland have already met my officials to discuss the policy, and I would like to invite you to discuss with the Rail Minister, Huw Merriman, how we can ensure this policy delivers the best possible outcomes for railway passengers and communities in Scotland.

Yours sincerely,

A handwritten signature in black ink that reads "Mark Harper". The signature is written in a cursive style with a long horizontal flourish at the end.

The Rt Hon Mark Harper MP

SECRETARY OF STATE FOR TRANSPORT

STRIKES (MINIMUM SERVICE LEVELS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Strikes (Minimum Service Levels) Bill as introduced in the House of Commons on 10 January 2023 ([Bill or Chapter Number]).

- These Explanatory Notes have been prepared by the Department for Business Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Strikes (Minimum Service Levels) Bill introduced on 10 January 2023
([AUTOGENERATED])

Overview of the Bill

- 1 The Bill enables the implementation of minimum service levels (MSLs) in certain services during periods of strike action. The Bill amends the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) to:
 - restrict the protection of trade unions under the 1992 Act from legal action in respect of strikes relating to certain services and the automatic protection of employees from unfair dismissal where provision has been made for minimum levels of service (MSLs). The services will be prescribed by regulations, following consultation; and
 - enable employers to issue work notices to require the minimum service levels to be delivered for particular strikes in specified services.

Policy background

- 2 The Bill is intended to expand upon a commitment made in the Conservative Party’s manifesto for the 2019 general election to require that a minimum service operates during transport strikes, by enabling the Government to regulate for minimum service levels in a range of sectors as outlined in paragraph 15.
- 3 Minimum service levels will be implemented via regulations, as provided for in this Bill, in specific services. The Government will consult on these regulations before they are made.
- 4 This Bill and subsequent regulations are designed to enable employers to require enough workers to work so as to ensure minimum service levels are delivered during strikes within relevant services.

Legal background

- 5 The current legislation relating to industrial action is set out in the 1992 Act, Part 5 in particular.
- 6 By organising industrial action, trade unions may become liable in tort (a civil wrong that occurs when someone causes a person to suffer loss or harm, for which the courts can provide a remedy in law, such as damages or an injunction to compel or prevent certain conduct). Where a trade union induces workers to take industrial action which amounts to a breach of their employment contract, the union may commit the tort of inducing breach of contract. Part 5 of the 1992 Act provides immunity for unions from such tortious liability provided the union follows the rules regarding the calling and conduct of strikes. It also protects employees participating in the strike for a certain period from being dismissed for breach of their contract of employment by reason of that participation. Both these protections can be lost if a strike is not undertaken in accordance with the rules.
- 7 The 1992 Act will continue to be the main Act dealing with rules regarding the calling and conduct of strikes, and this Act inserts new provisions into the 1992 Act.

Territorial extent and application

- 8 The Bill forms part of the law of England and Wales and Scotland, as set out in Clause 4. The provisions of the Bill extend and apply to Great Britain. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament or Senedd Cymru without the consent of the legislature concerned.
- 9 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament or Senedd Cymru, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.
- 10 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1 and the Schedule: minimum service levels for certain strikes

- 11 Clause 1 introduces the Schedule, which amends Part 5 and other provisions of the 1992 Act. Part 5 of the 1992 Act makes provision relating to industrial action, including the conditions that must be met in order for strike action to be protected from tort proceedings.

Bill Schedule Part 1: Amendments to Part 5 of the 1992 Act: Minimum Service levels

Paragraphs 1 to 2

- 12 These paragraphs add the need for a union to take reasonable steps to ensure compliance by its members with a work notice in relation to minimum service levels to the list of requirements necessary for a strike to be protected from liability in tort. They insert new sections 234B, 234C, 234D, 234E, 234F and 234G to the 1992 Act. The meaning of “strike” is explained in paragraph 30 below and work notices are further explained in paragraphs 16 to 23.

New section 234B: Power of Secretary of State to specify minimum service levels

- 13 Subsection (1) of this new section provides a power for the Secretary of State to make regulations providing for levels of service where there are strikes in relevant services, which are defined as “minimum service regulations”.
- 14 Subsection (2) provides that minimum service regulations may apply to strikes that take place on any day after they come into force, even if notice of the strike was given on or before that day, or the ballot in respect of the strike was on or before the day on which this Bill comes into force. This means that the regulations may apply to all such strikes, regardless of when employers are notified of the strike.
- 15 Subsection (3) provides for a further power for the Secretary of State to specify in regulations the relevant services for which minimum service level regulations may be made. This power to make regulations specifying relevant services is limited to the categories of services listed in Subsection (4) namely:
 - Health services
 - Fire and rescue services;
 - Education services;
 - Transport services;
 - Decommissioning of nuclear installations and management of radioactive waste and spent fuel;
 - Border security.

New section 234C: Work notices relating to minimum service levels

These Explanatory Notes relate to the Strikes (Minimum Service Levels) Bill introduced on 10 January 2023
([AUTOGENERATED])

- 16 This new section establishes how work notices are to operate. Work notices are the mechanism that puts minimum service levels into practice for particular strikes in relevant services. The work notice may be given by the employer to the trade union and will identify the people required to work to secure that the levels of service set out in the minimum service regulations are provided on a strike day.
- 17 Subsection (1) gives the employer the right to give a work notice to a union in relation to any strike which relates to the relevant service, where minimum service regulations have been made, and where the union has notified that strike to the employer in accordance with the existing rules on giving notice of a strike.
- 18 Subsection (2) explains that a work notice is to be a notice in writing telling the union that the levels of services, as provided for in the minimum service regulations, are to apply in relation to a strike. The work notice is therefore the mechanism by which the minimum service levels set out in the regulations apply to the provision of services for a strike day.
- 19 Subsection (3) requires the notice to be given to the union that has served the strike notice, in the period between receipt of that strike notice and 7 days before the relevant day of the strike (or later if this is agreed by the union).
- 20 Subsections (4) and (5) prescribe what the contents of a work notice should be. It must identify the people who are required to work during the strike, and the work they must do. It must not list more people than are reasonably necessary to provide the levels of service set out in the minimum service regulations.
- 21 Subsection (6) makes clear that the employer must have no regard to whether someone is a union member or not a union member (or a particular union member) in identifying the people in the work notice.
- 22 Subsection (7) requires the employer to consult the union about the number of people to be identified in the work notice and the work they must do and have regard to any views expressed by the union before issuing the work notice to that union. Subsection (8) allows the employer to vary a work notice before the end of the 4th day before the relevant day of the strike (or later if this is agreed by the union). Subsection (9) requires the employer to consult the union again, on the same matters as referred to above, before making such a variation.
- 23 Subsection (10) specifies that where a strike takes place over a number of days (whether continuously or discontinuously) each day of the strike is to be treated as a separate strike date. This enables employers to issue individual work notices for individual strike dates even if the strike as a whole runs for multiple days.

New section 234D: Work notices: disclosure of information

- 24 This new section provides that, where it is necessary to name individuals in work notices, this will not be a breach of confidence owed by the employer or of any other restrictions on disclosing information. The employer must adhere to data protection legislation but the obligations regarding the giving of work notices in this section are to be taken into account when assessing the obligations under that legislation.

New section 234E: No protection if union fails to take reasonable steps

- 25 This new section provides that the union's protection from tort proceedings (see paragraph 6) is removed if: minimum service regulations are in place in relation to a relevant service; an employer to whom the minimum service regulations applies issues a work notice in

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([AUTOGENERATED])

accordance with the procedures in the Bill; and the union fails to take reasonable steps to ensure that members of the union who are identified in the work notice comply with the work notice. Such compliance by union members would mean not participating in the strike on strike days when those members are required by the work notice to work.

- 26 If an employer does seek damages against a union in relation to a failure by the union to take reasonable steps to ensure a valid work notice is complied with by its members, subsection (2) requires that any damages awarded by the courts may only cover losses incurred as a result of the union failing to comply with the obligation in section 234E(1)(b) to take reasonable steps. In other words, damages may not extend to losses that would have been suffered by the employer anyway.

New section 234F: Regulations: consultation and supplementary

- 27 Subsection (1) requires that consultation takes place prior to regulations being made under section 234B. Subsection (2) explains certain types of provisions those regulations may contain. Subsection (5) makes it clear that consultation required by subsection (1) may take place prior to, as well as after, the passing of the Act.
- 28 Subsections (3) and (4) provide that these regulations are subject to the affirmative procedure and require the approval of both Houses of Parliament before they are made.

New section 234G: Interpretation of terms relating to minimum service levels

- 29 This section sets out the meaning of various defined terms used in the Act including that:
- a. Minimum service regulations are defined in section 234B(1);
 - b. Relevant services are defined in section 234B(3); and
 - c. A work notice is defined in section 234C(2).
- 30 Subsection (2) makes clear that the meaning of ‘strike’ where used in sections 234B to 234F, does not include overtime bans and call-out bans and that such bans constitute action short of a strike for the purposes of minimum service levels. This aligns with the same definition used for the purposes of a ballot on industrial action, as referenced by s229(2A) of the 1992 Act.

Bill Schedule part 2: Related amendments to the 1992 Act

- 31 This part of the Bill’s schedule makes a number of technical amendments to the 1992 Act to ensure the new requirements regarding minimum service regulations and work notices are applied to the law around industrial action more broadly, in particular whether certain strikes are protected against liability for the union or not (see paragraph 4 of the Schedule). This also includes that unions must make clear in their notice of industrial action (under section 234A) whether the action is a strike (as defined in paragraph 30 above).
- 32 This part also makes clear that that there is no automatic protection from unfair dismissal for an employee who is identified in a valid work notice but participates in the strike contrary to that work notice, provided that their employer has (before the strike day) given the employee notice of the work specified in the work notice that they are required to carry out on the strike day and a statement that they must comply with that work notice.

Other clauses in the Bill

Clause 2: Meaning of “the 1992 Act”

33 This clause is self-explanatory.

Clause 3: Power to make consequential provision

34 This clause allows the Secretary of State to make consequential amendments by affirmative regulations as regards amendments to primary legislation (i.e. an Act) and to make consequential amendments to any other legislation by regulations subject to annulment by a resolution of either House of Parliament in accordance with the negative procedure.

Clause 4: Extent

35 This clause is self-explanatory.

Clause 5: Commencement

36 See paragraph 38 below.

Clause 6: Short title

37 This clause is self-explanatory.

Commencement

- 38 All clauses within the bill come into force on Royal Assent.

Financial implications of the Bill

- 39 There will be implications in regards to the preparation of the regulations conferred to Secretaries of State by this Bill, in addition to implications for employers and unions in the development and issuing of the work notice (see paragraphs 16 – 23). Full details of the financial implications of the Bill are set out in the Impact Assessment.

Parliamentary approval for financial costs or for charges imposed

- 40 A money resolution will be required for the Bill to cover expenditure in respect of the Secretary of State in preparing regulations under the Bill.

Compatibility with the European Convention on Human Rights

- 41 Section 19 of the Human Rights Act requires a Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the Bill with the Convention Rights (as defined by section 1 of that Act). The Secretary of State, Grant Shapps, has made the following statement: “In my view, the provisions of the Strikes (Minimum Service Levels) Bill are compatible with the Convention rights.”
- 42 The Government has published a separate memorandum on ECHR issues with an assessment of compatibility of the Bill’s provisions with the Convention rights. This memorandum is available on the Government website.

Environment Act 2021: Section 20

- 43 Section 234B(3) and (4) of the new Schedule to the 1992 Act, includes the power to specify services within the category of decommissioning of nuclear installations and management of radioactive waste and spent fuel.
- 44 The Government considers that this provision is “environmental law” within the meaning of section 46 of the Environment Act 2021, as it is mainly concerned with “environmental protection”, which is defined in section 45 as including “the protection of the natural environment from the effects of human activity”. The Secretary of State is satisfied that this provision would not have the effect of reducing the level of environmental protection afforded by existing environmental law, and has made a statement under s.20(2)(a) and (3) of the Environment Act 2021 to that effect.

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	Yes	No	No	No	Yes	No
Schedule	Yes	Yes	Yes	No	No	No	Yes	No
Clause 3	Yes	Yes	Yes	No	No	No	Yes	No
Clause 4	Yes	Yes	Yes	No	No	No	Yes	No
Clause 5	Yes	Yes	Yes	No	No	No	Yes	No
Clause 6	Yes	Yes	Yes	No	No	No	Yes	No

These Explanatory Notes relate to the Strikes (Minimum Service Levels) Bill introduced on 10 January 2023
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STRIKES (MINIMUM SERVICE LEVELS) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Strikes (Minimum Service Levels) Bill introduced on 10 January 2023 ([AUTOGENERATED] [AUTOGENERATED]).

Ordered by [AUTOGENERATED] to be printed, 10 January 2023

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MINISTERIAL ENGAGEMENT BRIEFING: HUMZA YOUSAF

[OUT OF SCOPE]

<i>Engagement Title</i>	Call with Steve Barclay, Secretary of State for Health and Social Care, Eluned Morgan, Welsh Minister for Health and Social Services, and Jim Wilkinson, Deputy Secretary Healthcare Policy, Northern Ireland Department of Health, for the first meeting of the Health and Social Care Interministerial Group.
<i>Timing</i>	Immediate
<i>Organisation/Venue and full address including postcode</i>	Teams meeting
<i>Date and Time of Engagement</i>	Date: 28 February 2023 Time: 15:00 – 16:00

[OUT OF SCOPE]

- The Scottish Government considers this Bill to be a blatant assault on devolution. If minimum service levels have to be set in Scotland for healthcare – including ambulance services – then that is the responsibility of Scottish Ministers.
- **The Scottish Government will not assist the development of this Bill in any way.**

[OUT OF SCOPE]

- The Strikes (Minimum Service Levels) Bill focuses on an area of law that is wholly reserved to Westminster – employment – but in its implementation brings UKG Ministers into operational decisions in areas of devolved competence by giving powers to set staffing levels in health, transport, education, and fire and rescue.
- The Strikes Bill specifically includes healthcare workers, with the intention of having a consultation ready to launch upon Royal Assent to mandate minimum service levels for ambulance services during industrial action. The Bill does not set out a role for the Scottish Ministers or Parliament, despite health being fully devolved, with provision instead for UK Ministers to issue regulations that would allow employers to issue work notices.
- In the event of strike action, the employer will be able to issue work notices telling employees and unions how many workers would have to show up on a strike day to ensure MSLs are achieved – these notices would include the names of those

who must work, and what work they are to do. Unions would have to take 'reasonable steps' to ensure its members comply with the work notice. The Bill does not define 'reasonable steps'; DHSC officials have told us this will be left to the courts.

[OUT OF SCOPE]

- The Scottish Government is strongly of the opinion that any regulations issued by UK Ministers under the powers granted them by the Strikes Bill, without proper understanding of the Scottish health system and relationships between Scottish employers and workers, will be counterproductive and potentially harmful to the delivery of health services in Scotland.

[OUT OF SCOPE]

MINISTERIAL ENGAGEMENT BRIEFING: HUMZA YOUSAF

[OUT OF SCOPE]

<i>Engagement Title</i>	Call with Will Quince, UK Minister of State for Health and Secondary Care, on the UK Government's Strikes (Minimum Service Levels) Bill.
<i>Timing</i>	Immediate
<i>Organisation/Venue and full address including postcode</i>	Teams meeting
<i>Date and Time of Engagement</i>	Date(s): 1 February 2023 Time(s): 1:30 pm – 2:00 pm

[OUT OF SCOPE]

- UK Ministers intend to use the powers in this Bill to set ambulance MSLs in Scotland and Wales as well as England, despite health services being devolved. UKG is aware that without devolved knowledge their consultation documents (and regulations) risk being inaccurate and possibly ineffectual, and knows the simplest way to remove this risk is to secure our involvement in drafting.

[OUT OF SCOPE]

- The Scottish Government considers this Bill to be a blatant assault on devolution. If minimum service levels have to be set in Scotland for healthcare – including ambulance services – then that is the responsibility of Scottish Ministers.
- **The Scottish Government will not assist the development of this Bill in any way.**

[OUT OF SCOPE]

- The original Transport Strikes Bill would have fulfilled a manifesto pledge by the UK Government, but the expanded scope of the new Bill, including healthcare, was not part of that manifesto. For this reason (and that this is another Skeleton Bill, transferring power to UK Ministers with limited Parliamentary scrutiny of subsequent secondary legislation), the Bill is likely to face considerable opposition in the House of Lords.
- Under current legislation, provided a union organises a strike in accordance with rules set out in the Trade Union and Labour Relations Act 1992, the union cannot be sued for damages, and workers cannot be sacked. Under this bill, unions and individuals would have to comply with MSL regulations to maintain these rights. The bill has no provision implementing MSL arrangements, instead conferring delegated powers to UK Ministers to draft regulations. Relevant UK Departments will consult on the details of MSLs to set out in regulations.
- The Strikes (Minimum Service Levels) Bill focuses on an area of law that is wholly reserved to Westminster – employment – but in its implementation brings UKG Ministers into operational decisions in areas of devolved competence by giving powers to set staffing levels in health, transport, education, and fire and rescue.
- The Strikes Bill specifically includes healthcare workers, with the intention of having a consultation ready to launch upon Royal Assent to mandate minimum service levels for ambulance services during industrial action. The Bill does not set out a role for the Scottish Ministers or Parliament, despite health being fully devolved, with provision instead for UK Ministers to issue regulations that would allow employers to issue work notices.

- In the event of strike action, the employer will be able to issue work notices telling employees and unions how many workers would have to show up on a strike day to ensure MSLs are achieved – these notices would include the names of those who must work, and what work they are to do. Unions would have to take ‘reasonable steps’ to ensure its members comply with the work notice. The Bill does not define ‘reasonable steps’; DHSC officials have told us this will be left to the courts.
- If a union fails to take reasonable steps to ensure that its members who are identified in the work notice comply with the notice, its current rights under the 1992 Trades Union Act would be disapplied and it would become liable for damages, and its members would lose their protection from dismissal. The Bill sets out a requirement to consult on regulations covering individual strike actions before they are enacted.

[OUT OF SCOPE]

- The Scottish Government is strongly of the opinion that any regulations issued by UK Ministers under the powers granted them by the Strikes Bill, without proper understanding of the Scottish health system and relationships between Scottish employers and workers, will be counterproductive and potentially harmful to the delivery of health services in Scotland.

[OUT OF SCOPE]



Department for
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10 January 2023

STRIKES (MINIMUM SERVICE LEVELS) BILL

Dear John,

I am writing to update you on the UK Government's proposals to legislate for minimum service levels legislation. The Strikes (Minimum Service Levels) Bill will be introduced to Parliament this afternoon. This legislation will introduce new laws to ensure a basic level of service in some of our most crucial sectors when strikes take place.

This Government firmly believes that the ability to strike is an important part of industrial relations in the UK, rightly protected by law, and understands that an element of disruption is inherent to any strike. But the UK Government also has a duty to the public to ensure their safety, protect their access to vital public services and to help them go about their daily lives. That is why we are introducing new legislation to restore this balance – to protect the ability to strike, balanced with the public's right to life and livelihoods.

The Bill provides for powers to ensure that services that are vital to the public will have to maintain a basic function and deliver minimum service levels during strikes. The legislation will allow regulations to be made to ensure that specified services cannot shut down completely when workers strike, in order to maintain critical and in many cases life-saving services. The relevant services specified in the legislation include:

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

As with the 2016 Trade Union Act, the specific services within each of those sectors will be set out in regulations to follow the primary legislation. Regulations will also set the level of service that must be provided in a relevant service during strike action. The Bill requires the UK Government to consult to establish the necessary evidence base before regulations are made and the regulations will be subject to the affirmative procedure.

During Bill passage, the UK Government expects to consult on the adequate level of coverage from ambulance, rail, fire and border security services that should be guaranteed during a strike. The UK Government may choose not to use the regulation making powers in the Bill if adequate voluntary agreements are already in place between employers in a relevant sector and relevant unions. This package of measures will see the UK align with many countries across the world such as France and Spain that already have minimum service levels in place, to prevent large swathes of their economies being ground to a halt by industrial action.

The UK Government believes that introducing the safety net of statutory minimum service levels, to ensure that the public are not put at risk during strike action, is the best way of meeting its obligations to unionised workers and to the wider public. This new legislation will allow the UK Government, NHS and other services to plan properly for the running of services in times of strike – and ensure that striking workers are not inadvertently putting the public at risk.

Devolution position

The Bill will extend and apply to England and Wales and Scotland. Employment rights and duties and industrial relations, including the subject matter of the Trade Union and Labour Relations (Consolidation) Act 1992, are reserved to Westminster for Scotland and Wales.

Whilst the services to which minimum service levels may apply include areas that could generally be regarded as “devolved areas” (for example, healthcare, education, fire services, parts of transport, environment), the main purpose and substance of the Bill is in respect of regulating employment rights and duties and industrial relations in those areas and not the area itself. Specifying which services minimum service levels will apply to and making regulations that set out these minimum service levels, only applies where there are strikes. This is a reserved matter, and the operational effects on any devolved services are incidental to this.

Further, whilst the Bill may affect the delivery of public services by the Scottish Government, this is only in respect of the Scottish Government’s capacity as an employer, and does not alter executive competence.

Therefore, the UK Government does not consider that the legislative consent process is engaged as the Bill only legislates on reserved matters.

I look forward to engaging with you as the Bill progresses through Parliament. I know our officials have already met to discuss this legislation and, given that you are likely to have a significant interest in this Bill, I have asked that my officials maintain close engagement with you throughout its passage through Parliament.

I am attaching a copy of the Bill and supporting documents. I am copying this letter to the Secretary of State for Scotland.

Yours sincerely,



KEVIN HOLLINRAKE MP
Minister for Enterprise, Markets and Small Business



Home Office

Rt Hon Chris Philp MP
Minister of State for Crime,
Policing and Fire

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Elena Whitham
Minister for Community Safety
The Scottish Government
St Andrew's House
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February 2023

Fire and Rescue Services Minimum Service Level Consultation

Dear Elena,

You will be aware that the Strikes (Minimum Service Levels) Bill was laid in Parliament on 10 January and will introduce new laws to ensure a minimum level of service in some of our most crucial sectors when strikes take place.

The UK Government recognises the principle of workers and unions to negotiate over fair pay. However, we also have a duty to the public to ensure their safety, protect their access to vital services and help them go about their daily lives. The fire and rescue services play a vital role in protecting the public and it is right that we seek to ensure the public can rely on these crucial services during periods of strike action.

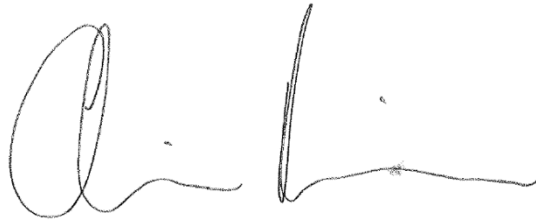
When a fire and rescue related emergency occurs, it is legitimate for the public to expect a response that will help save lives and reduce the risk of serious injury and damage. Even relatively small fires can potentially spread rapidly and quickly develop into significant incidents. We will ensure that minimum service levels for fire and rescue services are delivered in a proportionate way.

We will shortly be launching a public consultation to help us determine the most suitable approach for delivering minimum service levels for fire and rescue services. The consultation will be open for 12 weeks, and will invite responses from across England, Scotland and Wales. I would like to invite you to respond to the issues raised in the consultation via ministerial correspondence so that we can consider the Scottish position as we develop the policy and regulations required to underpin minimum service level agreements for fire and rescue services. While policy responsibility for industrial relations is reserved to the UK Government, we recognise that responsibility for fire and rescue services is devolved in Scotland, and are conscious of the need to consider operational practicalities in different parts of Great Britain so we can ensure we set a minimum service level that is appropriate and workable.

The consultation will be available on gov.uk/home-office and I will ensure your officials are provided with the relevant details when it goes live. Subject to the outcome of the consultation, we anticipate that regulations will be laid as soon as is practicable after the

closing date so that they are in place for any future strike action. Fire and rescue services perform a critical role in our society, and it is right that the public should have confidence that sufficient cover is in place to respond to emergencies. I look forward to engaging with you as this work continues.

I would also like to offer my condolences following the tragic news of the death of Barry Martin from the Scottish Fire and Rescue Service after attending a fire at the Jenners building in Edinburgh. My thoughts are with his family, friends and colleagues at this difficult time.

A handwritten signature in black ink, appearing to read 'C. Philp', written in a cursive style.

Rt Hon Chris Philp MP

T: 0300 244 4000
E: scottish.ministers@gov.scot

Will Quince
Minister of State for Health and Secondary Care
House of Commons
London
SW1A 0AA

13 September 2023

Dear Will,

Strikes (Minimum Service Levels) Act 2023

I have considered your request for a call to discuss the UK Government's further work on regulations for health workers, using the powers in the Strikes (Minimum Service Levels) Act 2023.

You will be aware that the Scottish Government is fundamentally opposed to this Act, and the approach to industrial relations that it represents. The Act does not respect the Scottish Government's Fair Work principle of providing workers with an effective voice through trade union activity.

The UK Government already has the most anti-trade union laws in western Europe, including the Trade Union Act 2016, which the Scottish Government continues to oppose. The Strikes Act further undermines and weakens the rights of Trade Unions and workers. These changes are another stark example of the UK Government's anti-trade unionism, which the Scottish Government will continue to resist.

Here in Scotland, we are seeking a constructive and respectful dialogue with Trade Unions, finding ways to pay workers a fair wage during the cost of living crisis. Given our opposition to this Act, for the reasons set out in this letter, I see no value in a call to discuss it.

Regards



Michael Matheson

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot



Department
of Health &
Social Care

*From Will Quince MP
Minister of State for Health*

*39 Victoria Street
London
SW1H 0EU*

020 7210 4850

Michael Matheson
Secretary for Health and Social Care
Scottish Government
The Scottish Government
St. Andrew's House
Regent Road
Edinburgh
EH1 3DG

28 September 2023

Dear Michael,

CONSULTATION ON MINIMUM SERVICE LEVELS FOR HOSPITAL SERVICES

Thank you for your letter of 13 September setting out your views on Minimum Service Level legislation. I am sorry that you do not see the value in discussing this matter. However, I did want to let you know that a consultation to seek views and evidence on bringing forward minimum service levels regulations for hospital services during strike action is due to be published today.

The UK Government is determined to balance the rights of unions and their members to strike, which is an important part of industrial relations across Great Britain, and the need of the wider public to be able to access key services during strikes.

Whilst industrial relations matters are reserved to the UK Government, I recognise that introduction of minimum service level regulations would impact on hospital service employers responsible for delivering health services, which fall under the responsibility of the Scottish Government. So, while I know you are not in favour on setting minimum service levels, I am still keen to hear your views on this specific proposal and would welcome any evidence you or your officials would like to submit as part of the consultation.

The consultation will run for eight weeks and will close on 10 November. A near final version of the consultation has been shared with your officials in confidence, and I have asked my team to make sure they are sent the final version as soon as it is available.

We are very keen to hear the views of stakeholders from across Scotland to inform our thinking as we consider introducing minimum service level regulations. I would welcome your assistance in encouraging a range of stakeholders, including trade unions and relevant employers, to respond to the consultation. We are planning to hold roundtable discussions with key stakeholders during the consultation period and would welcome the assistance of your officials in identifying the key stakeholders that should be engaged and

for our officials to work together so that we can effectively engage Scottish stakeholders on the proposals.

Separately, we are continuing to consider the introduction of MSLs for ambulance services following the consultation on this held earlier in the year. I will provide a further update on this in due course.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Will Quince', is centered on the page. The signature is fluid and cursive.

**WILL QUINCE MP
MINISTER OF STATE**



Department for
Business & Trade

Kevin Hollinrake MP
Parliamentary Under Secretary of State

Department for Business and Trade
Old Admiralty Building
Admiralty Place
Whitehall
London
SW1A 2DY

Neil Gray MSP
Cabinet Secretary for Wellbeing Economy, Fair Work and
Energy
The Scottish Parliament
Edinburgh
EH99 1SP

14 November 2023

Dear Neil,

Minimum Service Levels: Code of Practice on Reasonable Steps

Further to your letter of 4 October regarding the consultation on a Statutory Code of Practice on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) (“the Code”), I am writing to thank you for your feedback and inform you that the Government yesterday laid an updated Code of Practice in Parliament, for approval.

Following a public consultation, the Government carefully considered the feedback received and has made a number of changes to the Code of Practice as a result. The most significant change is the removal of proposed step 3 “Communications with the wider membership”. Whilst the information notice proposed in step 3 of the draft Code helps to reinforce the compliance notice for members identified in the work notice, and helps others taking part in the strike to understand the position of those workers identified in the work notice, the Government recognises it may be an additional burden on trade union time and resources. Consequently, Step 3 and the template information notice have been removed from the updated Code of Practice.

Former step 4 (now step 3 in the updated Code), “Picketing” has also been amended. While the Strikes (Minimum Service Levels) Act 2023 does not expressly refer to picketing, section 234E and amended section 219 are clear that a union which fails to take reasonable steps to ensure that all members identified in the work notice comply with the notice, will lose its protection from certain liabilities in tort. The Government therefore considers it would be difficult for a union to comply with the requirement to take reasonable steps without moderating its picketing activities in any way. We are, however, sensitive to the importance of picketing to effective strike action and have therefore amended the obligation on the union in this step from a positive one (focused on encouraging named individuals to attend work) to a negative one (making clear that those on the picket should refrain from encouraging those named on a work notice to strike, at times when they are required by the work notice to work).

A number of other, more minor and technical, changes have been made throughout the Code of Practice which my officials have informed your officials of.

The updated Code of Practice laid in Parliament recommends four steps that trade unions should take to meet the legal requirement to take “reasonable steps” set out in the 2023 Act:

- **Step 1: Identification of members** – Trade unions should identify those of their members who are identified in a work notice;
- **Step 2: Encouraging individual members to comply with a work notice** – Trade unions should send an individual communication or notice to each member identified in a work notice to advise them not to strike during the periods in which they are required by the work notice to work, as well as to encourage them to comply with the work notice.
- **Step 3: Picketing** – Picket supervisors will be instructed by the trade union to use reasonable endeavours to ensure that picketers avoid, so far as reasonably practicable, trying to persuade members who are identified in a work notice not to cross the picket line at times when they are required by the work notice to work;
- **Step 4: Assurance** – Once a work notice is received by the union, trade unions should ensure that they do not do other things which undermine the steps they take to meet the reasonable steps requirement.

The Code has been designed to balance the benefits and potential burdens of the reasonable steps, whilst helping to provide clarity for trade unions on maintaining their statutory protection during strike action.

The Code of Practice is issued under section 203 of the 1992 Act. Subject to Parliamentary approval, the Code will be issued and brought into effect by the Secretary of State in accordance with the procedure set out in section 204 of the 1992 Act.

A government response to the consultation on the draft Code of Practice has also been published and summarises the feedback we received and the changes we have made to the Code of Practice as a result. The government response can be accessed via this link: <https://www.gov.uk/government/consultations/minimum-service-levels-code-of-practice-on-reasonable-steps>

Separate non-statutory guidance will also shortly be published on the issuing of work notices by employers, where minimum service level regulations apply, to secure minimum levels of service on strike days. I am grateful to your officials for the feedback they provided on the work notice guidance.

My officials will keep your officials updated on Parliament approval of the Code of Practice.

Yours ever,

A handwritten signature in black ink, appearing to read 'Kevin', written in a cursive style.

KEVIN HOLLINRAKE MP
Minister for Enterprise, Markets and Small Business



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E: scottish.ministers@gov.scot

Rt Hon Chris Philp MP
Minister of State for Crime, Policing and Fire
2 Marsham Street
London
SW1P 4DF

By email: PS.ChrisPhilp@homeoffice.gov.uk

2 May 2023

Home Office Fire and Rescue Services Minimum Service Levels Consultation

Dear Chris

Thank you for your letter of 6 February to Elena Whitham drawing the attention of the Scottish Government to the Home Office Consultation on the Minimum Service Levels Bill. I have now taken up the position as Minister for Victims and Community Safety in Scotland and fire and rescue is within my portfolio.

The Scottish Government is of the view that the Strikes Bill is needless and unwarranted. I believe it is a hasty attempt to harm workers' rights and trade unions, and the way it is drafted – conferring regulation-making power to UK Ministers – would not allow proper democratic scrutiny and oversight, neither in Holyrood nor Westminster.

The Bill includes within the envisaged scope of regulations several public services which are devolved to Scotland, and enabling UK Ministers to make decisions in these areas would ride roughshod over the devolution settlement.

As you will already be aware, trade unions and others have shared concerns around the ramifications of this Bill, and we share these concerns.

The Scottish Government will not be providing the UK Government with any assistance, in any form, to avoid furthering the harmful objectives of this Bill.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot
Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot



As you may be aware there is a single Scottish Fire and Rescue Service covering our unique geography and environment. I understand that the National Fire Chiefs Council may be responding to the consultation but I would like to emphasise that such a response has no regard to the operational situation and position here in Scotland.

We believe the MSL Bill should be withdrawn. If the UK Government proceeds with this Bill, then we restate our request that Scotland be removed from its scope.



SIOBHIAN BROWN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot
Tha Ministearanna h-Alba, an luchd-comhairleachaidh sònraichte agus Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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www.gov.scot



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Until 2020





Department
of Health &
Social Care

Will Quince MP
Minister of State

39 Victoria Street
London
SW1H 0EU

020 7210 4850

6 November 2023

Dear Michael,

MINIMUM SERVICE LEVELS IN AMBULANCE SERVICES: CONSULTATION RESPONSE AND REGULATIONS

I am writing to inform you that we will today publish the Government's response to the consultation on '*Minimum service levels in event of strike action: ambulance services in England, Scotland and Wales*'.

We have decided to proceed with introducing these minimum service levels in England and tomorrow we intend to lay before Parliament *The Strikes (Minimum Service Level: NHS Ambulance Services and the NHS Patient Transport Service) Regulations 2023*. Subject to Parliamentary approval, we will introduce regulations covering the ten NHS ambulance trusts in England, as well as the ambulance services provided by the Isle of Wight NHS Trust. The services included in the minimum service levels will be the 999 and healthcare professional (HCP) call handling and emergency ambulance response to those calls, Inter-Facility Transfers (IFT) and non-emergency patient transport services (NEPTS). We expect these regulations to come in to force by the end of the year.

Our response to the consultation reaffirms our commitment to ensuring that patients in England can access ambulance services when they need them during a strike. These regulations will address the inconsistency and uncertainty of relying on the unions to agree arrangements on a case-by-case basis, by giving employers the power to issue work notices should they need to. This will increase public confidence in the service and better protect patient safety during periods of industrial action.

While employment rights and duties and industrial relations are a reserved matter, I recognise that health services are a devolved issue. You have indicated that you are content with the current arrangements for ensuring service continuity during strike action in the NHS in Scotland and so I have decided not to apply these regulations to ambulance services in Scotland. However, my officials stand ready to work with yours to extend coverage should circumstances change.

We have shared a copy of the regulations with your officials for information. I would be happy to meet to discuss this issue in more detail if that would be helpful.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Will Quince". The signature is written in a cursive style with a large initial "W" and a long, sweeping tail.

**WILL QUINCE MP
MINISTER OF STATE**

From: [redacted - s.38(1)(b) (personal information)]
Lifelong Learning and Skills Directorate
15 November 2023

Cabinet Secretary for Education and Skills

Strikes (Minimum Service Levels) Act 2023 (“the 2023 Act”) – Consultation on Minimum Service Levels for schools, colleges and universities

[redacted – outside scope of request]

Context and Issues

1. The purpose of the 2023 Act relates to matters that are reserved under schedule 5 of the Scotland Act 1998 – those being, employment and industrial relations. The 2023 Act may have incidental impacts on areas of devolved service delivery, but these impacts are only relevant in the specific context of strikes, and only apply where an employer decides to issue a work notice under the Trade Union and Labour Relations (Consolidation) Act 1992. That Act is amended by the 2023 Act to create a power for UK Ministers to make minimum service regulations in respect of various categories, including education services.

[redacted – outside scope of request]

[redacted – outside scope of request]

[redacted – outside scope of request]

[redacted – outside scope of request]

[redacted – outside scope of request]

[redacted - s.38(1)(b) (personal information)], Lifelong Learning and Skills Directorate, Mob: [redacted - s.38(1)(b) (personal information)]

Cabinet Secretaries and Ministers - Copy List	For Action	For Information Portfolio interest	For Information Constituency interest	For Information General awareness
<ul style="list-style-type: none">• Minister for Higher and Further Education• Minister for Children, Young People and Keeping the Promise		X		X

<ul style="list-style-type: none"> • Cabinet Secretary for Wellbeing Economy, Fair Work, and Energy 				
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Officials Copy List
<ul style="list-style-type: none"> • DG Education and Justice • Director Lifelong Learning and Skills • Director of Learning • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • Comms Education and Skills • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)] • [redacted - s.38(1)(b) (personal information)]

T: 0300 244 4000
E: CabSecHSC@gov.scot

Will Quince MP
Minister of State for Health and Secondary Care
39 Victoria Street
London
SW1H 0EU

15 February 2023

STRIKES (MINIMUM SERVICE LEVELS) BILL - CONSULTATION ON AMBULANCE SERVICES

Thank you for your letter of 9 January about the Strikes (Minimum Service Levels) Bill, informing me of the launch of the consultation on minimum service levels for ambulance services.

As I made clear during our call on 1 February, the Scottish Government is of the view that the Strikes Bill is needless and unwarranted. I believe it is a hasty attempt to harm workers' rights and trade unions, and the way it is drafted – conferring regulation-making power to UK Ministers – would not allow proper democratic scrutiny and oversight, neither in Holyrood nor Westminster.

The Bill includes several public services which are devolved to Scotland, and enabling UK Ministers to make decisions in these areas would ride roughshod over the devolution settlement. I note that the consultation published on 10 February asks if other areas of healthcare should be subject to these powers. Healthcare is fully devolved and decisions to do with the management of health services in Scotland are taken by the Scottish Ministers. My opposition therefore extends to any attempt to introduce minimum service levels for other healthcare services or professions.

As you will already be aware, trade unions and others have shared concerns around the ramifications of this Bill, and we share these concerns. I note that no impact assessment has been published, and it is disappointing that the Bill has progressed to the Lords from the Commons without this information being placed in the public domain.

The Scottish Government will not be providing the UK Government with any assistance, in any form, to avoid furthering the harmful objectives of this Bill.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

We believe the Bill should be withdrawn. If the UK Government proceeds with this Bill, then we restate our request that Scotland be removed from its scope.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'H. Yousaf', written on a white rectangular background.

HUMZA YOUSAF

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot



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Strikes (Minimum Service Levels) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Energy and Industrial Strategy, are published separately as ...

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Grant Shapps has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Strikes (Minimum Service Levels) Bill are compatible with the Convention rights.

ENVIRONMENTAL STATEMENTS

Secretary Grant Shapps has made the following statements under section 20(2)(a) and (3) of the Environment Act 2021:

In my view—

- (a) the Strikes (Minimum Service Levels) Bill contains provision which, if enacted, would be environmental law, and
- (b) the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.

Strikes (Minimum Service Levels) Bill

CONTENTS

Minimum service levels

- 1 Minimum service levels for certain strikes

Interpretation and final provisions

- 2 Meaning of “the 1992 Act”
- 3 Power to make consequential provision
- 4 Extent
- 5 Commencement
- 6 Short title

-
- Schedule – Minimum service levels for certain strikes
 - Part 1 – Amendments to Part 5 of the 1992 Act: minimum service levels
 - Part 2 – Related amendments to the 1992 Act

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TO

Make provision about minimum service levels in connection with the taking by trade unions of strike action relating to certain services.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Minimum service levels

1 Minimum service levels for certain strikes

The Schedule—

- (a) amends Part 5 and other provisions of the 1992 Act to restrict the protection that Act provides to trade unions and employees in respect of strikes where provision has been made in regulations for minimum levels of service, and
- (b) makes related provision.

5

Interpretation and final provisions

2 Meaning of “the 1992 Act”

In this Act, “the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992.

10

3 Power to make consequential provision

- (1) The Secretary of State may by regulations made by statutory instrument make provision that is consequential on this Act.
- (2) Regulations under this section may amend, repeal or revoke provision made by or under primary legislation passed—
 - (a) before this Act, or
 - (b) later in the same session of Parliament as this Act.

15

-
- (3) A statutory instrument containing (whether alone or with other provision) regulations under this section that amend or repeal provision made by primary legislation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (5) In this section, “primary legislation” means –
- (a) an Act,
 - (b) an Act or Measure of Senedd Cymru, or 10
 - (c) an Act of the Scottish Parliament.

4 Extent

This Act extends to England and Wales and Scotland.

5 Commencement

This Act comes into force on the day on which this Act is passed. 15

6 Short title

This Act may be cited as the Strikes (Minimum Service Levels) Act 2023.

SCHEDULE

Section 1

MINIMUM SERVICE LEVELS FOR CERTAIN STRIKES

PART 1

AMENDMENTS TO PART 5 OF THE 1992 ACT: MINIMUM SERVICE LEVELS

- 1 Part 5 of the 1992 Act (industrial action) is amended as follows. 5
- 2 After section 234A insert –

“Minimum service levels for certain services

234B Power of Secretary of State to specify minimum service levels

- (1) The Secretary of State may, for the purpose of enabling work notices under section 234C to be given, make provision by regulations for levels of service in relation to strikes as respects relevant services (“minimum service regulations”). 10
- (2) Minimum service regulations may be framed so as to have effect in relation to any strike that takes place after the day on which the regulations come into force, even if – 15
- (a) notice of the strike under section 234A was given on or before the day on which the regulations come into force, or
- (b) the date of the ballot in respect of the strike was on or before the day on which the Strikes (Minimum Service Levels) Act 2023 comes into force. 20
- (3) In this Part, “relevant services” has the meaning given by regulations made by the Secretary of State.
- (4) Regulations under subsection (3) may specify only services that fall within any of the following categories – 25
- (a) health services;
- (b) fire and rescue services;
- (c) education services;
- (d) transport services;
- (e) decommissioning of nuclear installations and management of radioactive waste and spent fuel; 30
- (f) border security.

234C Work notices relating to minimum service levels

- (1) Where minimum service regulations have been made as respects a relevant service, an employer may give a work notice to a trade union in relation to any strike – 35
- (a) of which the union gives notice to the employer under section 234A, and

- (b) which relates to the provision of the service.
- (2) In this Part “work notice” means a notice in writing that levels of service under minimum service regulations are to apply in relation to a strike.
- (3) A work notice must be given within the period beginning with the day on which the notice under section 234A is given and ending with— 5
- (a) the 7th day before the earliest strike date to which it relates, or
- (b) any later day that is agreed between the employer and the union. 10
- (4) A work notice must—
- (a) identify the persons required to work during the strike in order to secure that the levels of service under the minimum service regulations are provided, and 15
- (b) specify the work required to be carried out by them during the strike in order to secure that those levels of service are provided.
- (5) A work notice must not identify more persons than are reasonably necessary for the purpose of providing the levels of service under the minimum service regulations. 20
- (6) In deciding whether to identify a person in a work notice, the employer must not have regard to whether the person is or is not a member of a trade union (or a particular trade union).
- (7) Before giving a work notice, the employer must— 25
- (a) consult the union about the number of persons to be identified and the work to be specified in the notice, and
- (b) have regard to any views expressed by the union in response.
- (8) The employer may vary a work notice, so far as relating to a strike date, and give the notice as varied to the trade union— 30
- (a) before the end of the 4th day before the strike date, or
- (b) before the end of any later day that is agreed between the employer and the union.
- (9) Before varying a work notice the employer must—
- (a) consult the union about the variation, so far as it relates to the matters mentioned in subsection (7)(a), and 35
- (b) have regard to any views expressed by the union in response.
- (10) For the purposes of this section, where a strike takes place over more than one day (continuously or discontinuously) each day is to be treated as a separate “strike date”. 40

234D Work notices: disclosure of information

- (1) Except as provided by subsection (2), a disclosure of information authorised by section 234C does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or 45

- (b) any other restriction on the disclosure of information (however imposed).
- (2) Section 234C does not authorise a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, that section is to be taken into account). 5
- (3) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

234E Work notices: no protection if union fails to take reasonable steps

- (1) Where an employer gives a trade union a work notice in relation to a strike, an act done by the union to induce a person to take part, or to continue to take part, in the strike is not protected as respects that person’s employer if – 10
 - (a) the work notice is given in accordance with section 234C, and
 - (b) the union fails to take reasonable steps to ensure that all members of the union who are identified in the work notice comply with the notice. 15
- (2) In proceedings in tort that are brought against a trade union in reliance on paragraph (b) of subsection (1), any loss that would have been suffered even if the union had taken the reasonable steps mentioned in that paragraph is to be disregarded in calculating any amount to be awarded against the union by way of damages. 20

234F Regulations: consultation and supplementary

- (1) Before making regulations under section 234B the Secretary of State must consult such persons as the Secretary of State considers appropriate. 25
- (2) A power to make regulations under section 234B includes power to make –
 - (a) consequential, supplementary, incidental, transitional or saving provision; 30
 - (b) different provision for different purposes or areas.
- (3) Regulations under section 234B are to be made by statutory instrument.
- (4) A statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament. 35
- (5) Subsection (1) may be satisfied by consultation before the passing of the Strikes (Minimum Service Levels) Act 2023 (as well as by consultation after that time). 40

234G Interpretation of terms relating to minimum service levels

- (1) In this Part –
 - “minimum service regulations” means regulations under section 234B(1);

“relevant service” is to be read in accordance with section 234B(3);

“work notice” has the meaning given by section 234C(2).

- (2) Section 229(2A) (overtime ban and call-out ban to constitute action short of a strike) applies for the purposes of sections 234B to 234F as it applies for the purposes of section 229(2).” 5

PART 2

RELATED AMENDMENTS TO THE 1992 ACT

- 3 The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows. 10
- 4 In section 219 (which confers protection from certain tort liabilities), in subsection (4), for the words from “to”, in the first place it occurs, to “industrial action);” substitute “to –
- (a) sections 222 to 225 (action excluded from protection),
 - (b) section 226 (requirement of ballot before action by trade union), 15
 - (c) section 234A (requirement of notice to employer of industrial action), and
 - (d) section 234E (work notices: no protection if union fails to take reasonable steps);” 20
- 5 In section 234A (notice to employers of industrial action), in subsection (3) –
- (a) omit the “and” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “and
 - (ba) if the industrial action relates to the provision of a relevant service, states whether the action intended to begin or take place on each date specified under paragraph (b) is a strike for the purposes of section 234C (see section 234G(2)).” 25
- 6 Before section 235 insert –
- “Construction of references to contract of employment”* 30
- 7 In section 235 (construction of references to contract of employment), for the words from “to 234A” to “union)” substitute “to 234G”.
- 8 (1) Section 238A (unfair dismissal: participation in official industrial action) is amended as follows.
- (2) In subsection (2) (circumstances in which employee who took protected industrial action is to be regarded as unfairly dismissed) – 35
- (a) omit the “and” at the end of paragraph (a), and
 - (b) after paragraph (a) insert –
 - (aa) where the protected industrial action was a strike relating to the provision of a relevant service, the employee – 40
 - (i) was not an identified worker in relation to that strike, or

- (ii) was an identified worker in relation to that strike and did not take part in the strike except to an extent that complied with the work notice, and”.
- (3) For subsection (9) (meaning of “date of dismissal”) substitute – 5
- “(9) In this section –
- “date of dismissal” has the meaning given by section 238(5);
- “identified worker”, in relation to a strike relating to the provision of a relevant service, means a person who –
- (a) is identified in a work notice given in accordance with section 234C relating to the strike, and 10
- (b) before any day on which the work notice requires the person to work, is given by the employer –
- (i) notice in writing of the work specified in the work notice as required to be carried out by the person on that day, and 15
- (ii) a statement that, under this section, the person is an identified worker in relation to the strike and must comply with the work notice;
- “strike” has the same meaning as in section 234C (see section 234G(2)).” 20
- 9 In section 246 (minor definitions), for “for the purposes of section 229(2)” substitute “where section 229(2A) applies (see that section and 234G(2))”.
- 10 In section 299 (index of defined expressions) –
- (a) in the entry relating to the meaning of “contract of employment” in sections 226 to 234, for “234” substitute “234G”; 25
- (b) in the entry relating to the meaning of “not protected” in sections 222 to 226, after “226” insert “, 234A and 234E”;
- (c) at the appropriate places in the list insert –
- “minimum service regulations (in Part 5) section 234G(1)” 30
- “relevant service (in Part 5) section 234G(1)”
- “work notice (in Part 5) section 234C(2)”.

Strikes (Minimum Service Levels) Bill

A

B I L L

To make provision about minimum service levels in connection with the taking by trade unions of strike action relating to certain services.

*Presented by Secretary Grant Shapps,
supported by
The Prime Minister, Secretary Steve Barclay, The
Chancellor of the Exchequer, Secretary Suella
Braverman, Oliver Dowden, Secretary Gillian
Keegan and Secretary Mark Harper.*

*Ordered, by The House of Commons,
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By email: DfT.Ministers@dft.gov.uk

4 December 2023

Dear Huw,

I am writing in response to your letter, received on 6 November 2023, on the Consultation response on Minimum Service Levels (MSL) for Passenger Rail. Thank you for sharing the consultation response with me.

As you will be aware, Scottish Ministers remain strongly opposed to the Strikes (MSL) Act and any associated secondary legislation which encroaches on devolved power. This law represents an assault on worker's rights. The Scottish Government's position is that a progressive approach to industrial relations, built on greater, not fewer, protections for workers, is at the heart of a fairer society and prosperous economy.

We want to continue to work with the public sector and trade unions to reach fair and reasonable settlements, respecting the legitimate interest of workers without seeking to curb their right to strike.

As Governments, we should be working with transport operators and trade unions to reach fair and reasonable settlements, respecting the legitimate interest of workers and transport organisations and we will continue to do so.

Yours sincerely,



FIONA HYSLOP



Department
for Transport

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20 February 2023

Dear Jenny,

Launch of Minimum Service Levels Consultation for Rail

You will be aware that the Strikes (Minimum Service Levels) Bill was laid in Parliament on 10 January and will introduce new laws to ensure a minimum level of service in some of our most crucial sectors when strikes take place.

I am writing to update you on next steps for minimum services levels for rail. The Strikes (Minimum Service Levels) Bill is currently in the Lords, and due for second reading on 21 February. As part of the process to determine minimum service levels in rail, the Department is today launching a consultation for passenger rail.

For many years our railways have played an important role in connecting communities across all three nations to places of work and key public services. Following the pandemic, it is essential that the rail network adapts and modernises to meet the needs of passengers and to bring it back to a sustainable footing.

In recent years passengers have been subject to severe disruption on the railways due to sustained industrial action. It has had nationwide impact and has stopped people going to work and schools and in some cases accessing essential services such as hospital care.

This Government believes that the ability to strike is an important part of industrial relations in the UK. However, recent industrial action has demonstrated that too often strikes disproportionately impact the hardest working and disrupt the essential service they require.

The Bill, which is currently before Parliament, establishes a clear framework for setting MSLs, recognising the importance of ensuring workers are able to take strike action, while balancing the needs of the public to go to work, schools and access essential services.

The consultation will be open for 12 weeks from 20 February to 15 May and will invite responses from across England, Scotland and Wales. I would like to invite you to respond to the issues raised in the consultation via ministerial correspondence so that we can consider the Scottish position as we develop the policy and regulations required to underpin minimum service levels for passenger rail, including light rail.

While industrial relations is a matter that is reserved to the UK Government, we recognise that Scottish Government has responsibility for rail services delivered in Scotland, and are conscious of the need to consider operational practicalities in different parts of Great Britain so we can ensure we set a minimum service level that is appropriate and workable.

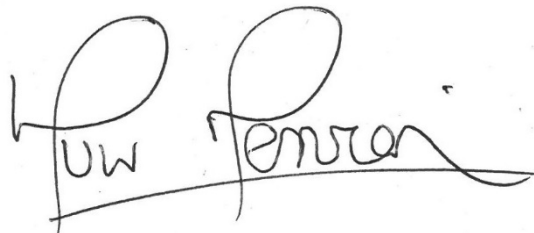
The consultation is available at:

www.gov.uk/government/consultations/minimum-service-levels-for-passenger-rail-during-strike-action

I will ensure your officials are provided with the relevant details. My officials will also continue to engage closely with your officials, as well as relevant stakeholders, to ensure Scotland's view is properly represented through the consultation. Subject to the outcome of the consultation, we anticipate that regulations will be laid as soon as is practicable after the closing date.

When we previously met, we discussed the concept of a rail consultation on MSLs and I encouraged you to feedback when a consultation was launched. I would be happy to meet with you to continue the discussion on the consultation. Please contact huw.merriman_mp@dft.gov.uk should you wish to meet again.

Yours ever,

A handwritten signature in black ink, appearing to read 'Huw Merriman', with a long horizontal flourish extending to the right.

HUW MERRIMAN MP

MINISTER OF STATE FOR TRANSPORT