



Strikes (Minimum Service Levels) Bill

Background

In October, we wrote about the Government’s [proposed bill](#) implementing minimum service levels for certain specified transport services during periods of strike action. The start of the New Year has seen continued industrial action, not just by bus and railway workers, but also by nurses, ambulance workers, the postal service, and now potentially teachers. Given this, the Government has introduced a new [Strikes \(Minimum Service Levels\) Bill](#) (the “Bill”) targeting a broader range of sectors and which is expected to supersede the earlier Transport Strikes (Minimum Service Levels) Bill.

The Bill was presented to Parliament on 10 January 2023 and was approved by a majority of MPs at its second reading on 16 January 2023. If enacted, it will extend to England, Wales and Scotland.

What does the new Bill propose?

The Bill seeks to amend the Trade Union and Labour Relations (Consolidation) Act 1992 to:

- Enable the Secretary of State to make regulations setting minimum service levels for specified public services;
- Remove union protection from liability if they fail to take reasonable steps to ensure that required persons do not participate in strike action for the purpose of meeting minimum service levels; and
- Enable employers to issue work notices to require the minimum service levels to be delivered for particular strikes in specified services.

Unlike the proposed Transport Strikes (Minimum Service Levels) Bill, there is no requirement for employers and unions to seek agreement before minimum service levels are set by the Secretary of State. Whilst the Secretary of State must consult “such persons as [they] consider appropriate”, regulations can be made directly and employers may give a “work notice” to unions, specifying the persons reasonably required to work during the strike in order to meet the minimum service levels.

The scope of the new Bill is also more far-reaching than its predecessor and extends to “relevant services” across the following sectors: (a) health; (b) fire and rescue; (c) education; (d) transport; (e) decommissioning of nuclear installations and management of radioactive waste and spent fuel; and (f) border security.

In a recent [press release](#), the Government has stated that it intends to consult on minimum service levels in relation to the fire,

ambulance, and rail services in the first instance, and hopes not to have to use these powers for other sectors included in the Bill. It also expects parties to reach a “sensible and voluntary agreement between each other” to ensure a “reasonable level of service” during strike action. However, the Bill will allow the Government to set such levels unilaterally if it considers it necessary.

As the disputes around pay and working conditions remain entrenched, the Bill is an attempt by the Government to limit the challenges caused to individuals and businesses by ongoing strike action by ensuring a minimum level of service in certain public services. However, the Bill has been regarded as controversial by many commentators and is expected to be contested by unions. Practical or legal grounds on which the Bill can be contested include:

- Its possible incompatibility with the right to freedom of assembly and association under Article 11 of the European Convention on Human Rights (which is still binding in the UK by virtue of the Human Rights Act 1998); and
- Its potential conflict with international law under Convention 87 of the International Labour Organization and related international treaties protecting the right of workers to organise. Whilst these treaties do not give rise to directly enforceable rights in UK courts, a breach could amount to contravention of the UK’s Trade and Cooperation Agreement with the EU.

With unions challenging other trade union law reforms (for example regulations permitting the use of agency workers during strike action) and the Labour Party stating that if they were voted into power they would repeal any such law, we anticipate that the path to the Bill becoming law will not be a smooth ride and continued industrial action into 2023 is likely.