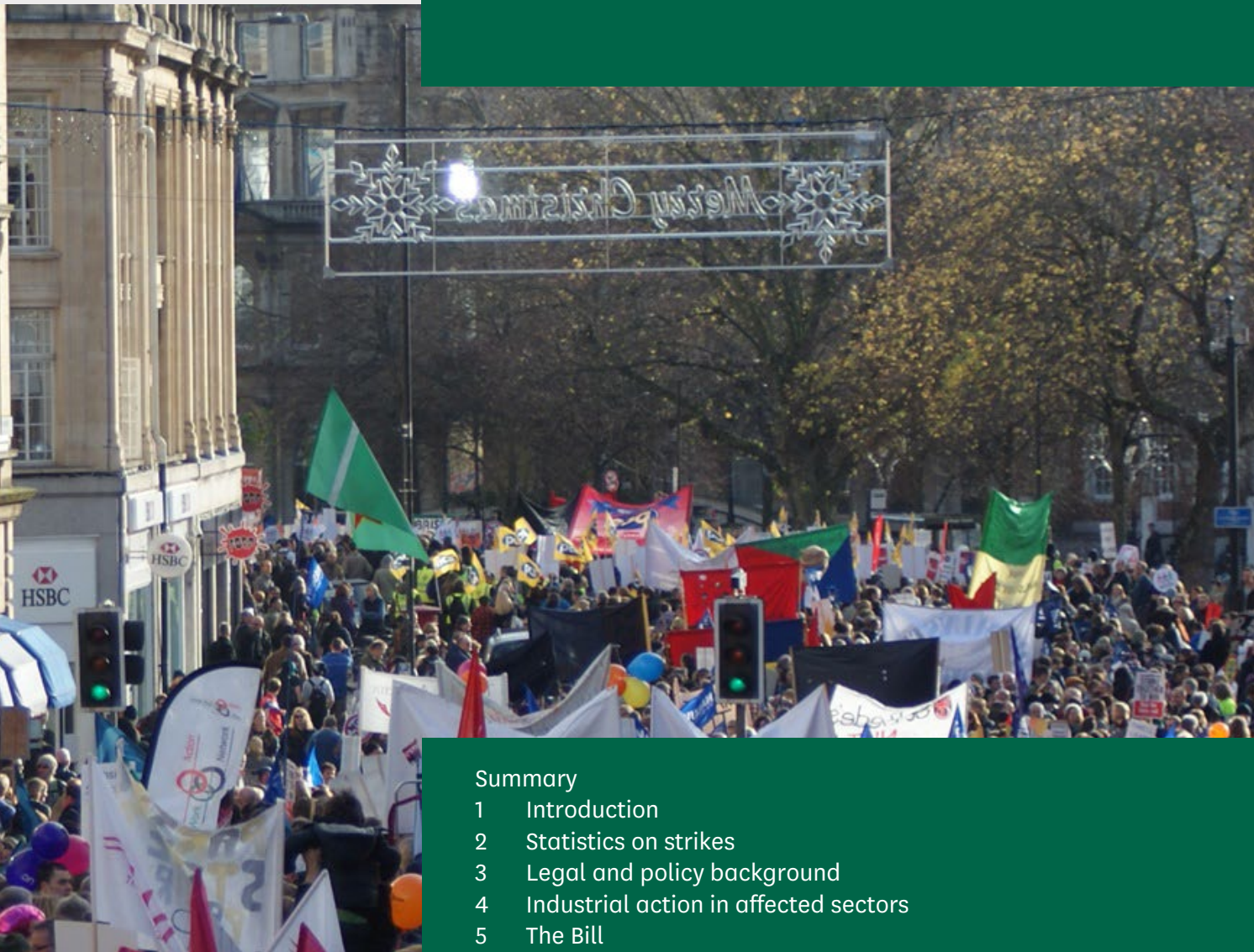


Research Briefing

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13 January 2023

Strikes (Minimum Service Levels) Bill 2022-23



Summary

- 1 Introduction
- 2 Statistics on strikes
- 3 Legal and policy background
- 4 Industrial action in affected sectors
- 5 The Bill
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Summary

The [Strikes \(Minimum Service Levels\) Bill](#), if passed, would allow the Secretary of State to make regulations setting out the minimum service required in certain sectors during strikes. Unions and workers would have to comply with these or face losing protections against being sued or dismissed.

The Bill, which is Bill 222 of the 2022-23 session, had its first reading in the House of Commons on 10 January 2023. Second reading is due to take place on 16 January 2023.

Background to the Bill

Legal background

Currently in the UK, police officers, members of the armed forces and some prison officers are prohibited from striking. There are no other general restrictions on public sector workers from striking, although the Trade Union Act 2016 did introduce for the first time the concept of “important public services”, where workers must meet a higher ballot threshold of 40% of eligible voters to strike.

Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 also makes it an offence to take industrial action in the knowledge or belief that human life will be endangered or serious bodily injury caused. As a result, many unions such as in the NHS agree to provide so-called ‘life and limb’ cover during strikes.

Under international law, the UK has certain obligations to guarantee the right to freedom of assembly and association, including under [Article 11 of the European Convention on Human Rights](#) and [Convention 87 of the International Labour Organisation \(ILO\)](#).

The ILO’s Committee of Experts published a [2012 report \(PDF\)](#) which discusses the circumstances under which the setting of minimum service levels might be compatible with the convention rights.

Industrial relations background

There were a significant number of public sector industrial disputes throughout 2022, continuing into early 2023, largely related to proposed pay awards that were below inflation, as well as other terms and conditions. These have significantly affected the transport, health, education and border security sectors.

According to the Office for National Statistics, from June 2022 to October 2022, a total of 1.16 million days were lost due to strike action in the UK. 1.39 million days were lost in 2011, which was the highest level since 1990. It is highly likely that the total number of days lost in 2022 will be higher than this once the figures for November and December are published.

Policy background

The Conservative manifesto for the December 2019 general election pledged to introduce legislation to “require that a minimum service operates during transport strikes.” A Bill to this effect was listed in the December 2019 Queen’s Speech, but not introduced in the 2019-21 session or repeated in the 2021 or 2022 Queen’s Speeches.

In the summer of 2022, then Transport Secretary and current Business Secretary Grant Shapps pledged to introduce this measure as part of a [16-point plan](#) to deal with growing industrial action.

On 20 October 2022, the [Transport Strikes \(Minimum Service Levels\) Bill 2022-23](#) was introduced to the House of Commons. This Bill would allow minimum service levels to be introduced during strikes in certain transport services to be specified by the Secretary of State. The Bill has not received a second reading and has likely been superseded by the Strikes (Minimum Service Levels) Bill.

What would the Strikes Bill do?

The Bill would grant the Secretary of State powers to make “minimum service regulations” which could set minimum service levels required during strikes in any services within six sectors:

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

Such regulations would be subject to [the affirmative procedure](#) (approved by both Houses of Parliament). Minimum service regulations would be able to affect any strike taking place from the day after they came into force, even if the relevant strike ballot had taken place before this Bill passes.

The Bill would allow an employer to give a “work notice” to a trade union concerning any strike affecting a service subject to minimum service regulations. The work notice would specify which workers the employer required to work to ensure the service levels required by the minimum service regulations. They would not be permitted to request more workers than “reasonably necessary” to meet the minimum service regulations.

Where a union fails to “take reasonable steps” to ensure that all workers requested to work by a work notice comply with that notice, it will lose its protection from liability for inducing workers to take part in the strike.

The Bill would also remove automatic protection from unfair dismissal for any employee who takes part in a strike contrary to a valid work notice. Any such employee will not be automatically regarded as unfairly dismissed under Part X of the Employment Rights Act 1996 if the reason or principal reason for the dismissal is because they took part in the strike.

The removal of protected status from any trade union which doesn’t take reasonable steps to ensure all workers comply with work notices also means that in such cases all workers (not just those who act contrary to work notices) who take part in the strike would lose their protection from unfair dismissal.

The Bill also includes a [Henry VIII power](#) to amend other primary legislation by regulation, in order make amendments consequential on this Bill.

Commentary on the Bill

When [introducing the Bill on 10 January](#), Business Secretary Grant Shapps said its purpose was to protect public safety and that it would bring the UK into line with other European countries such as France, Germany, Italy and Spain.

In a [press release accompanying the Bill](#), the Government said it intended to first consult on introducing minimum services in the fire, ambulance and rail services, adding it hopes to “not have to use these powers for other sectors included in the Bill, such as education, other transport services, border security, other health services and nuclear decommissioning.”

Conservative backbenchers who spoke during [the debate on the introduction of the Bill](#) were supportive, saying the measures were necessary to deal with ongoing disruption to public services. MPs from other parties were critical of the Bill, arguing that public services were already failing to meet minimum services even in the absence of strikes and that the Bill risked worsening industrial relations and potentially breaching international law.

Leader of the Opposition Sir Keir Starmer has [pledged to repeal the Bill under a Labour Government](#).

Several legal experts have expressed views on the Bill, [saying they expect there to be legal challenges](#) from trade unions on the grounds that it may breach the UK's commitments under international law.

Trade unions oppose the Bill, with the [TUC dubbing it a “sack key workers Bill” and general secretary Paul Nowak describing it as a “undemocratic, unworkable, and almost certainly illegal.”](#)

1 Introduction

[The Strikes \(Minimum Service Levels\) Bill 2022-23](#), Bill 222 of the 2022-23 session, was introduced on 10 January 2022 as a Government Bill. It is listed for second reading on Monday 16 January. The Bill's long title is:

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

The Bill would allow the Government to set, by regulations, minimum service levels which unions and employees would have to provide during strike action on services across six sectors.

The Bill extends and applies to England, Wales and Scotland, but not Northern Ireland where employment law is a devolved matter.

All clauses in the Bill would come into force upon it receiving Royal Assent.¹

The [explanatory notes](#) for the Bill were drafted by the Department for Business, Energy and Industrial Strategy. They set out the financial implications of the Bill, noting departments would incur costs while preparing regulations under the Bill, and a money resolution would be required.²³

The Bill includes new powers to make secondary legislation, including a Henry VIII power to amend primary legislation. These are set out in an accompanying [Delegated Powers Memorandum](#).

¹ Strikes (Minimum Service Levels) Bill, clause 5

² [Strikes \(Minimum Service Levels\) Bill Explanatory Notes](#) [PDF], paras 39-40

³ Erskine May notes that money resolutions imply the additional expenditure must be “new and distinct” – [para 35.3](#), Erskine May

2 Statistics on strikes

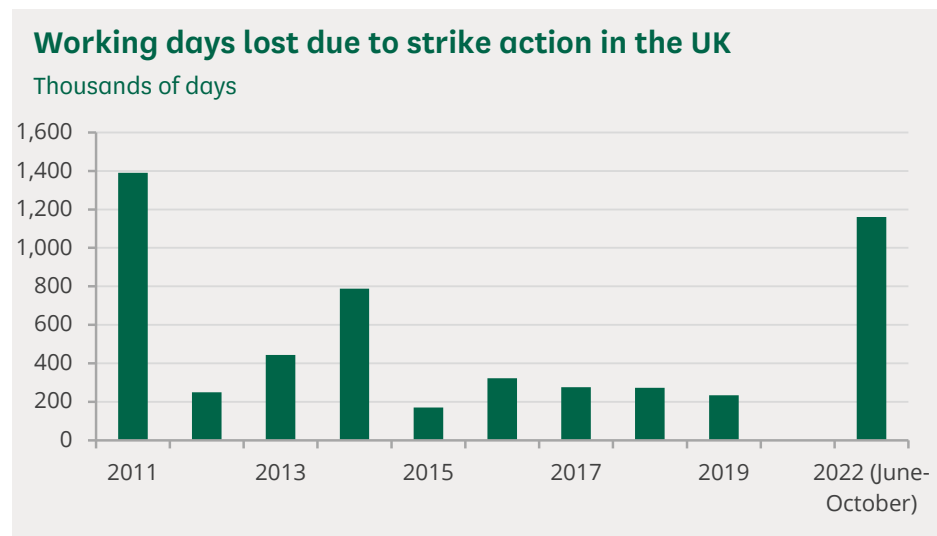
2.1 Working days lost due to strikes in the UK

The Office for National Statistics (ONS) publishes statistics on the number of working days lost due to industrial disputes, although the collection and publication of these figures was temporarily suspended following the start of the coronavirus pandemic. The ONS resumed publication of these statistics from June 2022, but figures are not available for the period between February 2020 and May 2022.⁴

From June 2022 to October 2022, a total of 1.16 million working days were lost due to strike action in the UK.

The chart below shows the number of working days lost due to strike action in the UK from 2011 to 2019, and in 2022 for the five-month period between June and October. A higher number of days have been lost in this five-month period in 2022 than across the whole of any year since 2011.

1.39 million days were lost in 2011, which was the highest level since 1990. It is highly likely that the total number of days that were lost in 2022 will be higher than this once the figures for November and December are published.

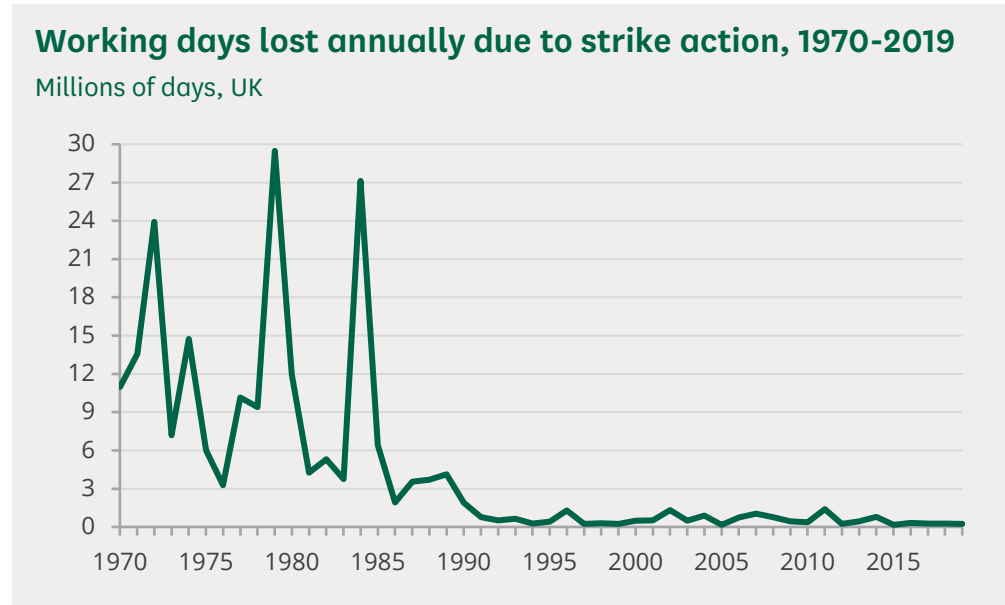


Source: [ONS Labour disputes: working days lost due to strike action; UK \(thousands\)](#)

⁴ ONS, [Labour disputes: working days lost due to strike action; UK \(thousands\)](#), 13 December 2022

The chart below shows the number of days that were lost to strike action in the UK between 1970 and 2019. From 1990 onwards there has only been five years in which the number of lost working days has exceeded a million.

Between 1970 and 1990 at least a million days were lost in every single year. The maximum number of days lost in any year during this period was in 1979 when almost 30 million days were lost.



Source: [ONS Labour disputes: working days lost due to strike action: UK \(thousands\)](#)

The May 2019 ONS article [Labour disputes in the UK: 2018](#) provides further statistics, including a time series of working days lost since 1891 and the number of workers who have been involved in strikes from 1999 to 2018.⁵

2.2 Number of employees in affected sectors

The ONS Business Register and Employment Survey (BRES) estimates of the number of employees in most of the sectors where minimum service requirements would be put in place. They cover these sectors in Great Britain in 2021.⁶

These figures are likely to overestimate the number of employees who would be impacted by the minimum service requirements. This is because the legislation is unlikely to impact every employee working within these sectors.

⁵ ONS, [Labour disputes in the UK: 2018](#), 17 May 2019

⁶ ONS Business Register and Employment Survey, via Nomis

Health services

2.5 million employees were estimated to be working in the health services sector in Great Britain in 2021. This is broken down into the following activities:

- 1.7 million estimated to be working in hospital activities.
- 380,000 estimated to be working in medical and dental practice activities
- 460,000 estimated to be working in other human health activities. This does not include those working in social care activities.

Fire and rescue services

50,000 employees were estimated to be working in fire service activities in 2021. This includes those working in regular and auxiliary fire brigades in fire prevention, firefighting and the rescue of persons and animals.

Education services

2.6 million employees were estimated to be working in the education sector in Great Britain in 2021. However, this includes those working outside formal education settings, who may not be impacted by the minimum service requirements proposed in this Bill.

2.3 million employees were estimated to be working in the pre-primary, primary, secondary or the higher education sectors:

- 78,000 estimated to be working in pre-primary education
- 1 million estimated to be working in primary education
- 750,000 estimated to be working in secondary education, including further education
- 500,000 estimated to be working in higher education

These figures will include non-academic staff, and staff who do not have a teaching role.

Transport services

650,000 employees estimated to be working in the transport services sector in Great Britain in 2021. However, many of these were working in sectors that may not be impacted by the minimum service requirements proposed in this Bill, such as those involved in freight transport.

310,000 employees were estimated to be working in sectors linked to the mass transit of passengers. Of these:

- 53,000 worked in passenger rail transport
- 128,000 worked in urban and suburban passenger land transport
- 56,000 worked in other passenger land transport
- 9,000 worked in sea and coastal or inland water transport
- 68,000 worked in passenger air transport

Decommissioning of nuclear installations and management of radioactive waste and spent fuel

The survey records the number of employees involved in the collection, treatment and disposal of hazardous waste, which seems to be the closest match to this activity. An estimated 9,000 employees were working in this sector in Great Britain in 2021.

Border security

The ONS survey used to provide the statistics section of this paper does not provide an estimate for the number of border security employees as they are included in a wider sector including employees in public order and safety.

Using data from the Home Office, an average of 9,100 full-time equivalent people were employed within the UK Border Force in 2020-21.⁷

⁷ [Home Office Annual Report](#), 8 July 2021, p 107

3 Legal and policy background

3.1 Existing law on strikes

The right to strike in Great Britain

Employees in Britain do not enjoy a general legal “right” to strike in all cases except when constrained by statute. Instead, unions have a freedom to strike only in cases where statute grants them legal protections. In the absence of these protections, employees on strike could be held in breach of their contractual obligations and trade unions which organised strikes could be sued for committing torts such as inducement of a breach of contract or conspiracy to do an unlawful act.

Currently, the provisions governing when strikes and unions are granted such protected status can be found in sections 226 to 235 of the Trade Union and Labour Relations (Consolidation) Act 1992. Unions must comply with all the requirements, such as around the holding of strike ballots or notifying employers, to be eligible for protection. Section 238A of the 1992 Act also gives employees automatic protection from dismissal on the grounds of taking part in a protected strike.

For more information on the law around strikes, see part 15 (“Industrial action”) of the Library briefing paper on [Key Employment Rights](#).

Existing restrictions on strikes in important public services

Currently, under the Police Act 1996, police officers in the UK are prohibited from striking. Likewise, members of the armed forces are prohibited from striking under the Incitement to Disaffection Act 1934.

Prison officers were prohibited from striking by sections 126-128 of the Criminal Justice and Public Order Act 1994, though these prohibitions were disapplied for many prison officers in 2005 following the negotiation of a voluntary no-strike agreement between unions and the Government.⁸

Historically, postal workers were in theory prohibited from striking under laws dating from the eighteenth century that prohibited interfering with or delaying postal deliveries, though none were prosecuted and current laws

⁸ [Explanatory Note to the Regulatory Reform \(Prison Officers\) \(Industrial Action\) Order 2005 SI No.908](#)

against interference with postal services explicitly excludes cases of lawful industrial action.⁹

Other than this there are currently no broad legal prohibitions on strikes by workers in particular services in the UK, though the Trade Union and Labour Relations (Consolidation) Act 1992 makes it an offence to take industrial action in the knowledge or belief that human life will be endangered or serious bodily injury caused, as a consequence.¹⁰ This has led many unions, particularly in the health sector, to set out policies on how they will maintain “life and limb cover” during periods of strike action (see “Life and limb cover” under Part 4.1 below).

The Government also has general emergency powers it can use in cases where strikes seriously threaten peoples’ welfare. The Emergency Powers Act 1920 created powers to ration resources during periods of emergency, including industrial action, and has since been replaced by the Civil Contingencies Act 2004 which created further powers.

Under the 2004 Act a Minister may make regulations to, for example, protect or restore facilities for transport or health, or to protect human life, health or safety. One of the preconditions for the exercise of this power is that an emergency has occurred. This is defined in section 1 to include “an event or situation which threatens serious damage to human welfare in a place in the United Kingdom”. Alongside this, the Government may replace striking workers with military personnel, as explained in Deakin and Morris’s Labour Law:

Integral to contingency planning in the industrial sphere has been the use of troops to replace striking workers, a strategy dating back to the nineteenth century. Since 1939 the government has had a standing power, now contained in the Emergency Powers Act 1964, to deploy troops on ‘urgent work of national importance’ without a proclamation of emergency. Troops have been used to replace workers in dispute on over 30 occasions since 1945, most recently during a firefighters’ dispute in 2002/2003.¹¹ On some occasions (in 1979, 1981, 1982 and 1989-1990) the police have been used to replace ambulance workers in dispute, although their deployment for this purpose is of dubious legal and constitutional propriety.¹²

There are also more specific laws relating to the privatised electricity and water industries:

When the electricity and water industries were privatised in 1989 Government ministers were granted extensive powers to issue confidential directions, both general and specific, to relevant operators for purposes which include mitigating the effect of any ‘civil emergency’ which may occur, ‘civil emergency’ being defined in terms which are sufficiently wide to cover

⁹ Deakin and Morris’ Labour Law, Seventh Edition, Hart Publishing, 2021, p1050

¹⁰ s240, Part V, [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1992/18/section/240)

¹¹ This has since been repeated during the border force strikes in 2022

¹² Deakin and Morris’ Labour Law, Seventh Edition, Hart Publishing, 2021, p1051

disruption caused by industrial action. The powers under this legislation may be exercised without parliamentary approval or even knowledge.¹³

And, in addition, in certain cases the UK Government potentially has the power to use injunctions against certain groups of public sector workers to prevent strikes, again according to Deakin and Morris:

As we discussed in para 9.6, in relation to certain groups of workers liability may lie for inducement to breach a statutory duty, a wrong against which there is no statutory immunity. As we have seen, it is not difficult for applicants to obtain an interim injunction to halt industrial action in any dispute and in relation to disputes in essential service the nature of the disruption is likely to give them additional ammunition. Given the severe penalties for breaching an injunction, this may be a more powerful constraint than the criminal law.¹⁴

Historic attempts to restrict strikes in important public services

The possibility of restricting strikes in important public services is regularly raised when they are disrupted by strike action. Previous legislation has used either term “important public services” such as in the Trade Union Act 2016, or, before that “essential services”. Prior to 2016, when concrete proposals were made for legislation, they foundered on the difficulty of defining an “essential service” alongside fears that they would prove counter-productive.

As Deakin and Morris’ Labour Law explains, the approach of UK labour law has historically avoided trying to carve out such exceptions for certain public services:

In many countries workers in ‘essential services’, or in the public sector, have been subject to additional restrictions in relation to their capacity lawfully to take industrial action. Restrictions on the former are determined by reference to the importance of the service to the community; the latter are based upon the notion of the state as ‘sovereign employer’. Labour law in Britain has not generally followed either of these approaches; there are particular group of workers for whom distinctive restrictions apply but these restrictions were introduced at differing time for different reasons; they are not the product of an integrated strategy towards public or essential services. As we have seen, the Trade Union Act 2016 has introduced the principle of requiring stricter balloting conditions to be met for ‘important public services’, but this approach remains exceptional.¹⁵

Green Paper, 1981

The 1981 Green Paper [Trade Union Immunities](#) discussed the possibility of making it unlawful for certain groups of workers to take industrial action. It highlighted some of the difficulties:

¹³ As above

¹⁴ As above, p1050

¹⁵ As above, p1049

First, there would be great difficulty in deciding which groups of workers should be chosen and on what criteria. There are clearly dangers in going too wide or appearing to be inequitable. There are many views on which groups should be restricted but very little agreement, not least amongst those industries which are most frequently mentioned.... the interdependent nature of industry means that a case can now be made for regarding a strike by most groups of workers as threatening essential services or supplies.

Secondly, the likely effects on industrial relations must be assessed. No group of workers would welcome the removal of a freedom to strike which has been hard won and long held. There would be the possibility of resistance and even industrial disruption if the law were changed on an issue of deeply held principle; this might be supported by trade unionists not directly affected by such restrictions.

...

These considerations suggest that there might be very great difficulties in making strikes by key groups of workers illegal. It is possible to argue that the most effective way of making progress on this question is through voluntary “no strike” agreements between management and unions in those sectors of industry where strikes might threaten the national interest.¹⁶

The proposal was not taken forward.

Green Paper, 1996

On 19 November 1996, partly as a response to an increase in industrial action in public services such as the London Underground and the Post Office, the government published a Green Paper, *Industrial Action and Trade Unions*, which favoured legislation to “remove immunity from industrial action which has disproportionate or excessive effects”:

The Green Paper considers a number of options for restricting the scope for strikes in essential services: compulsory arbitration, a statutory requirement to cooperate with conciliation services; giving the Government powers to ban specific strikes; and making the calling of strikes a statutory tort in specified sectors. All of these have disadvantages. The Government’s preferred option is to remove immunity from industrial action which has disproportionate or excessive effects. Clear criteria would be laid down in statute to help the courts determine what is unacceptable action, and the courts would rule on the effects of industrial action rather than the merits of the dispute.¹⁷

The Green Paper suggested that “disproportionate or excessive effects” might be defined as involving one or a combination of:

- risk to life, health or safety;
- threats to national security;
- serious damage to property or the economy; or

¹⁶ Trade Union Immunities, Cmnd 8128, paras 334-337, 1981

¹⁷ Department of Trade and Industry, *Industrial Action and Trade Unions*, Cm 3470, November 1996, paras 3-4,

- significant disruption of everyday life or activities in the whole or part of the country.¹⁸

These proposals were “not well-received even by employers”.¹⁹ The CBI feared that they would be unlikely to resolve disputes and “could lead to more uncertainty in the workplace” and the Institute of Directors thought they were “impractical, unworkable and liable to create a field day for lawyers”.²⁰ The proposals were taken no further.

1997 Conservative manifesto

In its 1997 manifesto the Conservative Party committed to remove immunity from strikes that had disproportionate or excessive effects, and to require strike action to be supported by a majority of all union members eligible to vote:

Industrial relations in this country have been transformed. In so far as there is a still a problem it is concentrated in a few essential services where the public has no easy alternative and strikers are able to impose massive costs and inconvenience out of all proportion to the issues at stake. We will protect ordinary members of the public from this abuse of power.

We will legislate to remove legal immunity from industrial action which has disproportionate or excessive effect. Members of the public and employers will be able to seek injunctions to prevent industrial action in these circumstances. Any strike action will also have to be approved by a majority of all members eligible to vote and ballots will have to be repeated at regular intervals if negotiations are extended.²¹

Public Services (Disruption) Bill 2002 – Private Members’ Bill

In the 2001/02 session of Parliament, Lord Campbell of Alloway, a Conservative peer, introduced a Private Members’ Bill - the [Public Services \(Disruption\) Bill](#) - designed to prohibit excessive or disproportionate disruption of a public service by collective industrial action. The Bill was introduced in the Lords on 16 April 2002,²² given a second reading on 22 May 2002²³ and passed by the Lords on 23 July 2002.²⁴ Although the Labour Government took no formal view for or against Private Members’ Bills, Lord McIntosh, the Government spokesperson in the Lords, expressed a number of doubts:

I start with the nature of the problem that is claimed to be before us. We have figures for industrial disputes in 2001—they come in calendar years. In the year 2001, 510,000 days were lost in industrial disputes. That is the seventh lowest figure since statistics started to be collected in 1891. We had 181

¹⁸ As above, para 2.5

¹⁹ Deakin and Morris, *op. cit.*, p1119 (see footnote 638)

²⁰ ‘CBI spikes anti-union ploy’, *The Guardian*, 30 January 1997

²¹ Conservative Party General Election Manifesto, *You can only be sure with the Conservatives*, 1997, p31

²² [HL Deb 16 April 2002 c824](#)

²³ [HL Deb 22 May 2002 cc863-74](#)

²⁴ [HL Deb 23 July 2002 c190](#)

stoppages. That is the second lowest figure since those figures started to be collected in 1920.

I must ask the question: what is the problem being identified of industrial disputes in the public sector? Clearly, there are threats of disputes. There are new leaders of public sector trade unions who have been elected on the basis of threatening greater militancy. But the facts do not bear out the claim that there is a new problem of industrial disputes in the public sector.

The noble Lord, Lord Tebbit, when he took part in the debate on the Unstarred Question last month, said that 20 years ago when he was responsible for these matters he did not take the view that special restrictions should be placed on industrial action in public services. If that were true then, how much more is it true now? He was talking at a time when disruption in the public services was many times greater than it is today.

...

Behind all this—and the noble Lord, Lord McNally, was right to remind us—there is something fundamental about the right to strike. That applies to all people working in our society. We must have a fair system of rights and responsibilities. It is right for the Leader of the Opposition to remind us that the responsibilities of the public services are to their users—to the patients, the public sector travellers and to the school users. That must be balanced against the rights of those who work in public services. It will not be overcome by discrimination in the right to strike between public services and the rest.²⁵

The Bill was sent to the Commons the day before the summer recess and failed to progress before Parliament prorogued in November 2002.

Public Services (Disruption) Bill 2003 – Private Members’ Bill

Lord Campbell re-introduced his Bill during the 2002-03 session; it received its Second Reading on 9 January 2003.²⁶ Several peers who spoke in the debate argued that, although the Bill might not be perfect, it was important to give serious consideration to ways of protecting the public from the potentially damaging effects of industrial action. The firefighters’ strikes, which started in November 2002, lent urgency to the debate.

Lord McIntosh again pointed out that the Government took no formal view on Private Members’ Bills, and said the “Government’s face is not set against legislative action which deals with problems that are raised, correctly analysed and recognised in a proper consultation process”.²⁷ However, his Lordship highlighted four defects in Lord Campbell’s Bill:

First, the Bill is not about strikes in the public services; it is about disruption to public services. It therefore includes any industrial action that might affect public services, whether in the private or public sectors. It is almost impossible to imagine any industrial action that would not in some way affect the public sector, even if it is in the private sector, as almost all industry and services in

²⁵ [HL Deb 22 May 2002 cc 871-873](#)

²⁶ [HL Deb 9 January 2003 cc1165-176](#)

²⁷ [HL Deb 9 January 2003 c1174](#)

this country are involved with the public sector as a customer or a supplier. So the Bill is far too widely drawn in that respect.

Secondly, the Bill is not just about strikes; it is about strikes at the instigation of a trade union. Therefore, it is only about official strikes and not wildcat or unofficial strikes. I am sure that that issue will be recognised as being a very serious defect because that makes it not just possible but likely that the provisions of the Bill would be evaded.

Thirdly, the Bill talks about disproportionate effects on the public. That is described as action that is excessive to the needs of a resolution of a dispute. That raises huge problems of definition. Most importantly, it leaves the courts to decide what are essentially economic or political issues and not legal issues. The noble Lord, Lord Campbell, as a distinguished lawyer himself, would in other circumstances be the first to resist such pressure.

Fourthly, the Bill refers to mandatory arbitration by the Central Arbitration Committee. The whole point about the Central Arbitration Committee is that of course it protects employee's rights to strike, but it also protects an employers' right to manage. Turning the Central Arbitration Committee into the creature of a mandatory process would be a distortion of its work. There is no reference in the Bill to the work of ACAS. If any reference is made to ACAS, it will become clear that it is profoundly against compulsion.²⁸

A Liberal Democrat peer, Lord McNally, accused the Government of complacency, arguing that there was a need to limit the impact of strikes on the general public:

At the heart of the matter is the concern about the Government's attitude to the industrial action that causes most damage to the public rather than to the employer. That is what the public do not understand. There is a kind of secondary picketing that was not touched by the Thatcher reforms. Tube strikes do damage not the managers of London Tube but hundreds of thousands of commuters. Teachers' strikes do damage not directors of education but children, mums and parents who are trying to manage their families. Of course, the striking firefighters do not damage the fire authorities but endanger the public at large.

Without wanting to remove the right to strike, we must get into our framework of industrial relations some way of avoiding the innocent general public being dragged into the firing line of disputes. That is something that the Government have neglected to do. On the part of new Labour, there has been none of what I would describe as post-Thatcherite thinking on industrial relations. The Government are simply willing to take the benefits of the Thatcher legislation and let sleeping dogs lie. Unfortunately, the dogs are waking up and beginning to bark. What is needed from the Government is some sense of urgency and the holistic approach...²⁹

The Bill was passed in the Lords and sent to the Commons on 25 March 2003; it failed to progress any further.

²⁸ [HL Deb 9 January 2003 cc 1174-5](#)

²⁹ [HL Deb 9 January 2003 c1170](#)

Trade Union Act 2016

The [Trade Union Act 2016](#) made a number of changes to trade union law, including additional restrictions on strikes.

The 2016 Act imposed new strike ballot thresholds which unions had to meet in order to qualify for the protection discussed above. Section 1 of the Act imposed a 50% minimum turnout threshold among eligible voters for a strike ballot to be valid, while section 2 of the Act imposed an additional threshold for “important public services” that at least 40% of eligible voters had to vote in favour for a strike to be valid.

The Act also extended the period of notice unions must give employers prior to industrial action from 7 to 14 days, required new information and more detailed reporting about ballots and required new ballots after six months to renew a mandate for strike action.

For more information on this legislation, see the Library briefing paper on the [Trade Union Bill](#), published ahead of the Bill’s second reading in 2015.³⁰

The Trade Union Act was the first piece of legislation in the UK to differentiate “important public services” from other services as regards trade unions and strikes (excepting the longstanding prohibitions on strikes in the police and armed forces).

During the committee stage of the Trade Union Bill, the Shadow Minister reiterated concerns that the proposal would breach international law. Mr Doughty highlighted the clause’s application to “important public services” and questioned why the term “essential services” was not used, a term employed by the International Labour Organisation (ILO) and widely understood. The ILO definition of essential services is limited to services “the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.³¹ To this end, the Opposition tabled amendments that would apply the 40% requirement only to those who work in essential services, as defined by the ILO.³²

The Minister explained the departure from ILO terminology:

Opposition Members discussed the difference between important services versus essential services. They are right that the ILO defines “essential services” and that that is an accepted definition, but it does so for the purposes of making it clear that it is therefore allowable to prohibit the right to strike in those services. The right to strike can be entirely prohibited in the sectors that the ILO has deemed to be essential, which include some but not all of the same sectors that we have listed—for example, firefighting services, the hospital sector, air traffic control, public or private prison services, electricity services, water supply services and telephone services.

³⁰ Commons Library briefing, [Trade Union Bill](#), 8 September 2015

³¹ [PBC Deb 20 October 2015 c233](#)

³² As above c232

...

Because of the ILO's definition of essential public services as those where it is permissible to prohibit the right to strike we decided to clarify that clause 3 proposes not a prohibition or a strike ban but simply a threshold of support for a strike. That was intended to clarify that the services listed are not the same as those covered in ILO definition, but are important public services. To be clear, our manifesto named the four most important of those services to which clause 3 applies. We have an absolute manifesto mandate for the inclusion of fire, health, education and transport services. Since then, based on cross-government consultation, we have added border security and nuclear decommissioning.³³

Mr Doughty stated that the Government's terminology moved away from the international legal consensus on when it is legitimate to restrict the right to strike, and he therefore pressed the amendment to a vote. The amendment was defeated by 10 votes to 8 and the Trade Union Act as passed uses the term "important public services".

Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022

In July 2022, the Government passed The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022. This statutory instrument (SI) allows employers to hire agency staff to replace striking workers.³⁴ A Government press release at the time explained the SI was intended to alleviate the impact of strikes on wider society, saying the changes:

will give businesses impacted by strike action the freedom to tap into the services of employment businesses who can provide skilled, temporary agency staff at short notice to temporarily cover essential roles for the duration of the strike.³⁵

According to ITV News, the TUC's then deputy general secretary Paul Nowak said the move would "undermine the right to strike and be extremely reckless".³⁶

The Library Insight [Plans to let agency staff cover for striking workers](#) explains more about these changes.³⁷

³³ As above c239

³⁴ [The Conduct of Employment Agencies and Employment Businesses \(Amendment\) Regulations 2022](#)

³⁵ BEIS Press Release [New law in place to allow businesses to hire agency workers to plug staffing gaps caused by strike action](#) 21 July 2022

³⁶ ITV News [Unions slam government's 'reckless' plan to replace striking staff with agency workers](#) 12 June 2022

³⁷ Commons Library Insight [Plans to let agency staff cover for striking workers](#), 29 June 2022

3.2

International law and comparison with other countries

Restrictions on the right to strike in international law

Article 11 of the European Convention on Human Rights, which the UK is a signatory of, guarantees “freedom of assembly and association”, “including the right to form and to join trade unions for the protection of his interests.”³⁸ The [Equality and Human Rights Commission’s page on Article 11](#) explains when this right can be lawfully restricted, saying:

There are some situations where a public authority can restrict your rights to freedom of assembly and association.

This is only the case where the authority can show that its action is lawful, necessary and proportionate in order to:

- protect national security or public safety
- prevent disorder or crime
- protect health or morals, or
- protect the rights and freedoms of other people.

Action is ‘proportionate’ when it is appropriate and no more than necessary to address the issue concerned.

You may face a wider range of restrictions if you work for the armed forces, the police or the Civil Service.³⁹

[Convention 87 of the International Labour Organisation](#), on Freedom of Association and Protection of the Right to Organise, provides similar protections, requiring that “Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.”⁴⁰ Convention 87 was ratified by the UK on 27 June 1949.⁴¹

The imposition of “negotiated minimum service” during strikes as a matter of international law is addressed in paragraphs 136-139 of the 2012 Report of the Committee of Experts on the Application of Conventions and Recommendations of the 101st International Labour Conference. It discusses

³⁸ [European Convention on Human Rights \[PDF\]](#), Article 11

³⁹ [Article 11: Freedom of assembly and association](#), Equality and Human Rights Commission, 3 June 2021

⁴⁰ Article 11, C087 - [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#), International Labour Organization

⁴¹ [Ratifications of C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#), International Labour Organization

the criteria the Committee feels would need to be met for it to be acceptable for governments to impose minimum service levels:

136. In situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, consideration might be given to ensuring that users' basic needs are met or that facilities operate safely or without interruption, the introduction of a negotiated minimum service, as a possible alternative to a total prohibition of strikes, could be appropriate. In the view of the Committee, the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (or essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term, but in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population; and (iii) in public services of fundamental importance.

137. However, such a service should meet at least two requirements: (i) it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (ii) since this system restricts one of the essential means of pressure available to workers to defend their interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. Moreover, a minimum service may always be required, whether or not it is in an essential service in the strict sense of the term, to ensure the security of facilities and the maintenance of equipment.

138. The Committee emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services. Moreover, any disagreement on minimum services should be resolved, not by the government authorities, as is the case in certain countries, but by a joint or independent body which has the confidence of the parties, responsible for examining rapidly and without formalities the difficulties raised and empowered to issue enforceable decisions. However, in practice, the legislation in certain countries continues to determine unilaterally and without consultation the level at which a minimum service is to be provided and to require that a specific percentage of the service is provided during the strike. Others authorize the public authorities to determine minimum services at their discretion, without consultation, or require the judicial authorities to issue an order for this purpose.

139. In this context, the Committee has noted several interesting cases of progress, including the establishment and tripartite composition of the Guarantees Commission, which is entrusted with determining minimum services in Argentina; the amendment of the Law on Strikes in Montenegro, which now provides that, when determining the minimum service, the employer shall be obliged to obtain an opinion from the competent body of the authorized trade union organization, or more than half of the employees; the introduction in Guatemala of a minimum service in essential public services determined with the participation of the parties and the judicial authorities; and the decision in Peru that in the case of disagreement on the number and

occupation of the workers who are to continue working, the labour authority shall designate an independent body for their determination.⁴²

European countries with minimum service legislation

The below summaries of other European countries' legislative frameworks are all taken from "[The right to strike - country factsheets](#)" produced by the European Trade Union Institute (ETUI) and published by the European Public Service Union.⁴³

The House of Commons Library has requested more detailed information directly from the parliamentary libraries of other European countries about minimum service legislation they may have in place and will make a summary of their responses available to MPs in due course.

Spain

The ETUI factsheet for Spain notes that both the Spanish Constitution and current laws require certain services deemed "essential" to the community to be maintained during a strike. These services are defined by both Government and case law from the Constitutional Court, and some limitations on the restrictions can be imposed, as the factsheet notes:

The Constitutional Court, however, has imposed certain restrictions on the notion of essential services. In particular, the level of service required must not be out of proportion to the breach of fundamental rights threatened by the strike.

Judicial review and negotiations between government and the two sides of industry to determine what staff should be co-opted to provide minimum services are fundamental safeguards of the right to strike in essential public and economic services.⁴⁴

Once strikes have been called and a decision taken to order minimum service levels, that decision can be appealed by unions through the civil courts. The factsheet goes on to give an example of how this operated in practice during:

On 23 September 2010, for the first time a collective agreement was concluded between the Government and the two main trade unions to organise minimum service provision during general strike action that was due to take place six days later. The agreement mainly covered the transport sector, as negotiations in all other sectors had failed.⁴⁵

⁴² "[Giving globalization a human face](#)" – *International Labour Conference, 101st Session, 2012: Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Office, Geneva, 2012, paras 136-139.

⁴³ [The right to strike - country factsheets](#), European Public Service Union [accessed 12 January 2023]. Factsheets exist for a total of 48 countries inside and outside the EU.

⁴⁴ [The right to strike in the public services – Spain](#) [PDF], European Public Service Union and European Trade Union Institute, 2021, p9

⁴⁵ As above

Italy

In Italy law No. 146 of 12 June 1990 defines essential services for strike purposes. The list of services is fairly broad, including:

health service, the service of waste collection and disposal, the supplying of energy and primary goods, the service of justice, protection of the environment and surveillance of museums, transports, payment by banks of pensions and wages, education, the postal services, telecommunication services and public information on radio and television⁴⁶

In these services, the right to strike must be balanced against a list of other constitutional rights:

the right to life, the right to health and to personal freedom and security, the freedom to travel, the right to assistance and to social security, the right to education and the freedom to communication.⁴⁷

The operation of minimum service in these sectors must be set out in collective agreements, that have to be negotiated between the service provider and local trade unions. This process is overseen by an independent statutory body, the Commission of Guarantee, which can assess whether such agreements provide an appropriate balancing of the right to strike with the other constitutional rights. The Commission of Guarantee has powers to order further measures if necessary, as well as penalise unions or employers for their conduct.⁴⁸

France

Constitutional case law in France has established that the constitution allows the state to organise minimum service levels to ensure the continuity of public services, though this power is not unlimited:

The right to strike may only suffer restrictions that are necessary with regard to the constitutional principles on which these restrictions are based, and the Constitutional Court held for instance that a minimum level of service may not be equivalent to a normal level of service.⁴⁹

In some sectors, the French Parliament has passed sector-specific legislation setting out what these essential minimum service arrangements should be. This includes public broadcasting, protection and control of nuclear materials, air traffic control, ground passenger transport, nurseries and elemental schooling and air passenger transport. The ETUI factsheet notes that:

⁴⁶ [The right to strike in the public services – Italy](#) [PDF], European Public Service Union and European Trade Union Institute, 2021, p7

⁴⁷ As above

⁴⁸ As above, p8

⁴⁹ [The right to strike in the public services – France](#) [PDF], European Public Service Union and European Trade Union Institute, 2021, p5

In practice, the Parliament widely delegates implementing aspects to administrative regulation by decree, orders or circulars. Such administrative regulation remains under judicial review by administrative courts.⁵⁰

As an example of one of these laws, in public hospitals:

The administrative court has defined, in the context of a hospital strike, the essential needs to be satisfied (CE, 7 January 7, 1976, no. 92162) in relation to physical safety of people; continuity of care and hotel services for hospitalised patients; and conservation of facilities and equipment. Recent case law specifies the obligation to have a safe, minimum number of staff corresponding to that of a Sunday or a holiday, except for services that are reinforced for an increase in activity during these periods.

The director must limit minimum activity only to those services whose operation cannot be interrupted without serious risks, which excludes, for example, outpatient consultations (CE 16 June 1982, CH Forbach, Req 24.016) and, in these services, to the minimum number of staff necessary to deal with emergencies (CE 7 January 1976, CHR Orléans).

The continuity of the public hospital service justifies the director assigning the work of the striking agents, as long as it is a minimum service whose implementation can be verified by the courts (Council of State, 30 November 1998, No. 183359).⁵¹

Employees whose presence is necessary to ensure minimum public services operate may be issued a summons by the director of the organisation, supervised by an administrative judge, or issued a requisition from a judicial authority in cases of an emergency posing a serious risk to public health.

European countries with more extensive laws

The European Public Service Union's article on "The right to strike in the public sector in Europe" describes a number of European countries as having "excessive requirements to provide minimum levels of service during a strike." The article goes on to note several examples of countries with such laws:

In **Romania**, for example, staff in establishments providing health care and social assistance, telecommunications, public radio and television broadcasting services, railway services, public transport, sanitation services, and gas, electricity, heating and water supplies are permitted to strike. However, there must be a minimum level of service corresponding to at least a third of normal activity or services.

In **Slovenia** the requirement to provide minimum services during a strike applies to all public officials. This treats all civil service workers as a uniform category and limits the extent to which they can exercise the right to strike.

In **Hungary**, the number of strikes has declined drastically since strike legislation was amended in December 2010. In "activities of fundamental public concern" – these include public transport, telecommunications, the supply of electricity, water, gas and other utility services – the right to strike

⁵⁰ As above

⁵¹ As above, p8

“must be exercised in a way that will not impede the performance of the services at a minimum level of sufficiency”. The legislation has had a major impact on workers in these sectors, who were previously among the few who were allowed to strike. Since December 2010, there has been only one strike in these sectors. Before the law was amended, there were three or four strikes a year.

In **Latvia**, in the public transport sector, continuity of services had to be ensured in the network of routes to educational establishments, health care establishments and to state and local government offices during opening hours. In the healthcare sector, only the continuity of emergency care was required, whereas scheduled operations and other ordinary day-to-day activities were postponed.

There are also examples of minimum service levels being unilaterally determined by the government or employers, without the involvement of unions. For example, the **Estonian** government has unilaterally determined a list of minimum services. The CEACR said that **Turkish** unions should be involved in determining minimum service in event of industrial action, rather than granting this authority unilaterally to the employer. In **Serbia** the employer has the power to unilaterally determine minimum services after consulting the union.⁵²

3.3 Recent policy proposals on minimum service levels

Conservative 2019 manifesto

The Conservative Party manifesto for the December 2019 general election included a commitment to introduce legislation to “require that a minimum service operates during transport strikes.”⁵³

Queen’s speech 2019

The December 2019 Queen’s Speech included reference to the introduction of a Bill to implement this commitment, saying:

To ensure people can depend on the transport network, measures will be developed to provide for minimum levels of service during transport strikes.⁵⁴

The background briefing notes for the speech explained how the measures would be implemented, saying that this would be based around Minimum Service Agreements and sanctions would not be directed at individual workers:

⁵² [The right to strike in the public sector in Europe](#), European Public Service Union [accessed 12 January 2023]

⁵³ [The Conservative and Unionist Party Manifesto 2019](#), Conservative Party, p27

⁵⁴ [Queen’s Speech December 2019](#), Prime Minister’s Office and HM The Queen, 19 December 2019

Minimum Service Agreements will set out the minimum service pattern to be provided during rail strikes, and the minimum number and nature of staff who shall work to provide that service.

Any strike against a rail employer shall be unlawful unless a Minimum Service Agreement is in place. If the Minimum Service Agreement is not honoured, the strike shall be unlawful and injunctions or damages may be sought against the union in the normal way.

We will consult on how best to implement this in a proportionate way, including ensuring that sanctions are not directed at individual workers, and how this would interact with the wider industrial relations framework.⁵⁵

No such measure was introduced in the 2019-21 session and this measure did not reappear in the 2021 or 2022 Queen's Speeches.

Conservative leadership elections 2022 and the 16-point plan

During the July-September 2022 Conservative Party leadership election, then Foreign Secretary Liz Truss reiterated the Conservative manifesto commitment to minimum transport services during strikes. She also pledged to replace ballot thresholds from the Trade Union Act 2016 with a requirement that 50% of eligible voters had to vote in favour for a strike to be valid, and for this to apply to all workplaces, not just “important public services”.⁵⁶

These proposals were also reflected in a “16 point plan” outlined by then Transport Secretary and current Business Secretary Grant Shapps in an article on 16 August, saying:

Two of the 16 measures have already been implemented – raising damages for unlawful action, and allowing agency workers to temporarily cover for strikers.

Minimum service levels during strike action, widely found in other western European democracies, will follow. We will also require strike ballots to be conducted more often to ensure strikes are genuinely supported by the workforce. We will give those voting better information about the issue in dispute and what the employer has offered to settle it.⁵⁷

⁵⁵ [Queen's Speech December 2019: background briefing notes](#), Prime Minister's Office, 19 December 2019

⁵⁶ [“Liz Truss pledges sweeping changes to UK trade union laws”](#), Financial Times, 25 July 2022

⁵⁷ [“Grant Shapps reveals 16-point plan to 'take on' militant unions grinding Britain to a halt including power to STOP strikes that threaten a national emergency - as commuters face latest walkout tomorrow”](#) Mail online, 17 August

3.4

The Transport Strikes (Minimum Service Levels) Bill 2022-23

On 20 October 2022, the [Transport Strikes \(Minimum Service Levels\) Bill 2022-23](#) was introduced to the House of Commons by the then Transport Secretary Anne-Marie Trevelyan.⁵⁸ This Bill would allow minimum service levels to be introduced during strikes in certain transport services to be specified by the Secretary of State.

Under the Transport Strikes (Minimum Service Levels) Bill 2022-23, the actual minimum service levels would be set either through minimum service agreements, to be agreed between employers and trade unions, minimum service determinations made by the Central Arbitration Committee or, in their absence, minimum service regulations made by the Secretary of State.

This differs from the Strikes (Minimum Service Levels) Bill, under which minimum service levels would all be set directly by regulations (see Part 5.1 below). The two Bills also differ in several other respects beyond the sectors they apply to, including in the commencement and transitional provisions.

No second reading date has been listed for the Transport Strikes (Minimum Service Levels) Bill, which has likely been superseded by the current Strikes (Minimum Service Levels) Bill.

In the Transport Strikes (Minimum Service Levels) Bill's impact assessment, the possibility that unions might stage more strikes was identified as a 'risk'.⁵⁹ The impact assessment also noted that it might be subject to legal challenge under Human Rights legislation, and that it could lead to more action short of a strike:

[A] significant unintended consequence of this policy could be the increase in staff taking action short of striking. Where services are reliant on staff working additional hours, this could have a significant negative impact on the level of services provided and it is important to note that such action could continue even when MSLs are in place, (so it could be that instead of taking strike action, action short of strike becomes a more prevalent form of lawful protest). This could further disrupt the interests of the workers and businesses the legislation seeks to protect.

A similar risk is an increased frequency of strikes following a Minimum Service Level being agreed. This would reduce the overall impact of the policy as although service levels would likely be higher than the baseline, it could mean that an increased number of strikes could ultimately result in more adverse impacts in the long term.

The policy restricts the rights of some workers in the transport sector to strike. To that end it may be that those individuals, or trade unions on their behalf,

⁵⁸ [Transport Strikes \(Minimum Service Levels\) Bill 2022-23](#)

⁵⁹ DfT Policy Paper [The Transport Strikes \(Minimum Service Levels\) Bill impact assessment](#) 20 October 2022, Para 101

seek to challenge the legislation under the Human Rights Act 1998. It is understood that to withstand legal challenge, the policy must ensure that interference with the right to strike is proportionate and goes no further than necessary.⁶⁰

The Department for Transport produced a [Memorandum on European Convention of Human Rights \(ECHR\)](#) [PDF] to accompany the Transport Strikes (Minimum Service Levels) Bill, to address issues that arise under the ECHR relating to the Bill. Paragraph 46 of the Memorandum states that “The Government also considers that it is compatible with Article 14 to extend the MSS requirements only to the transport sector in this Bill and not, for instance, to other important public service sectors”.⁶¹ The Memorandum goes on to explain why the transport sector should be treated differently from other key public services, saying that:

48. In addition, in the case of other key public services, important factors exist to mitigate the impacts of industrial action in those sectors on wider society. These factors are generally absent in the transport sector.

49. For example, in relation to industrial action in emergency and patient care type services, workers need to have regard to the provisions of section 240 of the 1992 Act. This renders unlawful any wilful or malicious breach of contract, where the probable consequences of this will be to endanger life, cause severe injury or expose valuable property to destruction or severe injury. To ensure strike action does not leave employees in breach of this provision, unions in relevant sectors include guidance to their members on their approach to ‘life and limb’ arrangements.

...

50. Similarly, the Fire and Rescue Services Act 2004 (ss29/30) allows the Secretary of State to provide and maintain services and facilities to fire and rescue authorities and grants him the power (by order) to oblige the authorities to use them. It also provides the Secretary of State with the power to give directions to fire and rescue authorities as to the use and disposal of their property or facilities for the purposes of public safety.

51. This power could be used during a period of industrial action should official fire and rescue authority cover to deal with emergencies be insufficient to deal with local risks or where, to ensure public safety, an authority’s equipment needs to be used by others providing emergency fire cover. To avoid a breach of those statutory duties arising, relevant employers have emergency planning arrangements to enable this minimum service to operate as far as possible.

52. In the education sector, there are various statutory duties on schools (and in particular head teachers or governing bodies) regarding the organisation, management, and control of a school, safeguarding and supervision of children (both on and off site) and health and safety duties regarding pupils which will impact on contingency arrangements needed in the event of strike action. For example, DfE Guidance for school leaders, governing bodies and

⁶⁰ DfT Policy Paper [The Transport Strikes \(Minimum Service Levels\) Bill impact assessment](#) 20 October 2022, Para 100-102

⁶¹ [Transport Strikes \(Minimum Service Levels\) Bill - Memorandum on European Convention of Human Rights \(ECHR\)](#), Department for Transport, 2022, para 46

employers handling strike action in schools provides statutory guidance on using volunteers to cover striking teachers and outlines how schools are often organised into 'family groups' enabling them to pool staff to ensure minimum services are delivered, and thus minimising the impact on children.

53. The large number of employers in the education sector would also likely make minimum service arrangements difficult and very burdensome to implement.⁶²

⁶² As above, paras 48-53

4 Industrial action in affected sectors

4.1 Health

Life and limb cover

The Trade Union and Labour Relations (Consolidation) Act 1992 makes it an offence to take industrial action in the knowledge or belief that human life will be endangered, or serious bodily injury caused, as a consequence.⁶³ This is often referred to as ‘preserving life and limb’.

Unions representing health workers set out how they will provide life and limb cover in their guidance to members on industrial action. The RCN [Industrial Action Handbook](#) states:

[...] any RCN industrial action will follow the life preserving care model. Life preserving services include:

- a) emergency intervention for the preservation of life or for the prevention of permanent disability
- b) care required for therapeutic services without which life would be jeopardised or permanent disability would occur
- c) urgent diagnostic procedures and assessment required to obtain information on potentially life-threatening conditions or conditions that could potentially lead to permanent disability.⁶⁴

Certain services may be exempt, or partially exempt, from industrial action by a derogation agreement. These are informal agreements made between employers and unions. [Guidance from NHS Employers](#) explains:

Each union has processes in place for NHS organisations to request local derogations. These should be followed by the organisation requesting derogations. The staffing levels on strike days in derogated areas will be agreed at employer level. Where agreement can't be reached on derogations and this creates a patient safety risk this should be escalated through emergency preparedness resilience and response (EPRR) regional teams. Unions may have escalation/appeals processes that should be followed too in these circumstances

Additionally, to further support a consistent approach to maintaining patient safety during industrial action, NHS England has set out a [common approach](#) for local discussions and provided clarity to patients and staff

⁶³ [s240, Part V, Trade Union and Labour Relations \(Consolidation\) Act 1992 \(legislation.gov.uk\)](#)

⁶⁴ RCN, [Industrial Action Handbook](#) [accessed 12 January 2023]

around service provision on days of planned industrial action through early notification and communication. They have also set the following principles that should underpin derogation discussions:

- Safety of delivery of NHS services - ensuring minimum staff levels are available to deliver emergency, immediate life, limb or organ-saving intervention.
- Safety of staff should be protected - for those working during industrial action.
- Safety of the public is maintained - ensuring appropriate staff levels are available to deliver care to the public in case of a major incident at national or local level.
- Professional regulatory advice is provided and followed.
- Life preserving services will continue - with the necessary number of professionals.
- Derogations are to be agreed locally to reflect local population and service needs.⁶⁵

During strikes a [process of derogation](#), where people and services are made exempt from strike action, is used to maintain the balance between causing disruption and maintain patient safety.⁶⁶

Local systems have also been asked to discharge patients who are medically fit ahead of strike action. NHS England said plans are in place to ensure life-saving care continues and to minimise disruption.⁶⁷

During strike action, patients are advised to continue to use GP services as normal and to call 999 for medical and mental health emergencies. Ambulances will continue to respond where there is an immediate risk to life. [Contingency measures](#) in place to support patient safety include support from the military, community first responders and extra call handlers.⁶⁸

2022/23 pay dispute

Industrial action in the health sector began in winter 2022 after numerous health worker unions rejected the Government's 2022/23 pay offer.

The Government announced workers on the Agenda for Change⁶⁹ pay scale, including nurses, would receive a £1,400 consolidated uplift to their full-time equivalent salary, backdated to 1st April 2022. The uplift is enhanced for those

⁶⁵ NHS Employers, [Managing industrial action - A guide for managers](#), 13 December 2022

⁶⁶ RCN, [Derogation: how to keep patients safe during strikes](#), 2 December 2022

⁶⁷ NHS England, [NHS tells patients to seek emergency care as needed during latest industrial action](#), 10 January 2023

⁶⁸ DHSC, [NHS industrial action - media fact sheet](#), 30 November 2022

⁶⁹ Agenda for Change (AfC) is the grading and payment system for most NHS staff, excluding doctors, dentists and senior managers. It was introduced in 2004 and replaced the 'Whitly System'.

at the top of Band 6 and at Band 7 so it is equal to a 4% uplift.⁷⁰ Doctors and dentists received a 4.5% pay rise.⁷¹

The pay offers are in line with recommendations from the independent review bodies on NHS pay. The [NHS Pay Review Body](#) (NHSPRB) makes recommendations for staff under the AfC contract.⁷² The [Review Body on Doctor's and Dentist's Remuneration](#) (DDRB) makes recommendations on the pay of most NHS doctors and dentists.⁷³

Final decisions on the implementation of recommendations made by the bodies are the remit of the UK Government, for England, and ministers in the devolved nations, for the rest of UK.⁷⁴ Unions have accused the Government of “hiding behind the pay review body”⁷⁵ and 14 unions have said they will [boycott the pay review process](#) for 2023/24.⁷⁶

Unions have said the pay rise is a pay cut in real terms and too little in the face of the rising cost of living, as well as hampering the recruitment and retention of NHS staff.⁷⁷

Unions and their members have also said that industrial action goes beyond demands for a pay rise and that health workers are striking to improve patient safety, which is being compromised by inadequate staffing levels and staff burnout.⁷⁸

Industrial action

Unions undertaking strike action range from those with members of one profession – such as the Royal College of Nursing (RCN) – to unions representing workers from across the NHS – such as Unite.

⁷⁰ DHSC, [NHS staff to receive pay rise](#), 19 July 2022

⁷¹ As above

⁷² For full 2022/23 pay recommendation see NHS Pay Review Body, [NHS Pay Review Body Thirty-Fifth Report: 2022](#), 19 July 2022

⁷³ For full 2022/23 pay recommendation see DDRB, [Review Body on Doctors' and Dentists' Remuneration 50th Report: 2022](#), 19 July 2022

⁷⁴ See section 4 of NHS Employers, [NHS Terms and Conditions of Service Handbook](#), updated August 2022, para 40.25

⁷⁵ Unison, [Government can stop strikes and strengthen NHS if it makes an effort with pay](#), 11 December 2022

⁷⁶ Financial Times, [Trade unions vow to boycott NHS pay review body](#), 11 January 2023

⁷⁷ See Unison, [‘Why Vote Yes? — Vote Yes for the NHS’](#) (accessed 16 November 2022); Royal College of Midwives, [‘England and Wales - NHS pay award and next steps’](#) (accessed 16 November 2022); British Dietetics Association, [‘NHS England and NHS Wales Pay 2022’](#)

⁷⁸ See RCN Blog, [‘Striking for patient safety’](#), 13 October 2022; Evening Standard, [‘Nurses are at breaking point – we’re striking because patient safety has been lost and we can’t afford to eat’](#), 13 December 2022; Nursing in Practice, [‘RCN strikes live: Nurses walk out over pay and patient safety concerns’](#), 15 December 2022; The Guardian [‘This is as much about patient safety as pay’: NHS faces wave of strikes as more unions vote’](#), 27 November 2022

In December 2020, members of the Royal College of Nursing (RCN) took strike action in England, Northern Ireland and Wales. Members of the RCN in England [will strike again in January 2023](#).

The RCN wants to secure a pay rise of 5% above RPI inflation as part of their [Fair Pay for Nursing](#) campaign. The Government said these demands are “neither reasonable nor affordable.”⁷⁹

Ambulance workers represented by the unions [Unison](#), [Unite](#) and [GMB](#), also went on strike in December 2022 and are striking in January 2023.

Members of the British Medical Association Junior Doctors Committee [voted in favour of a ballot](#) to take place in January 2023 after their demand for pay restoration to 2008/9 levels was not met.⁸⁰ [Junior doctors will strike for 72 hours](#) in March if the latest ballot is successful.

Unions representing Allied Health Professionals, including [dieticians](#), [pharmacists](#) and [physiotherapists](#), are also considering or planning to take strike action.

Health worker unions have also taken strike action in Wales and Northern Ireland and a mandate for action has been secured in Scotland.⁸¹ The Scottish Government made an [improved pay offer](#) in November 2022, which was [accepted by some unions](#).⁸² Whilst health policy is devolved, The Strikes (Minimum Service Levels) Bill will apply across England, Scotland and Wales.⁸³

4.2

Fire and rescue

In the last two decades, there have been two national strikes in fire and rescue services. The most recent national strike took place between 2013 and 2015 and was related to pension action.⁸⁴ Prior to this, the last national strike was in 2002-2003 over pay.⁸⁵

In March 2022, before leaving his post at the end of his tenure, former Chief Inspector at HM Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) Sir Thomas Winsor advocated for reform of industrial relations arrangements, including the possibility of removing the right to strike from

⁷⁹ DHSC, ‘[Steve Barclay: nurses going on strike is in nobody’s best interest](#)’, 12 November 2022

⁸⁰ British Medical Association, ‘[Junior doctors plan ballot for industrial action in early January](#)’, 3 October 2022

⁸¹ BBC, [NHS bosses fear impact of second ambulance strike](#), 11 January 2023

⁸² BBC, [Two NHS Scotland unions accept 7.5% pay deal](#), 12 January 2023

⁸³ HM Government, [Strikes \(Minimum Service Levels\) Bill explanatory notes](#) (PDF), 10 January 2023, p3; see Annexe A for more detail on Territorial extent and application in the United Kingdom.

⁸⁴ This strike only involved firefighters and not control staff.

⁸⁵ Fire Brigades Union, [FBU strike ballot opens](#), 5 December 2022

firefighters.⁸⁶ He argued that “the continued threat of industrial action doesn’t help anyone, least of all the public.”⁸⁷

He cited lengthy and “restrictive” industrial disputes over conditions during the Covid-19 pandemic, stating it prevented Fire and Rescue services from being able to adapt quickly and deploy firefighters to support the pandemic response such as supporting the national vaccination programme.⁸⁸ The Fire Brigades Union disagreed with this characterisation regarding industrial negotiations between fire services and unions, arguing these were important to keep firefighters and staff safe during the pandemic.⁸⁹

Possible further strike action

In June 2022, firefighters and firefighter control staff were offered a 2% annual pay increase. Following consultation with its membership, the Fire Brigades Union (FBU) rejected the offer. The FBU also announced it would prepare for the possibility of strike action. Matt Wrack, general secretary of the FBU said:

Taking strike action is always a last resort. But our employers are increasingly leaving us with no choice. And there is huge anger among firefighters at falling pay.⁹⁰

In October, the FBU announced that it had received an increased pay offer of 5%. After consultation this was also rejected.⁹¹ Matt Wrack said with inflation, this would amount “the biggest pay cut in a single year for many years. That’s after more than a decade of stagnating wages.”⁹²

Following the rejection of the second pay offer, on 5 December 2022, the FBU opened a postal ballot to allow members to vote on taking strike action in 2023. The ballot is due to close on 30 January 2023. The FBU reiterated that strike action was a last resort but said it was “running out of options”, having “held talks with and written letters to many different parties” to secure an increased pay offer that addresses the cost-of-living crisis. Matt Wrack said part of the responsibility of running a fire and rescue service is paying its staff “properly”.⁹³

⁸⁶ Sir Thomas Winsor, [Home Affairs Committee Oral evidence: State of the fire and rescue services](#), [HC 1168], 2 March 2022

⁸⁷ HMICFRS, [State of Fire and Rescue – The Annual Assessment of Fire and Rescue Services in England 2021](#) (PDF), 15 December 2021, p21

⁸⁸ As above; HMICFRS, [Responding to the pandemic: The fire and rescue service’s response to the COVID-19 pandemic in 2020](#) (PDF), March 2021, p1. **Note:** these disputes did not result in strike action.

⁸⁹ Fire Brigades Union, [Attack on workers’ rights](#), 18 May 2022

⁹⁰ Fire Brigades Union, [Firefighters prepare for ballot for strike action over pay](#), 6 September 2022

⁹¹ The FBU held a consultative ballot of its members and the 5% pay offer was rejected by 79% (based on a 78% turnout).

⁹² Matt Wrack, [The new pay offer for firefighters still isn’t enough. We can’t go on like this](#), The Times, 7 October 2022

⁹³ Fire Brigades Union, [FBU strike ballot opens](#), 5 December 2022

In its position statement, the National Fire Chiefs Council (NFCC) said the funding for firefighter pay, does not reflect the current or future role of the firefighter and “is unsustainable when balanced against the ambition to create an FRS, with firefighters and staff, that is fit for the future.” It added:

The current pay situation is significantly exacerbated by inflation and the cost of living crisis gripping the country. There is a real risk of an extended period of industrial action if the situation cannot be resolved. This will put communities at increased risk, whilst damaging the excellent reputation of the FRS.⁹⁴

4.3

Education

School staff

Recent industrial action – England

School staff and leadership unions are campaigning for pay increases in line with current inflation, whilst raising concerns about school budgets, given rising costs. They argue that insufficient funding has been made available to schools, to cover the higher-than-expected teacher pay awards in the 2022/23 academic year.

The National Association of Head Teachers (NAHT) confirmed on 18 October 2022 that it would formally ballot members on industrial action for the first time in its history, [citing real-terms pay cuts and funding that was “inadequate to meet schools’ needs”](#).⁹⁵ The National Education Union (NEU) [is formally balloting members](#) “asking all to vote in favour of strike action to win a fully funded, above-inflation pay rise”.⁹⁶

The NASUWT has also balloted members on industrial action, but on 12 January 2023 it was announced that the ballot did not meet the turnout threshold; 42% of members returned ballot papers. Of those that did, 9 in 10 were in favour of strike action.

All three union ballots close during the week commencing 9 January 2023.

The Association of School and College Leaders (ASCL) held a consultative ballot which closed in December 2022. 54% of eligible members voted, with 69% in favour of moving to a formal ballot on strike action, and 74% in favour of a formal ballot on action short of a strike. It subsequently said it was considering next steps.⁹⁷

⁹⁴ NFCC, [Position statement: Fire & Rescue Service Pay 2022](#) (PDF), August 2022

⁹⁵ National Association of Head Teachers, [Our pay and funding campaign](#), undated

⁹⁶ National Education Union, [Pay campaign](#), undated

⁹⁷ Association of School and College Leaders, [Results of ASCL consultative ballot on industrial action in England](#), 6 January 2023

On 11 January 2023, the Institute for Fiscal Studies published [analysis of teacher pay in England](#). On what the 2022/23 pay award meant, it said:

[The] changes represent some of the biggest cash-terms increases in teacher salaries for over 15 years. However, with CPI inflation currently expected to be about 10% in 2022–23, these increases will still represent real-terms salary cuts. As shown in Figure 1, salaries for teachers on most pay grades are expected to fall by 5% in real-terms in 2022–23. Even with larger increases, new and inexperienced teachers are likely to see real-terms salary cuts of 1-3% in 2022–23.

These cuts come on top of a long period of real-terms reductions in teacher salaries dating back to 2010. As shown in Figure 1, salaries for more experienced and senior teachers have fallen by 13% in real-terms since 2010. Teachers in the middle of the salary scale have experienced cuts of 9-10% since 2010. Starting salaries have fallen by 5% in real-terms.⁹⁸

Government guidance on strike action in schools

The DfE has published non-statutory [guidance for schools in England on managing strike action](#). This was last updated in 2016, although press reports suggest that new guidance is due to be published shortly.⁹⁹

Recent industrial action – Scotland & Wales

School strike action is taking place across Scotland in early 2023, for members of the Educational Institution of Scotland (EIS), Association of Head Teachers and Deputies Scotland (AHDS), the Scottish Secondary Teachers Association (SSTA), and NASUWT.

This follows earlier strike action in late 2022, also by EIS, AHDS, NASUWT, and SSTA members.¹⁰⁰

NASUWT balloted teachers in England and Wales together, but as noted above, did not reach the turnout threshold. NAHT's ballot includes teachers in Wales and closed on 10 January 2023. The National Education Union (NEU) is also balloting teachers in Wales; at the time of writing, the ballot remained open. UCAC's¹⁰¹ ballot closed on 12 January 2023 and results are not yet available.

Further education staff

Recent industrial action - England

In September and October 2022, staff at 26 further education colleges undertook ten days of strike action over pay following a ballot of [University](#)

⁹⁸ Institute for Fiscal Studies, [What has happened to teacher pay in England](#), 11 January 2023

⁹⁹ [‘No ‘minimum safety levels’ for school strikes \(just yet\)’](#), Schools Week (online), 5 January 2023

¹⁰⁰ Educational Institute of Scotland, [EIS to call Teachers out on Strike Action on 24 November](#). 10 November 2022;

¹⁰¹ Undeb Cenedlaethol Athrawon Cymru (meaning National Union of Teachers of Wales)

[and College Union](#) (UCU) members.¹⁰² This was described by the UCU as the “biggest set of strikes ever in further education,”¹⁰³ and followed similar strikes at some colleges in 2021.¹⁰⁴

On Wednesday 30 November, NEU teacher members who work in sixth form colleges went on strike over pay. This affected 77 colleges across England.¹⁰⁵ This followed strike action by NEU members at 26 colleges in 2019 over pay, employment conditions and workload, and cuts to further education funding.¹⁰⁶

Across England, further education staff at a number of individual colleges have also been striking since 2021 over disputes about pay and other issues, including “fire and rehire” plans, where staff are made to reapply for their jobs on contracts which often contain worse conditions.¹⁰⁷

Recent industrial action - Scotland

In April and May 2022, members of the Educational Institution of Scotland-Further Education Lecturers Association (EIS-FELA), took strike action over pay, seeking an award that “recognise[d] their efforts during the COVID 19 Pandemic.”¹⁰⁸

Reasons for the disputes

Industrial action has generally been driven by opposition to pay awards from unions and college staff.

A UCU report based on a survey of over 2,700 workers from more than 200 colleges across England showed 8 in 10 of respondents suffer from financial insecurity.¹⁰⁹ The UCU also argues pay has fallen 35% behind inflation since 2009, following a series of below inflation pay awards, and college lecturers earn an average of £9,000 less than schoolteachers.¹¹⁰

The UCU has called for pay rises, improved job security, reduced workload, and the closure of pay gaps for disabled staff and Black staff in particular.¹¹¹

¹⁰² UCU, [Unprecedented 10 days of strike action to hit English colleges over low pay](#), 12 September 2022.

¹⁰³ UCU, [Unprecedented 10 days of strike action to hit English colleges over low pay](#), 12 September 2022.

¹⁰⁴ UCU, [Staff to strike at 10 colleges](#), 27 September 2021.

¹⁰⁵ NEU, [Sixth Form Colleges - NEU teacher members strike](#), 30 November 2022.

¹⁰⁶ NEU, [Strikes in sixth form colleges](#), 4 November 2019.

¹⁰⁷ See for example, UCU, [Three days of strikes begin Monday at Sparsholt College over low pay](#), 6 January 2023; UCU, [Staff at Truro & Penwith College begin six days of strike action today in pay dispute](#), 1 December 2022; UCU, [Richmond upon Thames College to face 14 days more strike action over fire & rehire plans](#), 28 June 2022.

¹⁰⁸ EIS, [Scotland's College lecturers begin strike action on pay](#), 19 April 2022.

¹⁰⁹ UCU, [On the breadline. The cost of living crisis for England's college workers](#) (PDF), July 2022.

¹¹⁰ UCU, [On the breadline. The cost of living crisis for England's college workers](#) (PDF), July 2022.

¹¹¹ UCU, [On the breadline. The cost of living crisis for England's college workers](#) (PDF), July 2022.

The NEU has also highlighted the effect that real terms pay cuts have had on staff and colleges. In November 2022, the joint general secretary of the NEU, Dr Mary Bousted, said:

These cuts are driving an exodus from the profession whilst providing little incentive to those seeking a career in teaching. The overwhelming majority of teachers in sixth form colleges will receive a 5% pay rise this year, which simply doesn't deal with the effects of inflation. The Government is failing to act to protect the pay and living standards of our members, and it is in the gift of the education secretary to make that change.¹¹²

Higher education staff

Recent industrial action

Between February 2018 and March 2020, the [University and College Union](#) (UCU) coordinated 36 days of strikes across university campuses over two separate disputes.

The first dispute concerned a longstanding disagreement over reforms to pensions and the second covered several issues related to pay and working conditions. Further industrial action was curtailed by the Covid-19 pandemic, but it resumed with three waves of strikes in December 2021 and between February and April 2022. Some branches of [Unison](#), another union with members from the higher education sector, also took strike action in February and March 2022.

In July 2022, the UCU confirmed it would ballot all higher education members for potential strike action in November 2022. For the first time in these disputes, the ballots were aggregated, which meant if the nationwide turnout exceeded 50%, and there was majority support for a “yes” vote, so staff at all universities across the UK could take strike action, regardless of the results of their local branches.

Following “yes” votes in both the pension and pay and working conditions ballots, another wave of strike action took place in November 2022.¹¹³ On 12 January 2023, the UCU announced more than 70,000 staff at 150 universities across the UK will strike for 18 days between February and March 2023.¹¹⁴

Reasons for the disputes

The disputes between university employers and staff that have prompted industrial action are longstanding.

The first concerns changes to the pension scheme for many university staff – the Universities Superannuation Scheme (USS) – which will mean

¹¹² NEU, [Sixth Form Colleges - NEU teacher members strike](#), 30 November 2022.

¹¹³ UCU, [Biggest ever university strikes set to hit UK campuses over pay, conditions & pensions](#), 8 November 2022.

¹¹⁴ UCU, [Universities to be hit with 18 days of strike action before April](#), 12 January 2023.

increased contributions and reduced benefits.¹¹⁵ Assessments of the pension scheme's financial health had suggested a significant shortfall between the scheme's income and commitments, and changes would be required to ensure it remained viable. There have been disagreements over the way the scheme was valued.

A parallel dispute concerns several issues related to pay and working conditions. These include pay levels, gender and minority ethnic pay gaps, staff workload, and insecure contracts.¹¹⁶ The UCU has estimated that, since 2009, the value of pay in higher education has fallen by approximately 25%, accounting for inflation.¹¹⁷

In March 2022, a [report published by the UCU](#) (PDF), based on a survey of almost 7,000 university staff at over 100 institutions, said two-thirds of respondents were likely or very likely to leave the university sector in the next five years over pension cuts, and pay and working conditions.¹¹⁸

The UCU is demanding:

- A reverse to a reduction in pension benefits.
- A pay increase of at least inflation (RPI) plus 2%, or 12%, whichever is higher.
- Nationally agreed action to close gender, ethnicity, and disability pay gaps.
- An agreed framework to eliminate the use of precarious contracts, such as zero-hours employment.
- Nationally agreed action to address excessive workloads and unpaid work, including addressing the effect that excessive workloads are having on workforce stress and ill-health.

Steps to mitigate the effects of industrial action on students

Universities are expected to take steps to avoid or limit disruption to students. This might include making up for any lost teaching or learning time and ensuring students are not disadvantaged if changes must be made to assessments.

Whether students are entitled to tuition fee refunds following industrial action depends on what other actions a university has taken to minimise lost learning opportunities. Students must make any complaints to their university in the first instance. If students are not content with the outcome of a

¹¹⁵ UCU, [FAQs: USS pensions dispute](#).

¹¹⁶ UCU, [FAQs: Pay and working conditions dispute](#).

¹¹⁷ UCU, [FAQs: Pay and working conditions dispute](#).

¹¹⁸ UCU, [UK higher education: A workforce in crisis](#) (PDF), March 2022.

complaint, or if they believe it has been poorly handled, they can contact the relevant higher education ombuds service for their country.¹¹⁹

The [Office for Students](#) (OfS) is the regulator of higher education in England. It does not get involved in industrial disputes, nor comment on their substance, but its remit to protect students' interests and uphold standards remains during periods of industrial action. During periods of industrial action, the OfS monitors universities to ensure they continue to meet their [conditions of registration](#) (and are thus eligible to receive public funding) and obligations under consumer protection law.

In response to higher education industrial action, the Government has said it plays no role in disputes because of the autonomy of universities. In January 2023, it said:

Universities are autonomous and responsible for the pay and pension provision of their staff. While the department plays no role in such disputes, we hope all parties can reach an agreement that delivers good value for students, staff and the universities, so that industrial action can be avoided.¹²⁰

4.4

Transport

Railway industrial disputes

Since Spring 2022 there has been a national industrial dispute involving rail workers in Great Britain, represented by the following trade unions:

- The National Union of Rail, Maritime and Transport Workers (RMT) who represent signallers, maintenance workers, ticket collectors, cleaners and some train drivers¹²¹
- The Associated Society of Locomotive Engineers and Firemen (ASLEF) who represent most train drivers¹²²
- The Transport Salaried Staffs' Association (TSSA), who represent managers, control centre staff, engineers, ticket office and gate staff¹²³

Their principal employers in the dispute are Network Rail and the train operating companies under contract with the Department for Transport (DfT).

¹¹⁹ In England and Wales, the independent student complaints ombuds service for higher education is the [Office of the Independent Adjudicator](#) (OIA). In Scotland, it is the [Scottish Public Services Ombudsman](#) (SPSO).

¹²⁰ [PQ 114839 \[Higher Education: Conditions of Employment and Industrial Disputes\] 20 December 2022](#).

¹²¹ Chronicle Live [Why rail workers are on strike and what the RMT has been offered to settle dispute](#) 21 June 2022

¹²² ASLEF Press Release [Train Drivers' Union Announces New Strike Date](#) 20 December 2022

¹²³ TSSA [About TSSA](#) [Accessed 11 January 2023]

Network Rail own, maintain and operate most of the infrastructure on the railway (eg tracks, stations, signalling etc), and employ staff that support the railway infrastructure, not the trains that are on the railway. Network Rail is a publicly-owned company, funded primarily by the DfT.¹²⁴

The Train Operating Companies (TOCs) run the actual train franchises in Great Britain and employ conductors, drivers, and inspectors. Most TOCs are privately owned, although a few (LNER, Northern, Southeastern) are effectively owned by State via the DfT Operator of Last Resort (OLR) scheme.¹²⁵

TOCs are represented by the industry body, the Rail Delivery Group (RDG).¹²⁶ Since the Covid pandemic, public subsidy for the TOCs has increased substantially and the DfT now takes revenue risk, rather than the TOCs themselves who did so under pre-Covid contracts.¹²⁷

In May 2022, the RMT outlined its demands in the dispute as follows:

- job security with a guarantee of no compulsory redundancies;
- any changes to structures, working practices, or conditions are agreed with the union, not imposed;
- that members receive a negotiated pay increase that addresses the rising cost of living.¹²⁸

TSSA and ASLEF have similar demands.¹²⁹

Network Rail and the RDG have said they are limited in the pay deals they can offer due to the financial challenges the railway faces, created by the Covid pandemic and changing travel patterns since. They have also emphasised the need for modernisation of the railways.¹³⁰

The RMT has claimed that the root cause of the dispute is a decision by Government to ‘cut’ £4bn of rail funding - £2bn from national rail and £2bn from Transport for London.¹³¹ This ‘cut’ from operational spending was also cited in evidence given by the RMT to the Transport Committee in July 2022.¹³² The RMT have argued that without ministers providing additional funding, it is

¹²⁴ Network Rail [How we're funded](#) [Accessed 24 November 2022]; DfT/Network Rail [Network Rail framework agreement](#) 21 June 2019

¹²⁵ DfT Guidance [Public register of rail passenger contracts](#) 19 August 2022

¹²⁶ Rail Delivery Group [About Us](#) [accessed 24 November 2022]

¹²⁷ See Commons Library Briefing CBP-8731 [Rail FAQs](#) Q. 1.3 How is the railway in Great Britain funded?; PQ 104407 [[Train Operating Companies: Strikes](#)], answered 20 December 2022; DfT [Public register of rail passenger contracts](#) 8 December 2022

¹²⁸ RMT Press Release [UPDATE ON NATIONAL RAIL DISPUTE](#) 31 May 2022

¹²⁹ ASLEF Press Release [ASLEF Announces Strike Date](#) 14 July 2022; TSSA [Our Rail Our Future](#) [Accessed 12 January 2022]

¹³⁰ Network Rail press notice, [‘Talk, not walk’ says Network Rail in response to RMT vote for industrial action](#), 24 May 2022; RDG Press Release [Rail Delivery Group responds to further RMT strike dates](#) 19 October 2022

¹³¹ RMT [Press Release](#) 18 June 2022

¹³² Transport Committee [Oral evidence: Rail strikes](#), HC 581 13 July 2022, Q59 [PDF]

unlikely that Network Rail and the RDG are able to make a pay settlement which would be satisfactory for rail workers.¹³³

Pay disputes between the unions and ScotRail, Transport for Wales, and MerseyRail were settled over the course of 2022.¹³⁴ In evidence given to the Transport Committee in July 2023, union leaders said they had made pay settlements or were making progress toward settlements with all employers except those under DfT contracts.¹³⁵

The current state of play in the national strikes was discussed in oral evidence to the Transport Committee from the RMT, ASLEF TSSA, Network Rail and the RDG on 11 January 2023.¹³⁶

Other transport industrial disputes

There have also been separate industrial disputes between the RMT and Transport for London (TfL) which have led to six days of tube strikes in 2022, and which remain unresolved.¹³⁷ There are also ongoing pay disputes between the unions Prospect and TSSA and Rail for London Infrastructure, and between Unite and Abellio buses, which have led to strikes on London’s Elizabeth Line and parts of London’s bus network, respectively.¹³⁸

National rail strikes and Government response

On 24 May 2022, the RMT balloted its members who voted in favour of strike action “in the biggest endorsement for industrial action by railway workers since privatisation”. 71% of those balloted took part in the vote with 89% voting in favour of strike action.¹³⁹

An initial three days of RMT industrial action took place on 21, 23 and 25 June 2022.¹⁴⁰ Following ballots of their members, ASLEF and the TSSA joined RMT in subsequent strike dates in July, August, October, November, December 2022, and January 2023.¹⁴¹

¹³³ The Guardian [UK rail strikes – the truth behind the claims and counter-claims](#), 21 June 2022

¹³⁴ ScotRail Press Release [ASLEF members vote to accept ScotRail pay deal](#) 11 July 2022; BBC News [ScotRail strike off as RMT staff accept pay offer](#) 24 November 2022; RailAdvent RMT, ASLEF and TSSA [Unions agree pay deal with Transport for Wales](#) 16 December 2022; The Guardian [Almost no trains will run across England on Thursday as drivers strike](#)

¹³⁵ Transport Committee [Oral evidence: Rail strikes](#), HC 581, 13 July 2022, Q3 [PDF]

¹³⁶ Transport Committee [Formal meeting \(oral evidence session\): Rail strikes](#) 11 January 2023

¹³⁷ Evening Standard [Tube strike to go ahead on Thursday after last-ditch talks with London Underground bosses fail](#), RMT announces 8 November 2022

¹³⁸ BBC News [Elizabeth line partially closes and buses disrupted due to strike action](#) 12 January 2023

¹³⁹ RMT Press Release [RMT DECLARES OVERWHELMING MANDATE FOR NATIONAL STRIKE ACTION ON RAILWAYS](#) 24 May 2022

¹⁴⁰ Evening Standard [Train strikes June 2022: Which companies will be affected and when do they end?](#) 26 June 2022

¹⁴¹ National Rail Enquiries [Industrial Action on National Rail](#) Updated 9 January 2023; ASLEF Press Release [Train Drivers' Union Announces New Strike Date](#) 20 December 2022;

On 20 October 2022, the Transport Strikes (Minimum Service Levels) Bill was introduced to Parliament by the then Transport Secretary Anne-Marie Trevelyan.¹⁴² In a press release, the Government said that “the first wave of rail strikes alone, in June 2022, cost the UK economy nearly £100 million” and the Bill would mean that “even during the most disruptive of strikes, a certain level of services will still run”.¹⁴³

A second reading date for the Bill has not, to date, been announced and it is likely the Bill has been superseded by the current Bill.

In accordance with legal requirements,¹⁴⁴ on 16 November 2022 the RMT balloted its members for a new strike mandate covering the next six months.¹⁴⁵ New strike mandates were also approved in ballots by members of TSSA and ASLEF in November and December 2022.¹⁴⁶

4.5

Nuclear decommissioning and waste management

The body responsible for the decommissioning of nuclear installations and the management of radioactive waste and spent fuel is the Nuclear Decommissioning Authority (NDA). It is a non-departmental public body created by the Energy Act 2004, sponsored and funded by the Department for Business, Energy and Industrial Strategy (BEIS). UK Government Investments (UKGI) provides strategic oversight of the NDA’s corporate governance and performance. The NDA’s “mission” is to “clean-up the UK’s earliest nuclear sites safely, securely and cost effectively.”¹⁴⁷

The NDA has offices across the UK, in Cumbria, Warrington, Dounreay, Harwell and London, which together employ approximately 380 permanent staff. Since 2021 the NDA has moved towards a group (subsidiary) operating model. This means that it has a number of operating company subsidiaries that sit under it (these are Sellafield, Magnox with Dounreay, Nuclear Waste Services and Nuclear Transport Solutions), as well as a number of other businesses that support its mission (such as NDA archives and NDA properties). Together there are approximately 16,900 employees across the NDA group.¹⁴⁸

¹⁴² [Transport Strikes \(Minimum Service Levels\) Bill 2022-23](#)

¹⁴³ DfT Press Release [New bill to keep Britain moving during transport strikes](#) 20 October 2022

¹⁴⁴ [Section 234 of the Trade Union and Labour Relations \(Consolidation\) Act 1992](#)

¹⁴⁵ RMT Press Release [RMT RENEWS NATIONAL RAIL STRIKE MANDATE FOR ANOTHER 6 MONTHS](#) 16 November 2022

¹⁴⁶ TSSA Press Release [TSSA re-ballots at three more rail companies](#) 29 November 2022; ASLEF Press Release [BALLOT RESULTS: TRAIN DRIVERS VOTE OVERWHELMINGLY TO CONTINUE TO STRIKE](#) 7 December 2022

¹⁴⁷ GOV.UK, [Nuclear Decommissioning Authority: about us](#) [accessed 10 January 2022]

¹⁴⁸ Nuclear Decommissioning Authority, [Annual Report and Accounts 2021 to 2022](#), 14 July 2022

The NDA group uses established formal bargaining and consultation mechanisms to engage with trade union representatives.¹⁴⁹ The recognised trade unions are Prospect, Unite, General Municipal & Boilermakers (GMB), Associated Society of Locomotive Steam Enginemen and Firemen (ASLEF), Transport Salaried Staff Association (TSSA).¹⁵⁰

Ballots for strike action in recent years have been limited to specific groups of workers at specific sites. For example, in April 2019 contractors involved in cleaning, security and waste management, represented by the Unite union at the Sellafield nuclear reprocessing site, voted for strike action in relation to a pay dispute.¹⁵¹ Previously in November 2017 strike action was voted for by the Unite union representing craft workers at the Sellafield site, again in a dispute over a pay settlement.¹⁵² The Unite union and Sellafield management emphasised at the time how safety and security would be maintained and prioritised through maintaining a skeleton staff on site.¹⁵³

4.6

Border security

“Border security” services are within the scope of the Bill. The Bill does not define the term and it is unclear whether the provisions would only apply to the Home Office’s [Border Force](#) command or would also affect industrial action taken in other parts of the border and immigration system, such as by union members in UK Visas and Immigration, Immigration Enforcement, and HM Passport Office.

PCS union members employed in the Home Office’s Border Force took eight days of strike action at various UK air and sea ports between 23–26 and 28–31 December 2022.¹⁵⁴ The strikes were part of the ongoing PCS industrial action across the civil service in support of its claim for a 10% pay rise for 2022 and related proposals on jobs and pensions.

Some Border Force staff are represented by the Immigration Services Union (ISU), a specialist union for borders, immigration, and customs civil servants. ISU members are not currently taking industrial action. They had voted for strike action (84.5% in favour) in support of their 8% pay claim for 2022, but the turnout (43.1%) did not meet the 50% threshold required in law. When the result was announced in late November 2022, the ISU secretariat said it was “very seriously considering” a further ballot.¹⁵⁵

¹⁴⁹ Nuclear Decommissioning Authority, [Annual Report and Accounts 2021 to 2022](#), 14 July 2022, p60

¹⁵⁰ Nuclear Decommissioning Authority [Strategy effective from March 2021](#), 18 March 2021

¹⁵¹ Resource, “[Workers at Sellafield vote to strike](#)”, 8 April 2019

¹⁵² Cumbria Crack, “[Sellafield workers set to strike next week](#)”, 1 November 2017

¹⁵³ Cumbria Crack, “[Sellafield workers set to strike next week](#)”, 1 November 2017

¹⁵⁴ PCS, [Border Force officers to strike over Christmas](#), 7 December 2022

¹⁵⁵ ISU, [Membership update 03.11.2022 – ISU Industrial Action Ballot Results](#) (accessed 10 January 2023)

So far, the PCS Border Force strikes have affected the staffing of passport controls at Birmingham, Cardiff, Gatwick, Glasgow, Heathrow and Manchester airports, and at the Port of Newhaven.

There wasn't a voluntary minimum service level agreement and the Government warned travellers to expect delays and disruption during the strike period.¹⁵⁶ But widespread significant delays did not materialise.

As well as using trained volunteers from across the civil service, 600 military service personnel provided cover during the strikes.¹⁵⁷ They were unable to exercise Border Force officers' powers to detain arriving travellers because they had not received the necessary training. This led to some criticisms that people who would have otherwise been stopped were "waved through" during strike periods.¹⁵⁸ The Home Office rejected the suggestion that security had been compromised, saying that non-striking Border Force staff remained available to authorise decisions to detain where necessary.¹⁵⁹

¹⁵⁶ GOV.UK, news, '[Arrivals to the UK warned to prepare for disruption at the border](#)', 21 December 2022

¹⁵⁷ [PQ UIN HL4508](#) [Military Aid], answered on 9 January 2021

¹⁵⁸ The Guardian, [UK Border Force strike: armed forces cannot detain people, emails reveal](#), 24 December 2022

¹⁵⁹ Sky News, '[Home Office denies passengers 'waved through' airports without full checks after claims by striking border staff](#)', 25 December 2022

5 The Bill

5.1 Clause 1 and the Schedule

Clause 1 together with the Schedule would amend the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA 1992). Part 1 of the Schedule would insert new sections 234B-234G into Part 5 of TULRCA 1992.

Minimum service regulations

New section 234B would grant the Secretary of State powers to make “minimum service regulations” which could set required minimum service levels during strikes in any services within six sectors:

- (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;
- (f) border security.

These are the same six sectors that define the maximum extent of “important public services” in the Trade Union Act 2016, with the addition of “rescue” to “fire services” and the expansion of “education of those aged under 17” to all “education services”.¹⁶⁰

This new section would allow such minimum service regulations to affect any strike taking place from the day after they came into force, even if the relevant strike ballot had taken place before this Bill was passed.

Work notices

New section 234C would allow an employer to give a “work notice” to a trade union concerning any strike relating to a service subject to minimum service regulations. This would have to be given at least 7 days before the earliest strike date to which it relates, unless the union and employer agreed on a

¹⁶⁰ See [section 3\(2E\), Trade Union Act 2016](#) for comparison

later date. Once given, notices could be varied up until the end of the 4th day before the strike date.

Work notices would have to specify which workers the employer required to work during the strike and what work they would have to perform in order to ensure the service levels required by the minimum service regulations. They would not be permitted to request more workers than “reasonably necessary” to meet the minimum service regulations.

Work notices would not be permitted to request workers on the basis of whether or not they were trade union members.

Employers would be required to consult with and “have regard to” the views of trade unions before giving or varying work notices.

New section 234D would ensure that, where employers had to name individual workers to unions in work notices, this would not constitute a breach of confidence or other data protection requirements, provided general data protection legislation was followed.

Removal of protections from trade unions

Under common law, individual workers who strike are, unless otherwise protected, in breach of their contractual obligations. In the absence of other legal protections, trade unions which organise strikes would almost certainly commit a tort (a civil wrong) such as inducement of a breach of contract or conspiracy to do an unlawful act, the remedies for which are primarily damages and injunctions.

Currently, unions are protected from liability for such acts by section 219 of TULRCA, provided the union complies with all other legal requirements such as around strike ballots and giving proper notice.

New section 234E inserted by this Bill would remove this protected status from trade unions, for any strike they induce people to take part in where the union fails to “take reasonable steps” to ensure that all workers that have been identified and requested to work by a work notice comply with that notice.

Subsection (2) would limit the damages that could be awarded against any union in such a case to only cover losses that were incurred by the employer due to the failure of the union to “take reasonable steps” to ensure workers complied with the work notice – losses that would have been suffered anyway even if the union had complied with this new requirement would not be covered.

Other provisions

New section 234F would specify that any “minimum service regulations” made by the Secretary of State would be subject to the affirmative procedure.

New section 234G would define various terms, including clarifying that the meaning of “strike” does not include overtime bans and call-out bans, which are to be considered action short of a strike for these purposes as they already are for the purpose of strike ballot rules.

Part 2 of the Schedule would make a range of consequential amendments to other parts of TULRCA 1992.

Removal of unfair dismissal protections

One of the consequential amendments in **Part 2** of the Schedule would be to amend section 238A (unfair dismissal: participation in official industrial action) of TULRCA 1992. This section gives protection to employees against dismissal because of taking part in industrial action, by making any such dismissal automatically unfair, providing the industrial action they take part in is protected (meaning the union has complied with all legal requirements).

The amendment would remove this protection from any employee who takes part in a strike contrary to a valid work notice from an employer that has identified and requested that employee to work. Any such employee will not be automatically regarded as unfairly dismissed under Part X of Employment Rights Act 1996 if the reason or principal reason for the dismissal is because they took part in the strike.

The removal of protected status under section 219 of TULRCA from any industrial action where a union does not take reasonable steps to ensure all workers comply with work notices (see “Removal of protections from trade unions” above) also means that in such cases **all** workers (not just those who act contrary to work notices) who take part in the strike would lose their protection from unfair dismissal.

This is due to the wording of subsection 238A(1) of TULRCA which states “For the purposes of this section an employee takes protected industrial action if he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort.” As acts to induce workers to take part in strikes would no longer be protected against tort action under section 219 if the union “fails to take reasonable steps” under new section 234E(b), any workers taking part in such strikes would lose their protection from dismissal under section 238A, even if they personally complied with the work notices.

5.2

Clause 3

Clause 3 would grant power to the Secretary of State to make regulations by statutory instrument consequential to this Bill. There are two kinds of regulations this clause would allow:

- Regulations to amend, repeal or revoke other primary legislation, including Acts of Parliament or Acts of the Welsh Assembly or Scottish Parliament passed either before this Bill or later in the same session of Parliament. Such regulations would be subject to the affirmative procedure. This is a Henry VIII power.
- Other regulations which amend, repeal or revoke other secondary legislation. Any such regulations would be subject to the negative procedure.

The Henry VIII power is justified in the Delegated Powers Memorandum on the grounds that it is possible some necessary consequential amendments to primary legislation were missed during the Bill's preparation, stating:

The powers conferred by this clause are limited by the fact that any amendments made under this regulation-making power must be genuinely consequential on provisions in the Bill. The Bill already includes a number of changes to the 1992 Act as a consequence of the provisions in the Bill but it is possible that not all of the necessary consequential amendments have been identified in the Bill's preparation. The Government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation and therefore considers it appropriate to include this power so that full effect can be given to the provisions of the Bill.¹⁶¹

5.3

Clause 4

The Bill would extend to England, Wales and Scotland, but not to Northern Ireland where employment law and industrial relations is a devolved matter.

5.4

Clause 5

If passed, the Bill would come into force immediately on the day on which it received Royal Assent.

¹⁶¹

6 Commentary

6.1 Political commentary

Government commentary

When introducing the Bill on 10 January, Business Secretary Grant Shapps said the purpose of the legislation was to protect public safety and that it would bring the UK into line with other European countries:

I am introducing a Bill that will give the Government the power to ensure that vital public services will have to maintain a basic function, by delivering minimum safety levels to ensure that lives and livelihoods are not lost. We are looking at six key areas, each of which is critical to keeping the British people safe and society functioning: health, education, fire and rescue, transport, border security and nuclear decommissioning. We do not want to use this legislation, but we must ensure the safety of the British public.

...

That is a common-sense approach, and we are not the first to follow it. The legislation will bring us in line with other modern European countries such as France, Spain, Italy and Germany, all of which already have these types of rules in place. Even the International Labour Organisation—the guardian of workers’ rights around the world to which the TUC itself subscribes—says that minimum service levels are a proportionate way of balancing the right to strike with the need to protect the wider public. The first job of any Government is to keep the public safe, and unlike other countries, we are not proposing to ban strikes, but we do need to know that unions will be held to account.¹⁶²

Responding to concerns raised about the risks identified in the impact assessment for the previous Transport Strikes (Minimum Service Levels) Bill, the Business Secretary stressed that the impact assessment for the current Bill had yet to be published, saying:

On the impact assessment, which is a point that has been made several times, including from the Opposition Front Bench, the final impact assessment—which will come through primary legislation, with secondary legislation in the form of statutory instruments to bring it into place—is yet to be published.¹⁶³

Responding to a question from SNP Chris Stephens about how the proposed measures differed from existing requirements to provide “life and limb” cover,

¹⁶² [HC Deb 10 January 2023](#), cc432-433

¹⁶³ [HC Deb 10 January 2023](#) c438

the Business Secretary responded that the key difference was in allowing national levels of minimum service, saying:

The hon. Gentleman raises a good point, which I am pleased to answer. When strikes are taking place tomorrow and we are not able to get a simple answer to the question of what the national level of emergency cover will be for people in the most urgent situations—heart attacks, strokes and other life-threatening ailments—that is why we need minimum safety levels. When for many, many months, some of the poorest in society have been unable to go to work to earn their own living, perhaps as a cleaner or a hospital porter, that is why we need minimum service levels on our railways. I very much hope he will see the point and help to represent his constituents who are being prevented from earning money or, indeed, from being safe, should they have an accident tomorrow.¹⁶⁴

In a press release accompanying the introduction of the Bill, the Department for Business, Energy and Industrial Strategy stated that they intended to begin implementation of the Bill with fire, ambulance and rail services, only extending to other sectors if that should become necessary, saying:

The government will first consult on minimum service levels for fire, ambulance, and rail services, recognising the severe disruption that the public faces when these services are impacted by strikes, especially the immediate risk to public safety when blue light services are disrupted.

The government hopes to not have to use these powers for other sectors included in the Bill, such as education, other transport services, border security, other health services and nuclear decommissioning.

The government expects parties in these sectors to reach a sensible and voluntary agreement between each other on delivering a reasonable level of service when there is strike action. This will, however, be kept under review and the Bill gives the government the power to step in and set minimum service levels should that become necessary.¹⁶⁵

At Prime Ministers' Questions on 11 January, the Prime Minister, responding to a question from the Leader of the Opposition, said:

The right hon. and learned Gentleman talks about the minimum safety legislation. Let us just talk about it a little bit further, because this is a simple proposition. No one denies the unions' freedom to strike, but it is important to balance that with people's right to access to life-saving healthcare at the same time. This should not be controversial. The International Labour Organisation supports minimum service levels. They are present in France, in Italy, in Spain. Normally he is in favour of more European alignment—why not now?¹⁶⁶

In terms of opportunity for consultation, Minister Kevin Hollinrake, responding to a written question from Labour MP Justin Madders on 12 January,

¹⁶⁴ [HC Deb 10 January 2023](#) c440

¹⁶⁵ [Government introduces laws to mitigate the disruption of strikes on the public](#), BEIS, 10 January 2022

¹⁶⁶ [HC Deb 11 January 2022](#), c553

mentioned that he had met that day with representatives from the TUC and CBI to discuss the issue, adding:

The passage of the Strikes (Minimum Service Levels) Bill will give stakeholders the opportunity, via Members of Parliament, to share any concerns or constructive suggestions they may have.¹⁶⁷

Other political commentary

During debate on 10 January, Deputy Leader of the Opposition Angela Rayner attacked the Government's plans, saying that public services were already failing to provide adequate service levels even on non-strike days and that these measures would make things worse, as well as potentially breaching international obligations, saying:

The Secretary of State goes in one breath from thanking nurses to sacking them. That is not just insulting but utterly stupid. There is no common sense about this at all. He says that he recognises the pressures faced by key workers, but he knows that the NHS cannot find the nurses it needs to work on the wards, and that the trains do not run even on non-strike days such is the shortage of staff, so how can he seriously think that sacking thousands of key workers will not just plunge our public services further into crisis? The Transport Secretary admits it will not work, the Education Secretary does not want it, and the Government's own impact assessment finds that it will lead to more strikes and staff shortages.

The Secretary of State says that he is looking into six key areas. What do other Ministers think about that? Will they have to disagree on that, too? He is scraping the barrel with comparisons to France and Spain, but those countries, which he claims have these laws on striking, lose vastly more strike days than Britain. Has he taken any time at all to speak to their Governments or trade unions to learn any real lessons from them?

The Secretary of State quotes the International Labour Organisation—I am surprised that he even knows what it is—but he will know that the ILO requires compensatory measures and an independent arbitrator. Are those in his Bill? The ILO also says that minimum service levels can happen in services only when the safety of individuals or their health is at stake. That does not include transport, Border Force or teachers, as he proposes.¹⁶⁸

Speaking in Stratford ahead of the introduction of the Bill, Leader of the Opposition Sir Keir Starmer said of the expected Bill “I don't think this legislation is going to work and I'm pretty sure they've had an assessment that tells them that. It's likely to make a bad situation worse.” He said that if, as expected, the Bill contained further restrictions on the right to strike “then we will repeal it”, adding:

And the reason for that is I do not think that legislation is the way that you bring an end to industrial disputes. You have to get in the room and compromise.

¹⁶⁷ [PQ 117642 \(on Transport: Industrial Disputes\)](#), 6 January 2023

¹⁶⁸ [HC Deb 10 January 2023](#), c434

You can't legislate your way out of 30 years, 13 years of failure.

So, you know, as I say, the government's all over the show.

Will we repeal it? Yes, we will.¹⁶⁹

The SNP has announced its opposition to the Bill, with SNP deputy Westminster leader Mhairi Black saying the SNP “condemns these plans in the strongest possible terms” and that they stood in contrast to “the constructive role the SNP Scottish government has played in recent pay disputes north of the border”, adding:

These immoral proposals from the Tory government speak to the hard-right rhetoric that has Westminster in a choke-hold . . . Just months ago, the UK government applauded key workers. Now they are threatening them with the sack if they go on strike. It's utterly shameful.¹⁷⁰

Conservative backbenchers who spoke during the debate on the introduction of the Bill were supportive, such as Greg Smith MP who said:

My right hon. Friend is absolutely right to bring forward these proportionate measures, and not least in the urgency with which he seeks to protect the safety and lives of all our constituents at risk from strike action.¹⁷¹

6.2 Legal commentary

Several legal experts have expressed views on the Bill, saying they expect there to be legal challenges from trade unions on the grounds that it may breach the UK's commitments under international law.

Richard Arthur, head of trade union law at Thompsons Solicitors, said the Bill raised “very serious legal question marks” and anticipated legal challenges under Article 11 of the European Convention on Human Rights (Freedom of assembly and association) and Convention 87 of the International Labour Organisation (Freedom of Association and Protection of the Right to Organise), saying:

The measures go further than the minimum service levels envisaged by the Transport Strike (Minimum Service Levels) Bill published in October.

The Human Rights Memorandum accompanying that Bill set out reasons why minimum service levels were not justified in fire services, health settings and education and yet this is what is being proposed.

¹⁶⁹ Sophie Morris, [Sir Keir Starmer pledges to repeal any new anti-strike laws in first big speech of the year - as rail union warns about legislation](#), Sky News, 5 January 2023

¹⁷⁰ Kieran Andrews, [SNP: we would reject Tories' shameful strike laws](#), The Times, 6 January 2023

¹⁷¹ [HC Deb 10 January 2023](#), c442

The government is referring to minimum ‘safety levels’ and we anticipate legal challenge around what they are and who defines them.

The introduction of minimum safety levels does not comply with the United Kingdom’s legal obligations under Convention No.87 of the International Labour Organisation on Freedom of Association and Protection of the Right to Organise, and Article 11 of the European Convention on Human Rights.

The legal challenges when they come - and they will - are not something that the government can sidestep saying ‘Brexit has set us free’, the breaches will be of conventions that the government has signed up to that come from the Council of Europe and the International Labour Organisation, not the European Union.¹⁷²

Tom Long, employment partner and industrial relations specialist at law firm Shakespeare Martineau, said that while unions may hope for a successful judicial review, there was no guarantee such a case would succeed. He said the right to strike under the ECHR “can be interfered with where necessary and where such interference can be justified,” noting that France and Spain have minimum service laws while also being subject to the ECHR.¹⁷³ Richard Arthur, however, said that these laws in France and Spain were “not in effective use” and in the case of Spain had been “subject to considerable censure” by the courts.¹⁷⁴

David Hopper, employment partner at law firm Lewis Silkin, added that the Bill had a number of risks associated with it, saying:

It will take time to be enacted and there is no guarantee that it will make it past the House of Lords, as only transport strikes are covered by the government’s 2019 manifesto commitment to introduce minimum service levels.

If it does become law, it may still not be effective without numerous additional sets of regulations, industry agreements and even court rulings, which would actually set the particular minimum standards.

Even then, unions can be expected to resist the new requirements and will almost certainly challenge any enforcement action against them on human rights grounds.

Minimum service levels also actually risk prolonging strikes, by preventing unions from being able to generate sufficient leverage through causing disruption to secure their demands.¹⁷⁵

Professor Keith Ewing, Professor of Public Law and King’s College London and President of the Institute of Employment Rights, when giving evidence before the BEIS Select Committee on the day the Bill was introduced, also raised the issue of the UK’s obligations under article 399 of the Trade and Cooperation

¹⁷² Alan Jones & Peter A Walker, “[Lawyers predict legal challenges to minimum service levels legislation](#)”, insider.co.uk, 6 January 2023

¹⁷³ “[Lawyers expect court challenge to anti-strike laws](#)”, BBC News, 6 January 2023

¹⁷⁴ As above

¹⁷⁵ Alan Jones & Peter A Walker, “[Lawyers predict legal challenges to minimum service levels legislation](#)”, insider.co.uk, 6 January 2023

Agreement between the UK and the EU (Multilateral labour standards and agreements) which requires the parties to uphold international standards on collective bargaining, saying:

several obligations in article 399 of the agreement require us to effectively implement various obligations arising under the ILO treaties to which we are party and the European social charter of 1961 to which we are party. That is clearly relevant in terms of the Bill that is about to be announced today on minimum service levels in the event of industrial action. To what extent have the Government's proposals been tested against the obligations that arise under the free trade agreement, although they arise in any event? We are already bound by these obligations, but they have been reinforced by the terms of the free trade agreement. Just to simplify this, we cannot remove the EU social rights inheritance, because of article 387, where the removal is motivated by trade and investment, which seems to be the motivation here.

The other thing that we must do under the agreement is effectively implement, not derogate from, our obligations under ILO and the European social charter. The question is to what extent—the Government will have to be very mindful of this, I think—the Bill, which is yet to be published, is compatible with these obligations. It is just an indication. It comes back to the point I was trying to make earlier that, in a sense, the landscape has changed. We cannot return to the halcyon days. Brexit does not mean release from international obligations or even from our continuing obligation to comply with European law.¹⁷⁶

6.3 General commentary from trade unions

On the day the Bill was introduced, the Trades Union Congress (TUC) issued a statement calling on MPs of all parties to reject the Bill which they described as the “latest attack on the right to strike”, dubbing the Bill the “sack key workers bill”. TUC General Secretary Paul Nowak said the Bill was an attack on fundamental freedoms and would be counterproductive, saying:

The right to strike is a fundamental British freedom – but this government seems determined to attack it.

This legislation would mean that when workers democratically vote to strike, they can be forced to work and sacked if they don't comply.

That's undemocratic, unworkable, and almost certainly illegal.

Conservative ministers have gone from clapping key workers to sacking key workers. They seem more interested in scheming up new draconian restrictions on the right to strike than addressing the real concerns of public sector workers.

Let's be clear. If passed, this bill will prolong disputes and poison industrial relations – leading to more frequent strikes.

¹⁷⁶ Business, Energy and Industrial Strategy Committee, [Oral evidence: Post-pandemic economic growth: UK labour markets, 10 January 2023, HC 306](#), Q249

That's why MPs must do the right thing and reject this cynical 'sack key workers bill'.

It's time for the government to show they are on the side of nurses, firefighters and all our key workers who got this country through the pandemic – not actively working against them.¹⁷⁷

European Public Sector Union (EPSU) General Secretary, Jan Willem Goudriaan, argued that the comparisons by the UK Government of the Bill with existing laws in other EU countries was misrepresenting the situation, saying:

It is deplorable that instead of making every effort to negotiate a deal with health unions, the government is rushing through legislation that will impose further restrictions on the right to strike in the UK and could even lead to the dismissal of public service workers.

The UK government is attempting to justify the new rules with references to the other countries, such as Italy and Spain. It fails to mention that unions in these countries negotiate their minimum service levels and that they operate in a different legal framework where they don't face the excessive rules and thresholds for balloting imposed in the UK.¹⁷⁸

6.4

Commentary from stakeholders in affected sectors

Health

[The Royal College of Nursing has called the Bill “undemocratic”](#) and said it has long been calling for the Government to set safe staffing levels in law.¹⁷⁹

Unison said it is [“ironic” that Government is now calling for minimum staffing levels](#) and that the Bill risks undermining talks between ministers and unions on pay, with general secretary Christina McAnea commenting:

After a decade of refusing to bring in minimum staffing levels in the NHS 365 days a year, it's ironic that the government is only prepared to do so during a strike.

Every other day of the year ambulance crews are stuck queuing for hours outside A&E departments and hospital staff are rushed off their feet. But the government isn't interested in minimum staffing levels then.

Ministers should be putting all their energies into solving the NHS dispute, not worsening relations with health workers. Unions want to work with the

¹⁷⁷ [“MPs must reject government’s “cynical” bill to protect the right to strike, says TUC”](#), TUC News listing, 10 January 2023

¹⁷⁸ EPSU, [EPSU calls for support for UK unions taking action and their fight against new strike laws](#), 12 January 2023

¹⁷⁹ RCN, [RCN says UK government plan for anti-strike legislation is 'undemocratic'](#), 5 Jan 2023

government to secure a pay deal, but attacking workers makes that much harder.¹⁸⁰

Unite has said it [refutes claims ambulance workers didn't agree cover during the strikes](#), stating the ambulance service negotiate agreements with local managers in order to take into account the specific situations of local NHS trusts.¹⁸¹

GMB general secretary Gary Smith added to the opposition from unions by saying that the Bill would further alienate staff and fail to help patients or the public:

A Government that has presided over 13 years of failure in our public services is now seeking to scapegoat the NHS staff and ambulance workers who do so much to care for the people of our country.

The NHS can only function with the goodwill of its incredible staff and attacking their fundamental right to take action will alienate them even further and do nothing to help patients and the public.

We are always ready to discuss our members' pay but the Government is refusing to talk about problems as they exist now, instead they want to kick the can down the road.

There are huge questions over the NHS Pay Review Body, as Ministers' actions have consistently undermined its independence. The process needs real reform and our members need a much stronger commitment than we heard today.¹⁸²

Fire and rescue

The Fire Brigades Union had condemned the Bill's predecessor's - the Transport Strikes (Minimum Service Levels) Bill – and expressed support for transport workers to strike without minimum service requirements.¹⁸³ The FBU was highly critical of the Government's announcement of the updated Bill, calling it the latest “threatened onslaught on the right to strike” and saying that it would restrict “effective strikes”.¹⁸⁴ Matt Wrack went on to say:

To allow exploitative and vindictive bosses to pursue trade unionists in the courts would be a highly authoritarian move, and more in keeping with the actions of a dictatorial regime.¹⁸⁵

¹⁸⁰ UNISON, [Patients would be better served if ministers solved NHS disputes instead of picking fights](#), 10 January 2023

¹⁸¹ Unite, [Union leader brands Minimum Services Bill as “another dangerous gimmick”](#), 10 January 2023

¹⁸² GMB, [Anti-strike legislation 'scapegoating NHS workers'](#), 5 January 2023

¹⁸³ Fire Brigades Union, [FBU responds to government attack on transport strike rights](#), 17 October 2022

¹⁸⁴ Fire Brigades Union, [FBU responds to government anti-strike laws announcement](#), 5 January 2023

¹⁸⁵ As above

Education

In a series of tweets on 10 January 2023, General Secretary of the NAHT, Paul Whiteman, said:

The bill introduced today simply demonstrates that the government does not understand or care about the rights of workers. They cannot claim to be on side of working people on the one hand and then deny the right to strike on the other

[...]

The whole point of workers' rights is to balance the power between workers and unreasonable employers. Unfortunately unreasonable employers are as common in public service as anywhere else.

[...]

To threaten to sack workers for taking action to defend themselves is simply a bullies charter, designed by a failing government losing the confidence and cooperation of its own employees.¹⁸⁶

An [article in Tes Magazine cited criticism of the Government's approach from teaching union officials](#). ASCL General Secretary, Geoff Barton, is quoted as saying "the threat of imposing minimum service agreements is just anti-union sabre-rattling and hardly conducive to cordial industrial relations".¹⁸⁷ It continued:

Mr Barton said education secretary Gillian Keegan had told the unions that this is "permissive legislation which allows secretaries of state to bring forward regulations in their area".

However, Mr Barton said Ms Keegan had said she does not intend to do this in the short term, preferring instead to proceed by "agreement and guidance"

He added: "No agreement, however, will be reached if it involves removing the rights of employees, and none of this is helpful in promoting good industrial relations."¹⁸⁸

There were also concerns about enforceability:

[...]

¹⁸⁶ Paul Whiteman (@paulwhiteman6), "The bill introduced today simply demonstrates that the government does not understand or care about the rights of workers. They cannot claim to be on side of working people on the one hand and then deny the right to strike on the other", 10 January 2023 [accessed 12 January 2023]. Available from: <https://twitter.com/PaulWhiteman6/status/1612884579408351237>

¹⁸⁷ ['Headteachers won't accept 'bullies' charter' strike law, ministers warned'](#), the TES (online), 10 January 2023

¹⁸⁸ As above

Dr Mary Bousted, joint general secretary of NEU, told Tes that the problem was that “the government haven’t even said what minimum service levels would be in education”.

She also said it was unclear who was going to enforce the minimum service levels.

She said: “This is just a dog’s breakfast. And the government is years away from being able to enforce these minimum service levels in education. And you know, this has been really kicked into the long grass, and we think the legislation will be unworkable.”

Dr Bousted added that Ms Keegan had written to the NEU saying “she wants to negotiate” on minimum service levels.¹⁸⁹

Transport

A spokesperson for Rail Partners, who represent train operator owners (such as Abellio, Arriva and First Group)¹⁹⁰ responded positively to the introduction of the Strikes (Minimum Service Levels) Bill, in a statement reported by Rail Business Daily:

Minimum Service Levels for transport is not a new concept and is well established in countries across Europe.

It is an approach which seeks to appropriately balance and protect the right to strike and the rights of others to get to work or school and access necessary healthcare.

Now Government has published the bill, the next step is to develop the clear guidelines under which industry and unions will need to operate.¹⁹¹

Transport trade unions have criticised the Bill. Mick Whelan, general secretary of the ASLEF, warned it could backfire on the Government by prompting workers to stage longer periods of industrial action to compensate for the reduced impact of individual strike days. He was quoted by the Independent as warning of “more days’ action to equate to the same level of effect that we have from one day now”.¹⁹²

The RMT has said in a press release that the “government’s own impact assessment of minimum service levels shows it wouldn’t work” and that the new Bill is an “attack on human rights and civil liberties which we will oppose in the courts, Parliament and the workplace.”¹⁹³ RMT general secretary Mick Lynch said on 10 January 2023:

¹⁸⁹ As above

¹⁹⁰ Rail Partners [The Partners we speak for](#) [Accessed 12 January 2023]

¹⁹¹ Rail Business Daily [Government introduces controversial laws to mitigate disruption of strikes](#) 11 January 2023

¹⁹² The Independent [Keir Starmer pledges to repeal any new anti-strike law as unions vow legal action](#) 5 January 2023

¹⁹³ RMT Press Release [RMT RESPONSE TO THE ANTI-STRIKE BILL](#) 10 January 2023

This is an attack on human rights and civil liberties which we will oppose in the courts, Parliament and the workplace.

One of the most important things in any democratic society is to have free trade unions.

This law could make effective strike action illegal, and workers may be sacked for exercising their right to withdraw their labour.

The only reason this draconian legislation is being introduced is because the government have lost the argument and want to punish workers for having the temerity to demand decent pay and working conditions.

The government's own impact assessment of minimum service levels shows it wouldn't work. They would be better off coming to a negotiated settlement with unions through dialogue.¹⁹⁴

Nuclear decommissioning and waste management

Earlier in January 2023, before the Strikes (Minimum Service Levels) Bill was published, but in reaction to Government suggestions about what it might include, the Prospect union said the proposals showed, “a complete lack of understanding of the nuclear industry.”¹⁹⁵ Prospect went to explain how there were already agreements in place about minimum safe staffing levels:

“In large parts of the [nuclear] sector there are already agreements in place on minimum safe staffing levels in the event of industrial action taking place. These will vary depending on circumstances at each facility and all sides have judged them to work well in the past.

“The government says it does not seek to undermine voluntary agreements, so why has it included the sector in the legislation at all?

“All it will do is further erode trust between unions and the government.”¹⁹⁶

Border security

At the time of writing, the ISU and other stakeholders in the border and immigration sector had not published detailed commentary in response to the Bill.

¹⁹⁴ RMT, [RMT response to the anti-strike bill](#), 10 January 2023

¹⁹⁵ Prospect, “[Government strike proposals miss the point and will lead to further distrust](#)”, 5 January 2023


¹⁹⁶ Prospect, “[Government strike proposals miss the point and will lead to further distrust](#)”, 5 January 2023

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