



Strikes (Minimum Service Levels) Bill

HL Bill 97 of 2022–23

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The [Strikes \(Minimum Service Levels\) Bill](#) is a government bill that would allow ministers to make regulations setting out the minimum service required in certain areas of the public sector during strike action in England, Wales and Scotland. Workers and trade unions would have to comply with these requirements or face losing legal protections against being sued or dismissed.

The areas intended to be covered by regulations made under the bill's provisions are:

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

These match the definition of “important public services” introduced by the Trade Unions Act 2016 (with some additions). The relevant regulations would be made under the affirmative procedure (thus approved by both Houses of Parliament). The bill also contains a Henry VIII power to amend other primary legislation for related purposes.

The bill follows a wave of ongoing strike action in many areas of the public sector, which has seen disputes on a scale not seen for many years.

Its provisions have come in for significant criticism from opposition parties, who have described the bill as an attack on the right to assembly and discrimination protections—as a result of the proposed changes to the legal framework on unfair dismissal—and thus also in contravention of the UK's obligations under international law.

The government has rejected these assertions, suggesting the bill strikes a balance between protecting the right of workers to strike and ensuring that essential public services can continue to be delivered during industrial action.

This briefing examines these issues ahead of the bill's second reading in the House of Lords on 21 February 2023.

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I. Background to the bill

I.1 Current rules governing public sector strike action

Employees in Britain do not enjoy a general legal ‘right’ to strike unless otherwise prohibited by law.¹ Instead, trade 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 unions which organised strikes could be sued.²

The provisions governing when strikes and unions are granted such protected status are contained within the Trade Union and Labour Relations (Consolidation) Act 1992.³ To be eligible for protection, employment unions must comply with the various requirements detailed in the legislation, such as on the rules governing the holding of strike ballots and giving notification to employers. The act also gives employees automatic protection from dismissal on the grounds of taking part in a protected strike.

Some public sector workers in the UK are currently prohibited from taking strike action. They include the police, armed forces, and some prison officers. There are no wider prohibitions on industrial action, but the Trade Union Act 2016 introduced a higher support threshold for strike action for “important public services” where 40% of eligible voters must return their ballots saying they wish to strike for such action to be valid.⁴ Those sectors included: fire, health, education, transport, border security and nuclear decommissioning.⁵

In addition, the 1992 act made 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, several unions such as those which represent sections of the NHS workforce agree to provide so-called ‘life and limb’ cover during strikes. There is no fixed definition of what this entails in practice, but recent examples have included negotiations to ensure critical services could still run during the recent strike by paramedics and ambulance service workers.⁶

¹ House of Commons Library, [‘Strikes \(Minimum Service Levels\) Bill 2022–23’](#), 13 January 2023, p 15.

² As above.

³ [Trade Union and Labour Relations \(Consolidation\) Act 1992](#), accessed February 2023.

⁴ [Trade Union Act 2016](#), accessed February 2023. The 2006 act also introduced a turnout threshold where at least 50% of the trade union members entitled to vote must do so for a ballot to be valid.

⁵ Department for Business, Energy and Industrial Strategy, [‘Important public service regulations 2017: Guidance on the regulations’](#), 2017.

⁶ Guardian, [‘Deals struck to ensure ‘life and limb’ cover during NHS ambulance strike’](#), 20 December 2022.

Under the provisions of the Civil Contingencies Act 2004, the government also has general emergency powers it can use in cases where strikes seriously threaten peoples' welfare. In such cases, a minister may make regulations to protect or restore facilities for transport or health, for example, or to protect human life, health, or safety. One of the preconditions for the exercise of this power is that an emergency has occurred, defined as follows:

[An emergency is] an event or situation which threatens serious damage to human welfare in a place in the UK, the environment of a place in the UK, or war or terrorism which threatens serious damage to the security of the UK.⁷

The government also has the power to replace striking workers with military personnel under the terms of the Emergency Powers Act 1964 without declaring an emergency.⁸

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 (ECHR) and Convention 87 of the International Labour Organisation (ILO).⁹ Article 14 of the ECHR also protects against discrimination, which the government has suggested the bill “engages” but is “not incompatible with”.¹⁰ This subject is examined further below as part of analysis of debate at committee stage of the bill in the House of Commons.¹¹

1.2 Current industrial unrest and strike action

There is recent or ongoing industrial action in the following sectors that would potentially be covered by the Strikes (Minimum Service Levels) Bill:

- **Health:** industrial action has recently occurred or is ongoing in several areas of the health sector, predominantly following criticism of the government's 2022/23 pay offer as recommended by the NHS Pay Review body (which unions say represents a pay cut in real terms), including nursing, ambulance workers, and

⁷ Cabinet Office Civil Contingencies Act Enhancement Programme, '[Revision to emergency Preparedness: Chapter 1 introduction](#)', 2012, p 6.

⁸ House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023, p 16.

⁹ House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023, p 6.

¹⁰ HM Government. '[Strikes \(Minimum Service Levels\) Bill: Memorandum on European Convention of Human Rights \(“ECHR”\)](#)', accessed 5 February 2023, p 3.

¹¹ For a further examination of the application of international law in this area, and comparison with other countries, see: House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023.

- health workers (in Wales and Northern Ireland).¹² Strikes are also reportedly planned or being considered by junior doctors, dietitians, physiotherapists and pharmacists.
- **Transport:** strikes continue across many areas of the transport sector. On the railways, industrial action has been ongoing since early 2022, involving at different times train drivers, railway signallers, maintenance workers, ticket collectors, cleaners, control centre staff, managers, gate staff and engineers. Bus drivers and staff working on the London Underground and other parts of the Transport for London network have also engaged in strike action.
 - **Education:** strike action involving members of the National Education Union took place in February 2023, and further action is planned in the coming months.¹³ Strike action from the National Association of Headteachers has taken place in Wales, and in Scotland the Educational Institute of Scotland and two other unions are planning future walk outs. Similarly, many teachers in Northern Ireland are planning to strike later this month. Other teachers' unions are continuing to ballot their members. The further and higher education sectors have also seen recent staff walkouts, with further action planned for the coming months.¹⁴
 - **Fire and rescue:** following the rejection of a revised pay offer in January 2023, the Fire Brigades Union has said it has a mandate to take its members out on strike.¹⁵ However, at the time of writing the union has said it will refrain from doing so until after talks with employers.
 - **Border security:** members of the Public and Commercial Services Union took strike action at various UK air and sea ports in December 2022.¹⁶ Further action has been announced for the mid-February period.

There has been no strike action in the nuclear decommissioning and waste management sector, and indeed minimum safe staffing level agreements in the event of industrial action are in place in significant parts of the sector.¹⁷ For brevity, this overview does not examine each incidence of strike action

¹² In Scotland, strike action was averted by health workers following an improved pay offer. BBC News, '[New pay offer made to NHS Scotland health workers](#)', 24 November 2022.

¹³ BBC News, '[School strikes: How much are teachers paid and why are they striking?](#)', 3 February 2023.

¹⁴ House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023, pp 41–2.

¹⁵ BBC News, '[UK firefighters vote to strike in row over pay](#)', 1 February 2023.

¹⁶ House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023, p 48.

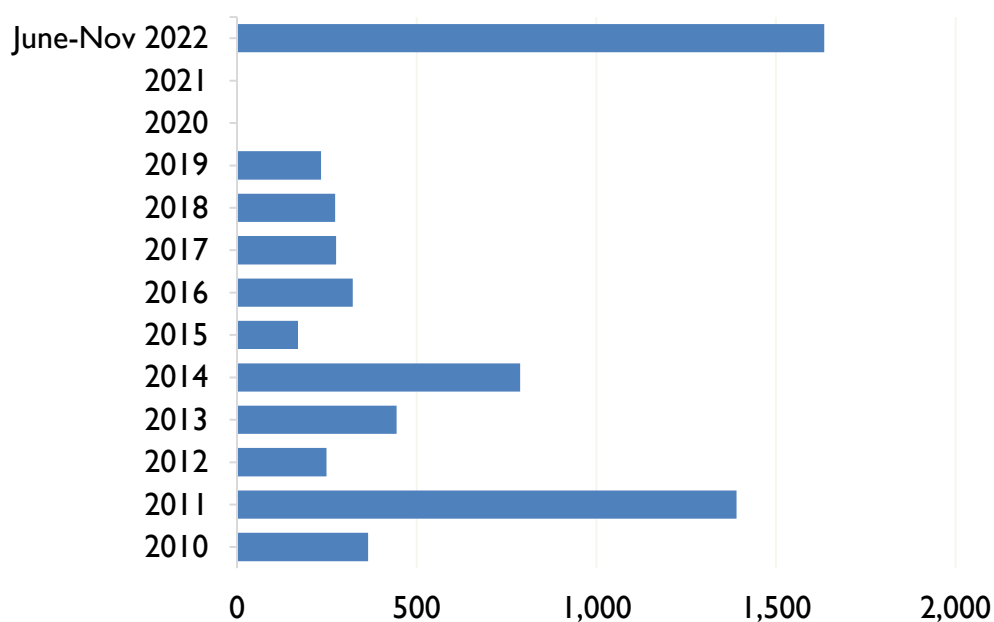
¹⁷ House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023, p 64.

and the various issues at play in each sector. For detailed analysis of the pay offers and the related debate on working conditions see the House of Commons Library briefing prepared ahead of the bill's introduction to Parliament and updated in January 2023.¹⁸

According to the latest data published by the Office for National Statistics (ONS) in January 2023, a total of 1.63mn working days were lost across the UK due to strike action between June 2022 to November 2022.¹⁹ This is the highest for any similar five-month period, or indeed any year-long period, since 1990. This data is illustrated below in comparison with days lost in each year since 2010 (please note that data was not recorded for 2020 and 2021 due to the Covid-19 pandemic):

Figure 1: Working days lost due to strike action in the UK²⁰

Thousands of days



¹⁸ House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023, p 64.

¹⁹ Office for National Statistics, '[Labour disputes: Working days lost due to strike action](#)', 17 January 2023.

²⁰ Source: Office for National Statistics, '[Labour disputes: Working days lost due to strike action](#)', 17 January 2023.

1.3 Manifesto commitment and recent reforms including the Transport Strikes (Minimum Service Levels) Bill 2022–23

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”.²¹ This was followed in the Queen’s Speech in 2019 by a commitment to introduce a bill that would ensure “people can depend on the transport network”. To do this, the government said it would develop measures to provide for minimum levels of service during transport strikes.²² The background notes provided by the government stated this would be founded upon the idea of minimum service agreements.²³

In July 2022, the government under Boris Johnson introduced the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022, allowing employers to use agency staff to replace striking workers.²⁴

Subsequently, in October 2022 the government led by Liz Truss introduced the Transport Strikes (Minimum Service Levels) Bill 2022–23, which would allow minimum service levels to be introduced during strikes in certain transport services.²⁵ This followed commitments made by Ms Truss during the Conservative leadership campaign to implement the 2019 manifesto commitment.²⁶

The Transport Strikes (Minimum Service Levels) Bill would set minimum service levels 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. (Differing from the Strikes (Minimum Service Levels) Bill, under which these levels would be directly set by regulations.)

²¹ Conservative Party ‘[Get Brexit done, unleash Britain’s potential: Conservative and Unionist Party manifesto 2019](#)’, 2019.

²² HM Government, ‘[Queen’s Speech 2019](#)’, October 2019.

²³ HM Government, ‘[Queen’s Speech December 2019: Background briefing notes](#)’, 19 December 2019, p 99.

²⁴ [Conduct of Employment Agencies and Employment Businesses \(Amendment\) Regulations 2022](#), accessed 5 February 2023. For further information on the reforms see: House of Commons Library, ‘[Plans to let agency staff cover for striking workers](#)’, 29 June 2022.

²⁵ UK Parliament, ‘[Transport Strikes \(Minimum Service Levels\) Bill](#)’, accessed 5 February 2023.

²⁶ During the conservative leadership campaign, Ms Truss also committed to replacing 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”. See: House of Commons Library, ‘[Strikes \(Minimum Service Levels\) Bill 2022–23](#)’, 13 January 2023, p 64.

The Department for Transport produced a Memorandum on the European Convention of Human Rights (ECHR) to accompany the Transport Strikes (Minimum Service Levels) Bill.²⁷ This stated that the government considered that it was compatible with Article 14 of the ECHR to extend the minimum service requirements only to the transport sector in the bill “and not, for instance, to other important public service sectors”.²⁸

The memorandum went on to explain why the transport sector should be treated differently from other key public services:

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 (ss 29/30) 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.

²⁷ Department for Transport, ‘[Transport Strikes \(Minimum Service Levels\) Bill: Memorandum On European Convention of Human Rights “ECHR”](#)’, October 2022.

²⁸ Department for Transport, ‘[Transport Strikes \(Minimum Service Levels\) Bill: Memorandum On European Convention of Human Rights “ECHR”](#)’, October 2022, p 3.

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, Department for Education guidance for school leaders, governing bodies and 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.²⁹

The government has also produced a human rights memorandum to accompany the current bill, setting out why it believes its new approach is compatible with article 14, which is examined below. No second reading date has been set for the Transport Strikes (Minimum Service Levels) Bill (and it likely has been superseded by the Strikes (Minimum Service Levels) Bill).

2. What would the proposed legislation do?

2.1 Overview of the bill

The Strikes (Minimum Service Levels) Bill would grant the secretary of state powers to make “minimum service regulations” that could set minimum service levels required during strikes in six sectors: health services; fire and rescue services; education services; transport services; decommissioning of nuclear installations and management of radioactive waste and spent fuel; and border security. Such regulations would be subject to the affirmative procedure and would be able to affect any strike taking place from the day after they came into force, even if the relevant date of the ballot had taken place before the bill received royal assent.³⁰

Under the provisions in the bill, an employer would be able to give a “work notice” to a trade union concerning any strike affecting a service subject to minimum service regulations. That notice would specify which workers the employer required to work to ensure the service levels mandated by the

²⁹ Department for Transport, ‘[Transport Strikes \(Minimum Service Levels\) Bill: Memorandum on European Convention of Human Rights “ECHR”](#)’, October 2022, pp 7–8.

³⁰ The [affirmative procedure](#) means both Houses of Parliament would have to actively approve the regulations before they could become law.

minimum service regulations. The employer would not be permitted to request more workers than “reasonably necessary” to meet the requirements set out by the minimum service regulations.³¹

If a union failed to take “reasonable steps” to ensure that all workers requested to work by a work notice complied with that notice, it would 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 took part in a strike contrary to a valid work notice.³²

In addition, the bill includes a Henry VIII power to amend other primary legislation by regulation in order to make consequential amendments.

2.2 The bill in detail: Clause by clause explanation

The bill contains five clauses and one schedule, as detailed below.

2.2.1 Clause 1 and related schedule: Minimum service levels for certain strikes

Clause 1 of the bill, and the related schedule, would amend the Trade Union and Labour Relations (Consolidation) Act 1992 to introduce minimum services requirements and work notices, to remove protections from trade unions and unfair dismissal protections, and to make other provisions.

Minimum services requirements

The bill would grant the secretary of state powers to make regulations which could set required minimum service levels during strikes in any services within the six sectors listed above. They are the same six sectors specified as 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”.³³

Work notices

The bill 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, specifying which workers the employer required to work during the strike and what work they would have to perform to meet required

³¹ [Explanatory notes](#), p 6.

³² House of Commons Library, [‘Strikes \(Minimum Service Levels\) Bill 2022–23’](#), 13 January 2023, p 8.

³³ House of Commons Library, [‘Strikes \(Minimum Service Levels\) Bill 2022–23’](#), 13 January 2023, p 50.

minimum service levels. Employers would not be permitted to request more workers than “reasonably necessary” to provide the level of service set out in the minimum service regulations.

Work notices would not be permitted to request workers based on whether 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.

Removal of protections from trade unions

Under common law, individual workers who strike are, unless otherwise protected, in breach of their contractual obligations. Analysis from the House of Commons Library notes that, in the absence of other legal protections, trade unions that 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.³⁴

Currently, unions are protected from liability for such acts by the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), provided the union complies with all other legal requirements such as around strike ballots and giving proper notice. The Strikes (Minimum Service Levels) Bill would remove this protected status from trade unions for any strike they induced people to take part in where the union failed to “take reasonable steps” to ensure that all workers identified and requested to work by a work notice complied with that notice.

The bill 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.³⁵

Removal of unfair dismissal protections

Currently, provisions in the 1992 act give protection to employees against dismissal as a result of them 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).

³⁴ House of Commons Library, [‘Strikes \(Minimum Service Levels\) Bill 2022–23’](#), 13 January 2023, p 51.

³⁵ House of Commons Library, [‘Strikes \(Minimum Service Levels\) Bill 2022–23’](#), 13 January 2023, p 51.

The bill would remove this protection from any employee who took part in a strike contrary to a valid work notice from an employer that had identified and requested that employee to work. Any such employee would not be automatically regarded as unfairly dismissed under the Employment Rights Act 1996 if the reason for the dismissal was because they took part in the strike.

Analysis by the House of Commons Library contends that this would also mean those who take part in strikes (rather than those who just act contrary to a work notice) would also lose such protections:

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 [...] also means that in such cases all [employees] (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 [employees] taking part in such strikes would lose their protection from dismissal under section 238A, even if they personally complied with the work notices.³⁶

Other provisions

Any minimum service level regulations under the bill would be made through the affirmative procedure, which means they would have to be agreed by both Houses of Parliament.

The bill would also define various terms used in the provisions, including clarifying that the meaning of “strike” would not include overtime bans and call-out bans, which are to be considered action short of a strike for the

³⁶ House of Commons Library, [‘Strikes \(Minimum Service Levels\) Bill 2022–23’](#), 13 January 2023, p 52. This quote has been slightly amended from the original to replace references to workers with employees when discussing the removal of dismissal protections, as only employees would lose automatic unfair dismissals protections. Workers that are not employees (for the purposes of section 230 of ERA 1996 and section 295 of TULRCA) are not covered by such protections.

purposes of the bill as they already are for the purpose of strike ballot rules.³⁷

The bill would also require that consultations must take place before regulations introducing minimum service levels were introduced.³⁸ The bill does not dictate what form this consultation should take. These consultations were referenced several times by ministers during debate on the bill when questioned on the amount of parliamentary time being given to scrutinise the legislation.

2.2.2 Clause 2: Meaning of the “1992 act”

Clause 2 would define the meaning of the “1992 act” for the purposes of the bill.

2.2.3 Clause 3: Power to make consequential provision

Clause 3 would allow the secretary of state to make two kinds of additional regulations to further carry out the purposes of the bill:

- A Henry VIII power to make regulations to amend, repeal or revoke other primary legislation. Such regulations would be subject to the affirmative procedure.
- Other regulations which amend, repeal, or revoke other secondary legislation. These regulations would be subject to the negative procedure, meaning ministers could sign them into law and they would remain in force unless rejected by either House of Parliament within a set time period.

In the delegated powers memorandum accompanying the bill, the government justifies the inclusion of such Henry VIII powers as follows:

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

³⁷ House of Commons Library, [‘Strikes \(Minimum Service Levels\) Bill 2022–23’](#), 13 January 2023, pp 51–2.

³⁸ [Explanatory notes](#), p 7.

legislation and therefore considers it appropriate to include this power so that full effect can be given to the provisions of the bill.³⁹

2.2.4 Clause 4: Extent

Clause 4 would provide that the bill would extend and apply to England, Scotland and Wales. It would not extend or apply to Northern Ireland, where industrial relations and employment law are devolved.

2.2.5 Clause 5: Commencement

Clause 5 would provide that the provisions in the bill would come into force immediately after royal assent.

2.3 Human rights memorandum

The government has published a human rights memorandum to accompany the Strikes (Minimum Service Levels) Bill.⁴⁰ In comparison with the Transport (Minimum Service Levels) Bill cited above, the memorandum states that the government believes that the Strikes (Minimum Service Levels) Bill is compatible with Article 14 of the ECHR as a result of the following:

12. Although the government considers that article 14 [relating to the prohibition of discrimination] ECHR is engaged [by the bill], the government does not consider that the relevant provisions are incompatible with the ECHR.

[...]

41. The provisions of the bill in relation to MSs [minimum service levels] engage article 11 [concerning freedom of assembly and association] and as such, they are also capable of engaging article 14 ECHR in relation to the fact that only certain types of categories, and services within those categories, would be the subject of the MSRs [minimum service regulations]. The government is however of the view that any interference with article 14 is justified as set out as follows.

42. The government believes that any such interference is justified under article 11(2) because it is necessary to protect the rights and

³⁹ HM Government, '[Delegated powers memorandum: Strikes \(Minimum Services Levels\) Bill](#)', 2 February 2023.

⁴⁰ HM Government, '[Strikes \(Minimum Service Levels\) Bill: Memorandum on European Convention of Human Rights \("ECHR"\)](#)', accessed 5 February 2023.

freedoms of others. Article 11 acknowledges that there may be more stringent conditions imposed on certain public sectors. The government seeks to limit the interference to those relevant services within the categories that are on the face of the bill and the secretary of state's power to prescribe relevant services within these categories are justified as these relevant services are where strike action causes disproportionate disruption to the general public (including significant financial loss) and harm to the wider economy. In addition, before any regulations could be made there is a requirement for prior consultation and the regulations are subject to the affirmative procedure ensuring heightened parliamentary scrutiny thus ensuring any interference is proportionate.

43. It should be noted that these provisions do not prohibit the right to strike in the affected relevant services.⁴¹

The memorandum also details further case law which it states supports member states imposing more stringent conditions on certain public sectors, and notes that consultations prior to the making of regulations prescribing the relevant services will be required.

Further, on article 11 of the ECHR on freedom of association, the memorandum states that the provisions are "engaged" by the bill but that it is "not incompatible" with them.⁴² According to the arguments set out in support of that proposition in the memorandum, the government contends that:

[Minimum service level agreements] are a proportionate means to limit the article 11 ECHR right to strike, as has previously been recognised by the ECtHR [European Court of Human Rights] and the ILO CFA [ILO's Committee on Freedom of Association] and are used in many other European countries. As such it strikes the right balance between the exercise of the right to strike and the protection of others' freedoms and rights.

Opposition parties have rejected that assertion, however, as examined below.

⁴¹ HM Government. ['Strikes \(Minimum Service Levels\) Bill: Memorandum on European Convention of Human Rights \("ECHR"\)'](#), accessed 5 February 2023, pp 8–9.

⁴² HM Government. ['Strikes \(Minimum Service Levels\) Bill: Memorandum on European Convention of Human Rights \("ECHR"\)'](#), accessed 5 February 2023, p 8.

3. Second reading of the bill in the House of Commons (and programme and money resolutions)

Second reading of the bill in the House of Commons took place on 16 January 2023. Introducing the legislation, the then secretary of state for business, energy and industrial strategy, Grant Shapps, said it would enable a balance to be struck between the right to strike and the delivery of essential public services:

The government firmly believe that the ability to strike is an important element of industrial relations in the UK. That ability is rightly protected by law, and we understand that an element of disruption is likely with any strike. However, we also need to maintain a reasonable balance between the ability of workers to strike and the rights of the public, who work hard and expect the essential services that they pay for to be there when they need them. We must be able to have confidence that when strikes occur, people’s lives and livelihoods are not put at undue risk. As has become clear from recent industrial action, that is not always the case, so we need a safety net in place to ensure that the public do not become collateral damage.

Citing the current disputes in various public sector areas, Mr Shapps claimed that the government was open to negotiation but could not accede to what he called the “inflation busting demands of the unions”.⁴³ Nor, he argued, could the situation continue without action, which was why the government was introducing the bill to ensure “minimum safety and service levels [and] keep livelihoods and lives safe”.⁴⁴

There were a number of interventions during Mr Shapp’s speech, including from Joanna Cherry (SNP MP for Edinburgh South West), who highlighted the human rights memorandum which accompanied the Transport Strikes (Minimum Service Levels) Bill:

[That memorandum] stated that the government’s legal advice was that it is not justifiable or necessary in a democratic society to have such restrictions in emergency and patient care services, in fire and rescue, or in education—only in transport. That does not appear in the human rights memorandum that accompanies this bill. Has the government’s legal advice changed or have they just changed their mind for reasons of political convenience?⁴⁵

⁴³ [HC Hansard, 16 January 2023, col 54.](#)

⁴⁴ [HC Hansard, 16 January 2023, col 54.](#)

⁴⁵ [HC Hansard, 16 January 2023, col 58.](#) The relevant memorandum on the current bill is available here: HM Government, ‘[Strikes \(Minimum Service Levels\) Bill: Memorandum on European Convention of Human Rights \(“ECHR”\)](#)’, accessed 5 February 2023, p 8.

In response, the secretary of state said that a change was necessary because of the subsequent strike action by the ambulance service in particular and related issues for patient safety:

[W]e have subsequently had disruption in the NHS, including in the ambulance service. What has happened in that disruption is that although the nurses have very sensibly provided a national level of safe service, unfortunately the same has not happened in the ambulance service. That is why this legislation is required in other areas at this time.⁴⁶

Responding for the Labour Party, Angela Rayner rejected the government's assertions, calling the bill a "vindictive assault" on workers' rights that a future Labour government would repeal.⁴⁷ She noted the scale of the current industrial action and the fact that in several areas, such as ambulance services, strike action was taking place for the first time in decades. Ms Rayner described Mr Shapps' assertion that patient safety had been put at risk as a unjustified "smear" and said the bill would do nothing to address industrial unrest.⁴⁸

Ms Rayner also contended that the government's argument that minimum service levels were now required was false:

[This is] a smokescreen about allegedly needing minimum service levels. We know that because, last autumn, [Mr Shapps'] own government assessed that minimum service levels were not needed for the emergency services due to existing regulations and voluntary arrangements.⁴⁹

In addition, Ms Rayner argued that the provisions in the bill would effectively curtail the right to strike, given the staffing levels required to deliver minimum service levels:

If the secretary of state for transport mandates that 50% of trains need to run on strike days, he knows that Network Rail will mandate that all signal operators need to work, because signals are needed even if just two trains are running. How can the secretary of state for business, energy and industrial strategy say this bill does not remove their right to strike?⁵⁰

⁴⁶ [HC Hansard, 16 January 2023, col 58.](#)

⁴⁷ [HC Hansard, 16 January 2023, col 66.](#)

⁴⁸ [HC Hansard, 16 January 2023, col 67.](#)

⁴⁹ [HC Hansard, 16 January 2023, col 67.](#)

⁵⁰ [HC Hansard, 16 January 2023, col 67.](#)

She also questioned how the government would seek to define minimum standards in the nuclear decommissioning sector, for example, as well as health and sectors like transport where there is a private and public sector component. She also questioned whether unions would be liable for non-union staff under the legislation.⁵¹

In addition, Ms Rayner drew attention to what she called the “far reaching” regulation-making powers in the bill, and the lack of opportunity for consultation on and scrutiny of the measures given the expedited nature of the bill. This was a subject that was returned to by a number of members at committee stage.⁵²

Speaking for the SNP, Alan Brown said that the bill was “an attack on millions of public sector workers”.⁵³ He argued that neither the Scottish nor Welsh governments desired such legislation and yet it would be imposed upon them. Similar to Angela Rayner, Mr Brown said that the bill raised “very serious legal question marks”, and he highlighted what he argued was the potential for employers to sue unions for damages.⁵⁴ He also pointed to the regulation-making powers in the bill and the nature of its commencement provisions:

The bill is made worse by the Henry VIII power that allows amendment and revocation even of future legislation not yet passed. We can see how the government are ramming this bill through Parliament with minimum scrutiny and a proposed programme motion allowing just five hours for committee. It really is an assault on democracy. The fact that the bill comes into effect immediately once passed, so that work notices and actions can be taken by employers for strikes that have already been voted through, shows just how ridiculous this assault on workers is.

The Liberal Democrat spokesperson, Christine Jardine, said that her party also opposed the bill. She argued it was merely political posturing:

It is an empty, detail-light, vague promise of a mandatory minimum level to replace existing voluntary arrangements. It will simply ramp up the rhetoric, without saying how anything will be achieved or offering any progress towards the solution that the public need.⁵⁵

The chair of the House of Commons Transport Committee, Iain Stewart (Conservative MP for Milton Keynes South), also spoke in the debate.

⁵¹ [HC Hansard, 16 January 2023, col 67.](#)

⁵² [HC Hansard, 16 January 2023, col 72.](#)

⁵³ [HC Hansard, 16 January 2023, col 74.](#)

⁵⁴ [HC Hansard, 16 January 2023, col 76.](#)

⁵⁵ [HC Hansard, 16 January 2023, col 105.](#)

Mr Stewart said that he welcomed the objectives of the bill but said there were a number of “practical concerns” that he wanted to put on record. For example, he said:

As has already been alluded to, it is possible in rail, for example, for parts of the system to operate at a minimum level. One train an hour could run from London to Manchester instead of three—there are a number of ways to have that reduction in service. But some parts of the system are binary: a signal box is either open or closed; and in aviation, an air traffic control centre is either open or closed. We need clarity on where the minimum level of service will apply.⁵⁶

Chair of the House of Commons Business, Energy and Industrial Strategy Committee, Darren Jones (Labour MP for Bristol North West) said he had significant concerns over the rationale for the bill and that his committee was disappointed by the lack of time for scrutinising its provisions.⁵⁷ He also noted that the independent Regulatory Policy Committee (RPC) had not been given time to review the government’s impact assessment and inform members about the consequences of the legislation. This was raised subsequently in committee stage, which is discussed below.

At the conclusion of the debate, David Linden (SNP MP for Glasgow East) moved a motion that the House consider the bill in private. That motion was divided upon and defeated by 482 votes to 49.⁵⁸

The House then divided on whether to give the bill a second reading, which was carried by 309 votes to 249.⁵⁹

Following the second reading debate a programme motion was moved to commit the bill to a committee of the whole House. That motion was divided upon and was carried by 306 votes to 252.⁶⁰ A money resolution was also moved which was again divided upon. It passed by 305 votes to 49.⁶¹

4. Committee of the whole House

The bill was considered in a committee of the whole House of Commons on 30 January 2023. A large number of amendments were discussed during the debate (over 100 were tabled), and four opposition amendments were divided upon. They are examined in turn below. All were voted down and

⁵⁶ [HC Hansard, 16 January 2023, col 78.](#)

⁵⁷ [HC Hansard, 16 January 2023, col 79.](#)

⁵⁸ [HC Hansard, 16 January 2023, cols 132–35.](#)

⁵⁹ [HC Hansard, 16 January 2023, cols 136–39.](#)

⁶⁰ [HC Hansard, 16 January 2023, cols 141–4.](#)

⁶¹ [HC Hansard, 16 January 2023, cols 145–7.](#)

no government amendments were moved, so the bill proceeded without any changes.

4.1 Amendment 1: Preserving protections against unfair dismissal

Ms Rayner moved amendment 1 which sought to preserve existing protections from unfair dismissal, including for an employee who participates in a strike contrary to a work notice.

Describing it as the issue she was most concerned about in the legislation, Ms Rayner argued that the bill would “give the secretary of state the power to threaten every nurse, firefighter, health worker, rail worker or paramedic with the sack”.⁶² She drew attention to the numbers of employment vacancies in sectors such as health, which she argued would not be able to cope with significant redundancies, and described the provisions as an attack on workers’ basic rights and protections. She called on members across the House to oppose the change by voting for Labour’s proposed amendment:

The secretary of state says that threatening key workers and tearing up their protection against unfair dismissal is necessary. Nurses, teachers, ambulance workers, cleaners, border staff, firefighters, rail workers, bus drivers and nuclear decommissioners—all threatened with the sack in the midst of a recruitment and retention crisis. If that is not the purpose of the bill, government members have the chance to join the opposition in voting for amendment 1 and removing the sacking key workers clause.⁶³

Kevin Hollinrake, then parliamentary under secretary of state at the Department for Business, Energy and Industrial Strategy, did not address amendment 1 specifically in his remarks, though he indicated his disagreement with the opposition’s assertion during Ms Rayner’s speech.⁶⁴

The House divided on amendment 1, where it was defeated by 315 votes to 246.⁶⁵

4.2 Amendment 4: Impact assessments on the impact of the bill on public services

Ms Rayner also moved amendment 4, which would have required the

⁶² [HC Hansard, 30 January 2023, col 86.](#)

⁶³ [HC Hansard, 30 January 2023, col 82.](#)

⁶⁴ [HC Hansard, 30 January 2022, col 86.](#) On 7 February 2023 the Department for Business, Energy and Industrial Strategy was dissolved. Responsibility for the bill transferred to the newly created Department for Business and Trade.

⁶⁵ [HC Hansard, 30 January 2023, cols 162–5.](#)

government to publish assessments of how the proposed legislation would impact on workforce numbers, individual workers, equalities, employers and trade unions. These would need to be published before the bill came into force.

Moving the amendment, Ms Rayner again contended that the bill risked penalising key workers and having an adverse impact on workforce numbers:

Can the minister promise that we will get separate assessments of the impacts of this legislation on all six of the sectors named? Can he guarantee that there will not be any impact on workforce numbers? Can he guarantee that work notices will not put undue burdens on overworked, under-resourced employers? Can he guarantee that equalities law will be upheld and that these new measures will not be used to discriminate against workers with protected characteristics?⁶⁶

She expressed further concerns over how work notices could be utilised and the impact on workers, unions, and employers:

The bill [...] allows bosses to target union members with work notices. What is to stop that happening? Will trade unions be liable for the actions of non-members? What about when there is no recognised trade union? What reasonable steps will a trade union need to take? Will it be penalised for picketing, or could the simple existence of an otherwise lawful peaceful picket line be effectively banned? The secretary of state claims to stand up for the democratic freedom to strike. Where are the protections to ensure that work notices do not prevent legal industrial action, or the requirements on employers to take reasonable steps to make sure that they do not, either intentionally or not?

[...]

If the secretary of state does not care about workers, what about the burden on the employers? Does he seriously think that overstretched public services have the resources to assess new minimum service laws—to work out who needs to be in work, how many people and where, before every single strike day? Should we not promote good-faith negotiations instead?⁶⁷

In response, Mr Hollinrake said that the government did not believe that the bill reduced requirements for employers to adhere to health and safety and equality legislation, and argued that it did not target union members, as

⁶⁶ [HC Hansard, 30 January 2023, cols 85–6.](#)

⁶⁷ [HC Hansard, 30 January 2023, col 83.](#)

“clearly stated” in the bill.⁶⁸ He added that he hoped voluntary arrangements would be sufficient, but the measures in the bill would be available if they were not:

[W]e hope not to use the powers in the bill if adequate voluntary agreements are in place where they are necessary. However, we cannot continue to rely on existing legislation or voluntary arrangements to help protect the lives and livelihoods of the people we represent. The public and workers reasonably expect the government to intervene to protect people’s lives and livelihoods, and that is what we are doing by ensuring that essential services continue, even while workers are exercising their right to strike.

The House divided on amendment 4, which was defeated by 317 votes to 250.⁶⁹

4.3 Amendment 32: Devolved consent

SNP spokesperson Alan Brown moved amendment 32, the purpose of which would be to prevent the provisions in the bill coming into force until consent had been obtained from the Scottish Parliament, Senedd Cymru/the Welsh Parliament, and the Greater London Assembly.

Mr Brown said the amendment was designed to protect the principles of devolution and suggested that it gave the minister a choice between respecting the views of the devolved legislatures or “riding roughshod over them”.⁷⁰

Responding for the government, Mr Hollinrake said ministers believed minimum service levels were necessary across Great Britain. However, he added that the UK government “[was] of course keen to engage with the devolved governments through consultation”.⁷¹

The House divided on amendment 32, where it was defeated by 321 votes to 46.⁷²

4.4 Amendment 2: Specifying minimum service levels

The Liberal Democrat spokesperson Christine Jardine moved amendment 2, which would have required the secretary of state to specify that any

⁶⁸ [HC Hansard, 30 January 2023, col 148.](#)

⁶⁹ [HC Hansard, 30 January 2023, cols 157–60.](#)

⁷⁰ [HC Hansard, 30 January 2023, col 95.](#)

⁷¹ [HC Hansard, 30 January 2023, col 148.](#)

⁷² [HC Hansard, 30 January 2023, cols 150–1.](#)

minimum service levels would be set no higher than the lowest actual level of service recorded on any day in the year before any new regulations were laid. The amendment would also have required the government to lay a report before Parliament to prove that condition had been met.

Ms Jardine said the purpose of the amendment was to ensure the bill's measures were better targeted by requiring the government to look at the level of minimum service they were calling for and ensure that it did not exceed the relevant service recorded in a given sector on any day in the previous 12 months.⁷³ She also called on the government to consider whether those recorded service levels were acceptable in the first place or whether they were seeking to shift the blame onto workers for public services being “run into the ground”.

The minister did not specifically address amendment 2 in his remarks, but again maintained that the government believed the bill was necessary to maintain a reasonable balance between the ability of workers to strike and the rights of the public to expect essential services to be there when they needed them.⁷⁴

The House divided on amendment 2, where it was defeated by 318 votes to 247.⁷⁵

4.5 Other notable issues raised at committee stage

4.5.1 Scope for scrutiny of the bill

Ms Rayner drew attention to the lack of line-by-line scrutiny of the bill or provision for evidence to be taken.⁷⁶ She called for scrutiny by the Joint Committee on Human Rights and the relevant select committees before the bill's provisions came into force.⁷⁷ She also drew attention to the continued lack of an impact assessment:

Who is the secretary of state planning to consult? Will he consult the trade unions and employers affected? Why has he failed to publish the impact assessment that he promised? The bill has nearly passed

⁷³ [HC Hansard, 30 January 2023, col 107.](#)

⁷⁴ [HC Hansard, 30 January 2023, col 146.](#)

⁷⁵ [HC Hansard, 30 January 2023, cols 153–6.](#)

⁷⁶ [HC Hansard, 30 January 2023, col 80.](#)

⁷⁷ The Joint Committee has now launched its inquiry into the bill's provisions: UK Parliament, '[JCHR launches inquiry into new strike legislation](#)', 20 January 2023. The committee held an [oral evidence session on 8 February 2023](#). A written transcript of this session was not available at the time of writing.

through the lower House and we have still not had any sight of it. This is near unprecedented and deeply anti-democratic.⁷⁸

Several opposition members also made the point about the lack of opportunity to scrutinise the bill during the debate.

In response, the minister again drew attention to the process of consultation which would be required by the bill before regulations on minimum service levels were introduced, and the use of the affirmative procedure for minimum service level regulations.⁷⁹ Mr Hollinrake said this process would enable sufficient scrutiny to take place:

To respond to some of the points made in the debate, particularly on scrutiny and process, clearly the consultations offer plenty of opportunities for hon. members, their constituents, employers, and unions to play a role in shaping minimum service levels before regulations are made, and both Houses will be able to provide additional scrutiny.

He added that the bill was already subject to parliamentary scrutiny and that the impact assessment on the bill would be available “shortly”.⁸⁰ At the time of writing an impact assessment had yet to be published. A press release from the RPC published on 2 February 2023 said the government had now submitted an impact assessment (IA) to them and it hoped to make its views known as soon as possible:

BEIS [the Department for Business, Energy and Industrial Strategy] has today (2 February) submitted an IA to the RPC for scrutiny, even though [...] it should have been submitted before the relevant bill was laid before Parliament and in time for the RPC to issue an opinion alongside publication of the IA. We are working to produce our opinion as quickly as possible and will make it available to government, Parliament and on our website as soon as our scrutiny is completed.⁸¹

4.5.2 Inclusion of Henry VIII powers

Former secretary of state for business, energy, and industrial strategy Jacob Rees-Mogg (Conservative MP for North East Somerset) spoke in the debate

⁷⁸ [HC Hansard, 30 January 2023, col 84.](#)

⁷⁹ [HC Hansard, 30 January 2023, col 146.](#)

⁸⁰ [HC Hansard, 30 January 2023, col 148.](#)

⁸¹ Regulatory Policy Committee, ‘[\(Updated\) Strikes \(Minimum Service Levels\) Bill IA: Statement from the RPC](#)’, 2 February 2023.

to welcome the aims of the bill. However, he also called it “badly written” and drew particular attention to the inclusion of Henry VIII powers:

[S]keleton bills and Henry VIII clauses are bad parliamentary and constitutional practice [...] On what basis can any government claim to have the power to amend legislation that has not yet been passed? The only argument for doing so, which no government would wish to advance, is incompetence. The only way to pass a subsequent act without amending it before it is passed is if we have not noticed what it was saying in the first place, and I cannot understand why a government would wish to put such a measure in a bill. Indeed, I am puzzled as to how clause 3 managed to get through the intergovernmental procedures that take place before legislation is presented to the House. I do not understand how the Parliamentary Business and Legislation Committee managed to approve a bill with such a wide-ranging Henry VIII clause and which fails to set out in detail what powers the government actually want.⁸²

Ms Rayner also spoke to the Henry VIII powers contained in the bill, noting the powers the bill would provide the ability not only to set, impose, and police minimum service levels, but to amend, repeal and revoke primary legislation, including future bills. She called for such regulations to be made through the affirmative procedure:

We might pass a bill only for a minister to rewrite it by statutory instrument the next day. Why on earth do the government need this power? Are they admitting that future legislation will be badly drafted, or are their motives more sinister? If those are the powers they seek, the least we can do is ensure that those regulations are made under the affirmative procedure.⁸³

In his response, the minister said the Henry VIII powers would be “restricted only to genuinely consequential amendments” and said that he did not believe they were as wide ranging as Mr Rees-Mogg and others had set out.⁸⁴

4.5.3 Compatibility with the UK’s international obligations

Several MPs raised the compatibility of the bill’s provisions with the UK’s international obligations, particularly Convention 87 from the International Labour Organisation (ILO) on the freedom of association and the protection

⁸² [HC Hansard, 30 January 2023, cols 87–8.](#)

⁸³ [HC Hansard, 30 January 2023, col 82.](#)

⁸⁴ [HC Hansard, 30 January 2023, col 147.](#)

of the right to organise.⁸⁵ The ILO's Committee of Experts published a report in 2012 which discusses the circumstances under which the setting of minimum service levels might be compatible with the convention rights. It states:

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 organisations 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 organisations 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

⁸⁵ International Labour Organisation, '[C087: Freedom of Association and Protection of the Right to Organise Convention](#)', 1948.

minimum service is to be provided and to require that a specific percentage of the service is provided during the strike. Others authorise the public authorities to determine minimum services at their discretion, without consultation, or require the judicial authorities to issue an order for this purpose.⁸⁶

There has been much discussion on whether the bill's provisions are compatible with those findings.⁸⁷ For example, during an earlier debate in the House of Commons before the bill's introduction, Angela Rayner said:

The ILO [...] 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 [...]⁸⁸

Similarly, during debate at committee stage of the bill, Andy McDonald (Labour MP for Middlesbrough) said:

Convention 87 of the ILO sets out the criteria that this government want to ignore. It stresses that the introduction of a negotiated minimum service as a possible alternative to the total prohibition of strikes should be contemplated only when the interruption of services would endanger life or the personal safety of the whole or part of the population [...]

The ILO says that a minimum service should be a genuine and exclusively minimum service—which this bill does not prescribe—and that unions should be able to participate in defining such a service.⁸⁹

In contrast, Laura Farris (Conservative MP for Newbury) said that the right to strike was neither absolute nor unlimited, and she rejected Mr McDonald's characterisation of the ILO position:

The hon. member for Middlesbrough was a tiny bit disingenuous when he read from the ILO's publication and said that the ILO allows a minimum service level only in:

“services the interruption of which would endanger the life, personal safety or health of the whole or part of the population”.

⁸⁶ International Labour Office, '[Giving globalization a human face: International Labour Conference](#)', 101st session, 2012.

⁸⁷ See House of Commons Library, '[Strikes \(Minimum Service Levels\) Bill 2022–23](#)', 13 January 2023, specifically sections 3.2 'International law and comparison with other countries', and 6.2 'Legal commentary'.

⁸⁸ [HC Hansard, 10 January 2023, col 434.](#)

⁸⁹ [HC Hansard, 30 January 2023, col 102.](#)

He knows as well as I do that he could and should have read on, because the ILO allows minimum service levels 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 [...] or in public services of fundamental importance.”⁹⁰

Ms Farris said a second acceptable restriction identified by the ILO is where strikes take place in activities that may be considered essential services. She noted that the 2012 report listed air traffic control, telephone services, firefighting services, health and ambulance services, prison services, the security forces and water and electricity services.⁹¹ She drew attention to the report’s finding that, in situations in which total prohibition of strike action would not appear justified, the “introduction of a negotiated minimum service [...] could be appropriate” to ensure that users’ basic needs are met or that facilities operate safely or without interruption.⁹²

These points were picked up the minister in his response, who said:

I was interested in the comments of my hon. friend the member for Newbury (Laura Farris) when she talked about the International Labour Organisation and its specifying of minimum service levels. It has stated that they do apply to essential services but could also apply to other services, such as education and railway workers. We think the legislation is consistent with international law and the International Labour Organisation.⁹³

5. Third reading of the bill in the House of Commons

There was no report stage of the bill in the House of Commons; it moved directly to third reading upon conclusion of committee stage.

Opening the debate at third reading, the secretary of state Grant Shapps reiterated the government’s argument that it was not seeking to withdraw the right to strike, comparing the situation with other countries:

We are not proposing a bill that would prevent people from being able to strike in other blue light services or in other areas. We are not

⁹⁰ [HC Hansard, 30 January 2023, col 104.](#)

⁹¹ International Labor Office, ‘[Giving globalization a human face: International Labour Conference](#)’, 101st session, 2012, p 71.

⁹² [HC Hansard, 30 January 2023, col 104](#); International Labor Office, ‘[Giving globalization a human face: International Labour Conference](#)’, 101st session, 2012, p 71.

⁹³ [HC Hansard, 30 January 2023, col 146.](#)

doing what we have done with the police or with the army in this country. We are not doing what they have done in other European nations or in countries across the world, including Canada, Australia, and large parts of America. We are not doing any of those things because we respect the right to withdraw labour. Rather, through this legislation, which I note was receiving large majorities in the House this evening, we are simply proposing to protect people's lives and to protect people's livelihoods.⁹⁴

Responding for Labour, Ms Rayner said that her party continued to believe the legislation was “impractical and insulting”, and again noted what she described as a lack of opportunity for scrutiny:

[The bill] is full of holes and it has been rushed through on the hoof with no real time for scrutiny. I rarely find myself agreeing with the right hon. member for North East Somerset (Mr Rees-Mogg), but this bill is incompetent. It is badly written, it uses bad parliamentary and constitutional practice, and it is wrong that the government are trying to bypass scrutiny. The opposition have been clear throughout that we will oppose this sacking nurses bill. If it passes, the next Labour government will repeal it. It threatens key workers with the sack during a workers' shortage and crisis, and it mounts an outright assault on the fundamental freedom of working people while doing nothing to resolve the crisis at hand.⁹⁵

Similarly, speaking for the SNP, Mr Brown said the bill would allow the targeting of workers and unions, and amounted to an “assault on the devolution settlement”.⁹⁶

The House divided on whether to give the bill a third reading, which was carried by 315 votes to 246.⁹⁷

⁹⁴ [HC Hansard, 30 January 2023, col 166.](#)

⁹⁵ [HC Hansard, 30 January 2023, col 166.](#)

⁹⁶ [HC Hansard, 30 January 2023, col 166.](#)

⁹⁷ [HC Hansard, 30 January 2023, cols 168–172.](#)

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