

Strikes (Minimum Service Levels) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Energy and Industrial Strategy, have been ordered to be published as HL Bill 97 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Callanan has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

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

ENVIRONMENTAL STATEMENTS

Lord Callanan has made the following statements under section 20(2)(a) and (3) of the Environment Act 2021:

In my view –

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

Strikes (Minimum Service Levels) Bill

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

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

Minimum service levels

1 Minimum service levels for certain strikes

The Schedule—

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

Interpretation and final provisions

2 Meaning of “the 1992 Act” 10

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

3 Power to make consequential provision

- (1) The Secretary of State may by regulations made by statutory instrument make provision that is consequential on this Act. 15
- (2) Regulations under this section may amend, repeal or revoke provision made by or under primary legislation passed—
 - (a) before this Act, or
 - (b) later in the same session of Parliament as this Act.

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

4 Extent

This Act extends to England and Wales and Scotland.

5 Commencement

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

6 Short title

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

SCHEDULE

Section 1

MINIMUM SERVICE LEVELS FOR CERTAIN STRIKES

PART 1

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

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

“Minimum service levels for certain services

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

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

234C Work notices relating to minimum service levels

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

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

234D Work notices: disclosure of information

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

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

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

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

234F Regulations: consultation and supplementary

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

234G Interpretation of terms relating to minimum service levels

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

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

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

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

PART 2

RELATED AMENDMENTS TO THE 1992 ACT

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

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

Strikes (Minimum Service Levels) Bill

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

Brought from the Commons on 31st January 2023

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