

Strikes (Minimum Service Levels) Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 21st February 2023, as follows –

| | |
|----------------------|--------------------------|
| Clause 1 Schedule | Clauses 2 to 6 Title. |
|----------------------|--------------------------|

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

The Schedule

LORD FOX

- 14 Page 3, line 31, at end insert –
“(5) Regulations made under this section in relation to strikes affecting services in an area for which an elected mayor is responsible may not be made without the consent of the elected mayor for that area.”

Member’s explanatory statement

This amendment would require the consent of the relevant elected mayor before minimum service levels could be set in relation to an area for which an elected mayor was responsible.

LORD ALLAN OF HALLAM

- 15 Page 3, line 31, at end insert –
“(5) Before making regulations under this section the Secretary of State must lay before each House of Parliament a statement outlining how the regulations are both necessary and proportionate.”

Member’s explanatory statement

This amendment would require the Secretary of State to outline why regulations made under this section are necessary and proportionate before making them.

LORD COLLINS OF Highbury
BARONESS O'GRADY OF UPPER Holloway

16 Page 3, line 31, at end insert –

“(5) The Secretary of State may not make any regulations under this section until a Minister of the Crown has laid before each House of Parliament assessments outlining the impacts of the Strikes (Minimum Service Levels) Act 2023 on –

- (a) workforce numbers,
- (b) individual workers,
- (c) employers,
- (d) trade unions, and
- (e) equalities.”

Member’s explanatory statement

This amendment would require the Government to publish assessments of how the proposed legislation would impact on workforce numbers, individual workers, equalities, employers and trade unions before the Bill comes into operation.

BARONESS NOAKES
As an amendment to Amendment 16

17 After paragraph (b) insert –

“(ba) users of the services or others who are affected by the availability of the services,”

LORD PATEL
LORD KAKKAR

18 Page 3, line 31, at end insert –

“(5) Regulations made under subsection (4)(a) specifying minimum service levels for health services may not be made unless the Government has first established, via primary legislation, appropriate and legally enforceable staffing levels across health services for non-strike days that are greater than those required on strike days.”

LORD HENDY

18A Page 3, line 31, at end insert –

“(5) Regulations may not prohibit or enable the prohibition of participation in, or any activity in connection with, a strike or other industrial action; or create an offence.”

Member’s explanatory statement

This amendment is intended to ensure that the regulations do not breach Article 11 of the European Convention on Human Rights by permitting the penalisation of individuals for exercising their right to strike.

18B Page 3, line 31, at end insert –

“(5) Regulations may not make provision which is contrary to the United Kingdom’s international obligations, and in particular –

- (a) the International Labour Organization Convention No 87 (Freedom of Association and Protection of the Right to Organise),

The Schedule - continued

- (b) article 6(4) of the European Social Charter, and
 - (c) articles 387 and 399 of the EU-UK Trade and Cooperation Agreement.
- (6) In determining the United Kingdom’s international obligations for the purposes of subsection (5)(a), reference must be made to the Observations of the International Labour Organization’s Committee of Experts, and the Decisions of the International Labour Organization’s Committee on Freedom of Association, and for the purposes of subsection (5)(b), reference must be made to the conclusions of the European Committee of Social Rights.”

Member’s explanatory statement

This amendment is intended to ensure that the regulations do not compromise the UK’s obligations under the Trade and Cooperation Agreement.

BARONESS RANDERSON

19 Page 3, line 31, at end insert –

“234BA Consultation with Devolved Administrations

- (1) Regulations which relate wholly or partly to Scotland may not be made unless a senior Minister of the Crown has consulted the Scottish Ministers.
- (2) Regulations which relate wholly or partly to Wales may not be made unless a senior Minister of the Crown has consulted the Welsh Ministers.
- (3) For the purposes of subsections (1) and (2), consultation means consultation with a view to reaching an agreement.”

Member’s explanatory statement

This inserted section 234BA is designed to ensure that the Minister must consult the Scottish and Welsh ministers before regulations are made. Sections 234BA(1) and (2) are based on similar provisions in the Civil Contingencies Act 2004.

LORD COLLINS OF Highbury
BARONESS O’GRADY OF UPPER Holloway

20 Page 3, line 31, at end insert –

“234BA Power to specify minimum service levels: health and safety

- (1) Minimum service regulations must take into account the levels of service provided in the relevant service in periods when that service is not affected by strikes.
- (2) Before making any regulations under section 234B, the Secretary of State must lay before each House of Parliament an assessment of the level of service provided within the relevant specified category over the most recent period of 12 months for which data is available.
- (3) The assessment under subsection (2) must include an analysis of performance in relation to health and safety standards applicable to the relevant service.

The Schedule - continued

- (4) The Secretary of State must give priority in making regulations under section 234B to maintaining health and safety standards during a strike which are no lower than the relevant applicable standards in the specified service.”

Member’s explanatory statement

This amendment would require the Government to assess health and safety performance in the affected sector before making minimum service regulations.

LORD FOX

- 21 Page 3, line 34, after “may” insert “if all options to avert a strike have been exhausted”

Member’s explanatory statement

This amendment seeks to ensure that work notices are only issued where all options to avert a strike are exhausted.

LORD COLLINS OF HIGHBURY
BARONESS O’GRADY OF UPPER HOLLOWAY
LORD HENDY

- 22 Page 3, line 34, after second “a” insert “recognised”

Member’s explanatory statement

Restricts the giving of work notices to trade unions which are recognised (either by an employer or statutorily).

BARONESS RANDERSON

- 23 Page 4, line 13, after first “the” insert “number of”

Member’s explanatory statement

This amendment seeks to probe issues with work notices naming individual employees.

LORD COLLINS OF HIGHBURY
BARONESS O’GRADY OF UPPER HOLLOWAY

- 24 Page 4, line 19, leave out “more persons than are reasonably” and insert “any more than the minimum number of persons”

Member’s explanatory statement

This amendment is intended to require employers to take reasonable steps to ensure the serving of work notices does not prevent lawful industrial action from taking place.

- 25 Page 4, line 21, at end insert “or have the effect of preventing any one person taking part in protected industrial action.”

- 26 Page 4, line 21, at end insert “and no person may be identified in one or more work notices where the effect would be that they would be prevented from taking part in industrial action on fifty per cent or more of the days included in the notice referred to in subsection (1)(a).”

Member's explanatory statement

This amendment is intended to ensure that specific workers cannot be prevented from striking by this Bill.

27 Page 4, line 24, at end insert—

- “(b) whether the person took part in the activities of an independent trade union at an appropriate time, or
- (c) whether the person made use of trade union services at an appropriate time.”

Member's explanatory statement

This amendment would ensure that the selection of persons for work notices cannot be targeted at trade union activists.

28 Page 4, line 24, at end insert—

- “(b) whether the person took part in the activities of an independent trade union at an appropriate time, or
 - (c) whether the person made use of trade union services at an appropriate time.
- (6A) Contravention of subsection (6) constitutes subjecting that person to a detriment for the purposes of section 146.
 - (6B) Subjecting a person to a detriment in contravention of section 146 by reason of subsections (6) and (6A) is actionable as a breach of statutory duty.
 - (6C) A person subjected to a detriment for the purposes of section 146 by reason of subsections (6) and (6A) may, as an alternative to pursuing an action for breach of statutory duty in accordance with subsection (6B), present a claim to an Employment Tribunal in accordance with that section.
 - (6D) If there are facts from which a court or tribunal could conclude, in the absence of any other explanation, that the employer has contravened, or is likely to contravene, subsections (6) and (6A), it must find that such a contravention occurred, or is likely to occur, unless the employer shows that it did not, or is not likely to, occur.”

Member's explanatory statement

This amendment is intended to give legal recourse in cases where employers may choose to target trade union members with work notices.

29 Page 4, line 28, at end insert—

- “(c) be satisfied that the requirement in subsection (5) is satisfied.”

Member's explanatory statement

This amendment is intended to require employers to take reasonable steps to ensure the serving of work notices does not prevent lawful industrial action from taking place

30 Page 4, line 28, at end insert—

- “(c) carry out an assessment of the equality implications of the notice.”

Member's explanatory statement

This amendment would require employers to assess the equality implications of work notices.

31 Page 4, line 28, at end insert—

- “(c) carry out an assessment of the health and safety implications of the notice, following consultation with any relevant health and safety representatives of any persons identified by the notice.”

Member's explanatory statement

This amendment would require employers to make an assessment of the health and safety implications and consult with health and safety reps before issuing work notices.

LORD FOX
LORD HENDY

32 Page 4, line 37, at end insert—

- “(9A) Failure to comply with a work notice may not—
- (a) be regarded as a breach of the contract of employment of any person identified in the work notice, or
 - (b) constitute grounds for dismissal or any other detrimental action.”

Member's explanatory statement

This amendment would protect employees from detrimental action for not complying with a work notice.

LORD HENDY

32A Page 4, line 40, at end insert—

“234CA Protection of employees

- (1) A person shall not be subject to a work notice if the person in question has not received a copy of the work notice.
- (2) It shall be for the employer to prove that an individual received a work notice.
- (3) Failure to comply with a work notice shall not—
 - (a) be regarded as a breach of the contract of employment of any person identified in the work notice, or
 - (b) constitute grounds for dismissal or any other detriment.
- (4) Having regard to subsection (3), failure to comply with a work notice shall be deemed to be—
 - (a) a trade union activity undertaken at an appropriate time for the purposes of section 146, and
 - (b) participation in industrial action for the purposes of sections 238 and 238A.”

Member's explanatory statement

The proposed section 234CA is intended to ensure that compliance with a work notice should be voluntary on the part of the employee in question. Provision is also made to protect the individual who decides not to comply from any sanction imposed by the employer.

LORD COLLINS OF Highbury
 BARONESS O'GRADY OF UPPER Holloway

32B Page 4, line 40, at end insert –

“ **234CA Interaction with the Trade and Cooperation Agreement**

- (1) The Secretary of State may not make regulations under section 234B affecting any provision of UK law –
 - (a) which is within the scope of labour and social levels of protection within the meaning of Article 386 of the Trade and Cooperation Agreement, or
 - (b) the effect or purpose of which is, directly or indirectly –
 - (i) to respect, promote or implement any of the “internationally recognised core labour standards” as set out in Article 399(2) of the UK/EU Trade and Cooperation Agreement 2021, or
 - (ii) to implement any Convention of the International Labour Organization ratified by the United Kingdom or any provision of the European Social Charter 1961 accepted by the United Kingdom, as provided for in Article 399(5) of the Trade and Cooperation Agreement.
- (2) In this section the “Trade and Cooperation Agreement” has the meaning given by section 37 of the European Union (Future Relationship) Act 2020.”

Member’s explanatory statement

This amendment prevents regulations made as a result of the Bill’s provisions from conflicting with protections in the UK/EU Trade and Cooperation Agreement.

LORD COLLINS OF Highbury
 BARONESS O'GRADY OF UPPER Holloway
 LORD HENDY

33 Page 5, leave out lines 9 to 22

Member’s explanatory statement

This amendment is to probe the level of protection of unions when involved in industrial action.

LORD COLLINS OF Highbury
 BARONESS O'GRADY OF UPPER Holloway

34 Page 5, line 17, leave out “comply with” and insert “are aware of”

Member’s explanatory statement

This amendment would ensure that the trade union’s legal duty is restricted to making its members aware of the content of the work notice.

LORD HENDY

34A Page 5, line 17, at end insert –

- “(1A) The following do not constitute a failure to take reasonable steps under subsection (1)(b) –

The Schedule - *continued*

- (a) disciplining or imposing any detriment for non-compliance or threatened non-compliance, or for inducing or seeking to induce non-compliance by another member with a work notice,
- (b) threatening to discipline or impose any detriment for non-compliance or threatened non-compliance, or for inducing or seeking to induce non-compliance by another member with a work notice, or
- (c) instructing a member not to comply with a work notice, or to revoke any instruction or encouragement to take part in the strike.”

Member’s explanatory statement

This amendment is intended to limit the requirement that a union should police its own members.

LORD COLLINS OF Highbury
BARONESS O’GRADY OF UPPER Holloway

35 Page 5, line 22, at end insert –

“(3) Peaceful picketing within the meaning of section 220 of this Act may not be regarded as an act done by the union to induce a person to take part, or to continue to take part, in the strike, for the purposes of subsection (1).”

Member’s explanatory statement

The intention of this amendment is avoid picketing alone being a cause for a claim against the union under the Act on the basis that this was inducing an identified person to take part in the strike.

36 Page 5, line 23, at end insert –

- “(A1) Before making regulations under section 234B the Secretary of State must receive a report on minimum services in the affected sector from the relevant House of Commons select committee.
- (A2) For the purpose of subsection (A1), “relevant House of Commons select committee” means –
 - (a) House of Commons Home Affairs Committee for regulations affecting fire and rescue services, and border security as set out in subsection 234B(4);
 - (b) House of Commons Education Committee for regulations affecting education services as set out in subsection 234B(4);
 - (c) House of Commons Transport Committee for regulations affecting transport services as set out in subsection 234B(4);
 - (d) House of Commons Health and Social Care Committee for regulations affecting health services as set out in subsection 234B(4);

The Schedule - continued

- (e) House of Commons Business, Energy and Industrial Strategy Committee for regulations affecting decommissioning of nuclear installations and management of radioactive waste and spent fuel as set out in subsection 234B(4).
- (A3) The Speaker of the House of Commons may determine in a case of any doubt the relevant successor of any committee mentioned in subsection (A2)."

Member's explanatory statement

This amendment would require that regulations could not be made for a particular sector before the relevant Commons Select Committee publishes a report on how the Act will impact on that sector.

LORD HENDY

36A Page 5, line 26, at end insert—

- “(1A) Before making regulations under section 234B the Secretary of State must lay before each House of Parliament, at least 28 days before the regulations are intended to be made, a draft of the regulations with an accompanying explanatory memorandum setting out—
- (a) all factors taken into account in determining each minimum service level specified in the regulations, and
 - (b) the minimum service level in respect of any sector or sub-sector to which the regulations are to apply.”

Member's explanatory statement

This amendment is intended to address paragraphs 17-23 of the Report of the Delegated Powers and Regulatory Reform Committee (27th Report of Session 1022-23, 2 March 2023).

LORD COLLINS OF Highbury
BARONESS O'GRADY OF UPPER Holloway

36B Page 5, line 26, at end insert—

- “(1A) At least one month before making regulations under section 234B, the Secretary of State must publish indicative minimum service levels for any service that the regulations will provide for.”

Member's explanatory statement

Requires indicative minimum service levels for any service to be set out before regulations can be made for that service.

LORD HENDY

36C Page 5, line 33, at end insert—

- “(3A) Regulations under section 234B are to be made only if—
- (a) the Secretary of State reasonably believes them to be necessary to protect the life, personal safety or health of the whole or part of the population, and
 - (b) each minimum service level specified in the regulations—

The Schedule - continued

- (i) is restricted to such levels of service as are reasonably necessary to provide protection for the life, personal safety or health of the whole or part of the population,
- (ii) does not provide for levels of service which are greater than those necessary to satisfy the basic needs of the population, and
- (iii) does not render ineffective any strike it affects.”

Member’s explanatory statement

This amendment is intended to partially fulfil the conditions required by ILO Convention 87 by providing that minimum service levels are limited to those matters specified by the ILO.

LORD FOX

37

Page 5, line 35, leave out from “provision)” to end of line 37 and insert “is subject to the super affirmative procedure as set out in subsections (4A) to (4H).

- (4A) The Secretary of State must lay before Parliament –
 - (a) a draft of the regulations, and
 - (b) a document which explains the draft regulations.
- (4B) Where a draft of the regulations is laid before Parliament under subsection (4A), no statutory instrument containing the regulations may be laid before Parliament until after the expiry of the 30-day period.
- (4C) The Secretary of State must request a committee of either House of Parliament whose remit includes either the wider UK workforce and industrial relations, or the sector to which the regulations relate, to report on the draft regulations within the 30-day period.
- (4D) In preparing a draft statutory instrument containing the regulations, the Secretary of State must take account of –
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee under subsection (4C),
 made within the 30-day period with regard to the draft regulations.
- (4E) If, after the 30-day period, the Secretary of State wishes to make regulations in the terms of the draft or a revised draft, they must lay before Parliament a statement –
 - (a) stating whether any representations, resolutions or recommendations were made under subsection (4D),
 - (b) giving details of any representations, resolutions or recommendations so made, and
 - (c) explaining any changes made in any revised draft of the regulations.
- (4F) The Secretary of State may make a statutory instrument containing the regulations (whether or not revised) if, after the laying of the statement required under subsection (4E), a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

The Schedule - continued

- (4G) In this section, references to “the 30-day period” in relation to any draft regulations is to the period of 30 days beginning with the day on which the original draft regulations were laid before Parliament.
- (4H) For the purposes of subsection (4G) no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.”

Member’s explanatory statement

This amendment seeks to provide Parliament with the opportunity for enhanced scrutiny of the regulations made under this section.

LORD COLLINS OF Highbury
BARONESS O’GRADY OF UPPER Holloway

- 38 Page 5, line 38, leave out from “may” to end of line 40 and insert “only be satisfied by consultation before the passing of the Strikes (Minimum Service Levels) Act 2023.”

Member’s explanatory statement

The intention of this amendment is to require that the consultation requirement may be satisfied only by consultation completed before the passing of the Act.

- 39 Page 5, line 40, at end insert –
“(6) Any consultation carried out under this section must be published within the period of six weeks beginning with the day on which this Act is passed.”

Member’s explanatory statement

The intention of this amendment is to require that the Government makes public any and all consultations.

LORD FOX

- 40 Page 6, line 6, at end insert –
“234H Impact assessment of sections 234B to 234G
 (1) The Secretary of State must conduct a review into the impact of sections 234B to 234G on services within each of the categories listed in section 234B(4), with regard to –
 (a) recruitment of new staff,
 (b) retention of existing staff, and
 (c) the provision of adequate staffing levels in the long term.
 (2) The Secretary of State must lay a copy of the report under subsection (1) before each House of Parliament no later than six months after the day on which the Strikes (Minimum Service Levels) Act 2023 is passed.”

Member’s explanatory statement

This amendment would require the Secretary of State to conduct a review into the impact of the Bill on recruiting staff, retaining staff and the provision of adequate staffing levels in the long term.

LORD COLLINS OF Highbury
 BARONESS O'GRADY OF UPPER Holloway
 THE LORD BISHOP OF LONDON

41 Page 6, line 29, leave out paragraphs 6 to 10

Member's explanatory statement

This amendment would preserve existing protections from unfair dismissal, including for an employee who participates in a strike contrary to a work notice under this Bill.

Clause 3

LORD COLLINS OF Highbury
 BARONESS O'GRADY OF UPPER Holloway
 LORD HENDY

42 Page 1, line 16, leave out subsections (2) and (3)

Member's explanatory statement

This amendment would remove the Secretary State's powers to amend, repeal or revoke primary legislation, through regulations.

LORD FOX

43 Page 1, line 16, leave out subsections (2) to (5) and insert—

“(2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Member's explanatory statement

This amendment would remove the ability for the Secretary of State to make regulations that repeal primary legislation and would make all regulations made under this section subject to the affirmative procedure.

LORD COLLINS OF Highbury
 BARONESS O'GRADY OF UPPER Holloway

44 Page 1, line 19, leave out paragraph (b)

Member's explanatory statement

This amendment would remove the Secretary of State's powers to bring in regulations to amend, repeal or revoke primary legislation that is passed later in the same session of Parliament as this Act.

45 Page 2, line 4, at end insert—

“(3A) No statutory instrument containing (whether alone or with other provisions) regulations under this section may be made unless the Secretary of State has published an assessment of this Act's impact on recruitment and retention in both the public and private sectors.”

Member's explanatory statement

No commencement until the government has made an assessment of the Bill's impact on recruitment and retention in the public and private sectors.

- 46 Page 2, line 4, at end insert –
 “(3A) No statutory instrument containing (whether alone or with other provisions) regulations under this section may be made unless the Secretary of State has published an assessment of this Act’s impact on workers with protected characteristics.”

Member’s explanatory statement

No commencement until the government has assessed the Bill’s impact on those with protected characteristics.

- 47 Page 2, line 5, leave out from “section” to end of line 7 and insert “may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament”

Member’s explanatory statement

This amendment would ensure that any regulations made under Clause 3 must be made under the affirmative resolution procedure.

BARONESS RANDESON
 LORD THOMAS OF CWMGIEDD

- 48 Page 2, line 9, leave out from “Act” to end of line 11 and insert “of Parliament.
 (6) This section does not apply to –
 (a) an Act or Measure of Senedd Cymru, or
 (b) an Act of the Scottish Parliament.”

Member’s explanatory statement

This amendment would mean that the power of United Kingdom Ministers to amend primary legislation does not apply to Acts of the Scottish Parliament or Senedd Cymru.

After Clause 3

LORD GREENHALGH
 LORD HOGAN-HOWE

- 48A Insert the following new Clause –
“Review: extending restrictions to other services
 (1) Within the period of one year beginning with the day on which this Act is passed, the Secretary of State must review the extent to which this Act has achieved its objectives.
 (2) The review must consider whether it would be expedient to enact further legislation applying the restrictions provided for under the Schedule to other services, in particular, services that support police services, including forensic investigation services and telephone call handling services.
 (3) On completing the review, the Secretary of State must lay a report before Parliament.”

Clause 4

BARONESS RANDESON
LORD THOMAS OF CWMGIEDD

49 Page 2, line 13, leave out “and Wales and Scotland”

Member’s explanatory statement

This amendment would limit the extent of this Act to England.

Clause 5

LORD BALFE

50 Page 2, line 15, after first “on” insert “the day two years after”

LORD COLLINS OF Highbury
BARONESS O’GRADY OF UPPER Holloway

51 Leave out Clause 5 and insert the following new Clause—

“Commencement

- (1) Sections 4 to 6 come into force on the day on which this Act is passed.
- (2) The remaining provisions of this Act come into force on such day as the Secretary of State may by regulations appoint.
- (3) Regulations under subsection (2) may not be made unless—
 - (a) the Joint Committee on Human Rights has taken written and oral evidence, and published a report, as to whether in its opinion this Act’s provisions are compatible with the right to freedom of assembly and association under Article 11 of the European Convention on Human Rights, as well as the right to strike as recognised in other international instruments that the United Kingdom has ratified, and
 - (b) the day appointed under the regulations is not before the end of the period of one month beginning with the day on which the report in paragraph (a) is published.”

Member’s explanatory statement

This amendment requires the publication of a report from the Joint Committee on Human Rights before the Act can come into operation.

Strikes (Minimum Service Levels) Bill

SECOND
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21 March 2023
