



EXPLANATORY NOTES

Strikes (Minimum Service Levels) Act 2023

Chapter 39

£6.90

STRIKES (MINIMUM SERVICE LEVELS) ACT 2023

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Strikes (Minimum Service Levels) Act 2023 which received Royal Assent on 20 July 2023 (c. 39).

- These Explanatory Notes have been prepared by the Department for Business and Trade in order to assist in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	3
Policy background	3
Legal background	3
Territorial extent and application	3
Commentary on provisions of the Act	4
Section 1 and the Schedule: minimum service levels for certain strikes	4
Act Schedule Part 1: Amendments to Part 5 of the 1992 Act: Minimum Service levels Paragraphs 1 to 2	4
New section 234B: Power of Secretary of State to specify minimum service levels	4
New section 234C: Work notices relating to minimum service levels	4
New section 234D: Work notices: disclosure of information	5
New section 234E: No protection if union fails to take reasonable steps	6
New section 234F: Regulations: consultation and supplementary	6
New section 234G: Interpretation of terms relating to minimum service levels	6
Act Schedule Part 2: Related amendments to the 1992 Act	6
Other sections in the Act	7
Section 2: Meaning of “the 1992 Act”	7
Section 3: Power to make consequential provision	7
Section 4: Extent	7
Section 5: Commencement	7
Section 6: Short title	7
Commencement	7
Annex A – Hansard References	8

These Explanatory Notes relate to the Strikes (Minimum Service Levels) Act 2023 which received Royal Assent on 20 July 2023 (c. 39).

Overview of the Act

- 1 The Act enables the implementation of minimum service levels (MSLs) in certain services during periods of strike action. The Act amends the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) to:
 - restrict the protection of trade unions under the 1992 Act from legal action in respect of strikes relating to certain services and the automatic protection of employees from unfair dismissal where provision has been made for minimum levels of service (MSLs). The services will be prescribed by regulations, following consultation; and
 - enable employers to issue work notices to require the minimum service levels to be delivered for particular strikes in specified services.

Policy background

- 2 The Act is intended to expand upon a commitment made in the Conservative Party’s manifesto for the 2019 general election to require that a minimum service operates during transport strikes, by enabling the Government to regulate for minimum service levels in a range of sectors as outlined in paragraph 15.
- 3 Minimum service levels will be implemented via regulations, as provided for in this Act, in specific services. The Government will consult on these regulations before they are made.
- 4 This Act and subsequent regulations are designed to enable employers to require enough workers to work so as to ensure minimum service levels are delivered during strikes within relevant services.

Legal background

- 5 The current legislation relating to industrial action is set out in the 1992 Act, Part 5 in particular.
- 6 By organising industrial action, trade unions may become liable in tort (a civil wrong that occurs when someone causes a person to suffer loss or harm, for which the courts can provide a remedy in law, such as damages or an injunction to compel or prevent certain conduct). Where a trade union induces workers to take industrial action which amounts to a breach of their employment contract, the union may commit the tort of inducing breach of contract. Part 5 of the 1992 Act provides immunity for unions from such tortious liability provided the union follows the rules regarding the calling and conduct of strikes. It also protects employees participating in the strike for a certain period from being dismissed for breach of their contract of employment by reason of that participation. Both these protections can be lost if a strike is not undertaken in accordance with the rules.
- 7 The 1992 Act will continue to be the main Act dealing with rules regarding the calling and conduct of strikes, and this Act inserts new provisions into the 1992 Act.

Territorial extent and application

- 8 The Act forms part of the law of England and Wales and Scotland, as set out in Section 4. The provisions of the Act extend and apply to Great Britain.

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Commentary on provisions of the Act

Section 1 and the Schedule: minimum service levels for certain strikes

- 9 Section 1 introduces the Schedule, which amends Part 5 and other provisions of the 1992 Act. Part 5 of the 1992 Act makes provision relating to industrial action, including the conditions that must be met in order for strike action to be protected from tort proceedings.

Act Schedule Part 1: Amendments to Part 5 of the 1992 Act: Minimum Service levels Paragraphs 1 to 2

- 10 These paragraphs add the need for a union to take reasonable steps to ensure compliance by its members with a work notice in relation to minimum service levels to the list of requirements necessary for a strike to be protected from liability in tort. They insert new sections 234B, 234C, 234D, 234E, 234F and 234G to the 1992 Act. The meaning of “strike” is explained in paragraph 28 below and work notices are further explained in paragraphs 14 to 21.

New section 234B: Power of Secretary of State to specify minimum service levels

- 11 Subsection (1) of this new section provides a power for the Secretary of State to make regulations providing for levels of service where there are strikes in relevant services, which are defined as “minimum service regulations”.
- 12 Subsection (2) provides that minimum service regulations may apply to strikes that take place on any day after they come into force, even if notice of the strike was given on or before that day, or the ballot in respect of the strike was on or before the day on which this Act comes into force. This means that the regulations may apply to all such strikes, regardless of when employers are notified of the strike.
- 13 Subsection (3) provides for a further power for the Secretary of State to specify in regulations the relevant services for which minimum service level regulations may be made. This power to make regulations specifying relevant services is limited to the categories of services listed in Subsection (4) namely:
 - Health services
 - Fire and rescue services;
 - Education services;
 - Transport services;
 - Decommissioning of nuclear installations and management of radioactive waste and spent fuel;
 - Border security.

New section 234C: Work notices relating to minimum service levels

- 14 This new section establishes how work notices are to operate. Work notices are the mechanism that puts minimum service levels into practice for particular strikes in relevant services. The work notice may be given by the employer to the trade union and will identify the people required to work to secure that the levels of service set out in the minimum service regulations are provided on a strike day.

- 15 Subsection (1) gives the employer the right to give a work notice to a union in relation to any strike which relates to the relevant service, where minimum service regulations have been made, and where the union has notified that strike to the employer in accordance with the existing rules on giving notice of a strike.
- 16 Subsection (2) explains that a work notice is to be a notice in writing telling the union that the levels of services, as provided for in the minimum service regulations, are to apply in relation to a strike. The work notice is therefore the mechanism by which the minimum service levels set out in the regulations apply to the provision of services for a strike day.
- 17 Subsection (3) requires the notice to be given to the union that has served the strike notice, in the period between receipt of that strike notice and 7 days before the relevant day of the strike (or later if this is agreed by the union).
- 18 Subsections (4) and (5) prescribe what the contents of a work notice should be. It must identify the people who are required to work during the strike, and the work they must do. It must not list more people than are reasonably necessary to provide the levels of service set out in the minimum service regulations.
- 19 Subsection (6) makes clear that the employer must have no regard to the following when deciding who to identify in a work notice:
 - whether someone is or is not a member of a trade union or a particular trade union, including a particular branch or section of a trade union (see subsection (7));
 - whether a person has or has not taken part in activities of a trade union. This could, for example, include strike action or recruitment activities;
 - whether a person has or has not made use of trade union services;
 - whether a trade union has or has not raised a matter on behalf of a person; or
 - whether a person has or has not consented to a trade union raising a matter on their behalf.
- 20 Subsection (8) requires the employer to consult the union about the number of people to be identified in the work notice and the work they must do and have regard to any views expressed by the union before issuing the work notice to that union. Subsection (9) allows the employer to vary a work notice before the end of the 4th day before the relevant day of the strike (or later if this is agreed by the union). Subsection (10) requires the employer to consult the union again, on the same matters as referred to above, before making such a variation.
- 21 Subsection (11) specifies that where a strike takes place over a number of days (whether continuously or discontinuously) each day of the strike is to be treated as a separate strike date. This enables employers to issue individual work notices for individual strike dates even if the strike as a whole runs for multiple days.

New section 234D: Work notices: disclosure of information

- 22 This new section provides that, where it is necessary to name individuals in work notices, this will not be a breach of confidence owed by the employer or of any other restrictions on disclosing information. The employer must adhere to data protection legislation but the obligations regarding the giving of work notices in this section are to be taken into account when assessing the obligations under that legislation.

New section 234E: No protection if union fails to take reasonable steps

- 23 This new section provides that the union’s protection from tort proceedings (see paragraph 6) is removed if: minimum service regulations are in place in relation to a relevant service; an employer to whom the minimum service regulations applies issues a work notice in accordance with the procedures in the Act; and the union fails to take reasonable steps to ensure that members of the union who are identified in the work notice comply with the work notice. Such compliance by union members would mean not participating in the strike on strike days when those members are required by the work notice to work.
- 24 If an employer does seek damages against a union in relation to a failure by the union to take reasonable steps to ensure a valid work notice is complied with by its members, subsection (2) requires that any damages awarded by the courts may only cover losses incurred as a result of the union failing to comply with the obligation in section 234E(1)(b) to take reasonable steps. In other words, damages may not extend to losses that would have been suffered by the employer anyway.

New section 234F: Regulations: consultation and supplementary

- 25 Subsection (1) requires that consultation takes place prior to regulations being made under section 234B. Subsection (2) explains certain types of provisions those regulations may contain. Subsection (5) makes it clear that consultation required by subsection (1) may take place prior to, as well as after, the passing of the Act.
- 26 Subsections (3) and (4) provide that these regulations are subject to the affirmative procedure and require the approval of both Houses of Parliament before they are made.

New section 234G: Interpretation of terms relating to minimum service levels

- 27 This section sets out the meaning of various defined terms used in the Act including that:
- Minimum service regulations are defined in section 234B(1);
 - Relevant services are defined in section 234B(3); and
 - A work notice is defined in section 234C(2).
- 28 Subsection (2) makes clear that the meaning of ‘strike’ where used in sections 234B to 234F, does not include overtime bans and call-out bans and that such bans constitute action short of a strike for the purposes of minimum service levels. This aligns with the same definition used for the purposes of a ballot on industrial action, as referenced by s229(2A) of the 1992 Act.

Act Schedule Part 2: Related amendments to the 1992 Act

- 29 This part of the Act’s schedule makes a number of technical amendments to the 1992 Act to ensure the new requirements regarding minimum service regulations and work notices are applied to the law around industrial action more broadly, in particular whether certain strikes are protected against liability for the union or not (see paragraph 4 of the Schedule). This also includes that unions must make clear in their notice of industrial action (under section 234A) whether the action is a strike (as defined in paragraph 28 above).
- 30 This part also makes clear that there is no automatic protection from unfair dismissal for an employee who is identified in a valid work notice but participates in the strike contrary to that work notice, provided that their employer has (before the strike day) given the employee notice of the work specified in the work notice that they are required to carry out on the strike day and a statement that they must comply with that work notice.

Other sections in the Act

Section 2: Meaning of “the 1992 Act”

31 This section is self-explanatory.

Section 3: Power to make consequential provision

32 This section allows the Secretary of State to make consequential amendments by affirmative regulations as regards amendments to primary legislation (i.e. an Act) and to make consequential amendments to any other legislation by regulations subject to annulment by a resolution of either House of Parliament in accordance with the negative procedure.

Section 4: Extent

33 This section is self-explanatory.

Section 5: Commencement

34 See paragraph 36 below.

Section 6: Short title

35 This section is self-explanatory.

Commencement





36 All sections within the Act came into force on Royal Assent.

Annex A – Hansard References

37 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament:

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	10 January 2023	Vol. 725 Col. 455 
Second Reading	16 January 2023	Vol. 726 Col. 54 
Committee of the Whole House	30 January 2023	Vol. 727 Col. 59 
Third Reading	30 January 2023	Vol. 727 Col. 165 
<i>House of Lords</i>		
Introduction	31 January 2023	Vol. 827 Col. 549 
Second Reading	21 February 2023	Vol. 827 Col. 1561 
Committee	9 March 2023 23 March 2023	Vol. 828 Col. 892  Vol. 828 Col. 1862 
Report	26 April 2023	Vol. 829 Col. 1222 
Third Reading	9 May 2023	Vol. 829 Col. 1678 
Commons Consideration of Lords Amendments	22 May 2023	Vol. 733 Col. 76 
Lords Consideration of Commons Reasons	8 June 2023	Vol. 830 Col. 1600 
Commons Consideration of Lords Amendments	21 June 2023	Vol. 734 Col. 801 
Lords Consideration of Commons Reasons	4 July 2023	Vol. 831 Col. 1115 

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Stage	Date	Hansard Reference
Commons Consideration of Lords Amendments	17 July 2023	Vol. 736 Col. 712 
Lords Consideration of Commons Reasons	20 July 2023	Vol. 831 Col. 2461 
Royal Assent	20 July 2023	House of Commons Vol. 736 Col. 1073 
		House of Lords Vol. 831 Col. 2498 

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Published by TSO (The Stationery Office), a Williams Lea company,
and available from:

Online

www.tsoshop.co.uk

Mail, Telephone & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

E-mail: customer.services@tso.co.uk

Textphone: 0333 202 5077

ISBN 978-0-10-560341-2



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