
BMA briefing – Strikes (Minimum service levels Bill)

January 2023

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Summary

- **The BMA calls on MPs to oppose the Strikes (minimum service levels) Bill and to urge Government to ensure there is meaningful engagement with unions on pay, instead of heavy-handed tactics that put workers' rights and jobs at risk.**
- The BMA strongly opposes the Strikes (minimum service levels) Bill, which would amend the Trade Union and Labour Relations (Consolidation) Act 1992 to:
 - enable employers to issue work notices identifying staff required to work to ensure minimum service levels in public services, and;
 - remove protections for trade unions from legal action if they fail to ensure minimum service levels, and for staff from unfair dismissal if they strike when a work notice has been issued.
- The BMA has long called on the Government to ensure safe-staffing levels across the NHS, but it has failed to take the action needed to do so. It is ironic that the Government is now focusing on minimum staffing levels as a reason to curtail strike action when protecting the NHS goes to the heart of why healthcare workers are striking and considering striking.
- The Bill gives the Secretary of State wide-ranging powers to define and set the levels of service required during strikes in public services via regulations subject to the affirmative resolution procedure. These are not defined in the bill and therefore transfer huge powers to the secretary of state to define them via statutory instrument with apparently no restrictions on this power or protections against over-reach.
- We are particularly alarmed at the rate at which Government is progressing the Bill through parliament and the apparent disregard for parliamentary procedure – no impact assessment has taken place and the Government has yet to begin consultation with any of the impacted sectors, despite remaining stages of the in the Commons due to conclude on 30th January.
- The Bill risks contravening the UK's obligations under Convention 87 of the International Labour Organisation that protects the right to organise. It is a disproportionate and unnecessary measure, given life and limb protections that already exist in the 1992 Act. It is an established principle amongst healthcare unions that strike action should be coordinated in such a way as to allow critical services to continue to function.

- It diminishes unions' rights and responsibilities to represent their workers, infringes workers' rights to strike and threatens key public sector workers with losing their jobs if they fight for better conditions. Any proposals which could reduce an already too small workforce are completely unacceptable.
- To protect the NHS and patient care, the Government must focus on addressing the NHS workforce crisis and retaining and recruiting the staff needed.
- This must mean addressing years of pay erosion that has left doctors demoralised and turning to better paid jobs abroad and outside the NHS and funding workforce expansion – Figures from the GMC's State of medical education and practice report show that **in 2021, almost 10,000 doctors left the UK medical workforce**, whilst a recent BMA survey found **one third of junior doctors are actively planning to leave the NHS** as soon as they can find another job, with poor pay and working conditions among the top reasons for junior doctors wanting to leave.

BMA concerns

Human rights impacts and removal of protections for unions and workers

Clause 1 introduces the Schedule, which amends the 1992 Act. Part 1 of the Bill Schedule inserts provisions to require a union to take reasonable steps to ensure compliance by its members with a work notice in relation to minimum service, and to enable employers to sue unions where this is not done. This loss of immunity would not be confined to the action involving identified workers who fail to comply, but would apply to the entirety of the action.

There is significant risk of abuse by employers in terms of specifying numbers and identifying workers subject to the work notice, and of divisions arising between unions and their members in terms of steps unions would be required to take to ensure compliance by their members.

The BMA is deeply concerned that if enacted, these measures not only represent an intrusion on legitimate trade union activities, but also undermine workers' rights to representation and leave unions unable to effectively represent their members.

Part 2 of the Bill Schedule removes workers' automatic protection from unfair dismissal if they participate in strike action contrary to a work notice. Rather than protecting patient care, enabling employers to fire workers who strike would only serve to exacerbate existing workforce shortages.

The Secretary of State has said that the Bill is in line with the International Labour Organisation, which "itself states that minimum service levels can be a proportionate way of balancing the right to strike with the need to protect the wider public". Whilst the ILO does state that the health and personal safety of the population should be protected, the Bill is a disproportionate and unnecessary measure given life and limb protections already exist in the 1992 Act and that it is an established principle amongst healthcare unions that strike action should be coordinated in such a way as to allow critical services to continue to function. Conversely the Bill risks contravening the ILO by giving unprecedented powers to the Secretary of State to set undefined minimum service levels that could undermine strike action.

Far from bringing the UK in line with other European countries, it represents a significant departure from their practices where pay and minimum service levels are typically decided through collective negotiations and agreement, with disputes settled between trade unions and employers. Instead, this Bill makes no reference to collective bargaining nor does it subject minimum service levels to independent arbitration should it be necessary.

The UK already has some of the toughest trade union laws in Europe. Whilst the Government has pointed to minimum service level requirements in countries including France, Spain and Italy, none of these countries have anything approaching the overall cumulative extent of restrictions found in the UK in terms of balloting and notification requirements, permissible use of agency workers as strike replacements and restrictions on the circumstances in which industrial action can be taken. The cumulative impact of these existing restrictions with minimum services requirements and the associated threat of dismissal and damages for non-compliance, risk significantly undermining the effectiveness of lawful industrial action.

The imposition of tighter restrictions on trade unions may instead have the inadvertent effect of prolonging or increasing the frequency of workplace disputes, as concluded by the Government's own [Impact Assessment](#) on the Transport Strikes Bill.

- **The BMA is aware of amendments tabled that would seek to address some of the issues raised above:**
 - **Amendments 25 and 56 tabled by SNP MP Chris Stephens to remove Clause 1 and the Bill Schedule, and Opposition Amendment 9 that would remove health services from the Bill.**
 - **Opposition Amendment 63 SNP Amendments 49 and 52, and Amendment 79 tabled by Labour MP Ian Mearns that would remove unions' compliance duties under the Act, which currently risk undermining unions' ability to effectively represent their members.**
 - **Amendment 39 aimed at ensuring regulations do not restrict the right to strike and are compliant with international human rights obligations and New Clause 1, tabled by Labour MP Richard Burgon, that would prevent the Act from coming into operation until a court had certified that the Act complied with the UK's relevant international obligations. This should be a minimum requirement to prevent legislation being passed that would contravene internationally established human rights protections.**

Regulation-making powers

The Bill gives significant wide-ranging powers to the Secretary of State to make minimum service regulations that would specify the levels of service required in relation to strikes in the public services.

The Bill places a requirement on the Secretary of State to consult 'such persons as they consider appropriate' before making the regulations, while employers will be required to consult unions and 'have regard to their response' before setting any work notice.

These requirements fall far short of ensuring any meaningful consultation and risk unrealistic service levels being set which will undermine strike action.

The Secretary of State [has said](#) he hopes voluntary agreements can be agreed between employers and unions so the regulatory-making power won't need to be used. However, the Bill would still allow the Secretary of State to utilise this significant power if they so choose during a dispute with limited parliamentary scrutiny, minimal consultation and no obligation to reflect unions' views in establishing what minimum service levels should look like.

Clause 3 of the Bill also includes a Henry VIII power to amend other primary legislation by regulation which leaves huge questions over what the true impact of the Bill will be and means parliamentarians debating the Bill cannot be exactly sure what they are voting for.

- **The BMA also notes amendments tabled that would seek to address some of these concerns, including:**
 - **Amendments 43, 51, 85, 87 and 89 that would enhance both the Secretary of State's and employers' obligations to both consult and agree minimum service levels with trade unions**
 - **Opposition Amendment 100 that would remove the Secretary of State's powers to amend, repeal or revoke primary legislation through regulations.**

Parliamentary procedure

The BMA is alarmed at the rate at which Government is progressing the Bill through parliament, allowing for minimal scrutiny and undermining the role of parliament in examining and approving legislative change.

Despite the far-reaching consequences of the Bill, unions have been given no opportunity to feed into any pre-legislative scrutiny and the Government has yet to begin consultation with any of the impacted sectors. This is despite the Bill already having made significant progress through parliament – the Bill will likely conclude its journey through the Commons on Monday with no consultation having been carried out.

Critically, no impact assessment has been published, as [highlighted](#) by the Regulation Policy Committee. Taken alongside the significant regulatory-making powers and powers for the Secretary of State to amend primary legislation contained in the Bill, there is no transparency over what impact the legislation will have.

- **The BMA notes amendments that would help ensure necessary scrutiny of the Bill. This includes Opposition Amendments 4 and 8 that would require impact assessments and inquiries by relevant Select Committees to be carried out and published before the Act could be brought into operation.**

What the BMA is calling for

Instead of allowing existing and expected strikes to continue with the intention of then relying on heavy-handed legislation to undermine this legitimate action, the Government should be focused on meaningful negotiation with unions and addressing the critical, ongoing challenges facing the NHS.

This must mean addressing years of pay erosion that has left doctors demoralised and turning to better paid jobs abroad and outside the NHS.

Healthcare staff made significant sacrifices throughout the Covid-19 pandemic and continue to work in an increasingly overstretched healthcare system, which is struggling with the highest waiting lists and backlog of care since records began. However, the Government has shown itself unwilling to properly reward healthcare staff, leaving them forced into taking or considering taking industrial action.

It is this that has led to the BMA balloting our junior doctor members in England on industrial action, not unions acting irresponsibly. The legislation does nothing to address what the Health and Social Care Committee has identified as “the greatest workforce crisis” facing the NHS, but instead risks worsening industrial relations.

Junior doctors in England have seen their pay eroded by over 26% in the past 15 years. In a recent BMA survey of more than 4,500 junior doctors:

- One third said they are actively planning to leave the NHS as soon as they can find another job, with poor pay and working conditions among the top reasons for junior doctors wanting to leave
- nearly half (45.3%) said they have struggled to afford their rent or mortgage
- half (50.8%) have had difficulty paying to heat and light their homes in the past year
- Seven in ten (71.4%) junior doctors surveyed said they have undertaken extra shifts on top of their standard contracts over the past year.

Instead of committing to address the situation, the Government has exacerbated it by restricting the DDRB from making pay recommendations for staff on multi-year deals. Junior doctors in England have been held to a multi-year agreement which delivers a pay uplift of just 2%, failing to recognise their significant sacrifices during the Covid-19 pandemic or the context of soaring inflation. This is despite the DDRB warning that failure to provide an uplift above the multi-year settlement would 'have a significant effect on motivation, affecting retention, productivity, and ultimately patient care'¹.

The BMA calls on MPs to oppose the Strikes (minimum service levels) Bill and to urge Government to ensure there is meaningful engagement with unions on pay, instead of heavy-handed tactics that put workers' rights and jobs at risk.

¹ DDRB & DHSC (July 2022) Review Body on Doctors' and Dentists' Remuneration 50th Report: 2022
<https://www.gov.uk/government/publications/review-body-on-doctors-and-dentists-remuneration-50th-report-2022>