
BMA briefing – Strikes (Minimum Service Levels) Bill

May 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 is opposed to proposals for imposing minimum service levels (MSLs) on strike days on the grounds that:

- **They are unnecessary given ‘life and limb’ protections already exist in the Trade Union and Labour Relations (Consolidation) Act 1992.** These current arrangements allow for rapid and effective localised responses to agree derogations during industrial action.
- **The Secretary of State will have significant powers to define MSLs through regulations, and employers to set work notices, with minimal requirement for consultation and no requirement for agreement with trade unions.** This risks thresholds for MSLs being set that undermine legitimate strike action.
- **Proposals for MSLs risk contravening the UK’s responsibilities under international human rights laws and conventions to which the UK is a signatory.** The UK already has some of the toughest trade union laws in Europe.¹ The proposals would further limit legitimate trade union activities and risk undermining workers’ right to strike.
- **The imposition of Minimum Service Levels and work notices risk leading to greater tensions between trust leaders, their staff and unions without addressing the underlying issues that are causing healthcare worker to take strike action.** This concern is shared by both unions and organisations representing NHS management, including NHS Providers and NHS Confederation.²

We call on MPs to vote against Government motions to reject Lords’ amendments to the Strikes (Minimum Service Levels) Bill which remove some of its most damaging parts.

¹ In *RMT v United Kingdom* [2014] IRLR 467, the Court of Human Rights recognised that both the ILO and the European Committee on Social Rights considered the UK’s procedural rules were “excessive and unduly burdensome” and that domestic laws restricting secondary action, which “did not strike at the “core” of Article 11 rights”, meant the UK was at the “most restrictive end of a spectrum of national regulatory approaches and is out of line with a discernible international trend”. Since then, the UK has become even more restrictive. The Trade Union Act 2016 imposes a 50% turnout threshold and requires that at least 40% of those entitled to vote must vote “yes” in ballots concerning important public services.

² Sir Julian Hartley, CEO, NHS Providers and Matthew Taylor, CEO, NHS Confederation, [Oral evidence to Health and Social Care Committee, 09.05.23](#)

Lords Amendments

[Lords Amendment 2 – The Schedule: minimum service levels for certain services](#)

The BMA urges MPs to vote against the Government motion to remove Lords Amendment 2 from the Bill. This amendment ensures that powers for the Secretary of State to set minimum service levels may not be exercised unless a consultation on the potential impact of their use has been carried out, published, and reviewed by a committee of each House of Parliament whose remit includes either the wider UK workforce and industrial relations, or the sector to which the regulations in question relate.

Throughout the passage of the Bill the BMA has raised significant concern that the Bill risks contravening International Labour Organisation standards³ by enabling the Secretary of State to define minimum service levels with limited consultation and no obligation for agreement. This amounts to giving the executive huge and unrestricted powers almost arbitrarily to interfere in what is a fundamental human right.

There has been very little transparency over the human rights, equalities or economic impact of the Bill – the Government’s [Impact Assessment](#) was only published once the Bill was already progressing through parliament and was [rated as “not fit for purpose”](#) by the Regulatory Policy Committee. Consultation on minimum service levels has only just begun with limited sectors.

Lord Amendment 2 is a proportionate response to retrospectively addressing the lack of consultation so far by ensuring that powers to set and enforce Minimum Service Levels can only be carried out once consultation has been carried out on their impact.

[Lords Amendment 4 – Protection of employees](#)

The BMA strongly urges MPs to vote against the Government motion to reject Lords Amendment 4, which would ensure that an employee cannot be dismissed or suffer detriment due to failing to comply with a work notice.

Lords Amendment 4 addresses significant concern – expressed by trade unions, employees and employers – that workers could be subject to disciplinary action or dismissal if they participate in strike action contrary to a work notice.

Without this amendment, there is significant risk of abuse by employers in terms of specifying numbers and identifying workers in work notices and of increased tensions between employers, employees and trade unions. As NHS Providers have [warned](#):

“We anticipate that asking trusts to enforce work notices with the threat of dismissal will damage relations and the goodwill that is crucial to successful local derogation negotiations.”

The NHS is already experiencing a workforce crisis making the NHS the power to dismiss staff particularly concerning. Not only does it leave staff the health service relies on vulnerable to

³ The ILO does state that minimum service levels can be used with a view to ensure that the basic needs of the population are met during a strike in a public utility. However, this is with requirements that:

- It does not render the strike action ineffective
- The service is “genuinely and exclusively a minimum service”
- the workers’ organisations concerned should be able to participate, if they so wish, in defining such a service, along with employers and the public authorities.”

dismissal, but it could deter staff from taking part in industrial action, resulting in lower standards across the profession and fewer people choosing to pursue a career in the health sector.

Given that the effect of this would be to worsen patient care, and that employers are unlikely to ever want to use this power for this reason, it is difficult to understand why the Government should want to re-add it to the Bill.

[Lords Amendment 5 – trade union protections](#)

The BMA calls on MPs to vote against Government motions to reject Lords Amendment 5 and related technical amendments, which would ensure that trade unions do not have any responsibility or obligation to ensure that their trade union members comply with a work notice.

Without the Lords' amendment, unions that fail to "take reasonable steps" to ensure compliance by members with a work notice would be at risk of litigation. This loss of immunity could result in unions being sued for damages, which, in the case of unions with more than 100,000 members is £1 million.

As highlighted by the Joint Committee on Human Rights' (JCHR) report on the Bill, it is unclear what the Government would consider reasonable steps to be and how unions could be sure they had met these. More concerning, the threat of litigation and obligations on unions to help ensure compliance with work notices imposed by employers would require unions to act in a way that would undermine their own industrial action and responsibility to represent their members.

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