



## Department for Energy Security & Net Zero

**Lord Callanan**  
Minister for Business, Energy and  
Corporate Responsibility

**Department for Business,  
Energy & Industrial Strategy**  
1 Victoria Street  
London  
SW1H 0ET

[www.gov.uk](http://www.gov.uk)

To: Baroness Drake  
Chair of the Constitution Committee

19 April 2023

Dear Baroness Drake

Thank you for your Committee's report following its scrutiny of the Strikes (Minimum Service Levels) Bill ("the Bill"). As the Minister responsible for the Bill, I welcome your report and the constructive debates that have taken place at Committee stage.

The Government has carefully considered the Committee's views and recommendations. This letter sets out the Government's response.

### **Skeleton legislation**

#### *Committee view*

The Committee are concerned with the lack of detail in the Bill, such as no definition of "minimum service levels" or clarity on who should be consulted when making regulations under new section 234B. The report states "It is not clear whether regulations establishing "minimum service levels" will apply to a particular phase of strike action between particular dates or more broadly to any industrial action undertaken by employees in one of the service areas listed in the Bill. The Bill does not provide any guiding principles on what should constitute minimum service levels (such as, for example, the protection of human health)." The Committee states "These factors hinder the ability of Parliament to scrutinise the policy underlying the Bill."

The Committee recommends *"that indicative draft regulations be published during the Bill's passage through the House so that Parliament can properly assess the Government's interpretation of the term "minimum service levels" and better scrutinise its application to different services."*

#### *Government response*

The Government believes that this Bill provides for a reasonable, fair and proportionate approach to protect the lives and livelihoods of the public. I will address each of the Committee's points in turn.

First, with the range of sectors included in the Bill, it is right that the detail of specific services within these sectors and of minimum service levels for specific services is set out in secondary legislation. The Government is of the view that the detail required to describe the relevant services and set the level of service for each relevant service is not appropriate for primary legislation. The regulations will allow the Secretary of State, after consulting and in the light of relevant evidence, to set levels of service to be provided in the event of a strike relating to the provision of a relevant service. The consultation on proposed minimum service levels will seek detailed evidence in order to understand the different circumstances that could be applicable in one relevant service and set appropriate tailored levels in response to that evidence gathering. The consultation on passenger rail minimum service regulations, for example, indicates the complex nature of the matters to be considered when designing minimum service levels such as whether the minimum service level framework includes information on particular aspects including route prioritisation, hours of operation, and/or timetable implications. Evidence from responses to the consultation will inform how the regulations are drafted to take these matters into consideration.

In addition, secondary legislation can be more reactive to changing circumstances. For example, were clinical standards to change in the future, this might impact on the minimum service level required for relevant health services and the workforce required to deliver that minimum level of service. With regards to fire and rescue services, developments in technology may change demand over time – for example the increased use of electric vehicles and charge points may require increased resource during a vehicle fire incident compared with that for an internal combustion engine vehicle fire. Furthermore, with any minimum service level introduced for passenger rail, as the design and operation of the railways continues to evolve over time it will be important to ensure that its effectiveness can be reviewed should there be significant changes in services.

To note, the Bill does provide detail on the requirements of work notices once minimum service levels are set by regulations.

Second, I would like to clarify when minimum service levels will apply in relation to strike action. Once a minimum service level is in place, if the relevant trade union(s) give notice of strike action, the relevant employer(s) can issue a work notice ahead of the strike(s) to specify the workforce required and the work they are required to carry out to meet the minimum service level for that strike period. The work notice may cover the entire strike period, or a new work notice may be issued for each strike day. The work notice will make clear which period of strike action it applies to. A work notice must be issued 7 days prior to the strike day, unless a later day is agreed by the relevant union(s) and can be varied up to the fourth day before the strike date or any later day agreed by the relevant union.

With regards to guiding principles, as the Bill covers six sectors, each consultation and subsequent regulations, via the explanatory memorandum, will specify the legitimate aim(s) in respect of the service(s) they apply to. For example, in the passenger rail consultation the aim is to balance the ability to take strike action with the ability of others to get to work and access key services. In the ambulance consultation the aim is to protect life and health.

The Bill is clear that before making minimum service regulations for a particular area, consultations must take place. It is entirely proper for Government to seek the views of members of this House, experts, employers, industry bodies, as well as relevant trade unions and their members through consultations. We have launched consultations on establishing minimum service levels in fire, ambulance and passenger rail services. Regulations will be subject to approval by both houses to enable parliamentary scrutiny before they come into force. To prepare draft regulations before consultation has taken place would predetermine the outcome of the consultations. For this reason, we do not accept the Committee's recommendation to publish draft regulations during the Bill's passage.

## **Consequential powers**

### *Committee view*

The Government should explain why clause 3(2)(b) is necessary. Unless the explanation is satisfactory, it should be removed from the Bill.

### *Government response*

This power may only be used to make amendments to other legislation that are genuinely consequential on this Bill. As the Committee mention in the report, this clause is based on standard wording. The Bill already includes a number of changes to the Trade Union and Labour Relations (Consolidation) Act 1992 as a consequence of this Bill - but it is possible not all necessary consequential amendments to other legislation have been identified in the Bill's preparation, particularly in relation to other primary legislation that is still going through Parliament in this session. For example, those Acts might have been drafted before the Bill becomes an Act and therefore may not take it into account (even if they get Royal Assent later). It is therefore prudent for the Bill to contain a power to deal with these in secondary legislation and the Government considers it is appropriate to include this power, so that full effect can be given to the Bill. If this power is used to amend primary legislation then the regulations would be subject to the affirmative procedure, so would need to be approved by both Houses of Parliament before being made. This power may be used to amend provisions that are made by or under primary legislation that is passed either before this Bill is passed, or later, if in the same session of Parliament as this Bill. It is worth noting that the Delegated Powers and Regulatory Reform Committee does not reference Clause 3 in its report on the Bill.

I hope this provides sufficient reassurance for the Committee, and that they will agree with the Government's view that the powers in clause 3 are appropriate and necessary.

## **Impact Assessment**

### *Committee view*

The Committee is concerned that late provision of impact assessments contradicts the Government's 'Guide to Making Legislation' and hinders scrutiny.

### *Government response*

The Government recognises that impact assessments should be included alongside bill documents wherever possible. However, it was important to bring forward this legislation at pace which regrettably meant it was not possible to finalise the impact assessment for introduction of the Bill. It was, however, published at the earliest possible point to support parliamentary scrutiny of the legislation.

## **Compliance with international obligations**

### *Committee view*

The Committee emphasises the importance of ensuring that legislation is compliant with those obligations.

### *Government response*

We agree with the Committee of the importance that legislation is compliant with our international obligations and I would like to reassure you that the Government firmly believes that this legislation is compatible with our international obligations including the European Convention on Human Rights (ECHR).

As you acknowledge in your report, Article 11 ECHR can be restricted in some circumstances. The European Court of Human Rights (ECtHR) has found that:

“regard must be had to the fair balance to be struck between the competing interests of the individual and the community as a whole. Since achieving a proper balance between the interests of labour and management involves sensitive social and political issues, the Contracting States must be afforded a margin of appreciation as to how trade-union freedom and protection of the occupational interests of the union members may be secured.” (RMT v UK [2014] ECHR 366)

The application of minimum service levels in key sectors as a restriction of Article 11 is compliant with the ECHR, with a clear legal basis that has been established through ECtHR case law.

With regards to Article 14, as set out in the ECHR Memorandum the Government has chosen the six sectors and are satisfied that the difference in treatment is justified and a proportionate means of achieving a legitimate aim. The six sectors: – health, education, transport, fire & rescue, nuclear decommissioning and border security – are justified, given the impacts of their potential disruption when strikes take place on a significant number of people who are not involved in the dispute. As well as impacts on public safety and the ability of the public to go about their daily lives.

Countries across modern democracies in the EU and globally have implemented minimum service levels as a way to balance the ability to strike with the rights of the public. In fact, some have banned strikes in specified sectors completely and both the ECHR and ILO conventions allow for this. But we’re not proposing to go that far.

The Government will continue to consider our international obligations when deciding what services to prescribe as relevant services and the level of minimum service level to set for them.

Once again, I would like to reiterate my thanks to you and the Committee for your engagement. I hope that the Committee is reassured by the points set out in this letter and I look forward to continuing to work constructively with the Committee during the remaining stages of the Bill's passage.

A handwritten signature in blue ink, appearing to read 'Martin Callanan', with a stylized flourish at the end.

**Lord Callanan**