



House of Commons
Transport Committee

Minimum service levels for rail: Government Response to the Committee's Eighth Report of Session 2022–23

Second Special Report of Session
2023–24

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Transport Committee

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Second Special Report

The Transport Committee published its Eighth Report of Session 2022–23, [Minimum service levels for rail](#) (HC 1153) on 22 September 2023. The Government response was received on 22 November 2023 and is appended below.

Appendix: Government Response

Introduction

The government is pleased to have the opportunity to respond to the conclusions and recommendations of the Transport Select Committee's inquiry into Minimum Service Levels (MSLs) for Passenger Rail.

Evidence presented during the committee's inquiry highlighted the substantial impact that industrial action has had on rail passengers during recent disputes. When a trade union chooses to strike, people – including key workers such as doctors, nurses, and teachers – cannot get to work, students can struggle to get to school, and patients' ability to attend appointments can be affected. Whilst it is right that workers are able to take strike action, it has been a priority for the government to protect members of the public from disproportionate impacts of strike action on their ability to make important journeys and on their livelihoods.

The government has introduced new regulations which, subject to Parliamentary approval, set MSLs in specified passenger rail services and thus allow in-scope employers to issue work notices to secure a minimum level of service to reduce the impact on rail passengers and the wider economy, whilst balancing this with workers' ability to take strike action.

The committee's inquiry has been carefully followed by officials, and the government's engagement and analysis, in parallel with the work of the committee, came to similar conclusions on the approach for the policy. This response accompanies the consultation response¹, regulations² and explanatory memorandum³ to set out the government's policy position.

Where text is in bold and italics, this is text quoted from the committee's final report.

Minimum Service Levels

The government's 2019 manifesto committed to ensuring that a minimum level of service can operate during transport strikes. To deliver this commitment, the UK Government introduced the Strikes (Minimum Service Levels) Act (the Act), which became law in July 2023, amending the Trade Union and Labour Relations (Consolidation) Act 1992.

1 <https://www.gov.uk/government/consultations/minimum-service-levels-for-passenger-rail-during-strike-action>

2 <https://www.legislation.gov.uk/ukdsi/2023/9780348253368>

3 <https://www.legislation.gov.uk/ukdsi/2023/9780348253368/memorandum/contents>

The Act provides that, for a range of key sectors, the relevant Secretary of State may specify in regulations the relevant services to which MSLs will apply, and what the minimum service level will be. Whilst the Act establishes the mechanism for delivering MSLs, the minimum level of service for the relevant sector is set out in regulations.

Public consultation

The Department for Transport (the department) conducted a 12-week public consultation from February to May 2023. The consultation covered proposals for implementation of MSLs for both heavy rail and light rail services throughout Great Britain and received 78 responses from across both the transport sector and other interested parties from across the wider economy.

The public consultation proposed options for designing the MSL framework and posed questions about the merits of the proposed options. In consideration of the responses provided to the consultation, we assessed if there were further evidence gaps. We concluded further consultation and engagement was required with stakeholders on the implementation of MSLs, to ensure as many views as possible were considered as part of the design of the MSL regulations. This engagement included gathering additional evidence and testing the effectiveness and proportionality of the design of the regulations, and consultation on the department's proposed framework with:

- Representatives from infrastructure managers, including Network Rail
- TOCs (including Open Access Operators)
- The regulator (Office for Rail and Road - ORR)
- Light rail operators
- Devolved administrations
- Maintenance providers
- Freight operating companies
- Trade union representatives
- Passenger representative groups

The department also conducted further analysis using available datasets to model the impacts of recent strikes, the potential impact MSLs could have had during this action, and to consider different ways to design MSLs. This modelling further supported our work to design MSLs to meet our key aims - supporting passengers to make important journeys during strike action (including to get to work, education, and healthcare appointments), and limiting the damage to the economy it can cause.

The full detail of this work is set out in the government's response to the public consultation⁴.

4 <https://www.gov.uk/government/consultations/minimum-service-levels-for-passenger-rail-during-strike-action>

Minimum Service Levels for passenger rail

Through the consultation responses and engagement with industry, we looked closely at the impacts of strikes on different parts of the rail network and current industry processes. It was clear that a one-size-fits-all approach for the entire rail sector would not adequately reflect the complexities of the industry, or support us in designing MSLs that are deliverable, proportionate, and meet our aims.

In recognition of the stark impacts that different strikes can have on different aspects of the rail network, the department's approach in the Regulations is to set MSLs for three categories of specified passenger rail services that can apply during strike periods. These MSLs also work in conjunction with one another where strikes affect multiple different services. These are:

- **Train Operation Services** – where a strike affects passenger train operation services, the MSL is the provision of the train operation services necessary to operate the equivalent of 40% of the operator's timetabled services during the strike.
- **Infrastructure services (such as the operation of track and signalling)** – where a strike affects infrastructure services (for example, strikes affecting Network Rail), the MSL is the provision of the specified infrastructure services over specified priority routes (set out as a list in the Regulations) but only between the hours of 6am and 10pm.
- **Light Rail services** – where a strike affects any of 11 listed light rail systems (trams, undergrounds, and metros in Great Britain), the MSL is the provision of the train operation services and infrastructure services necessary to operate 40% of that system's timetabled services for the relevant strike day.

MSLs are a tool for employers who operate services within scope of the Regulations, who will be able to issue work notices to trade unions once a strike has been called, should they choose to do so. The Act provides that work notices must identify which employees are reasonably required to work, and what work they must undertake, to secure the MSLs as set out in the Regulations. Employers must consult the trade union on the number of employees reasonably necessary to secure the MSL and the work they will be required to do, and trade unions must take reasonable steps to ensure employees comply with the work notice once it has been issued. The government have laid a Statutory Code of Practice in Parliament for approval on the reasonable steps trade unions should take to meet the legal requirements under the Act. Separate non-statutory guidance has also been published on the issuing of work notices by employers, where the regulations apply, to secure minimum levels of service on a strike day.

The careful design of these MSLs, based on evidence from consultation and engagement with industry, will allow the delivery of a considerable improvement in the level of service experienced by passengers during strikes and limit the disproportionate economic damage to businesses and the wider economy if and when they are used, whilst providing the industry the flexibility it needs to ensure MSLs are deliverable. MSLs have also been designed with safety in mind and are fully compatible with the industry's existing safety processes which apply as normal when work notices are used.

Government response to the Transport Select Committee's proposed criteria for MSLs

In considering the overview of the range of factors to be taken into account when designing MSLs, the committee recommended nine criteria (paragraph 69 of the report) that the Government should fulfil in the Regulations. The government has carefully considered these and believes that MSLs policy captured in the Regulations currently laid before Parliament addresses all of the criteria.

Criterion A

Limited services do already run on days when strike action takes place; up to an average of around 40 per cent of services in some instances. A minimum service level provided on strike days should therefore be at least as good as that typically provided on previous strike days.

Government response

It is the government's expectation that service levels will exceed the overall service levels provided on previous strike days, with passengers seeing more consistent service levels than current provision.

In developing the MSLs for passenger rail, the department has commissioned research and analysed data to inform the service levels that have been chosen, as well as consulting carefully with stakeholders. This research is highlighted by the committee in their report and has been used to understand in detail the service levels experienced by passengers in recent strike action, and its impact on passengers.

MSLs are another tool that employers can use to mitigate the impact of strikes, though employers could choose to use contingency staff if it would deliver a higher service for passengers. When employers use them, the MSLs that have been designed and set out in the Regulations will allow delivery of a service level on strike days that exceeds service levels in recent strikes whilst remaining proportionate, given the need to balance benefits to passengers with the ongoing ability of workers to take strike action.

Analysis of service levels during past strikes indicates that MSLs will deliver an increase in service levels compared with most recent strikes. For example, during recent strikes by ASLEF, many operators have been unable to run any services at all⁵, and during strikes by RMT at Network Rail service levels have been around 20%. For past strikes where the average service level has been higher, this has often involved many operators delivering less than 40% of normal services.

Service levels have also vary depending on the strike called and the circumstances, and the regulations will enable more consistent service levels to be achieved.

Criterion B

Safety on the network for staff and the travelling public must be the primary consideration.

5 Based on Network Rail data on trains run

Government response

Great Britain's rail network has a world-leading reputation for safety, with a strong existing safety framework backed by regulations. With this in mind, and reflecting the department's prioritisation of safety, MSLs have been designed to fit within existing safety frameworks, and the department has consulted with the ORR during the development of these regulations. MSLs do not override any existing safety rules, or obligations, and staff who are placed on work notices (requiring them to work) will follow standard safety practice for their role as normal.

Reduced service as a result of strike action has the possibility of leading to overcrowding, and some passengers have reported increased crowding on trains during recent industrial action⁶. This is something that can cause safety issues, and is something we want to avoid. Operators currently run a reduced service during strike action relying on non-striking staff and managers or volunteers from other departments to cover the roles of those on strike, and staff are not required to declare in advance if they intend to strike or not. This means that the service on the day can be unpredictable which in turn can result in uncertainty for passengers as to expected service levels, despite communications from operators. This can result in overcrowding on some platforms and trains.

MSLs will go some way to resolving this issue, by providing a higher level of service in some instances, and the ability to provide a more consistent and predictable level of service on strike days than passengers currently see, ensuring that employers are more confidently able to plan an appropriate level of staff to provide the safe operation of those services, and that passengers have clear expectations.

Criterion C

The ability of train companies to run services on strike days is dependent on the specific circumstances of the strike action—in particular, which staff, in which roles, are participating in industrial action—and operators' ability to make contingency arrangements. The minimum service level must be flexible enough to be applied to different patterns of industrial action affecting different employers.

Government response

The department is confident that MSLs will cover the different patterns of strike action observed in recent disputes and have been designed flexibly to cover future disputes and action.

Following feedback received in the public consultation, the approach the government has taken consists of two MSLs for heavy rail related services, and a single MSL for light rail services.

The two MSLs for heavy rail related services can work together. Where staff at an infrastructure manager providing in-scope services (such as Network Rail) are on strike, then the infrastructure manager can issue work notices which will list the staff reasonably

6 For those who had planned to travel during strikes in July–October 2022, 12% reported that their trains were more overcrowded than usual (figure 2, page 22). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1150225/rail-strikes-understanding-the-impact-on-passengers-full-report.pdf

necessary to enable the priority routes to be kept open during the specified hours for trains running on those routes. Where staff at an in-scope train operator is on strike, the train operating company can issue work notices which will list the staff reasonably necessary to provide the train operation services necessary to operate the equivalent of 40% of the timetabled services. Where both staff at an infrastructure operator and a train operator are on strike, then the MSLs can fit together – i.e. the train operator will operate the equivalent of 40% of its train services on the priority routes that are, by virtue of use of the infrastructure services MSL, kept open during the strike. This approach of two separate MSLs: one applying to the network (infrastructure) and the other to the train operations, allows the rail industry to respond flexibly depending on the circumstances of strike action.

A different approach has been taken for light rail, reflecting that light rail systems are integral systems, setting their own timetables and running their own infrastructure.

Criterion D

Under a minimum service level there will likely be groups of specialised staff who are required to work more than others because of their job role. The greater responsibilities placed on those who must work on strike days to provide a minimum service must be reflected in pay and conditions. Resilience in staffing must be improved so that there are trained alternatives able to cover for specialised staff who may want to exercise their right to strike.

Government response

The government heard during the public consultation, and subsequent engagement across the rail sector, that the nature of some roles could mean some staff are named more often on a work notice than others. The Department for Business and Trade have published non-statutory guidance for employers, employees, and trade unions on the issuing of work notices to secure a minimum level of service on a strike day. The guidance includes the factors that employers may wish to consider when deciding who to include in a work notice, including (where appropriate) whether any individual has been identified in other work notices recently.

The government has carefully designed passenger rail MSLs to ensure they are practical to deliver and achieve a proportionate balance between the ability of workers to strike and the ability of people to make important journeys (including accessing work and vital services), and the impact of strikes on the economy. This, along with guidance to support the implementation of MSLs, will seek to mitigate this possibility as far as possible.

Criterion E

There is considerable nuance in local travel patterns; a localised approach to specifying a minimum service level will be required in order to provide for passengers who use rail services to get to school, work or hospital appointments. Regulations must be specified in a way which enables knowledge about travel patterns in particular regions and localities, including access to employment, education, and essential services, to be taken into account.

Government response

The design of MSLs is intended to ensure a proportionate and measured approach, to allow passengers to make important journeys balanced against workers' ability to strike. The train operation services and light rail services MSLs are designed to apply to each operators own level of services and the infrastructure services MSL applies to the services provided by each relevant infrastructure manager.

As the train operation and light rail services MSLs are set in a way which applies to the specific employer who is securing the relevant MSL, the Regulations will allow those employers, who know their networks (and the communities that they serve) best, to decide which precise services they run to secure the MSLs, enabling a localised and nuanced approach. This will help enable those who use rail to get to school, work, and hospital to still do so during strike action.

For infrastructure services, to inform the development of priority routes, the Government also considered evidence on total usage of different routes and specific evidence on rail use for commuting (given the importance of rail for some and in some areas for getting to work), and on the locations of health and education sites in relation to the rail network, which showed a dispersion of these sites across the network and indicated that access to health and education can also be supported by prioritising areas where rail is used most. The priority route approach developed takes into account our understanding of travel patterns and is informed by our own extensive analysis which is detailed in our consultation response.

Criterion F

The service available on recent strike days has varied considerably across the country, with some areas having little or no service. During disruption, passengers have turned to alternative modes of travel to complete journeys, but there is also variation in the availability of alternative options. Rail services—or credible alternatives—should be available to passengers in all areas of the country normally served by the network.

Government response

As explained in the Government response to Criterion E, the MSLs are designed to apply to the specific services of each employer who use them, to ensure a proportionate and relevant approach.

The infrastructure services MSL is designed with a focus on the most heavily used routes, particularly to enable people to get to work, and considered evidence on the locations of health and education sites. We also considered evidence on the availability of alternative methods to make these important journeys, which vary across the country.

The train operation services and light rail services MSLs would allow employers to take into account distribution of their services including alternatives when planning how to secure the 40% of timetabled services, allowing them to better plan ahead. This could perhaps include considering other train or bus services that run along the similar routes.

Criterion G

Passengers with access needs must receive the same support as they are entitled to on regular travel days.

Government response

MSL regulations do not contain any provisions to restrict or alter the existing regulatory regime that provides for the rights of all passengers to access rail services. When using MSLs, employers issuing work notices must continue to fulfil all their obligations under the existing regulations and ensure that passengers receive the appropriate level of accessibility support.

MSLs would give passengers more certainty of what services to expect on a strike day, enabling them to better plan their journeys and have confidence that services timetabled for the strike day will run. Certainty of service offering is a key concern raised by passengers with accessibility needs, and we hope that this will give these passengers more confidence travelling during strike action.

Criterion H

Rail disruption impacts the wider economy, preventing travel to social plans and having a disproportionate impact on consumer confidence to travel on strike days. A minimum service level for rail should protect industries, such as the night-time economy, that cannot adopt flexible and remote working patterns on strike days.

Government response

The department's approach to developing the Regulations has carefully considered relevant industries in our wider economy who are disproportionately impacted by strike action. The department also heard from representatives of the nighttime economy during the public consultation process. Currently during strike action on infrastructure services the department has observed that where lines are open train services are generally able to operate between 7:30am and 6:30pm. Where a strike is for a longer period than this, the infrastructure services MSL allows work notices to be issued to keep the priority routes of the network open between 6am and 10pm, which will have a significant benefit for passengers and ensure that the night-time economy is not disproportionately impacted and help support our economy. Where there is no infrastructure services strike at the same time, the MSLs for train operation services and light rail services are not constrained by any particular time period, and we expect that operators will ensure services respond to patterns of user demand as they would normally do.

Criterion I

Although the freight sector is excluded from the Act, it is heavily affected by the legislation, not least because it has little recourse to alternative modes of transportation when strikes impact the wider rail network. When strikes span multiple days in particular, the impact on freight can be hard to mitigate, which can have a longer-term impact on

consumer confidence in the sector. There must be clarity about the access that freight services can expect to have to the network, and government and the freight industry must collaborate on determining what routes should be prioritised.

Government response

Engagement with the rail freight industry has been extensive throughout the process of developing MSLs for passenger rail, and formal representations from the freight sector were received as part of the public consultation.

Whilst these Regulations set MSLs for passenger rail, Ministers have considered carefully the impact this might have on rail freight. During strikes affecting the operation of infrastructure, where the infrastructure services MSL is used, freight services will be able to use the priority routes kept open as a result of the infrastructure services MSL being used, and access depots and freight terminals which connect within a 5 mile radius to these priority routes. The priority routes are similar to the network that the freight sector has typically had access to during recent strikes that affect access to the rail network.

The department continues to engage with the freight industry, and ensure that the government's priorities for rail freight continue to be reflected across all its policies – including MSLs.

Suggestion by committee that department pilot MSLs

At present, the lack of detail from the department about what a minimum service level specification might look like is preventing stakeholders from being able to assess how it will affect them or those they represent. Once the department has determined which model of minimum service level it plans to implement through regulations, it must consult on it. The department should set out an implementation plan and consult with a wide group of stakeholders including unions, passengers and operators. The department should also consider ways in which a set minimum service level for rail could be piloted.

Government response

Though the government has consulted with the rail industry and with trade unions extensively and has carefully considered different options for MSLs, the parent Act under which MSLs can be provided for does not include powers to undertake a pilot.

The department has also considered that strike action on the rail network, in particular in the period over Christmas and New Year, in recent years has had a significant impact on passengers and the wider economy, and that it would therefore be prudent to introduce these regulations as soon as possible. This would seek to enable MSLs to mitigate the disproportionate impact of strikes as soon as possible.

There is precedent for unions targeting disruption over the Christmas period. ASLEF have recently announced strike action to take place from 1–9 December 2023, and last Christmas, unions called considerable strike action from mid-December 2022 to early January 2023. This resulted in significant disruption to service levels, and there is evidence that a substantial proportion of the general public was impacted by the strikes over this period. The ONS reported that 'nearly 1 in 5 people reported having their travel plans

disrupted by rail strikes that occurred in December 2022 and early January 2023⁷. With regard to economic impact, a CEBR report stated that the strikes in December and January 2023 were expected to result in considerable economic losses due to people not being able to work.⁸ They reported that ‘the period of heightened action between December and January is expected to see a total cost of £219.0 million in two months alone’.

Subject to Parliamentary approval, we expect the Regulations laid by the Secretary of State before Parliament on 7 November 2023, to come into force before the end of the year. This will mean that in-scope employers can issue work notices to secure the MSLs set out in the Regulations, should they choose to do so, for any strike that takes place after they come into force. The department will continue to engage closely with the industry on use of the Regulations and MSLs for passenger rail.

Criteria proposed by the committee for assessing success of MSLs

The committee proposed three criterion that could be used to assess the success of MSLs:

- a) *We heard that there was a risk that the introduction of minimum service regulations in the rail industry could lead to the proliferation of action short of striking or novel industrial action. It is essential that when a minimum service level for rail is implemented, industrial disputes are neither prolonged nor increased, and novel industrial action does not proliferate.*
- b) *We heard that the key passenger requirement from the railways is reliability. Minimum service regulations must result in greater passenger satisfaction on strike days than at present, with access to clearly communicated information, and greater certainty, further in advance than at present about travel on strike days.*
- c) *Longer term, a minimum service level can only be successful if it results in more effective cooperation and better working relationships between rail unions, the industry and government.*

Government response

The government welcomes these suggested criteria and will carefully monitor the impact of MSLs.

7 <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/workplacedisputesandworkingconditions/articles/theimpactofstrikesintheuk/june2022tofebruary2023>

8 <https://cebr.com/reports/eight-months-of-strike-action-to-have-cost-the-uk-economy-at-least-1-7bn-adding-to-existing-recessionary-pressure/>