



Department for Energy Security & Net Zero

Lord Callanan
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To: The Rt Hon. the Lord McLoughlin CH
Chair, The Delegated Powers and Regulatory
Reform Committee

19 April 2023

Dear Lord McLoughlin,

Thank you for your Committee's report following its detailed scrutiny of the provisions of the Strikes (Minimum Service Levels) Bill ("the Bill"). As the Minister responsible for the Bill, I welcome these reports and the constructive debate that has taken place on the Bill at Committee stage.

The Committee provided a range of comments and recommendations in relation to the delegated powers contained in the Bill. The Government has carefully considered the Committee's report. This letter sets out the Government's response.

Committee view

The Committee commented that the House may wish to press the Minister to provide an explanation of how the following powers will be exercised - power to set minimum service levels in new section 234B(1) of the 1992 Act and power to define "relevant services" in new section 234B(3) of the 1992 Act. In the absence of a satisfactory explanation, the Committee regard these powers as inappropriate.

Government response

The Government maintains that it is right that the detail of specific services and minimum service levels is not appropriate for primary legislation. There are many ways in which minimum service levels could be set and the consultations on proposed regulations will seek detailed evidence in order to understand the many different circumstances that could be applicable even in one relevant service. The subsequent regulations will set appropriate tailored levels in response to that evidence gathering and it is possible these could be of significant detail.

The recently published consultations on the application of minimum service levels for ambulance, fire and rescue, and passenger rail services set out various options for setting a minimum service level in each of those services and give a sense of how challenging it would be to make provision for these in primary legislation. 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. These include whether the minimum service level framework is to include

provision on particular aspects such as route prioritisation, hours of operation, and/or timetable implications. Evidence from responses to the consultation will inform how the regulations can best be drafted to take these matters into consideration. For ambulance services, minimum service regulations might include detail on the clinical response required for particular categories of 999 calls. Concerning fire and rescue services (FRSs), minimum service regulations might contain detail on differences between FRSs regarding local priorities as well as flexibility to deal with anticipated periods of high demand that coincide with strike days, the patterns of which may change over time, for example an increase in wildfires due to lengthier heatwaves.

For all sectors, defining what a minimum level of service entails will be complex and the Government recognises the importance of gathering evidence before setting those minimum service levels to ensure implementation is effective, takes account of the many different circumstances applicable to each sector and is understood by all relevant stakeholders. We therefore think it fair and reasonable that key stakeholders, including employers, workers, trade unions and their members, as well as users of services, are all consulted on the approach to minimum service levels for their relevant service, which is why the Bill requires the Secretary of State to undertake consultations before the regulations can be made.

Furthermore, the government considers that secondary legislation provides greater flexibility to amend legislation should circumstances change in the future. For example, were clinical standards to develop over time, this might impact on the minimum service level required for relevant health services. With regard 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.

New section 234B(1) of the Trade Union and Labour Relations (Consolidation) Act 1992

The Committee suggest further examples of what minimum service levels might contain would have afforded more context for Parliament and suggest that the regulation making power in new section 234B(1) of the 1992 Act could have set out an exhaustive or non-exhaustive list of the matters that could be included in the regulations.

As set out above, following introduction of the Bill to Parliament, the Government published consultations on the application of minimum service levels for ambulance, fire and rescue, and passenger rail services. These services have been identified as priority areas, recognising that disruption to blue light services puts lives at immediate risk and the importance of passenger rail services ensuring people can make vital journeys to access work, education and healthcare for example. These consultations outline the aims of minimum service levels within those services and set out various options for setting a minimum service level in each of those services.

To have included further examples in the Delegated Powers Memorandum would therefore have pre-judged the consultation process.

New section 234B(3) of the 1992 Act

The Committee commented that the Bill could define more fully the meaning of relevant services. As set out above, the Government is of the view that the detail required to accurately describe the relevant services under each category of service set out in the Bill is not appropriate for primary legislation and should be set once further evidence is gathered through the consultation process in order to effectively design the regulations.

It is also essential to maintain a degree of flexibility in relation to this provision, should circumstances change in the future with regard to the list of relevant services to be defined by regulations. The changes in circumstances are likely to be varied and could include, for instance, technological developments in services, the relative importance of a particular type of service or increased impact of industrial relations in a particular service. Of course, there may be other services within the sectors listed in the bill, beyond those which the Government is currently consulting on, where minimum service levels are required in the future. The current power as drafted therefore enables the Secretary of State to make the decision at the appropriate time, after consultation (as is required by new section 234F(1)) and in the light of relevant evidence to specify which specific services, within the categories of services listed in the new section 234B(4), could be subject to the requirement to provide minimum levels of service in the event of strike action. To include these in primary legislation would require an additional delegated, and Henry VIII, power in the Bill to amend primary legislation in the future.

The Committee were unconvinced by the precedent, section 226(2E) of the 1992 Act, referred to in the Delegated Powers Memorandum for new section 234B(3). The Government considers that whilst the Bill requires the Secretary of State to set out in regulations the meaning of “relevant services”, as well as the required levels of service, the mechanisms to limit the right to strike and the consequences of failing to observe these are set out in the Bill - the Bill makes clear the obligations on unions and individuals once a minimum service level is in place and notice of strike action has been given, and the consequences if those obligations are not met. In that sense, there is therefore a similar clarity as in section 226.

Pre-legislative scrutiny and draft regulations

The Committee suggested that publishing indicative draft regulations would have assisted Parliament’s scrutiny of the Bill. However, as stated above, we think it fair and reasonable that key stakeholders are all consulted on the approach to setting the minimum service levels for their relevant service. That is why we have launched consultations on applying minimum service levels to ambulance, fire and rescue and passenger rail services. We would of course similarly consult if the Government proposed to introduce minimum service levels for other services. This approach ensures that a wide range of views are considered and used to inform the proposed minimum service level. To prepare draft regulations before consultation has taken place would predetermine the outcome of these consultations.

Finally, the Committee suggested the Government could have undertaken pre-legislative scrutiny. However, there is a clear and urgent need for this legislation. Recent strikes have demonstrated the disproportionate impacts strikes can have on the public. Pre-legislative scrutiny would have significantly delayed the bill and extended the disproportionate impact of strike action on the public.

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

Lord Callanan