

Briefing



Anti-strike laws in the UK

January 2023

Existing anti-trade union laws

The UK has some of the most draconian anti-trade union laws in the Western world.

A succession of legislation has brought in an onerous and complex regime that means that trade unions in the UK cannot call strike action without conducting a postal ballot of all members involved.

Detailed legislation covers everything from the wording of ballot papers to the publication of results. Digital balloting is prohibited.

In 2016 a new piece of anti-union legislation was introduced which increased the turnout thresholds for strike ballots. This meant that for a strike to be legal, it had to secure a majority of votes in favour on a *majority turnout of eligible members*.

It also means that, in many public services, on top of the 50 per cent turnout threshold, 40 per cent of all those eligible to vote must vote in favour of industrial action. For example, a strike ballot with a 50 per cent turnout would need to secure an 80 per cent vote in favour in order to pass.

The 2016 Trade Union Act also increased the notice time unions were required to give employers to 14 days and forces a union to re-ballot for a strike mandate every six months.

This makes industrial action costly and onerous for unions and gives ample opportunities for employers to seek to challenge successful ballots for technical reasons.

The Strikes Bill

In its 2019 election manifesto, the Conservative Party promised to introduce minimum service levels (MSLs) in transport. This would require a certain level of service to be required during periods of strike action.

This has culminated in the Strikes (Minimum Service Levels) Bill, published in early 2023, the scope of which has been extended far beyond transport.

The TUC believes that this legislation is draconian: it could lead to individual workers being sacked for taking part in industrial action that was supported in a democratic process.

It is also counter-productive: the government's own analysis has warned that minimum service levels could lead to more strikes.

And it is unnecessary: it is custom and practice for life-and-limb cover to be agreed by unions during industrial disputes.

Timeline for the Bill to become law

The government is attempting to rush the bill through parliament with minimum scrutiny

MPs are being given limited opportunities to debate and revise the legislation and there are minimal opportunities for experts and civic society organisations to make their views known.

The first reading in parliament was on 10 January 2023

The second reading was 16 January 2023.

The government hopes to achieve Royal Assent by April or May and implement the first minimum service levels as early as June/July 2023.

The law will apply to Great Britain only. Employment law is devolved to Northern Ireland.

How the MSLs will be decided

The Strikes (Minimum Service Levels) Bill itself is a short item of primary legislation. Ministers will impose minimum service levels in specific services through statutory instruments (SIs).

In the UK law-making system, the broad basis for regulation is created through primary legislation, which is meant to be subject to intensive scrutiny as part of the democratic process. However, specific items within the regulatory framework can then be defined by secondary legislation like SIs. Parliamentarians are unable to amend SIs, and none have been rejected since 1979.

This way of deciding on appropriate levels of MSLs is a quicker and more direct process than that proposed by the original Transport Strikes Bill, which contained an element of collective negotiation followed by referral to the independent Central Arbitration Committee (CAC). If that body failed to put MSLs in place in time, then ministers could then seek to impose them via an SI.

In this current version of the Bill, these checks and balances, as limited and ineffective as they were likely to be, have been removed.

What the Bill does

The government has tabled in the House of Commons a Bill that will allow ministers, by regulation, to impose minimum service levels in six sectors.

- Health services
- Education
- Fire & rescue services
- Transport services
- Decommissioning of nuclear installations and management of radioactive waste and spent fuel
- Border security

Ministers have said that consultation on MSLs in ambulance, fire, and rail are to be conducted in parallel with legislation.

The government claims to have no plans to introduce minimum service levels in the other sectors but will expect voluntary agreements to be put in place. As such, MSLs will become a longstanding threat in the event of future industrial disputes.

Once an MSL is in place, the employer will be able to issue a 'work notice' specifying the specific employees required to work and maintain minimum service levels during strike action.

Impact on unions

A union could face an injunction or be forced to pay damages if it is deemed not to have taken "reasonable steps" to ensure that the people identified in the work notice do not take part in the strike action.

In effect, unions will be expected to force their members to cross their own picket lines, with catastrophic implications for the relationship of trust between members and unions, and between union members themselves.

The cap for damages which unions might face for non-compliance was raised last year to £1 million.

The legislation provides no detail on what a “reasonable step” constitutes, leaving trade unions uncertain of their responsibilities.

The TUC also believes that forcing unions to send their members across picket lines is a significant infringement of their freedoms, and a significant departure from the industrial relations framework in the UK.

Impact on individuals

If a person specified in their employer's work notice continues to take strike action despite being required to work during the strike, they will lose their protection from automatic unfair dismissal that currently applies for first 12 weeks of strike.

This is a gross infringement of individuals' freedom.

It is also a U-turn on the government's initial pledge to protect individuals from penalties.

It is unclear - in the event that a strike is deemed “illegal” because a work notice has not been complied with - whether those individuals who were not originally named in the work notice will retain their statutory protections.

Government has already pointed out key flaws in its own proposals

The [impact assessment](#) for the predecessor Transport Strikes Bill said minimum service levels could lead to an “increased frequency of strikes” and “reduced terms and conditions” for workers.

The human rights [memorandum](#) published for that Bill explained why minimum service levels weren't appropriate for a range of sectors, including fire, health, and education.

For example: “The large number of employers in the education sector would also likely make minimum service arrangements difficult and very burdensome to implement.”

In sectors like fire and healthcare, lifesaving minimum service levels already operate by custom and practice, and this regulatory intrusion is likely to poison healthy industrial relations where they currently exist.

It is legally vulnerable?

The government makes much of these plans being compliant with International Labour Organisation requirements.

The TUC believes this is inaccurate. The new legislation will be considered in the context of the UK's wider industrial relations landscape. There are already highly restrictive rules concerning industrial action.

The ILO itself has [cast significant doubt](#) on the government's claim.

The ILO has already raised concerns about existing UK labour law, which the government has failed to address.

For example, the ILO committee of experts made a direct request in 2018 for the UK government and social partners to review the protection available to workers who stage industrial action and the procedural requirements for industrial action. The government has not resolved this.

International comparisons

The UK government has made strong claims that these laws bring the UK into line with European norms.

The assertion that these laws bring the UK into line with other countries in Western Europe has been [rejected by the European Trade Union Confederation](#).

Other countries have entirely different industrial relations and legal frameworks.

These typically include constitutionally protected rights to take industrial action, embedded sectoral bargaining, and social partnership.

Breach of Trade and Co-operation Agreement

The UK-EU Trade and Co-operation Agreement (TCA) requires respect for freedom of association and prevention of forced labour.

The TCA contains 'Level Playing Field' clauses that oblige the UK government to honour its obligations in the ILO and Council of Europe.

If the government is found to be in breach of the agreement by the EU, it could seek to impose tariffs on UK goods. This would hurt businesses, and those who work for them, that sell into the EU.