

<b>Committee(s):</b> Corporate Services Committee	<b>Dated:</b> 1 March 2023
<b>Subject:</b> Strikes (Minimum Service Levels) Bill	<b>Public</b>
<b>Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?</b>	3, 4, 6, 9 and 12.
<b>Does this proposal require extra revenue and/or capital spending?</b>	<b>No</b>
<b>Report of:</b> Remembrancer	<b>For Information</b>
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### **Summary**

The Strikes (Minimum Service Levels) Bill is a framework Bill, enabling Ministers to make regulations setting out the minimum service required in certain areas of the public sector during strike action. If they do not comply with those regulations, trade unions would face losing legal protections against being sued, and employees would lose protections against unfair dismissal for taking part in industrial action. The Bill was introduced in the House of Commons on 10 January and progressed swiftly while facing fierce opposition. It is expected to receive further criticism in the Lords, where its Second Reading is scheduled for 21 February.

### **Recommendation**

Members are asked to note the contents of this report.

### **Main Report**

#### **Background to the Bill**

1. The Conservative Party manifesto for the December 2019 general election included a commitment to introduce legislation to “require that a minimum service operates during transport strikes”. This was followed in the 2019 Queen’s Speech by a commitment to introduce a bill that would ensure “people can depend on the transport network”.
2. During the Conservative leadership campaign, Liz Truss committed to implement the 2019 manifesto commitment. In October 2022, her government introduced the Transport Strikes (Minimum Service Levels) Bill 2022–23, which sought to enable the introduction of minimum service levels during strikes in

certain transport services. No Second Reading has been scheduled for that Bill; it has been likely superseded by the Strikes (Minimum Service Levels) Bill, the subject of this report.

3. The Bill follows a wave of ongoing strike action in many areas of the public sector, which has seen disputes on a scale not seen for many years. According to the latest data published by the Office for National Statistics (ONS) in January 2023, a total of 1.63 million working days were lost across the UK due to strike action between June 2022 to November 2022. This is the highest for any similar five-month period, or indeed any year-long period, since 1990.
4. The Government indicated during the Bill's Second Reading debate that the current Bill, which encompasses other services in addition to transport, was prompted by disruption in the NHS and, in particular, in the ambulance service.

### **Operation and Application**

5. As this is a framework Bill, with substantive provisions to be set out in regulations, it is not yet clear what practical effects the legislation will have on the services specified by the Bill. Minimum service levels are not defined but are left to the discretion of the Minister, who must set out the minimum levels in regulations which must be approved by both Houses of Parliament.
6. The regulations may set out minimum service levels for six categories of services. These broadly reflect the categories of "important public services" introduced by the Trade Union Act 2016. They are:
  - 1) health services;
  - 2) fire and rescue services;
  - 3) education services;
  - 4) transport services;
  - 5) decommissioning of nuclear installations and management of radioactive waste and spent fuel; and
  - 6) border security.
7. The regulations could apply to any strike taking place after the day on which they come into force, even if the relevant ballot took place before the Bill came into force.
8. Under the Bill, an employer would be able to give a "work notice" to a trade union concerning any strike affecting a service subject to minimum service regulations. That notice would specify which workers the employer required to work to ensure the service levels mandated by the regulations. The employer would not be permitted to request more workers than "reasonably necessary" to meet the requirements set out by the regulations.
9. If a union failed to take "reasonable steps" to ensure that all workers requested to work by a work notice complied with that notice, it would lose its protection from liability for inducing workers to take part in the strike. The Bill would also

remove automatic protection from unfair dismissal for any employee who took part in a strike contrary to a valid work notice.

### **ECHR considerations**

10. In the human rights memorandum accompanying the Bill, the Government concludes that the Bill is compatible with Articles 11 and 14 of the ECHR.
11. The Government acknowledge that Article 14, on the prohibition of discrimination, is engaged as only certain categories, and services within those categories, would be the subject of the minimum service regulations. The Government considers, however, that any interference with Article 14 is justified under the Convention, because it is necessary to protect the rights and freedoms of others.
12. The Government also recognise that Article 11, on freedom of association, is engaged by the Bill. The Government concludes, however, that ministerial powers to prescribe relevant services are justified, as strike action in these services causes disproportionate disruption to the public, including significant financial loss and harm to the wider economy. Article 11 is said to acknowledge that there may be more stringent conditions imposed on certain parts of the public sector.
13. The Government points to the requirement for the regulations to be approved by both Houses of Parliament as providing heightened parliamentary scrutiny, thus ensuring that any interference is proportionate. The Government acknowledges that prior consultation would nevertheless be required before any regulations could be made.

### **Parliamentary Reaction**

14. Introducing the legislation, the then Secretary of State for Business, Energy and Industrial Strategy, Grant Shapps, spoke of the need “to maintain a reasonable balance between the ability of workers to strike and the rights of the public” to access essential public services. He argued there was a need for “confidence that when strikes occur, people’s lives and livelihoods are not put at undue risk.” He told the House that recent industrial action had shown that a “safety net” was required “to ensure that the public do not become collateral damage,” and to “keep livelihoods and lives safe”.
15. Deputy Leader of the Opposition Angela Rayner called the Bill a “vindictive assault” on workers’ rights and assured MPs that a future Labour government would repeal the legislation. She described the Minister’s assertion that patient safety had been put at risk by health service strikes as an unjustified “smear” and argued that the Bill would not address the real reasons for industrial unrest. Rayner questioned how the Government would define “minimum standards”, particularly in sectors such as health and transport, where there is a private and public sector component. She criticised what she called “far reaching” regulation-making powers in the Bill and argued there was a lack of opportunity for consultation and scrutiny given the Bill’s expedited progress.

16. The Liberal Democrats also opposed the Bill. Their Spokesperson Christine Jardine argued it was merely political posturing, calling it “an empty, detail-light, vague promise of a mandatory minimum level to replace existing voluntary arrangements.” She felt it would “simply ramp up the rhetoric, without saying how anything will be achieved or offering any progress towards the solution that the public need.”

## **Conclusion**

17. The Bill has faced strong criticism in the Commons over the scope of Ministerial powers which it would grant and the potential impact that opponents argue it would have on Convention rights. MPs were particularly critical of the Government for, in their view, failing to allow sufficient opportunity to scrutinise the Bill by expediting its passage. The Bill now begins its progress through the Lords, where peers are expected to table amendments seeking to limit its scope and provide greater protections for those taking industrial action.

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