

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

The Strikes (Minimum Service Levels) Act is a short, framework Act. It enables 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 will face losing legal protections against being sued, and employees will lose protections against unfair dismissal for taking part in industrial action. The Act faced fierce opposition in both the Commons and the Lords. It underwent a lengthy round of parliamentary “ping pong”, in which the Commons and Lords disagreed on the level of consultation that should be required before the Government may set minimum service levels. All provisions of the Act came into force when it received Royal Assent on 20 July.

Recommendation

Members are asked to note the contents of this report.

Main Report

Background to the Act

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 pledged that she would implement the 2019 manifesto commitment. In October 2022, her

government introduced the Transport Strikes (Minimum Service Levels) Bill, which sought to enable the introduction of minimum service levels during strikes in certain transport services. No Second Reading debate was scheduled for that Bill; it was superseded by the Strikes (Minimum Service Levels) Act, the subject of this report.

3. The Act has followed a wave of strike action in many areas of the public sector, on a scale not seen for many years. According to data published this year by the Office for National Statistics (ONS), a total of 1.63 million working days were lost across the UK due to strike action between June 2022 and November 2022. This was the highest for any similar five-month period, or indeed any year-long period, since 1990.
4. The Government indicated during the Second Reading debate that the Act, which applies to 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 Act, with substantive provisions to be set out in regulations, it is not yet fully clear what practical effects the legislation will have on the services specified by the Act. 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 may apply to any strike taking place after the day on which they come into force, even if the relevant ballot took place before the Act came into force on 20 July 2023.
8. Under the Act, an employer may give a written “work notice” to a trade union concerning any strike affecting a service subject to minimum service regulations. That notice must specify the workers which the employer requires to work during the strike, and specify the work required to be carried out by them, to ensure that the service levels mandated by the regulations are provided. The employer is not permitted to request more workers than “reasonably necessary” to meet the requirements set out by the regulations.

9. If a union fails to take “reasonable steps” to ensure that all workers requested to work by a work notice comply with that notice, it will lose its protection from liability for inducing workers to take part in the strike. The Act also removes 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 Act, the Government conclude that it 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 Act. 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 point 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 further highlight that prior consultation would also 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. The Opposition has pledged to repeal the Act in the future. Deputy Leader of the Opposition Angela Rayner called the measures a “vindictive assault” on workers’ rights. 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 Act 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.

16. The Liberal Democrats also opposed the Act. 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.”

Parliamentary “Ping Pong”

17. The Act completed a lengthy round of parliamentary “ping pong”, in which the Commons and Lords disagreed on the level of consultation that should be required before the Government may set minimum service levels.
18. In the Lords, Shadow Spokesperson Lord Collins of Highbury called the “skeletal Bill” an “example of legislating and then determining policy and procedure.” He warned that the “impracticable” legislation lacked a “proper process of consultation,” and would “worsen the situation in industrial relations” by increasing the frequency of strikes. The Lords twice insisted on amendments to ensure greater consultation and parliamentary scrutiny requirements.
19. In response to criticism in the Lords, Minister for Enterprise, Markets and Small Business Kevin Hollinrake told the House that the “lengthy consultation and parliamentary requirements” put forward in the Lords amendment were not needed and would lead to “a delay in the implementation of minimum service levels,” and “unnecessary delays in the protection of the lives and livelihoods of those whom we have been elected to represent cannot be justified.”
20. The Minister accepted that “further detail would give unions more legal certainty and foresight with regard to their obligations.” He therefore pledged that the Government will use existing powers to introduce a statutory code of practice on the “reasonable steps” that must be taken by trade unions to ensure that their members comply with the regulations. Hollinrake assured MPs that the code of practice will be subject to the approval of Parliament and to statutory consultation which would “give trade unions, employers and any other interested parties an opportunity to contribute to practical guidance in order to make it as practicable, durable and effective as possible.” The Lords did not insist on their amendment a third time and the Act received Royal Assent.

Conclusion

21. The Act faced strong criticism in Parliament over the scope of Ministerial powers which it grants and the potential impact that opponents argued it may 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. In the Lords, peers tabled amendments seeking to limit the Act’s scope and provide greater protections for those taking industrial action. They insisted on amendments on greater scrutiny of the exercise of

regulation-making powers, leading to a protracted period of parliamentary “ping pong”. The Lords conceded to the Government after Ministerial assurance that guidance will be provided to trade unions on the steps which they must take to ensure that their members comply with the regulations.

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