

<b>Title:</b> Minimum Service Levels for Passenger Rail Consultation  <b>IA No:</b> DFT00459  <b>RPC Reference No:</b> N/A  <b>Lead department or agency:</b> Department for Transport  <b>Other departments or agencies:</b> Department for Business and Trade, Department for Health and Social Care, Home Office	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 21.02.23
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Secondary Legislation
	<b>Contacts for enquiries:</b> <a href="mailto:RailMinimumServiceLevels@dft.gov.uk">RailMinimumServiceLevels@dft.gov.uk</a>
<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> No Opinion

Cost of Preferred (or more likely) Option (in 2019 prices): NQ			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying Provision
NQ*	NQ*	NQ*	

**What is the problem under consideration? Why is government intervention necessary?**

Strike action on the passenger rail network can lead to disproportionate disruption to members of the public who rely on rail services to attend work and access other important services. Government intervention is needed in the sector to establish a minimum level of service on passenger rail networks in the event of a strike which corrects for the negative externality imposed on users and creates a fair balance between workers being able to take strike action and the ability of the public to get to work and access key services.

**What are the policy objectives and the intended effects?**

**Objective:** The policy is seeking to reduce the adverse impacts of rail strike action on users, access to essential services, and the wider economy, whilst maintaining workers' ability to take strike action. This consultation seeks to inform the drafting of secondary legislation to introduce minimum service levels for passenger rail.

**Intended effects:** A framework will be established for Minimum Service Levels (MSLs) by the Strikes (Minimum Service Levels) Bill. This will enable the Secretary of State to make regulations for minimum service levels for transport services (and other categories of service) in the event of strike action, which would enable employers to issue 'work notices', requiring the workers needed to provide the minimum level service to work during the strike.

This consultation is being carried out to explore whether and how MSLs might work for passenger rail services given the need to fairly and proportionately balance between the ability of workers to strike with the ability of the travelling public and others to get to work and access key services. MSLs in the passenger rail sector should enable key workers and those who need to make vital journeys to continue to have access to transport services.

**What policy options have been considered, including any alternatives to regulation?**

**Option 0 – Do Nothing**

**Option 1 – Voluntary Minimum Service Levels.** MSLs are introduced into the rail sector on a voluntary basis with the Government setting out expectations for their introduction through non-statutory guidance.

**Option 2 – Statutory Minimum Service Levels (Preferred Option).** MSLs are introduced for specified transport services by regulations, following consultation.

- **Option 2A – Design a minimum service level framework based on existing timetable arrangements.**  
This Option corresponds to Option 1 in the consultation document.
- **Option 2B – Developing a priority route map focused on increased hours of service.** This Option corresponds to Option 2a in the consultation document.
- **Option 2C – Developing a priority route map focused on increased geographical coverage of service.**  
This Option corresponds to Option 2b in the consultation document.


Option 2 (and the variations within) is the preferred option because it is more likely to deliver the objectives of the policy. It is more likely to ensure the ability to take strike action is fairly balanced against the need for the travelling public to go about their daily lives, and importantly to incorporate a mechanism to take into account factors such as access to important facilities and wider social and economic impacts. As set out above, there are a number of different ways to implement the options and the consultation asks for views to develop the evidence base on which variation of Option 2 may work best to deliver the policy.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** May 2028

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)		<b>Traded:</b> NQ	<b>Non-traded:</b> NQ	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister



Date: 21/02/23

\* We have provided a qualitative assessment of the expected costs and benefits associated with increased aggregate service levels during strikes. These will be reviewed following consultation with a view to increasing the scope of costs and benefits monetised for the particular passenger rail services to which MSLs will be applied.

# Summary: Analysis & Evidence

# Policy Options 1 and 2

**Description:** The below impacts apply to options 1 and 2.

## FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price)		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	N/A	NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

Description and scale of key monetised costs by 'main affected groups' N/A

### Other key non-monetised costs by 'main affected groups'

All policy options are anticipated to impose similar types of costs on Government, business, unions and transport workers. Option 2 is expected to more effectively implement MSLs compared with Option 1, and this is likely to be associated with higher costs (including increased administrative costs, enforcement costs, operational costs, familiarisation costs and impacts on the ability to strike). Reasons for why costs are predominantly non-monetised at this stage is considered in the main Costs and Benefits section of the paper.

#### Government:

- Administrative and familiarisation (direct)
- Enforcement costs (direct)
- Increased funding due to cost of running additional services (direct/indirect)

#### Businesses (transport operators and infrastructure managers):

- Administrative and familiarisation (direct)
- Increased costs due to cost of running additional services (direct)

#### Unions:

- Administrative and familiarisation (direct)
- Lost utility from reduced bargaining power (direct)

**Transport sector workers:** Loss in utility resulting from the restricted ability to take strike action partially offset by pay for those working on strike days (direct)

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	N/A	NQ	NQ
High	NQ		NQ	NQ
Best Estimate	NQ		NQ	NQ

Description and scale of key monetised benefits by 'main affected groups' N/A

**Other key non-monetised benefits by ‘main affected groups’**

As with costs, benefits are likely to take a similar form under each option, but are likely to be greater under Option 2 than Option 1. This is because Option 2 is expected to more effectively implement MSLs compared with Option 1, and this is likely to be associated with reduced negative impacts of strikes, which will materialise as benefits to consumers, businesses and government.

**Consumers (rail users):**

- Reduced negative impacts of strikes on (passenger) user experience, e.g. journey times (direct)
- Reduced negative impacts on access to workplaces or ability to earn a living (direct)
- Change in transport costs for consumers, for example reduced likelihood of needing to pay for alternate travel (direct)
- Reduced negative impacts of strikes on access to private and family life, education, and health (direct)

**Government:**

- Increased revenue from running more services (direct/indirect)
- Change in tax receipts from business and wider economy (indirect)

**Businesses (transport operators and infrastructure managers):**

- Increased revenue from running more services (direct/indirect)
- Reduced negative business impacts associated with strikes (direct)

**Wider Impacts:**

- Reduced negative impact of strikes on peoples’ livelihoods, wider economy, environment (including reduced pollution from passengers who, in the absence of MSLs, might need to use higher polluting modes), and other transport modes (indirect)
- Reduced negative long-term impacts on the rail sector (indirect)

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	N/A
Our working assumption for the purpose of assessing the costs and benefits is that Option 1 and Option 2 will raise service levels in aggregate, but Option 2 would be more likely do so. At this stage, details around the level of service that would be required under the MSL have not been established. Scale of impacts will depend on the extent to which service levels are increased by the legislation compared with Option 0.		

**BUSINESS ASSESSMENT**

<b>Direct impact on business (Equivalent Annual) £m: NQ</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs: NQ</b>	<b>Benefits: NQ</b>	<b>Net: NQ</b>	
			NQ

# 1.0 Policy Rationale

## Introduction and definition of the rail sector

1. This document looks to assess firstly the current situation for passenger rail, including how heavy and light rail systems are used and how they differ from one another. This helps to inform the understanding of the impact of industrial action in passenger rail. Following from this, two main options have been considered to address the impact of industrial action, these being voluntary MSLs and statutory MSLs. Within this assessment the impact of these options is compared to the alternative “do nothing” approach.
2. ‘Heavy rail’ and ‘light rail’ do not have a single agreed definition but are used to refer to services that operate over certain types of railways. For example, heavy rail is commonly understood as meaning the national rail network and light rail is generally understood to refer to tram services and light metro systems that operate across the United Kingdom, although some Underground systems can sometimes be categorised differently. For the purposes of this document, heavy and light rail are grouped as follows:
  - Heavy Rail includes the Mainline Network (as referred to on the Office for Rail and Road website<sup>1</sup>) and all services that operate over it.
  - Light Rail includes Underground Railways (including the London Underground), Light Rail and Tramways (as referred to on the ORR website) and all services that operate over them.
3. Minor and heritage railways, which include museum railways or tourist railways, and international and charter services are not in scope of the policy so have not been included for this analysis.
4. ‘Surface rail’ typically includes all heavy rail and some light rail, however the exact definition of this term varies according to source. Where surface rail is referenced in this document, please see the footnotes for further detail on what is included in each instance.

## Background on the rail sector

5. **The transport system supports all sectors of the economy and is a crucial enabler for economic growth.** It plays a key role in the economy in Great Britain by providing connectivity for transport users. In the UK<sup>2</sup> in 2019,<sup>3</sup> the average person in England travelled 6,500 miles.<sup>4</sup>
6. **Public transport is critical for the everyday lives of citizens in Great Britain.** Demand for transport is a derived demand: it is necessary for people to go to work, visit family and friends, travel to important appointments and destinations, and allows goods and materials to flow to the right places where they are needed. In 2019, an average of 97 public transport trips were made

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<sup>1</sup> Office for Rail and Road. Railway networks. <https://www.orr.gov.uk/about/who-we-work-with/railway-networks>

<sup>2</sup> As set out in the consultation document, it is being consulted on whether MSLs are expected to operate throughout Great Britain (noting difference in systems between nations), data limitations require that many of the statistics in this section and throughout the document are at UK-wide or England level, though we do not expect this to have a material impact on conclusions of the Impact Assessment.

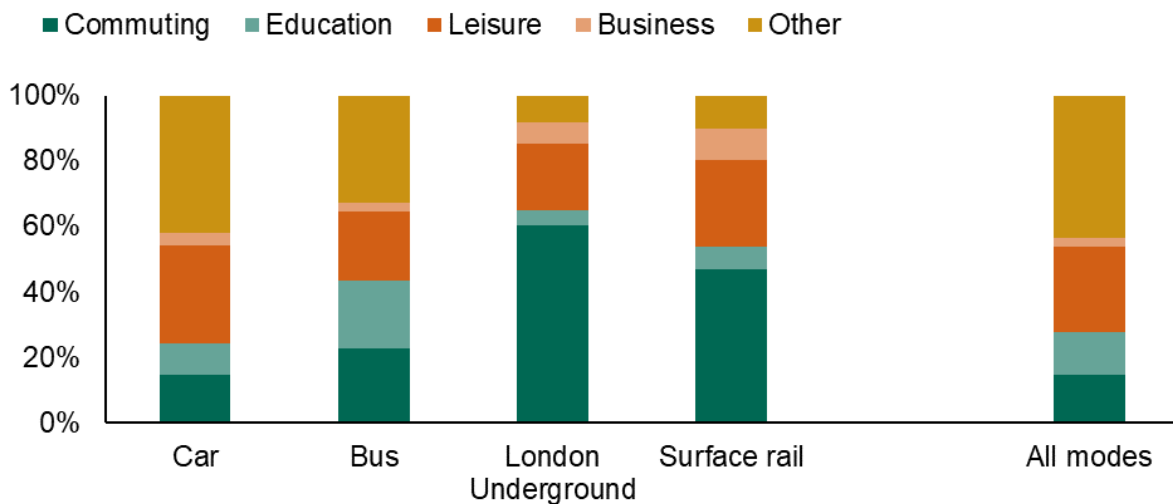
<sup>3</sup> Data from 2019 has been used here to describe key elements of the rail sector. More recent data has been heavily affected by the Covid pandemic, which led to substantial impacts on the transport sector, particularly through a reduction in usage. Post-Covid data reflects a short-term recovery position of the sector, and therefore it is expected that pre-Covid data will provide a better description of the rail sector over the longer-term, for which the proposed legislation is expected to apply. It should be noted that there are limitations to this approach because the impacts of the pandemic on the rail sector are not expected to be limited only to the short-term. More information on rail can be found in the following sources: [Rail Factsheet: 2020 - GOV.UK \(www.gov.uk\)](#); [Rail factsheet: 2022 - GOV.UK \(www.gov.uk\)](#); [Light Rail and Tram Statistics: England 2019/20 \(publishing.service.gov.uk\)](#); [Light rail and tram statistics, England: year ending March 2022 - GOV.UK \(www.gov.uk\)](#); [Office for Rail and Road Data Portal](#).

<sup>4</sup> DfT (2022). National Travel Survey. Table 0303. Average number of trips, stages, miles and time spent travelling by main mode: England, 2002 onwards. <https://www.gov.uk/government/statistics/national-travel-survey-2021>

per person in England, covering 1,106 miles and 77 hours of travelling.<sup>5</sup> Rail (including underground) is among the most commonly used public transport modes, covering around one third of trips made and around two thirds of distance covered by public transport in 2019.<sup>6</sup>

- Rail is particularly important for commuting.** Although the majority of commuting trips were made by car in 2019, an estimated 12% of commuting trips were made by rail (including surface rail and London Underground) in 2019 in England. As demonstrated in Figure 1 below, a relatively high proportion of rail trips were made for commuting in 2019 in England. For light rail specifically, on average between 2012 and 2019 commuting was the most common journey purpose, with 42% of stages travelled (excluding London Underground) being for this purpose.

**Figure 1. Proportion of trips made for each purpose in England in 2019, by mode.<sup>7</sup>**



- Commuting by rail is particularly important in London, where rail's share in commuting trips is greatest.** In 2019, 24% of people commuting to work in London used national rail and a further 24% used London Underground, light rail, and tramway as their usual method of travel.<sup>8</sup> Notably for London Underground specifically 60% of trips were for commuting.<sup>9</sup> A higher proportion of light rail travel in London (excluding London underground) was for commuting purposes (54%), compared to for the rest of England, for which commuting only accounted for 30% of light rail travel.<sup>10</sup>
- For surface rail in particular, average journey length is longer than for most modes.** Of all travel in England in 2019, surface rail accounted for 2% of trips and 10% of distance travelled,<sup>11</sup> implying that the average trip length for surface rail is longer than the average across other modes. This means that for some journeys there may not be viable alternative options for rail users.

<sup>5</sup> DfT (2022). National Travel Survey. Table 0303. Average number of trips, stages, miles and time spent travelling by main mode: England, 2002 onwards. <https://www.gov.uk/government/statistics/national-travel-survey-2021>

<sup>6</sup> DfT (2022). National Travel Survey. Table 0303. Average number of trips, stages, miles and time spent travelling by main mode: England, 2002 onwards. <https://www.gov.uk/government/statistics/national-travel-survey-2021>

<sup>7</sup> DfT (2022). National Travel Survey. Table 0409. Average number of trips (trip rates) and distance travelled by purpose and main mode: England, 2002 onwards. <https://www.gov.uk/government/statistics/national-travel-survey-2021>. Note: "Other" includes "shopping", "other escort", "personal business", and "other including just walk". "All modes" includes "walk", "pedal cycle". "car/van", "motorcycle", "other private transport", "bus in London", "other local bus", "non-local bus", "London Underground", "surface rail", "taxi/minicab", "other public transport".

<sup>8</sup> DfT (2022). Transport Statistics Great Britain. TSGB0109: Usual method of travel to work by region of workplace.

<https://www.gov.uk/government/statistical-data-sets/tsgb01-modal-comparisons>

<sup>9</sup> DfT (2022). National Travel Survey. Table 0409. Average number of trips (trip rates) and distance travelled by purpose and main mode: England, 2002 onwards. <https://www.gov.uk/government/statistics/national-travel-survey-2021>. Note: "Other" includes "shopping", "other escort", "personal business", and "other including just walk". "All modes" includes "walk", "pedal cycle". "car/van", "motorcycle", "other private transport", "bus in London", "other local bus", "non-local bus", "London Underground", "surface rail", "taxi/minicab", "other public transport".

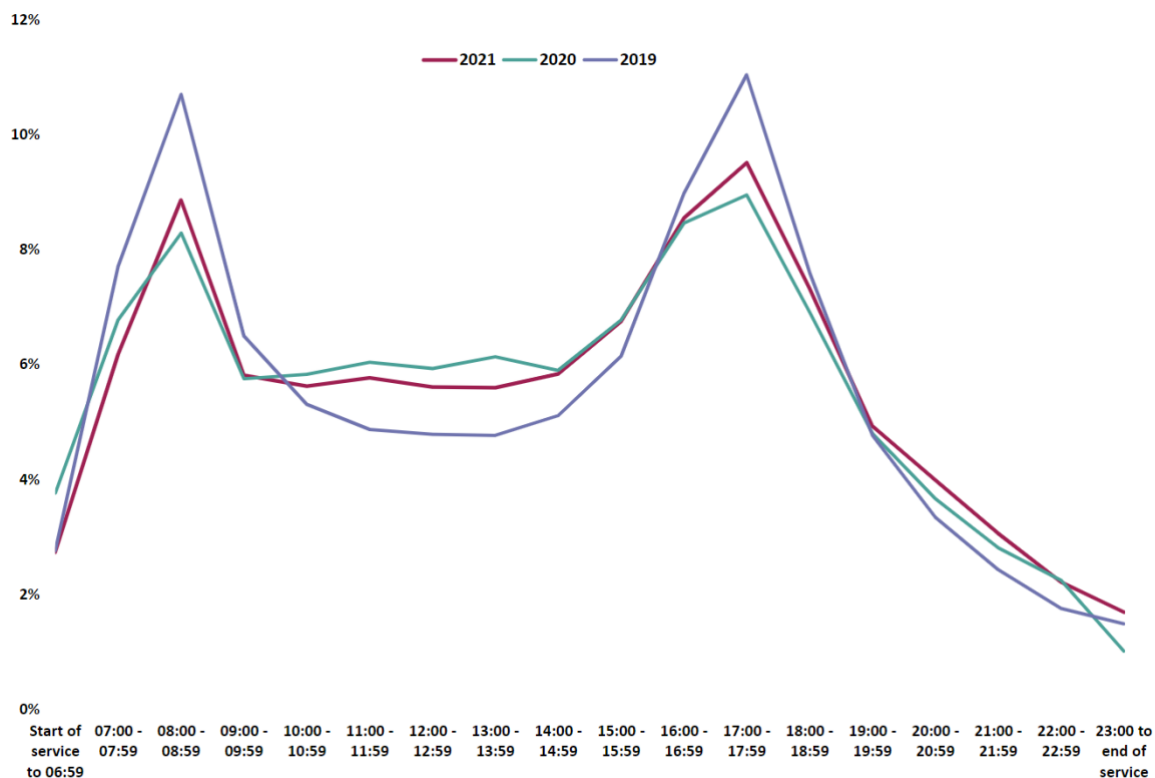
<sup>10</sup> DfT (2022). National Travel Survey: Light rail and tram statistics (LRT), Table LRT0401a, based on number of stages travelled per person

<sup>11</sup> DfT (2021). National Travel Survey. NTS0303: Average number of trips and distance travelled by main mode: England, from 2002.

<https://www.gov.uk/government/statistics/national-travel-survey-2021>

10. **Rail also plays a role in access to education.** Figure 1 indicates that an estimated 7% of surface rail trips and 5% of London Underground trips are made for the purpose of accessing education.<sup>12</sup> For light rail specifically around 9% of stages travelled are for education (excluding London underground).<sup>13</sup>
11. **Use of rail for leisure travel is another of the most common passenger uses.** In 2019, 26% of all surface rail passenger trips were made for leisure purposes. For London Underground, leisure accounted for 20% of all trips made in 2019 as shown in Figure 1.<sup>14</sup> For light rail, leisure accounts for 23% of stages travelled in England as a whole (excluding London underground). Leisure accounts for a higher proportion of light rail travel outside of London at 29% compared to 17% for within London (both excluding London Underground).<sup>15</sup> These types of trips contribute to local economies by supporting expenditure in sectors such as retail, hospitality, and tourism.
12. **Weekday rail usage tends to be concentrated during the morning and evening peaks, reflecting the high share of rail trips that are for commuting.** Figure 2 below depicts the proportion of heavy rail passenger arrivals and departures by hour for major cities, excluding London, demonstrating that rail use is highest between 7-10 am and between 4-7 pm. This is also the case for London, where, of the over one million passengers travelling to central London by surface rail on a typical weekday, over half arrived between 7-10 am. On weekends, rail use is more evenly spread across the day. Further detail on the timing of rail trips can be found in the 2022 Rail Factsheet.

**Figure 2. Proportion of Passenger Arrivals and Departures by Hour, Regional Major Cities: Autumn 2019, 2020, and 2021.<sup>16</sup>**



<sup>12</sup> DfT (2022). National Travel Survey. Table 0409. Average number of trips (trip rates) and distance travelled by purpose and main mode: England, 2002 onwards. <https://www.gov.uk/government/statistics/national-travel-survey-2021>

<sup>13</sup> DfT (2022). National Travel Survey: Light rail and tram statistics (LRT), Table LRT0401a, based on number of stages travelled per person

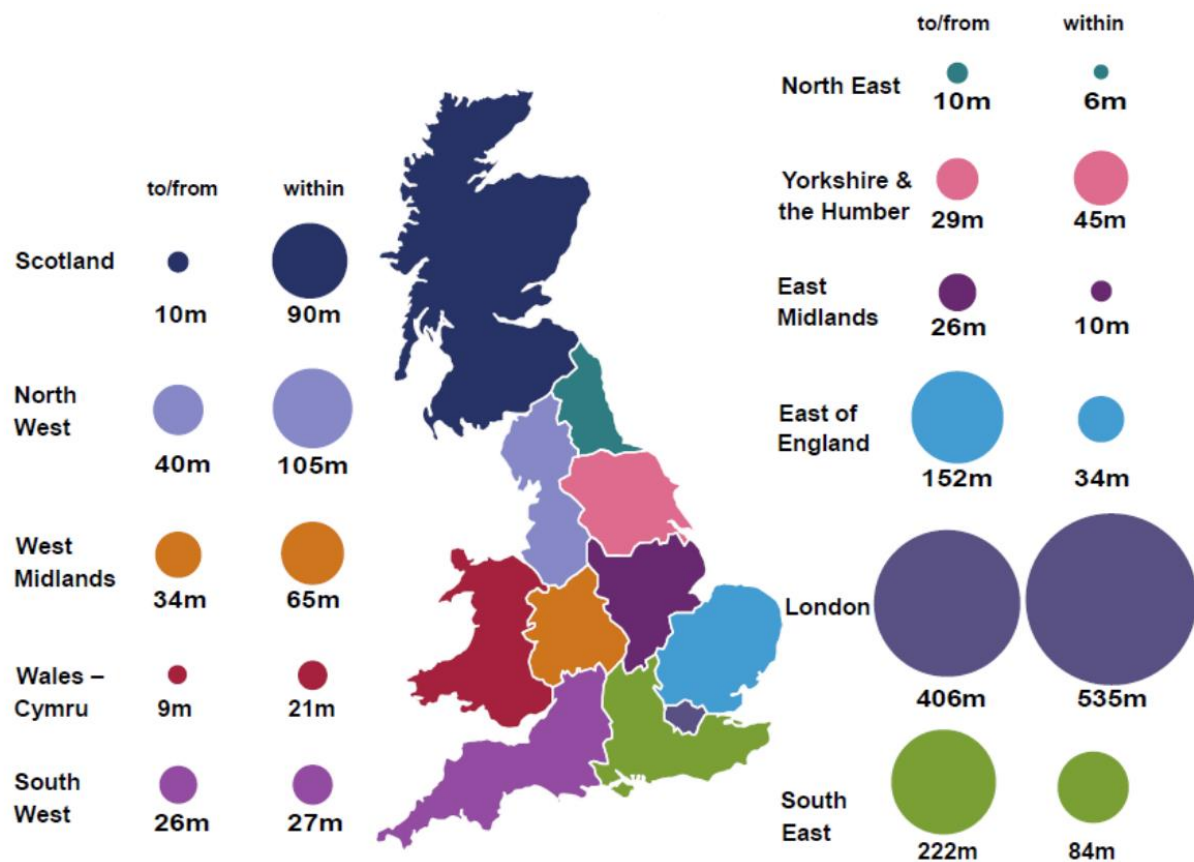
<sup>14</sup> DfT (2022). National Travel Survey. Table 0409. Average number of trips (trip rates) and distance travelled by purpose and main mode: England, 2002 onwards. <https://www.gov.uk/government/statistics/national-travel-survey-2021>

<sup>15</sup> DfT (2022). National Travel Survey: Light rail and tram statistics (LRT), Table LRT0401a, based on number of stages travelled per person

<sup>16</sup> DfT (2022). Rail Factsheet: 2022. <https://www.gov.uk/government/statistics/rail-factsheet-2022/rail-factsheet-2022>

13. **Rail use is also heavily concentrated around London.** Prior to the pandemic, around 120 trips per person per year were made by surface rail or London Underground on average by London residents, compared with an average of around 30 trips per person per year across England.<sup>17</sup> Figure 3 below shows the number of heavy rail passenger journeys per region of the UK.<sup>18</sup> For heavy rail in 2019-20, over 60% of rail passenger journeys in Great Britain started or ended in London. For light rail the picture is similar, with 91% (1.5 bn) of 2019/20 passenger journeys in Great Britain accounted for by light rail and underground systems within London (London Underground, Docklands Light Railway and London Trams). However, this will be largely driven by greater demand for transport overall, due to a higher population density. Looking only at light rail in England outside of London, Manchester Metrolink and Tyne and Wear metro, accounted for the highest proportion of journeys of the six systems at 37% (44m) and 28% (33m) of journeys respectively.<sup>19</sup>

**Figure 3. Heavy rail passenger journeys within and to/from other regions, Great Britain, 2019-20.<sup>20</sup>**



14. **Rail employs thousands and delivers economic benefits to Great Britain.** The rail sector directly employs around 240,000 people<sup>21</sup> and generates substantial wider economic impacts by connecting people and goods across the country, opening job opportunities, and supporting productivity and growth.
15. **The transportation of freight by rail delivers vital benefits to the British economy.** Of the 120 billion tonne-miles of domestic freight moved within the UK in 2019, 9% was moved by rail.<sup>22</sup>

<sup>17</sup> DfT (2022). National Travel Survey. Table 9903. Average number of trips (trip rates) by main mode, region and Rural-Urban Classification: England, 2018/2019. <https://www.gov.uk/government/statistics/national-travel-survey-2021>

<sup>18</sup> Office for Rail and Road (2020). Regional Rail Usage, 2019-20. <https://dataportal.orr.gov.uk/media/1933/regional-rail-usage-2019-20.pdf>

<sup>19</sup> Light rail and tram statistics, England: year ending March 2022 - GOV.UK ([www.gov.uk](http://www.gov.uk))

<sup>20</sup> Office for Rail and Road (2020). Regional Rail Usage, 2019-20. <https://dataportal.orr.gov.uk/media/1933/regional-rail-usage-2019-20.pdf>

<sup>21</sup> The Rail Sector in Numbers (2019).

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/787082/rail-sector-in-numbers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/787082/rail-sector-in-numbers.pdf)

<sup>22</sup> Department for Transport (2020). Transport Statistics Great Britain. Table 0403. <https://www.gov.uk/government/statistical-data-sets/tsqb04-freight>



A report commissioned by the Rail Delivery Group found that in 2018/19, rail freight contributed £2.45bn to the UK economy.<sup>23</sup>

## Problem under consideration and rationale for intervention

16. Workers in Great Britain can take industrial action against their employer.<sup>24</sup> Industrial action is designed to impose a cost on the employer and in some cases the wider economy, in order to encourage the employer to resolve the grievance.
17. Strike action on the railways also has an impact on rail users' lives and livelihoods. It leads to adverse personal and financial impacts for some rail users and generates wider social, economic and environmental impacts on Great Britain and its economy. A recent survey of rail users about the impacts of recent strikes on heavy rail<sup>25</sup> found that the majority of those who had planned to travel during a strike week (81%) had their journey(s) impacted in some way. Nearly half of those planning to travel (47%) reported an impact on work and working arrangements including being unable to get to their place of work (32%), changing working hours (12%) working less than planned (9%), changing working days (7%), and being unable to work at all (4%). Of those planning to travel, around a quarter (27%) reported disruption to social plans or time with family. For nearly one in five of those who had planned to travel in a strike week (18%), it was not feasible to make alternative arrangements during the rail strikes. This figure rises to one in four among those who had planned to travel for education and those who had planned to travel for healthcare in a strike week (25% and 26% respectively).<sup>26</sup>
18. The survey found that 17% reported at least one type of negative financial impact as a result of the strikes (personal loss of earnings, loss of business earnings, increased travel costs, additional childcare costs, other). This compares with 9% of respondents who reported at least one type of positive financial impact (saving on travel costs, saving on childcare costs, other).<sup>27</sup> In addition, impacts of rail strikes on the wider economy are considerable. In December, a report by Cebr estimated that rail strikes between June 2022 and January 2023 would result in a loss of UK economic output of around £500m due to people outside of the rail sector not being able to work. This impact does not include the direct loss of output from workers on strike.<sup>28</sup> Several sectors have also highlighted the impact on trade as a result of rail strikes, reporting multi-billion pound losses in revenue e.g. UK Hospitality<sup>29</sup>. Further work would be required on these estimates to verify the scale of these impacts.
19. Whilst a substantial number of users and economic agents bear the impact of strike action, they are neither party to any dispute nor have any avenue to have their interests represented. The impact of strike action on these parties represents a negative externality which is not reflected in the interests of employers and trade unions. Government intervention is considered appropriate in sectors where strike action imposes significant negative externalities.

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<sup>23</sup> Rail Delivery Group (2021). The role and value of rail freight in the UK. <https://www.raildeliverygroup.com/media-centre-docman/12807-2021-04-role-and-value-of-rail-freight/file.html>

<sup>24</sup> GOV.UK, Taking part in industrial action and strikes, <https://www.gov.uk/industrial-action-strikes/your-employment-rights-during-industrial-action> (accessed 21 June 2022)

<sup>25</sup> DfT (2023). Rail Strikes: Understanding the impact on passengers – summary findings. Note – findings from the survey relate to strike weeks detailed in the report but may differ to future strikes should the nature of the strike differ (e.g. union involved, day in question and number of adjacent strike days). <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>

<sup>26</sup> DfT (2023). Rail Strikes: Understanding the impact on passengers – summary findings, see <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>

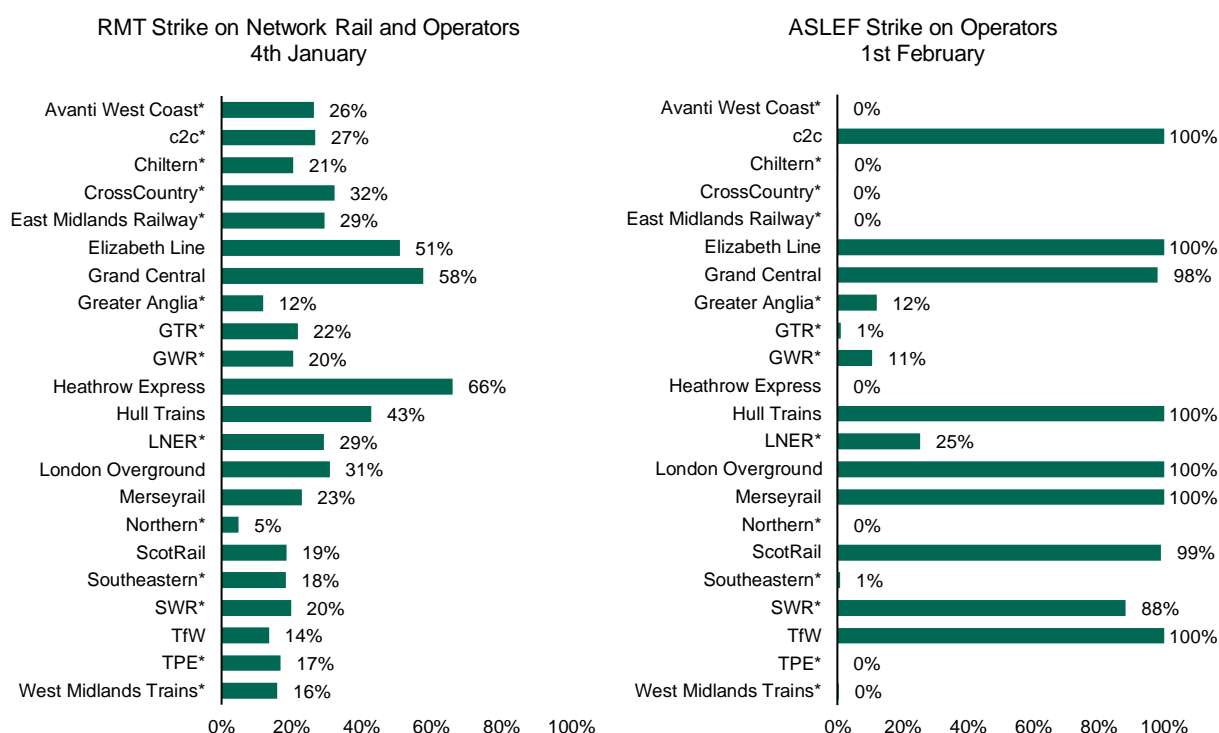
<sup>27</sup> DfT (2023). Rail Strikes: Understanding the impact on passengers – summary findings, see <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>

<sup>28</sup> Cebr (2022). <https://cebr.com/reports/eight-months-of-strike-action-to-have-cost-the-uk-economy-at-least-1-7bn-adding-to-existing-recessionary-pressures/>

<sup>29</sup> UK Hospitality. <https://www.ukhospitality.org.uk/news/631630/>

20. Action is required in the passenger rail sector as it frequently suffers disruption due to strikes. DfT's records show that between June 2022 and January 2023, there have been 25 days of strike action on operators and/or Network Rail that have led to widespread disruption on the rail network.<sup>30</sup> Figure 4 below provides two indicative examples of estimated strike day service levels for recent strikes on the national rail network by RMT and ASLEF unions, respectively. It shows the number of services run during the RMT strike on Wednesday 4<sup>th</sup> January and during the ASLEF strike on Wednesday 1<sup>st</sup> February compared with typical services run. On aggregate, around 20% of normal services ran on the 4<sup>th</sup> January, while around 40% ran on the 1<sup>st</sup> February. However, both charts demonstrate that service levels varied considerably across operators on these strike days, with this particularly the case in the chart depicting the ASLEF strike on 1<sup>st</sup> February (there is also variation within operators). These are examples of service levels during strikes and not representative of all recent strike days nor a prediction of the level of service that may result from potential future strikes.

**Figure 4. Services run during recent strike days as percentage of typical services run.<sup>31</sup>**



\*Operator staff on strike (depot drivers and Island Line drivers only at SWR during 1<sup>st</sup> February ASLEF strike)

21. The negative externalities associated with strike action in parts of the rail sector are considered to be disproportionate. The role of passenger rail in enabling a wide range of economic and social activities means that the impact of any disruption in services will be widespread. Evidence of this includes:

- a. Depending on the nature of strikes, they can result in removals of service provision, either across the whole rail network or in specific network or geographical locations. For example, during RMT strikes on the national rail network affecting TOCs and Network Rail, only around 20% of services tend to run, with services distributed unevenly across the network and with some routes completely closed. This is illustrated by the variation in service levels across operators in Figures 4 above, and by the Network Rail map in Figure 5 for the RMT strikes in January 2023. Although network coverage will vary under different strikes scenarios for different parts of the rail sector, this demonstrates the substantial impact of strikes on service levels, including the complete closure of some

<sup>30</sup> Internal unpublished Department for Transport data.

<sup>31</sup> Industry insight provided by Network Rail. For more detail, see Annex E at <https://www.gov.uk/government/consultations/minimum-service-levels-for-passenger-rail-during-strike-action>. For further information on recent rail performance, see [ORR – Passenger Rail Performance](#)

routes. The considerable impacts of strike action are often distributed unevenly across passengers, with certain routes and lines more disrupted than others. In addition, recent strikes have resulted in a reduction in hours of operation of the network, meaning that no services have run during some parts of the day. For example, as indicated in Figure 5 below, the recent RMT strikes in January 2023 resulted in services running between 07:30 and 18:30 only. In cases where strikes result in no available rail service, and where there is little or no feasible alternative transport mode, strikes may cause serious disruption to people's lives. This includes not being able to travel to a workplace, to access educational settings or healthcare appointments, or missing leisure activities.

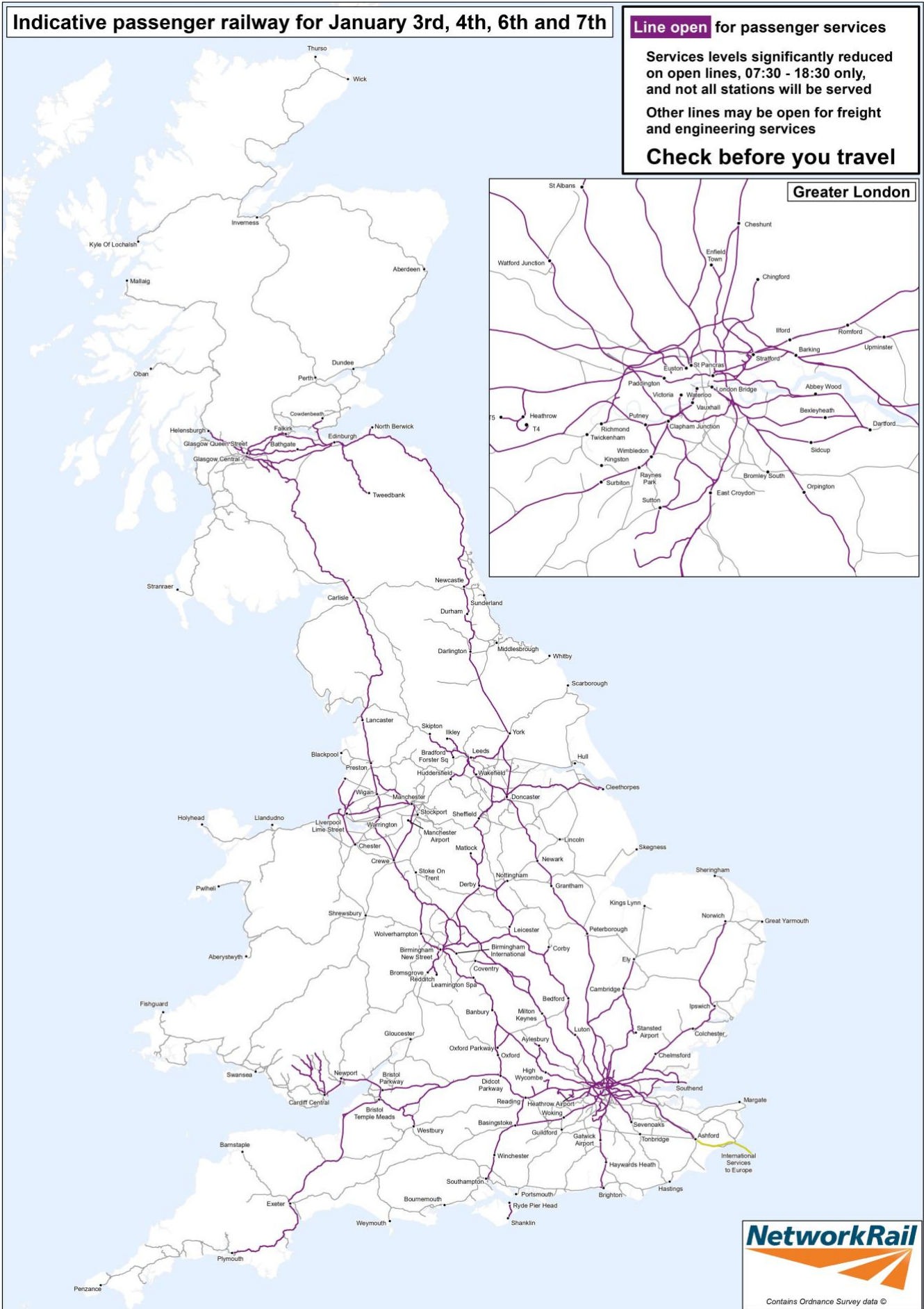
- b. Whilst there are alternative transport modes to rail, they may not be available to some people and/or impose significant additional costs and challenges (e.g. longer journey times). Those who commute by rail tend to have less access to a car compared with those who commute by other modes. The National Travel Survey found that in 2019 of those in England whose primary mode of commute was rail (including underground, metro, light rail, trams), 31% did not have access to a car, and around 45% for London specifically. This was especially true for those travelling by 'underground, metro, light rail and tram', for which 50% in England overall do not have access to a car. This was higher for London alone at 53%, whereas for England outside London the figure was only 24%. By comparison around 13% of commuters across all modes in England did not have access to a car in their household.<sup>32</sup>
- c. Although the Covid-19 pandemic has raised resilience through the increased ability to work from home, this is not the case for all workers. Many, including key workers in critical sectors such as health, education, and hospitality are unable to work remotely. A recent ONS survey indicates that 35% of workers are unable to work from home.<sup>33</sup>

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<sup>32</sup> National Travel Survey: Access to a car/van for those who usually commute by rail, 2019. <https://www.gov.uk/government/collections/national-travel-survey-statistics>

<sup>33</sup> ONS (2022). Public opinions and social trends, Great Britain: travel to work and rail disruptions. 11 – 22 January edition. <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/datasets/publicopinionsandsocialtrendsgreatbritaintraveltoworkandraildisrupti>  
[ons](https://www.ons.gov.uk)

Figure 5. Indicative Passenger Railway for RMT strikes in January 2023.<sup>34</sup>



<sup>34</sup> Network Rail.

## Policy objective

22. The objective of this legislation is to maintain a fair balance between the ability of workers to take strike action and the needs of others to use transport services to attend work and access other essential services. The legislation is seeking to address the negative externality referenced above by fairly balancing the adverse impacts of strike action on users and the wider economy, with the ability to take strike action.
23. It will also meet the 2019 Conservative manifesto commitment to operate a minimum service during certain transport strikes which stated:

*“We will require that a minimum service operates during transport strikes. Rail workers deserve a fair deal, but it is not fair to let the trade unions undermine the livelihoods of others.”<sup>35</sup>*

24. There are a number of examples across Europe of how MSLs are deployed to manage the level of service during rail strikes, such as in Spain and Italy where legislation has been in place for many years. In Italy, the focus is on ensuring people can get to and from work during strikes. In Spain a variety of factors are taken into account when setting MSLs on a strike by strike basis for both heavy and light rail. These include the availability of alternative transport options, duration of strike, number of people who will be impacted, requirements for different lines, types of services and times of day, and whether strikes coincide with festivals and events.

## Options considered

25. The variations of option 2 here are presented in the Minimum Service Levels for Passenger Rail Consultation which is currently live. These are currently developed at high level, based on main principles around deliverability and effectiveness of options.

### Option 0 – Do Nothing

26. Transport workers retain the ability to take strike action in line with current arrangements. The level of services provided on the transport network will vary during strike action depending on the nature and extent of the action, with full and ongoing network closures possible in worst-case scenarios. At present, workers volunteer to work and the level of service is based on those who decide to attend work. There would be no Minimum Service Levels (MSLs) in place meaning bespoke strike timetables would continue to need to be developed between infrastructure managers and operators or employers at short notice each time they are given notice of strike action. The level of service provided by the strike timetables would continue to depend on the nature and extent of the strike action. This would continue to lead to limited or no services on some routes or modes during strike action as it would not be possible to ensure a consistent level of services being available across the country.
27. The distribution of union membership across different classes of workers can have a profound impact on the services which may be able to run during strikes. For example, in the case of rail, if a union which predominantly represents drivers or railway signallers strikes then typically very few services would be able to run.

### Option 1 – Voluntary Minimum Service Levels

28. MSLs are introduced into the rail sector on a voluntary basis with Government setting out expectations for their introduction through non-statutory guidance. The level of service specified by

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<sup>35</sup> Conservative Party Manifesto 2019. <https://www.conservatives.com/our-plan/conservative-party-manifesto-2019>

MSLs will be mutually agreed between employers and their trade unions, and the associated level of service contained within the agreement.

29. In the absence of a penalty for failing to engage or achieve a balanced outcome, there may be no real incentive on employers and trade unions to achieve an outcome that minimises or appropriately addresses the negative externalities on transport users and the wider economy. As such, it is considered unlikely employers and trade union(s) would reach agreement on an MSL.

## **Option 2 – Statutory Minimum Service Levels (Preferred Option).**

30. After the Strikes (Minimum Service Levels) Bill comes into force, MSLs would be introduced for specified transport services by regulations, following consultation. The regulations would specify how minimum service levels (MSLs) will be set and implemented and to which transport services. For passenger rail services, there are a range of possible scenarios or options as to how MSLs would be implemented under consideration as set out below:
31. **Option 2A (corresponding to Option 1 in the consultation document) – Design a minimum service level framework based on existing timetable arrangements.** For this option, the pre-existing timetable for the named strike day would be adjusted down to an appropriate minimum service level which would be set based on evidence from consultation and other appropriate sources, such as corridors that are used by high volumes of people to get to work or access key services. This approach would allow the MSL to take account of different travel patterns and passenger needs across different days of the week and in different parts of the country, as well as days where there are particular needs for increased level of services, such as around key sporting events, as these considerations can be captured in the way in which timetables are currently prepared.
32. **Option 2B (corresponding to Option 2a in the consultation document) – Developing a priority route map focused on increased hours of service.** This would involve designing a new priority route map for strike day services, specifying routes to reflect requirements in terms of frequency of service or the length of time of operation of particular services. Priority lines would be identified based on a range of factors, including evidence of high volumes of people getting to work, or accessing key services. Under this option, the minimum service level would be designed to operate for as long a period as reasonably possible compared to previous strike days (approximately 11 hours of service), recognising that this would likely result in less geographical coverage compared to Option 2C.
33. **Option 2C (corresponding to Option 2b in the consultation document) – Developing a priority route map focused on increased geographical coverage of service.** This option would also involve designing a new priority route map for strike day services. Similar to Option 2B, routes would be specified to reflect requirements in terms of frequency of service or the length of time of operation and priority lines would be identified based on a range of factors, including evidence of high volumes of people getting to work, or accessing key services. The intention for this option would be to design the route map based on as broad geographical coverage as possible (for example, to maximise the number of stations across Great Britain that have services running), recognising that this would likely result in reduced hours of service or levels of service compared to Option 2B.
34. For all these alternative options, employers would be able to implement MSLs by issuing a work notice specifying the staffing levels required to the trade unions, who would then be under a duty to take reasonable steps to ensure that their members named on the notices comply with the work notice, in order for the MSL to be delivered.

## Implementation and justification of Option 2 (preferred option)

35. In deciding whether to take industrial action and the form this will take, trade unions will primarily be concerned with defending the interests of their members. As a result, they will not voluntarily take sufficient account of the impact of strike action on the public and wider economy, unless those interests are aligned, thereby not internalising the associated negative externality. Legislating for MSLs (Option 2) redresses this situation by enabling workers to strike whilst also providing a minimum level of service for the travelling public (thereby establishing a reasonable limit on the disbenefits they are exposed to). Secondary legislation implementing MSLs for passenger rail will enable a balance to be identified in each case (i.e. both heavy rail and light rail), by setting MSLs at an appropriate level.
36. The voluntary option (Option 1) has been ruled out on the basis that it risks being ineffective. Further, there is a risk this option would suffer from the same underlying problems associated with strike action, i.e. that insufficient regard would be given to protecting the travelling public and wider economy.
37. When setting MSLs in regulations, the Secretary of State will be expected to take into account all relevant factors, following consultation. MSLs will be set by assessing a range of matters including but not limited to (a) the distribution of services on routes over agreed time periods (such as peak weekday, rest of weekday, Friday evenings, weekends, Sundays and on special occasions) and (b) the proportion of passengers needing to, or able to, use these services at given time periods, in specific conditions or features of particular routes of point to point flows, (such as those which provide access to hospitals, schools, critical national infrastructure, and other places of significant economic importance).
38. Where an MSL applies to a specific service and once a trade union provides a notice of strike action to an employer, the employer can then specify the workforce required to secure the MSL. The employer cannot specify more people than reasonably necessary to meet the MSL and must consult with the relevant union on the number of persons to be identified and the work to be specified and have regard to their views before issuing the work notice. Work notices must be issued to the union(s) which has called strike action at least 7 days prior to the strike starting (unless a later date is agreed with the union). The work notices can be varied after they are issued up until the end of the fourth day prior to the strike starting, or later if this is agreed by the union which has called the strike action. The employer must not have regard to whether the worker is or is not a member of a trade union in developing the work notice and the union that is striking must take reasonable steps to ensure that any of its members named on the work notice comply with the work notice.
39. Taking this legislative approach ensures that MSLs can be applied to passenger rail services, recognised as services of fundamental importance, and which therefore would benefit from them, and that they can be applied across all employers within the passenger rail sector across Great Britain and across all strikes. This broad application has an advantage in providing more certainty to service users over voluntary agreements, which may not apply consistently, regularly, or effectively for each strike within the relevant services.

## 2.0 Costs and Benefits

40. This section describes the potential costs and benefits that may arise as a result of introducing minimum service regulations for passenger rail in comparison to the "do nothing" option. The Secretary of State will be able to set MSLs through regulations, though the details around the specific passenger rail services to be specified and the appropriate levels of service would be established after consultation. The comparison of costs and benefits in this section largely provides a qualitative assessment of the expected costs and benefits associated with increased aggregate service levels during strikes. These will be reviewed following consultation with a view to increasing the scope of costs and benefits monetised for the particular passenger rail services to which MSLs will be applied.
41. Please note that while these costs and benefits apply to all rail systems, the scale may differ by system and region, especially for the benefits. This is due to differences in these systems, for example: the type of service run, the purpose of travel, the availability of alternative options, the typical occupancy rate, and the level of disruption from industrial action. For systems which see higher disruption from strikes and therefore experience larger impacts, the scale of the problem MSLs will seek to address is larger, and therefore it is expected that the benefits associated with implementing a minimum service level will generally be greater. In contrast systems that are less affected, will see lower benefits associated with implementing a minimum service level.

### Option 0 – Do Nothing

42. The Do Nothing option involves a continuation of the status quo in relation to strikes. This means that strikes will continue to present the risk of significant disruption to rail users, as seen from recent strikes which have resulted in reduced services on strike days, with some strikes resulting in no services at all on certain routes. Some of the main detrimental impacts of strikes include disruption to rail users, impacts on revenue for businesses and government, disruption to planned maintenance, and impacts on the wider economy and rest of the transport network. Evidence in relation to these impacts is presented in the comparison of options below.

### Options 1 and 2 – Minimum Service Levels

43. The two policy options considered in this Impact Assessment involve a form of Minimum Service Level. For Option 1, MSLs would be voluntarily reached (noting the implementation challenges referenced above), while these would be implemented via regulations in Option 2.
44. Our working assumption for the purpose of assessing the costs and benefits is that MSLs would, on average, raise service levels and reduce disruption on strike days compared with Option 0 – though we note this is a simplification and the extent to which this is the case will depend on the particular circumstances of strike action. It is possible that the proposal could also impact days adjacent to strike days, which also tend to face disruption. At this stage, details around the level of service that would be required under MSLs have not been established, therefore, it is not possible to provide quantified estimates of the expected costs and benefits of each option. This section provides evidence on the expected costs and benefits associated with increased service levels during strikes, which may be applicable to all options. Aside from potential differences in administrative costs, if implemented, in theory both Options 1 and 2 (and any variants of Option 2) could result in the same level of service so costs and benefits have been assessed for all options together. However, we note that the likelihood of these benefits realising under a variant of Option 2 will be highest because it is expected to be the most effective in implementing MSLs in the rail sector. For this reason, we anticipate that costs and benefits, to different parties to



varying degrees, are likely to be largest in magnitude for Option 2.

45. This Impact Assessment does not consider the different costs and benefits associated with each of the sub-options within Option 2. At this stage, these broad approaches to setting MSLs do not set out the service levels that will be implemented by MSLs, which will determine the extent of most costs and benefits. Other impacts will depend on the complexity of implementation. We are seeking evidence at consultation to understand the different costs and benefits associated with each of the sub-options within Option 2.

## Summary

46. Noting that clarity relating to how different groups will be impacted by MSLs will follow from consultation, the table below summarises the relevant groups we have identified as potentially impacted by MSLs. We have also aimed to describe the impacts in terms of the costs and benefits (relative to the counterfactual of Option 0), even though in certain cases it may not be possible to quantify or monetise.
47. Impacts have been classified as direct insofar as they are unavoidable first order consequences of an increase in service levels during strikes, as per RPC guidance<sup>36</sup>, even where these may be a result of the secondary legislation which will consider the implementation of MSLs in more detail. Second order impacts have been classified as indirect. With regards to costs and benefits of delivering more services, we have classified these as direct for the parties who directly incur the additional costs and/or collect the additional revenue receipts. If these direct impacts have secondary funding implications for other parties, they have been classified as indirect. In some cases this is a notable difference between heavy rail (which tends to be operated by private companies subsidised by Government) and light rail systems (where around half are publicly operated), though the particulars of these arrangements are subject to various contractual arrangements which remain subject to change. Some of these costs and benefits can be classified as economic transfers which would not be treated additively in a formal cost benefit analysis.
48. At this stage, we have only been able to partially monetise familiarisation costs. The majority of the costs and benefits are non-monetised and have been qualitatively explained. This is primarily because there is insufficient detail at this stage about the implementation of MSLs and the service levels that they will provide, which will depend on decisions taken following consultation. We expect that we will be better able to assess the costs and benefits of MSLs following consultation once greater detail about MSLs is established. To do so we will use existing data from Network Rail on service levels and industry revenue data to assess the impact on operational costs and revenue implications for both businesses and Government. We also anticipate the consultation will provide greater evidence on how rail users are impacted by strikes which we will seek to help quantify impacts where possible, though where these relate to improved access to certain services quantification will remain difficult. Similarly, where impacts relate to reduced utility of union membership and ability to take strike action even at secondary legislation stage following consultation we will be limited in what we can quantify.

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<sup>36</sup> [RPC case histories - direct and indirect impacts, March 2019 - GOV.UK](#)

## Costs and benefits summary of introducing minimum service levels in rail

Group	Costs	Benefits
Government	Administrative and familiarisation costs (direct) Enforcement costs (direct) Increased funding due to cost of running additional services (direct/indirect)	Increased revenue from running more services (direct/indirect) Change in tax receipts to Government from business and wider economy (indirect)
Businesses – transport operators and infrastructure managers	Administrative and familiarisation costs (direct) Increased costs of running more services (direct)	Increased revenue from running more transport services during strikes (direct) Reduced negative business impacts associated with strikes (direct)
Rail users	N/a	Reduced negative impacts of strikes on user experience (direct) Reduced negative impacts on access to workplaces or ability to earn a living (direct) Change in transport costs for consumers (direct) Reduced negative impacts of strikes on access to private and family life, education, and health (direct)
Unions	Administrative, familiarisation and compliance costs (direct) Lost utility from reduced bargaining power (direct)	N/a
Rail workers	Loss in utility resulting from the restricted ability to take strike action partially offset by pay for those working on strike days (direct)	N/a
Wider Impacts	N/a	Reduced negative impact of strikes on businesses, livelihoods, wider economy, environment, and other transport modes (indirect) Reduced negative long-term impacts on the rail sector (indirect)

### Costs

#### Costs to Government

##### Administrative and familiarisation costs

49. There will be administrative costs associated with implementing the policy. These costs will be incurred by Government as well as other relevant parties in the development of MSLs and in its implementation – i.e. agreeing an initial implementation framework that will be practical and deliver the aims of the policy. The administrative costs such as form filling, serving of notices, etc. have not been quantified in this Impact Assessment. They are expected to be relatively small, and will be a function of the number and severity of disputes, which are highly uncertain at this stage. In certain cases, such as publicly operated light rail services, these costs could be higher.

50. There will be costs to Government in developing MSLs. It is likely that this will largely be transitional, as once MSLs are in place for the specified services then additional work would be limited. We have not attempted to monetise this at this stage but will seek to do so following consultation.

#### Enforcement costs

51. Government (including Local Government and devolved authorities) will incur some costs around the enforcement of MSLs. It is anticipated that this cost will depend on a number of factors, including the complexity of MSLs set by Government and the potential arrangements for imposing these MSLs on the relevant parties. Some of the practicalities of implementation and enforcement will be determined following consultation.

#### Increased funding due to cost of running additional services

52. Given the assumption that the proposal would result in a higher level of services during strike action relative to Option 0, one of the implications of increased rail services on strike days will be running additional services which will result in additional costs incurred by Government. Whether these are direct costs (e.g. increased operation costs of running a service) or indirect costs (e.g. increased public funding of private operators) depends on the contractual arrangements in place, as discussed above.

### **Costs to businesses (operators and infrastructure managers)**

#### Familiarisation Costs

53. It is expected that organisations in the rail sector will be required to familiarise themselves with the legislation and any relevant guidance produced to support the policy, though this is not expected to be an ongoing cost or ongoing at the same level. To some extent MSLs will require action at the individual employer level, and possibly the individual establishment level.
54. It is possible that some or all rail workers affected by the policy would choose to familiarise themselves with the legislation and any relevant guidance produced to support the policy. It is not yet clear if this would be a requirement of workers or whether familiarisation with the policy would occur through communication from employers and/or union representatives. We will continue to explore this assumption during the consultation period and will look to use any evidence gathered to inform any final stage Impact Assessment.
55. For illustrative purposes we have estimated the familiarisation costs for businesses in the rail and light rail sectors associated with primary legislation only. Rail Delivery Group lists 42 passenger and track services companies in the rail industry.<sup>37</sup> For light rail, we have estimated the familiarisation costs associated with 9 organisations, which includes the operators for the 8 light rail systems in Great Britain (excluding TfL systems),<sup>38</sup> plus TfL. It should be noted that around half of light rail systems are publicly operated. For the purpose of this analysis these have been combined with private operators under the employer costs below. Further information on the familiarisation costs to TfL will be gathered after consultation.

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<sup>37</sup> Rail Delivery Group (2022). This includes train operating companies, owning groups and track and infrastructure companies. Rail Delivery Group. Passenger, Freight & Track Services. <https://www.raildeliverygroup.com/uk-rail-industry/passenger-freight-track.html> [Accessed October 2022]

<sup>38</sup> [Light rail and tramways | Office of Rail and Road \(orr.gov.uk\)](https://www.light-rail.gov.uk/)

56. To estimate familiarisation costs, we assume that, as a minimum, senior management teams would take 8 hours to familiarise themselves with the legislation as there are similar responsibilities placed on employers and unions by this policy.<sup>39</sup> Familiarisation will need to happen at operational level too, such as planners developing rail timetables. For most of the employers that we expect will need to familiarise themselves with the legislation, we assume a chief executive or senior official, an HR manager or director, a legal professional, and a senior manager or professional in the specific industry would form the management team familiarising themselves.<sup>40</sup> Estimated median hourly wages for the relevant occupations, taken from the Annual Survey of Hours and Earnings 2022, have been updated by 17.9% to take account of non-wage labour costs.<sup>41</sup> The median hourly wage rates (excluding overtime) and estimated related labour costs, set out below, have been used to estimate the costs per organisation.<sup>42</sup> These hourly wage costs are national averages rather than specific estimates for the rail sector. They also do not indicate the range of wages within each job role.

### Hourly median wages and labour costs for employer management team occupations

Job role	Median hourly wage (excl. overtime)	Median hourly labour costs (incl. non-wage costs)
Chief executives and Senior Officials	£37.43	£44.13
HR managers and directors	£24.59	£28.99
Managers in transportation and distribution	£18.38	£21.67
Legal Professionals	£23.27	£27.44
<b>Total</b>	<b>£103.67</b>	<b>£122.23</b>

57. The costs for rail and light rail are estimated as the hourly labour cost multiplied by the hours of familiarisation and the estimated number of employers affected. These are intended to give a sense of scale of familiarisation costs rather than a calculation of total familiarisation costs from the proposal. They are set out in the table below.

### Estimated familiarisation costs for employers in the rail sector

Employers	Estimated number of employers	Estimated hourly labour cost of familiarisation team	Hours taken	Familiarisation cost (nearest £10,000)
Rail	42	£122	8	£40,000
Light Rail <sup>43</sup>	9	£122	8	£10,000

<sup>39</sup> We expect that the proposal will place similar responsibilities onto employers and unions. This is reflected in assumptions relating to the time required to familiarise themselves with the changes to legislation. Note that this is a high-level assumption and will vary across organisations.

<sup>40</sup> Note that the assumptions included here around the number of workers required to familiarise per organisation and per type of worker are high level and may vary by organisation.

<sup>41</sup> Estimated from latest ONS Index of Labour Costs per Hour publication.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/indexoflabourcostsperhour/ich/julytoseptember2020> Here, the non-wage labour cost uplift uses 2019 Q4 to 2020 Q3 figures (seasonally adjusted). To estimate the uplift, non-wage costs per hour as a proportion of total labour costs (15%) are divided by wage costs per hour as a proportion of total labour costs (85%) (i.e.  $0.152/0.848=0.179$ ). Therefore, we have uplifted wages by 17.9% to get an estimate of total labour costs.

<sup>42</sup> ONS (2022). Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14.6a Hourly pay – Excluding overtime (£) – For all employee jobs: United Kingdom, 2022. Chief executives and senior officials (SOC:111), HR managers and directors (SOC:1136), Managers in transportation and distribution (SOC:1241), Legal professionals (SOC:241).

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

<sup>43</sup> Some light rail systems are publicly owned and operated, therefore the familiarisation costs for these will go to the associated public operator. Of these employers four are public operators. For systems which are publicly owned but privately operated, the owners are not included within the employer figure.

58. The total familiarisation cost to employers in the rail and light rail sector is estimated at around £50,000. Beyond the familiarisation costs associated with primary legislation, it is expected there would be further familiarisation costs for employers when the scope of the policy is specified in secondary legislation. Where they decide to issue a work notice, employers would inform workers and unions of those workers required to work to provide the minimum services during a strike. The familiarisation costs relating to secondary legislation have not been estimated at this stage due to the fact that the precise approach to implementing MSLs will be developed following consultation. The different options for implementation are being consulted on and costs will be considered in more detail following this process.

#### Administrative costs

59. In addition to the familiarisation costs set out above, it is expected that there will be additional administrative costs to businesses associated with this proposal. As with familiarisation costs associated with secondary legislation, these have not been monetised here due to the significant uncertainty around the implementation of the policy about which the consultation is seeking views. These costs will be considered in more detail following this process.

#### Increased costs of running more services

60. Given the assumption that the proposal would result in a higher level of services during strike action relative to Option 0, one of the implications of increased transport services on strike days will be the increase in operational costs incurred by operating companies. For light rail around half of systems are publicly operated, in these instances the increased cost will go to the public operator. Total operational costs typically include fixed costs (vehicles, infrastructure, performance regimes etc.) and variable costs (staff salaries, fuel, electricity etc.) costs. Increased service provision would primarily increase variable costs. These have not been monetised here as the nature of these costs will vary by mode and depend on the level at which MSLs are set. These will be considered further following consultation.

#### Costs to unions

61. The proposal is anticipated to have direct and indirect impacts on unions. There will be administrative, familiarisation and compliance costs associated with the implementation of MSLs. The combined impact of primary and secondary legislation will be to reduce, for those unions affected by the secondary legislation, the current protections from potential damages claims under statutory immunity.
62. Given one of the factors influencing the ability of unions to effectively represent their members' interests is the extent to which they hold bargaining power over employers, the proposal may have implications on the attractiveness of union membership to existing and prospective members. However, the extent to which this is affected by MSLs is at this stage unknown.

#### Familiarisation Costs

63. We anticipate that unions will have to spend time familiarising themselves with the proposed changes, and will engage external legal advice to understand the legal implications. Familiarisation costs may include the time taken to understand the legislative changes, attending training sessions to acquire knowledge and costs associated with obtaining external advice.

64. Based on the evidence obtained from unions in the consultation on the assurance of trade union membership registers, as set out in the related Impact Assessment,<sup>44</sup> which placed additional requirements on unions to maintain their membership registers, we assume that it would take between half a day and two days in meetings for the union General Secretary and four other senior directors, with a best estimate of one day (of 8 hours), to familiarise themselves with the proposed policy. A similar approach was also taken in the Strikes (Minimum Service Levels) Bill Impact Assessment. This is a high level estimate of the familiarisation cost for unions, we will aim to add to this following consultation. Estimates from the Annual Survey of Hours and Earnings (ASHE)<sup>45</sup> suggest that the median hourly wage of a General Secretary or a senior union official is £30.83.<sup>46</sup> These values are then uplifted by 17.9% to cover the non-wage labour costs. The calculations are presented in the table below.<sup>47</sup> This results in a central estimate of familiarisation costs for union officials of £1,500 per union.

#### Hourly median labour costs for Union roles

Job role	Number of Officials	Median Hour Pay (Uplifted)	Time Taken (Hours)	Total (nearest £'00)
<b>General Secretary</b>	1	£36.35	8	£300
<b>Other Senior Official</b>	4	£36.35	8 (32 in total)	£1,200

65. We also expect that unions will seek legal advice on the reform as part of the familiarisation process. Using a similar methodology to the Trade Union Enactment Impact Assessment, we assume that this will take 8 hours. The 2016 IA, based on evidence from unions, assumed that it would cost £250 per hour for legal advice. We use the Bank of England inflation calculator to update this value to find it in 2022 prices (£302).<sup>48</sup>

#### Estimated legal expenses associated with familiarisation

Legal Cost (hourly)	Hours taken	Total Legal Cost (to nearest £'00)
£302.26	8	£2,400

66. The total familiarisation cost, including legal advice, per union is estimated at around £3,900. This cost is expected to be incurred by unions representing rail and light rail sectors, which includes unions such as RMT, ASLEF, TSSA, UNITE and GMB. If five unions incur the estimated cost per union, the total familiarisation cost to unions would be around £19,000.<sup>49</sup>

#### Administrative costs

67. As for businesses, it is expected that there will be additional administrative costs to unions associated with this proposal, e.g. amending their Rule Books. However, these have not been

<sup>44</sup> BIS, Certification of trade unions' membership registers and investigatory powers for the Certification Officer Impact Assessment, December 2014, p10 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/414353/bis-15-143-trade-union-assured-register-of-members-final-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414353/bis-15-143-trade-union-assured-register-of-members-final-impact-assessment.pdf) - this placed additional requirements on unions to maintain their membership registers.

<sup>45</sup> ASHE (2022). Earnings and hours worked, occupation by four-digit SOC: ASHE Table 14.6a Hourly pay – Excluding overtime (£) – For all employee jobs: United Kingdom, 2022..

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

<sup>46</sup> We use the median wage of 'Functional manager and directors n.e.c' as a proxy for a General Secretary or union senior official wage (SOC 1139). In the Trade Union Bill Impact Assessment, the median hourly wage for chief executives and senior officials is used as a proxy for the wage of a union General Secretary.

<sup>47</sup> This assumption is informed by evidence obtained from unions in the consultation on the certification of trade union membership registers. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/493636/BIS-16-70-trade-union-bill-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493636/BIS-16-70-trade-union-bill-impact-assessment.pdf)

<sup>48</sup> <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>.

<sup>49</sup> Note that some rail workers may be represented by other unions, including PCS, Prospect and Unison. However, these unions account for a small proportion of the rail workforce and therefore have not been included in calculations, as the extent to which they would need to familiarise with legislation is unclear.

monetised here due to the fact that precise details on the implementation of the policy remains subject to the results of the consultation. These costs will be considered in more detail following this process.

## Costs to rail sector workers

### Lost utility arising from restricted ability to take strike action

68. The ‘utility’ from being a member of a union and the associated ability to take strike action is used to describe any value to the worker that is associated with having this ability. Part of this utility comes from the fact that unions help counterbalance the bargaining power that employers have over their staff. Strike action may in some cases lead to improved terms and conditions, including increased pay deals. If the proposed policy were to change the balance between unions and employers, this may reduce the value that workers derive from being part of a union. If the policy reduces the impacts of strikes or threat of strikes, this could lead to potential reductions in future pay or working conditions for these workers compared with the “do nothing” scenario under each policy measure. This potential reduction in terms of condition for workers in unionised sector over time (if bargaining power is substantially weakened) could have a downward effect on terms and conditions more generally in the labour market. It is also possible that there may be wellbeing impacts over and above any monetary loss incurred by union members.
69. In determining the value of lost utility from being a member of an union, consideration should be given to whether, and to what extent, MSLs will impact the terms and conditions of rail workers on lower incomes. Should strike action lead to improvements in terms and conditions, the marginal benefit of extra income could be greatest for those on lower incomes.<sup>50</sup> Estimates of annual salaries are provided by ONS in the Annual Survey of Hours and Earnings dataset.<sup>51</sup> This includes percentile estimates of the distribution of salaries for different job types, indicating a range of salaries for various transport-related roles which demonstrates that while a large proportion of employees receive above UK median salary, some rail workers receive salaries lower than the UK median salary. Were the introduction of MSLs to have an impact on terms and conditions, this would result in proportionately larger social costs if lower paid rail workers were disproportionately affected. This is something which will be considered following consultation.
70. There will be fewer instances of pay being withdrawn on the basis of striking when comparing a specific strike action in the counterfactual scenario to introducing a MSL. The net effect of such over a certain period of time is uncertain, as this is dependent on the extent to which strike action occurs and MSLs are applied and how they vary from what happens on a day of strike action currently.
71. Workers who strike are not paid by employers for the period they are taking industrial action. If the MSL results in fewer individuals involved in strike action, employers would have reduced instances of withheld pay. Individuals who wanted to strike, but were unable to due to an MSL, would retain their pay for that strike period. This would need to be considered alongside the costs to those workers from being required to work (the utility cost described above) with the expectation that the net impact of these benefits and costs would be negative (on the basis that workers will only strike if the benefits of doing so exceed the costs).

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<sup>50</sup> E.g. see HMT (2022), The Green Book for a discussion of distributional analysis. <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government/>

<sup>51</sup> ONS (2021). Annual Survey of Hours and Earnings. Table 14: Earnings and hours worked, occupation by four-digit SOC. <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/occupation4digitsoc2010ashtable14>

## Benefits

### Benefits to Government

#### Increased revenue from running more services

72. It is generally expected that more users would access the rail network on a strike day than in a “do nothing” scenario and so it would generate more revenue for rail and light rail. This is on the assumption that MSLs would raise service levels compared to the “do nothing” scenario which is subject to consultation. The volume of revenue loss that is avoided by MSLs, would depend on the extent of the difference in services provided under the two scenarios and the number of passengers who choose to travel on a strike day. Whether the increased revenue is a direct or indirect benefit to Government depends on contractual arrangements, with the Government benefiting directly when operating the services and indirectly when implicated via contractual arrangements.

#### Changes in tax revenue

73. If the policy were to result in a higher level of services being run during strike action, with a significant increase in users relative to Option 0, then it may generate wider economic impacts (such as on hospitality, catering and other sectors). This in turn could lead to more tax revenues from increased volume of economic activities, indirectly benefiting Government finances. Given the uncertainty around changes to transport workers’ wages and working conditions, the extent to which this increase in tax revenues is offset by reductions in income tax or tax revenue from other modes remains highly uncertain.

### Benefits to businesses (operators and infrastructure managers)

#### Increased revenue from running more services

74. As per the benefit accruing to Government, businesses also benefit from the increased revenue from more users accessing the rail network compared with current strike days – on the assumption that MSLs provide an increased service which is subject to consultation. As discussed, the extent of revenue increases under the proposed legislation would depend on the nature of strike action occurring in the absence of MSLs. These are subject to significant uncertainty, and the resulting revenue impact is expected to be highly variable across modes meaning it would not be possible to quantify this impact at this stage. We will look to monetise this impact after consultation once further detail on the implementation of MSLs is established. Businesses who directly operate heavy rail and light rail services would benefit from revenue increases, but where the operation is Government led, the benefit will directly accrue to Government.
75. An indicative order of magnitude for the potential scale of revenue in the heavy rail sector can be gauged from an inspection of revenue data. The Office for Rail and Road report that the heavy rail industry collected around £10.4bn a year from passenger fares prior to the pandemic, equivalent to roughly £28m a day.<sup>52</sup> A worst case scenario in Option 0 is if no services run at all, and all season ticket holders exercise their right to a full refund, then this would suggest an upper bound for passenger revenue benefit from MSLs could be around £28m per strike day. This is an overestimation as service levels even in the presence of MSL would be lower than a normal non-strike timetable. Furthermore, in most incidences of strike action some services

<sup>52</sup> <https://dataportal.orr.gov.uk/statistics/finance/rail-industry-finance/>. Daily estimate doesn't account for weekday/weekend revenue differences or seasonal variation.



continue to run. To provide an indicative order of magnitude for the potential scale of revenue in the light rail sector, TfL reported London Underground fare income of £2.7bn (£7m a day) in 2019/20.<sup>53</sup> Passenger revenue for light rail and underground systems in Great Britain excluding London Underground totalled £413m (over £1m a day) in actual prices, with revenue for England alone at £377m (over £1m a day) in 2019/20. For Glasgow underground revenue was £20m for the same period (£55k a day), and for Edinburgh trams £16m (£44k a day).<sup>54</sup> It should be noted, however, that season tickets are available for some light rail systems, therefore additional revenue would likely come from on the day sales. For light rail outside London the beneficiaries of higher revenue would differ by system, with some being privately operated and others publicly operated.

## Reduced efficiency losses

76. The successful operation of rail networks across the Great Britain requires significant forward planning and coordination of various organisations, workers and infrastructure to ensure a reliable service is available for users. Short term disruption to the rail network due to strike action causes disruption to operational and maintenance plans which requires time and resource intensive efforts to mitigate. This results in efficiency losses e.g. through maintenance and enhancement plans that are delayed and rescheduled for later dates at an increased expense. Though it is not possible to quantify, an increased level of service during industrial action disputes would likely reduce and minimise any costs associated with efficiency losses.

## Benefits to rail users

### User Experience

77. One of the principal benefits to rail users may be an improvement in experience due to a likely increased service on strike days and days adjacent to strikes. With more services on offer, consumers would have greater flexibility to travel when it suits their needs and wouldn't need to change their plans as much to align with severely reduced timetables produced at short notice. MSLs may also provide greater clarity around the services they can expect to run during strikes.

### Improved access to work or ability to earn a living

78. In 2019, 54% of surface rail journeys in England were made for commuting to work or education.<sup>55</sup> This includes employees across a variety of sectors, including key workers in education and health who may have low ability to work from home.<sup>56</sup>
79. Assuming MSLs increase the number of services on strike days, they would reduce the impact of strikes on workers' ability to access their workplace. They will also mitigate the costs associated with the inability of workers to access work. However, the impact of future strikes may be different to those recently experienced and the precise approach to implementing MSLs will be developed following consultation, therefore the extent to which MSLs would reduce the impact on workers' ability to access their workplace is not feasible to estimate.

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<sup>53</sup> Transport for London (2020). <https://content.tfl.gov.uk/tfl-annual-report-2019-20.pdf> . Note that the figures presented here are therefore intended to give a sense of scale of costs and are not intended to identify the total revenue across all modes.

<sup>54</sup> [Light rail and tram statistics \(LRT\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/light-rail-and-tram-statistics) LRT0301. Daily estimate doesn't account for weekday/weekend revenue differences or seasonal variation.

<sup>55</sup> National Travel Survey. <https://www.gov.uk/government/collections/national-travel-survey-statistics>. As used in 2019 Rail Factsheet (2020), p3. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/942425/rail-factsheet-2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942425/rail-factsheet-2020.pdf)

<sup>56</sup> Department for Transport (2023) Rail Strikes: Understanding the impact on passengers – summary findings at <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>.

80. In December, a report by Cebr estimated that rail strikes between June 2022 and January 2023 would result in a loss of UK economic output of around £500m due to people outside of the rail sector not being able to work. This impact does not include the direct loss of output from workers on strike.<sup>57</sup>

#### Reduced disbenefits of strike action on private and family life

81. The proposal may impact those who use rail for leisure reasons, including visiting family and friends, caring for family and friends, shopping, tourism and other non-work reasons. These leisure activities contribute to the wellbeing of society and the ability to go about such activities is restricted during strike action on the rail network. The proposal may, therefore, reduce the disbenefits of strikes on rail users. While they are not possible to quantify or monetise, they are significant factors against which the disbenefits to employees of restricting the ability to take strike action should be balanced.
82. A recent survey found that 19% of GB adults had their travel plans disrupted by the rail strikes in January 2023.<sup>58</sup> Amongst rail users, Rail Strikes: Understanding the impact on passengers<sup>59</sup> found that just over half (52%) of respondents had planned to make a rail journey during a strike week, and 27% of those who had planned to make a journey had to cancel/ re-arrange social plans or spend less time with their family/friends, or both.

#### Impacts on access to education

83. The proposal should improve access to education during strikes. Rail networks are used by school, college and university students to travel to education and by workers in the education sector to travel to work. Therefore, strike action can limit the ability of students and teachers to travel to schools, colleges and universities. Although the most common mode of accessing education in England<sup>60</sup> in 2019 was either walking or taking private cars, around 2% of school students used rail (surface rail or underground) as their main mode of travel to their place of education. Disruption may be felt particularly in urban areas where dedicated home-to-school transport could be less common.
84. Additionally, only a small proportion of workers in the education sector are currently working from home – the April 2022 Business Insights and Conditions Survey found that 10% of workers in education were working from home.<sup>61</sup> Although the number of people ‘currently’ working from home is a different measure to ‘ability’ to work from home, we would expect the two to be correlated.
85. Rail Strikes: Understanding the impact on passengers<sup>62</sup> found that 4% of respondents had planned to travel to/from education during a strike week. Of those who had planned to travel to/

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<sup>57</sup> Cebr (2022). <https://cebr.com/reports/eight-months-of-strike-action-to-have-cost-the-uk-economy-at-least-1-7bn-adding-to-existing-recessionary-pressures/>

<sup>58</sup> ONS (2022). Public opinions and social trends, Great Britain: 11 to 22 January 2023. [Public opinions and social trends, Great Britain: travel to work and rail disruptions - Office for National Statistics](https://www.ons.gov.uk/publications/abstracts/public-opinions-and-social-trends-great-britain-11-to-22-january-2023). Questions about the impact of rail strikes on GB adults have been repeated, with the reference periods 22 June to 3 July, 3 August to 14 August, 31 August to 11 September and 21 December to 8 of January. The percentage of GB adults disrupted was consistent in the last two waves of this research – 19% between the 11<sup>th</sup> and 22<sup>nd</sup> of January 2023 and 18% between the 21<sup>st</sup> of December and the 8<sup>th</sup> of January. A smaller percentage were disrupted in the summer at 15% between the 22 June and the 3<sup>rd</sup> of July and 13% between the 3<sup>rd</sup> and 13<sup>th</sup> of August.

<sup>59</sup> Department for Transport (2023) Rail Strikes: Understanding the impact on passengers – summary findings at <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>.

<sup>60</sup> Department for Transport (2021). National Transport Survey – Trips to and from school per child per year by main mode: England, 2020. <https://www.gov.uk/government/statistical-data-sets/nts03-modal-comparisons>

<sup>61</sup> Business Insights and Conditions Survey data (Wave 57). Based on responses from 9,418 UK businesses referencing the period 1 April 2022 to 30 April 2022. Data from currently trading businesses only.

<https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheukeconomy>

<sup>62</sup> Department for Transport (2023) Rail Strikes: Understanding the impact on passengers – summary findings at <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>.

from education 47% reported at least one impact including being unable to get to a place of education, being unable to study at all, studying less than planned, changing study hours of days and being unable to sit an exam. While this is a relatively small proportion of all respondents, it is worth noting that the survey included those over 16 only, of which only a small proportion are in education.

86. A higher level of rail services enabled by the proposal should reduce the disruption faced by those accessing educational settings. It is not possible to quantify and monetise this impact, other than establishing some of the core facts about the use of the railway for the different purposes which operators will have regard to when setting MSLs.

#### Impacts on health and delivery of healthcare

87. Prior to the pandemic, around 7% of workers in the health sector in the UK travelled to work by rail (including underground, light railway and tram)<sup>63</sup> and evidence in the April 2022 Business Insights and Conditions Survey<sup>64</sup> indicates that health & social workers (5% of workforce working from home) are among industries with the lowest proportion of people currently working from home and hence more likely to be impacted by rail strikes. While those who are 'currently' working from home is a different measure to the ability to work from home, we would expect there to be a correlation. The June 2020 wave (wave 7)<sup>65</sup> of the survey – taken as the country was starting to come out of the first lockdown – indicated that Health and Social care workers had the highest proportion of employees not working from home, with around 70% of those still working (surveyed among enterprises that remained open and not including those on furlough) still attending a dedicated place of work.
88. Rail Strikes: Understanding the impact on passengers<sup>66</sup> found that 1% of respondents had planned to make journeys to healthcare appointments during a previous strike week. Reported impacts on access to health and social care were correspondingly low: 1% of all respondents had to cancel a healthcare appointment, 1% had to rearrange a healthcare appointment, and 1% were unable to undertake caring responsibilities. These results reflect the small proportion of the population which might be expected to have a medical appointment scheduled on any given day, but not the scale of negative impact felt by them which could in certain circumstances be material.

#### Change in travel costs

89. Strikes on the passenger rail network often lead to travellers using alternative modes of transport to travel to their destination. The extent to which travel costs change under different strike scenarios and across different users depends on the nature of the strikes and choices around whether or not to travel and alternative modes. However, it is likely that increased service provision enabled by MSLs will reduce any additional costs of alternative travel faced by users by enabling users to choose the most cost effective and convenient way to travel.

### Wider Impacts

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<sup>63</sup> ONS (2020). Figure 6: Different modes of transport by industry, UK, 2018.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/coronavirusandtraveltowork/june2020>

<sup>64</sup> Business Insights and Conditions Survey data (Wave 57). Based on responses from 9,418 UK businesses referencing the period 1 April 2022 to 30 April 2022. Data from currently trading businesses only.

<https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheukeconomy>

<sup>65</sup> Wave 7 1 June to 14 June: [Business Impact of COVID-19 Survey \(BICS\) results - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheukeconomy)

<sup>66</sup> Department for Transport (2023) Rail Strikes: Understanding the impact on passengers – summary findings at

<https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>.

## Wider economic impacts (indirect)

90. Evidence from Rail Strikes: Understanding the impact on passengers<sup>67</sup> indicates the kinds of disruption that transport strikes can have on household finances and productivity. 29% of all respondents, and 70% of those who had planned to commute by rail during a strike week, had their work or working arrangements impacted in some way as a result of the strikes. Five per cent of all respondents were unable to get to a business meeting.
91. Some sectors of the economy, such as leisure and hospitality, have reported that they have faced high volumes of cancellations as a result of rail strikes. The extent to which personal finances and businesses, and consequently the impact on the wider British economy, are impacted by strikes is highly uncertain and will vary by sector, geography and severity of strike. However, with more services running on strike days under the proposal, the adverse effects would likely be reduced to some extent. Given the outstanding uncertainties, quantification of these impacts and how they contribute to the wider economy has not been possible, though for context a discussion of how they have manifested in recent strikes has been set out in the Problem Under Consideration section.

## Reduced negative long-term impacts on the rail sector

92. Evidence from Rail Strikes: Understanding the impact on passengers<sup>68</sup> indicates that strikes may have a long-term negative impact on rail usage. Almost a quarter (24%) of passengers who participated in the research agreed with the statement that they will no longer travel by train if the strikes continue for an extended period of time. It should be noted that this represents claimed future behaviour and may not correspond to an actual change in behaviours of the same level. The introduction of MSLs may therefore raise confidence amongst rail users by providing increased certainty about the services that will run. This could lead to increased rail usage over the longer-term compared with the “do nothing”, which would generate positive user benefits, increased revenues in the sector, and wider economic impacts across Great Britain. Improvements in the operating position could potentially benefit all those in the industry – including rail workers.

## Reduced stress on other modes of transport during strikes

93. The proposal could increase the number of rail services running on strike days, therefore could avoid the additional pressure on alternative modes of transport that could be used. This may be especially important in urban centres where congestion is more likely, given a relatively large travelling population.

## Reduced negative environmental impacts

94. The proposal is expected to result in increased passenger rail services, which may increase rail usage and reduce private car usage. Rail Strikes: Understanding the impact on passengers found that a larger proportion of respondents switched to car, motorcycle or van than other alternative modes (13% of those who had planned to make at least journey by rail during a strike week). If private car usage is reduced, the proposal could reduce negative environmental impacts attributable to private car use as public transport tends to be less polluting than travel by car. For example, rail carried around 10% of all passenger miles prior to the pandemic but produced only around 1% of Great Britain’s domestic transport emissions. Additionally, for every

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<sup>67</sup> DfT (2023). Rail Strikes: Understanding the impact on passengers – summary findings at <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>.

<sup>68</sup> DfT (2023). Rail Strikes: Understanding the impact on passengers – summary findings at <https://www.gov.uk/government/publications/rail-strikes-understanding-the-impact-on-passengers>.

mile travelled, passenger trains produce around one third of the emissions of the average petrol car. Therefore, modal shift towards rail use is likely to have positive environmental impacts. This potential benefit depends on the extent to which the proposal will facilitate modal shift and the extent of passenger rail services which themselves emit CO<sub>2</sub>, which is highly uncertain and has not been monetised here.

## **Business Impact Target Calculations**

95. The proposal is expected to impose some costs on businesses, including increased operating costs and additional administrative/familiarisation costs, which are described above. These costs have largely not been monetised because the service levels that will be delivered under Minimum Service Levels have not been established as part of this proposal and are highly uncertain. Therefore, we do not provide a Business Impact Target score or Equivalent Annual Net Direct Cost to Business in this Impact Assessment, but will revisit after consultation once further details about the implementation of MSLs have been established.

## **Indirect Costs and Benefits**

96. In addition to the indirect costs and benefits set out above, there may be further indirect impacts as a result of the proposal.
97. The implementation of Minimum Service Levels may lead to changes in the relationship between trade unions, employees and employers. These knock-on impacts are highly uncertain and could lead to costs or benefits for the transport sector depending on many factors.

## **Sensitivity Analysis**

98. This Impact Assessment has monetised only a small proportion of the costs and benefits associated with the proposal. Therefore, a sensitivity analysis has not been conducted.
99. However, the costs and benefits of the proposal are expected to depend heavily on the service levels mandated by Minimum Service Levels during a strike, which are to be determined following consultation. Overall, the magnitude of costs and benefits of the proposal to different parties are expected to increase to varying degrees as the required service levels increase. For example, increases in service levels lead to increases in the avoided negative impacts of strike action to businesses (including increased revenue for operators), consumers and government. However, they are also likely to lead to greater disbenefits to workers and increases in operational costs associated with providing additional services during strikes.
100. Estimates of familiarisation costs to businesses and unions have been provided in this Impact Assessment to give a sense of possible scale, but these are based on high level assumptions about the amount of time and number of employees per organisation required to familiarise themselves with the requirements of the proposal. These estimates are intended to provide an indication of order of scale and will depend on how MSLs are specified.
101. Impacts of the proposal would also be sensitive to the assumption on service levels during strikes used in the "do nothing" option. Service levels can vary substantially on the type of strike, ranging from a worst-case scenario of the complete shutdown of a given network to the possibility of much greater service levels. This proposal is expected to have greater impacts in cases where strikes would have caused larger service level reductions with little or no alternative options for travel.

## 3.0 Risks and unintended consequences

### Risks

102. There are several potential risks to reflect in the analysis of impacts and considered in the detailed design of the policy.
103. The first is where MSLs are in place and those who are named in the work notice, and so required to deliver the service, do not turn up for work. The policy will be designed in a way so as not to restrict the ability to take strike action for all rail workers, just those who are required to deliver the MSL that has been prescribed in the regulations. A failure on the part of the employee to comply with the work notice removes the right to automatic protection from unfair dismissal, though dismissals are not an objective of the policy. However, in the event these workers fail to turn up for work with no notice, in the short term this could have a direct impact as the service may not be able to run, or it may be delayed while other staff are found to cover.
104. Given the highly skilled nature of certain job roles in the rail sector, such as signallers, and electrical control room operators, in addition to the level of training required for certain roles e.g. driver training for specific routes, there is a reliance on staff complying with the minimum service level and any notice requiring them to work. It is difficult to mitigate against this, but the policy removes the automatic unfair dismissal protection from employees named on the notice who do not comply and continue to withdraw their labour.
105. Where staff named on the work notice fail to work during a strike, they will need to follow the requirements set by their employers within the relevant absence policy. Failure to attend on the grounds that they are participating in strike action would result in them losing their right to automatic protection from unfair dismissal and could leave them subject to disciplinary action. The loss of protection from automatic unfair dismissal is intended as a deterrent and action taken would be a retrospective form of recourse for the employer. So this mechanism does not remove the risk of failure to provide the minimum service during the strike itself due to non-attendance of workers named in a work notice.
106. According to unions, a further consequence of this policy could be the increase in staff taking action short of striking which is not prohibited by this legislation. Operationally, action short of strike is often difficult to mitigate and can require extensive planning, placing significant strain on the rail industry; due to the nature of each operator's contractual arrangements and the specific nature of the industry, action short of strike can also affect industry partners differently. In practice, this means that mitigating widespread action short of strike effectively may prove impossible and may cause widespread disruption and confusion for passengers. Where services are reliant on staff working additional hours, say on a voluntary non-contractual basis, the risk of negative impact on the service provided is greater, especially as such action could continue even when MSLs are in place. This risk could potentially be mitigated through other means, such as changes to working practices and terms and conditions, however, whilst this is being considered as part of the current workforce reform programme, this is a complex and lengthy process.
107. It is possible that the preferred policy approach could lead to a change in relations between unions and employers. On the one hand, this may result in more adverse impacts in the long term, such as an increased frequency of strikes for each dispute.<sup>69</sup> However, this is very speculative. Strikes themselves are influenced by a range of factors, such as the nature of the dispute, the level of support for strikes from union members and the ability of employers and

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<sup>69</sup> Strikes bill: Unions criticise plans as unworkable: <https://www.bbc.co.uk/news/uk-64219016>

unions to reach a settlement. On the other hand, it is also possible that in some cases, MSLs could lead to settlements between unions and employers being reached more quickly than they may otherwise would have. This is because the disruption caused by strike action would be reduced where MSLs are applied, which could encourage unions to compromise more frequently and union members to vote in favour of employer offers if they realise more favourable offers may not be achievable. In these circumstances, it is not possible to predict with any certainty, the precise impact of this policy.

108. The policy restricts the ability of some workers in passenger rail services to take strike action. To that end it may be that those individuals, or trade unions on their behalf, seek to challenge the legislation or its use under the Human Rights Act 1998.<sup>70</sup>
109. In preparing estimates consideration will need to be given to whether variable costs (or other cost components) may increase as a result of operating MSLs. Staff costs often form a significant proportion of total operating costs. Costs may rise if in order to deliver the MSL, operators need to use agency staff, who tend to be paid at higher rates.

## **Unintended consequences**

110. Above, we have set out the direct and indirect costs that are expected to be incurred by government, businesses and rail sector employees. It is possible that the proposal could generate unintended consequences that have not been considered within the assessment. Any such impacts that may materialise are highly uncertain but the likelihood of these impacts to materialise may become clearer as details of the proposal are developed further.
111. Examples of potential impacts include:
- Additional impacts on operators beyond those set out above. These could result from the additional responsibilities or duties imposed on operators by the proposal.
  - Impacts on the supply chain affecting businesses not considered in the costs and benefits section.
  - Costs to other parties not included within the assessment of costs and benefits. It cannot be ruled out that such costs could affect small or micro businesses.
112. Additionally, the introduction of legislation around MSLs may have an unintended negative impact on industrial relations.

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<sup>70</sup> UK Government (1998). Human Rights Act 1998. <https://www.legislation.gov.uk/ukpga/1998/42/contents> [Accessed October 2022].

## 4.0 Wider impacts

### Innovation Test

113. We do not expect this proposal to directly impact innovation. Additionally, unforeseen innovation is not anticipated to materially affect the assessments provided in this Impact Assessment.

### Micro, Small, and Medium Business Assessment

114. Costs to businesses identified in this Impact Assessment include the following costs, both of which are likely to apply to transport operators:

- Costs associated with running additional services during strikes.
- Administrative and familiarisation costs to comply with the new regulations.

115. These costs have the potential to place a proportionately large burden on micro, small and medium businesses if they are affected by the proposal. For example, smaller businesses may be required to devote a greater proportion of their resources to familiarising with the new legislation and addressing any additional administrative burden.

116. The 2022 business population estimates for transportation and storage are set out in the table below, which shows the number and percentage of employers in the sector in the UK that are micro, small, medium or large businesses.<sup>71</sup> The estimates indicate that a significant majority of employers in the transportation and storage sector are small or micro businesses. In addition to the employers included in the table below, there are 287,040 businesses listed as having no employees. The businesses included within the tables in this section include both employers that are directly affected by the proposed legislation and those within the wider transport supply chain that may also be affected indirectly by MSLs. It is possible that some of these businesses may not be affected by MSLs but data availability does not allow us to provide a more granular assessment.

#### Business population estimates for employers in transportation and storage, 2022

Business size	Number of employers	Proportion of employers <sup>72</sup>
All employers	51,685	100%
Micro (1-9 employees)	41,465	80%
Small (10-49 employees)	8,280	16%
Medium (50-499 employees)	1,560	3%
Large (500+ employees)	380	< 1%

117. The table below sets out the number of businesses of different sizes for selected transport categories, as based on the 2022 business population estimates.<sup>73</sup> There is a relatively high proportion of larger employers within the passenger rail transport (interurban).<sup>74</sup> However, there are some businesses that are classified as micro, small or medium businesses. This is more so the case amongst the 'other passenger land transport' (which includes light rail and underground) and 'support activities for transportation' categories included below, for which the majority of businesses are small or micro businesses.

<sup>71</sup> Business Population Estimates for the UK and Regions 2022. Table 5 – Number of businesses in the private sector and their associated employment and turnover, by number of employees and industry sector, UK, start 2022. Transportation and Storage.

<https://www.gov.uk/government/statistics/business-population-estimates-2022>

<sup>72</sup> Excludes businesses listed as having no employees.

<sup>73</sup> Business Population Estimates for the UK and Regions 2022. Table 7 – Number of businesses in the private sector and their associated employment and turnover, by number of employees and industry group, UK, start 2022. Selected transport categories.

<https://www.gov.uk/government/statistics/business-population-estimates-2022>

<sup>74</sup> Note: Table 7 of the Business Population Estimates does not provide a more granular breakdown



## Business population estimates for employers in selected transport categories, 2022

Business size	Proportion of employers in each category		
	Passenger rail transport, interurban	Other passenger land transport	Support activities for transportation
1-9 employees	25%	76%	73%
10-49 employees	12.5%	20%	19%
50-249 employees	12.5%	3%	6%
250+ employees	50%	1%	2%

118. It is not possible to exempt micro, small and medium businesses at this stage. However, given the presence of micro, small and medium businesses, MSLs for rail should give due regard to business impacts identified in this Impact Assessment so that they do not disproportionately burden micro, small or medium businesses. This will be considered following consultation

### Equalities

119. As set out above, the proposal is expected to interfere with the ability to take strike action for those workers who are required to work on strike days, to comply with MSLs.
120. Based on the Labour Force Survey the 'transport and storage' sector<sup>75</sup> in the UK is comprised of a higher proportion of men (78%) than women (22%). Within rail, almost 90% of workers are male and a majority are aged between 31 and 50.<sup>76</sup> By contrast, the employed population in the UK is more evenly distributed between genders, with 52% of employees being men and 48% of employees being women.<sup>77</sup> Although data is not available on the ethnicity of workers in the rail sector, data is available for the wider transport sector. The 'transport and storage' sector is broadly comparable to that of the overall population of employed people, but with a higher proportion of people identifying as ethnic minorities in the 'transport and storage' sector (20%) than in the overall employed population (14%) in the UK.<sup>78</sup>
121. In consideration of this limited evidence, the proposal may impact protected characteristics groups more than other groups. However, the extent to which protected characteristic groups are affected is uncertain, particularly as some job roles may be more impacted than others.
122. MSLs are likely to provide greatest benefits to those who use rail the most. However, impacts of MSLs on different user groups are likely to vary depending on the implementation approach taken after consultation. For example, some user groups may be more likely to travel at certain times of day, and usage by different groups will vary by geography, and therefore the impacts of MSLs on different user groups are likely to vary depending on the option taken forward after consultation.
123. We will look to explore and gather more evidence to inform equalities analysis following consultation.

<sup>75</sup> Transport and storage SIC code, used by ONS, relates to activities such as air, land and water transport (e.g. rail, taxi and passenger air transport etc.) and also relates to warehousing and support activities for transportation (e.g. warehousing and storage, cargo handling, and bus and coach station facilities etc.)

<sup>76</sup> The Rail Sector in Numbers (2019). p.24.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/787082/rail-sector-in-numbers.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/787082/rail-sector-in-numbers.pdf)

<sup>77</sup> ONS (2022). Employment by industry, transport & storage sector, July – September 2022.

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/datasets/employmentbyindustryemp13>

<sup>78</sup> Office for National Statistics (2022). Annual Population Survey, ethnicity by industry, October 2021 – September 2022. Accessed from Nomis.

<https://www.nomisweb.co.uk/datasets/aps180><https://www.nomisweb.co.uk/datasets/aps180>

## **Justice Impact Test**

124. A Justice Impact test is not required for consultation stage. The Department for Business and Trade is engaging with the Ministry of Justice on the justice impacts of the wider MSLs legislation.

## **Trade Impact**

125. As set out in the Better Regulation Framework guidance, all Impact Assessments must consider whether the policy measures are likely to impact on international trade and investment. We do not believe that the introduction of powers in the rail sector will have any impact on international trade.

## **Family Test**

126. This proposal aims to improve family life due to the expected positive impact on the right to respect for private and family life under Article 8 of the European Convention on Human Rights.

## **Health Impact Assessment**

127. This proposal is likely to reduce the detrimental impacts of rail strikes. The costs and benefits section has some evidence relating to the use of rail for access to healthcare services or for work in healthcare. There may be wider health benefits from use rail and light rail relative to car journeys, in terms of lower levels of pollutants such as NOx and PM10.

## **Rural Proofing**

128. This proposal, where possible is expected to increase transport services during strikes, thereby avoiding or reducing the possibility of strike action resulting in parts of the transport network being completely shut down or experiencing very significant levels of service disruptions. For example, in rail the routes which tend to be more significantly impacted by service reductions during strike action, are indicated in Figure 5 of this document. These routes tend to be in rural areas. The extent to which MSLs will improve service levels during strikes will depend on the sub-option that is taken forward after consultation. For example, option 2B is intended to increase geographical coverage of service.

## **Sustainable Development**

129. This proposal is not anticipated to impact sustainable development.

## **Competition Assessment**

130. This proposal is not anticipated to have substantial impacts on competition.

## **Greenhouse Gases/Wider Environmental Impact Test**

131. This proposal is expected to result in increased rail services, which may increase rail usage and reduce car usage. If so the proposal could generate some benefits in terms of reduced carbon emissions and improved air quality as rail tends to be less polluting than travel by car. For example, heavy rail carried around 10% of all passenger miles prior to the pandemic but produced only around 1% of Great Britain's transport emissions.<sup>79</sup> Additionally, for every mile travelled, heavy rail passenger trains produce around one third of the emissions of the average

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<sup>79</sup> Williams-Shapps Plan for Rail (2021), p88.

petrol car.<sup>80</sup> Therefore, modal shift towards public transport is likely to have positive environmental impacts. This potential benefit depends on the extent to which the proposal will facilitate modal shift, which is highly uncertain and has not been monetised here. It is also dependent on the geographical distribution of services, offsetting emissions from running additional public transport services, and factors that affect traffic on the day of strike actions.

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<sup>80</sup> Williams-Shapps Plan for Rail (2021), p16.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/994603/gbr-williams-shapps-plan-for-rail.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/994603/gbr-williams-shapps-plan-for-rail.pdf)

## 5.0 Post implementation review (PIR)

132. The primary legislation will be evaluated by the Department for Business and Trade and the Department for Transport will provide evidence and any relevant analysis to support this review. More substantial implementation reviews will be undertaken by DfT on how the rail MSLs will have delivered its objectives.
133. Given the need for policy to be developed following consultation, uncertainties currently associated with the preferred option and its implementation detailed evaluation plans will be developed once regulations are made and MSLs are put in place. The policy will be evaluated within the first five years from when the secondary legislation comes into force. This will be a sufficient period to observe the effectiveness of the policy and collect adequate data for an evaluation study. However, if an event triggers a need for this evaluation to be conducted earlier, then this will be undertaken as soon as is practically feasible. Such triggers may include the need to learn lessons on implementation to inform whether the powers provided by the legislation are sufficient and effective or whether they require any amendments.
134. Due to the nature of this legislation, these regulations will only impact delivery of services when there are strike days in the rail sector. It will not have any impact on business as usual services for rail. The ability to effectively evaluate the policy delivering its objectives depends on the extent to which it is used, which in turn depends on the frequency of strikes affecting rail services over any review period.
135. The PIR will include an evaluation of the extent to which the policy has delivered its objectives in the following areas:
136. How has the objective of fairly balancing the cost (disbenefits) from limiting strike action against the benefits to the wider public (such as better access health care, to key worker employment) been achieved?
- a. What impact has the policy had on union membership?
  - b. How have wider economic impacts and environmental impacts been incorporated into the factors that government considered when setting MSLs?
  - c. How has the policy impacted the number of strikes, actions short of a strike and the likelihood of reaching an agreement during a dispute.
  - d. What have been the impacts on key service operators?
  - e. Have there been unintended consequences from the policy, or through any mechanism put in place to deliver the policy?
  - f. What are the lessons learned that could be transferred to other areas?
137. It is anticipated that the evaluation will include both a process evaluation as well an impact evaluation. This will explore the process of developing secondary legislation, its implementation, the costs of familiarisation and other administrative functions needed to deliver the policy. This will aim to establish the cost of the different aspects of the process of implementing the policy. impact evaluation will focus on the impacts on passengers, other users of the relevant transport system, employers, workers, the wider economy and the environment.

# Post-Implementation Review (PIR) Plan

1. **Review status:** Please classify with an 'x' and provide any explanations below.

<input type="checkbox"/>	Sunset clause	<input type="checkbox"/>	Other review clause	<input type="checkbox"/>	Political commitment	<input checked="" type="checkbox"/>	Other reason	<input type="checkbox"/>	No plan to review
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Policy will be reviewed on the fifth anniversary of the entering into force of secondary legislation for MSLs.

Regulations to be reviewed in parallel to policy. However, if implementation of regulations and any relevant guidance, triggers an event where a review is needed or will be significant for determining the baselining the evaluation for the review, then it will be conducted earlier. Monitoring data will be used to inform the decision on timing of the review and baselining that will be conducted.

2. **EU or Domestic Regulation:** Please indicate the origins of the regulation.

<input type="checkbox"/>	EU-derived regulation	<input checked="" type="checkbox"/>	Domestic regulation	<input type="checkbox"/>	Other
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3. **Expected review date:** month and year.

0	5	/	2	8
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4. **Rationale for PIR approach:**

**Will the level of evidence and resourcing be low, medium or high?**

Based on the quantity and quality of information that is currently available to set the baseline for an evaluation study, or to assess impacts of the policy, the level of evidence and resourcing will be medium to high.

Primary legislation sets out the broad framework for how MSLs would operate. The key evidence required to demonstrate whether the policy is having the expected impacts at an aggregate sector level may be relatively easy to collect, process and analyse. This will broadly look at whether the impacts of strike actions has changed with the policy coming into force, and some of the main implementation costs incurred. The level of evidence and resourcing would be low to medium.

However, to fully appreciate whether the core objectives of the policy are being met, such as whether the balancing between human rights has been achieved in a reasonable and fair manner, will require more detailed analysis at a local and sector level. This will require conducting new data collection and primary analysis. This will also include wide stakeholder engagement. The level or evidence and resourcing could be high.

**What forms of monitoring data will be collected?**

Data is currently collected during strike actions and on the adjacent days of strikes. We will continue to build on this evidence base so that a more comprehensive dataset of the impact of strikes could be analysed. This monitoring data is undertaken by DfT.

Additional monitoring data will be required with the introduction of the policy. This will include data from other Government departments such as ONS (on retail transactions, or the impact on the hospitality sector).

For rail, DfT also requires templated information to be provided by train operating companies, light rail operators or relevant devolved administrations, and from Network Rail and other infrastructure managers. This activity will have to continue, and work needs to be undertaken in order to build a database of information from these sources which are key to establishing the impacts. DfT work closely with these companies, organisations and Network Rail and other infrastructure managers. This information includes financial information such as cost impacts during strikes, demand information, and labour force data (absences etc). The quality of this information will need to be tested.

Other monitoring data will be available to assess the impact on other modes, using reporting information from wider transport sectors. Also, data on pay mandates and time spent on these processes will need to be collected and monitored. This will be from operators, some of the supply chain (to be confirmed), network operators, and devolved administrations.

#### **What evaluation approaches will be used (e.g. impact, process, economic)?**

Given the complexity of the policy and its implementation, it is currently envisaged that both a process and an impact evaluation will be undertaken.

The process evaluation is very important, including the fact that key lessons will need to be derived and hopefully used in improving implementation, and in using the lessons for other relevant sectors.

The impact evaluation, including before and after comparisons, will be key to delivering the analysis to make a judgement on whether secondary legislation will need particular amendments.

It will also look at whether any unintended consequences came about during implementation of due to any other factors, explained by the characteristics of the sector being regulated.

#### **How will stakeholder views be collected (e.g. feedback mechanisms, consultations, research)?**

The devolved administrations will be engaged through existing channels of data sharing and data collection. For rail, DfT has a good working relationship with TfL and other administrations. A process of engagement through a light touch 'survey' may be sufficient. Hence consultations may be the method that may be deployed.

With regards to parties such as Network Rail, other infrastructure managers and Train Operating Companies, these will be through a mixed method of a formal request for information, informal regular engagements between franchise managers and operators, or colleagues working closely with Network Rail. We are currently unsure whether research will be required but will scope this depending on whether more structured evidence will be required, other than information that is already collected through existing means.

Other stakeholders (including unions and employees) will need to be scoped and an engagement plan will be developed, including following up with relevant parties who will have expressed clear views during the consultation exercise that is planned for secondary legislation. This is likely to take the shape of focus groups and structured interviewing to gather qualitative evidence, and if possible, some quantitative evidence on time spent and costs etc.

**Key Objectives, Research Questions and Evidence collection plans for the Post Implementation Review**

<b>Key objectives of the regulation(s)</b>	<b>Key research questions to measure success of objective</b>	<b>Existing evidence/data</b>	<b>Any plans to collect primary data to answer questions?</b>
Achieving an MSL that aligns with policy	Successful delivery of MSL – to balance the ability of rail workers to take strike action with the needs of the wider public during strike action.	Existing usage data by purpose, for example in the National Travel Survey. Existing supply-side information, e.g. rail timetables run during strike and non-strike days. Existing studies and research into passengers, responses to strikes, and other relevant data on uses of transport to access education, health and places of work. Some wider economic impacts of strikes.	Primary data to be collected on MSLs when developed. This will be compared with baseline data. Research into passengers' responses to different strike actions, to build a more comprehensive database of data for further analysis. Analysis of distribution of impacts of rail sector strikes. Further research into the impacts on access to important public services. Research into impacts on workers in the sector.
Effective and efficient delivery of the policy	Extent of costs faced by all parties involved in implementation of MSLs.	Emerging evidence once policy is implemented at sector level, reviewing costs of implementation and any relevant administrative costs involved.	Research into costs to the wider sector and impacted parties, through a combination of focus group, interviewing and data collection.
Effective monitoring	Impact of strikes on rail travellers.	Social research survey has been conducted on the impact of recent strikes on rail users.	Social research will need to continue and will need to cover a good sample of devolved administrations.  Research will need to be conducted to understand the wider economic impact.
	Impact on economy minimised.	Studies on wider economic impacts, e.g. Cebr as referenced in the costs and benefits section of the IA. Other relevant data such as on hospitality and other sectors. Social research around impacts on commuters.	An overarching methodology will need to be developed to capture in a single framework the balancing of different interests to test the outcome of policy.