



Department
for Business
Innovation & Skills

**GOVERNMENT RESPONSE TO THE
CONSULTATION ON BALLOT
THRESHOLDS IN IMPORTANT
PUBLIC SERVICES**

JANUARY 2016

Contents

Ministerial Foreword	3
Introduction	4
Summary of responses	5
Conclusion	20
Annex A: List of ‘important public services’ subject to the 40% threshold	21
Annex B: Skeleton regulations	22
Annex C: List of Individuals/Organisations consulted	24

Ministerial Foreword

The ability to strike is an important part of our industrial relations framework. But it is a powerful tool that has to be used responsibly. Strikes can affect many people who don't get a say in whether it goes ahead or not. Regrettably, they can and do often take place on the support of just a small proportion of affected workers, yet can cause significant disruption to the public. In key public services, strikes can also affect people's safety and security, or leave them with no alternative way to get to important appointments. It is only fair to ask unions to ensure they have a strong mandate from their members before strikes can go ahead.

The thresholds introduced by the Trade Union Bill do just this. They restore a level of fairness to industrial action, and rebalance the interests of all working people – both union members exercising their right to strike, and non-strikers who want to go to work and carry out their daily lives.

Over the summer, we consulted on which important public services should or should not be subject to the 40% support threshold introduced by clause 3 of the Bill. Just over 200 individuals and organisations have provided their views. Their feedback, and the Government's response, is set out in this report.

We have considered respondents' views and the available evidence of the impact of strike action across key public services, and have focused the threshold on the services where strikes could have the most significant impact on the public.

Many respondents highlighted that unions and employers would need clarity around which services will be included in the 40% threshold, and that the reference to ancillary workers in the Bill adds complexity in assessing who would be subject to the threshold. We have considered the issue carefully, and will therefore table an amendment to the Bill at Lords Committee to remove the broad reference to ancillary workers from clause 3.

We will include certain private sector workers in the threshold where they are delivering an important public service. We will also require ballots to be run under the threshold where a majority of affected workers are carrying out an important public service. This is the fairest and simplest way for the threshold to operate in practice.

None of these changes are about stopping strikes. Recent events show that, where union members feel strongly about live issues, they do surpass the thresholds. The Bill will enable the voice of union members to be heard more clearly, and modernise trade unions for the benefit of everyone.



Nick Boles MP
Minister of State for Skills

Introduction

1. Trade unions can play a vital role in the work place and in representing their members' interests. The Government supports working people's ability to participate in industrial action, where this is a last resort.
2. However, strikes in important public services can have far reaching effects on the public, who are un-associated with the dispute at the centre of the strike. This is particularly unfair for members of the public if strike action is only supported by a small proportion of union members. The Government wants to ensure that strikes affecting these services only happen where there is a clear mandate from union members. Some strikes take place based on ballots in which fewer than half of those union members eligible to vote actually did so. For example, a strike in the education sector in 2014 organised by the National Union of Teachers was held on the support of just 22% of their members in a 2012 ballot. A future strike of the same magnitude could impact 800,000 working households and could lose the economy 600,000 working days.
3. The Government has therefore introduced a new 40% important public services threshold in the Trade Union Bill. This will mean that industrial action in specified services in the fire, health, education, transport, border security and nuclear decommissioning sectors will require the support of at least 40% of all those entitled to vote in the relevant ballot. This is in addition to the 50% participation threshold, which will require a turnout of at least 50% in a ballot for industrial action in order for that ballot to be valid.
4. This is not about banning strikes. The new strike ballot thresholds will rebalance the interests of union members and members of the wider public, and ensure that strike action can only go ahead with a level of support that is proportionate to the disruption that a strike could lead to.
5. In parallel with the introduction of the Trade Union Bill, the Government published a consultation on defining which important public services within the fire, health, education, transport, border security and nuclear decommissioning sectors should be subject to the 40% threshold. This invited respondents to submit evidence on the impacts of strike action within these sectors. It sought views on the occupations and functions within these sectors which should or should not be subject to the 40% threshold. It also made a number of proposals to ensure that the 40% threshold would operate as simply as possible in practice. The consultation ran for 8 weeks and closed on 9 September.
6. The Government will bring forward secondary legislation to specify which public services are in scope of the threshold for each of the six sectors. Skeleton regulations are attached in Annex B of this document. We will also issue guidance to clarify which workers we expect to be captured by each of the important public services listed, in order to assist unions and employers when they are assessing how a ballot should be conducted.
7. A summary of the consultation responses and the Government's response is set out below.

Summary of responses

Responses submitted

8. A total of 205 responses were submitted in answer to the questions put forward in the consultation. A list of the respondents is set out at Annex C. Individual respondents have not been identified.
9. 69 (34%) responses were submitted by private individuals; 57 (28%) by trade unions; 50 (24%) by public service providers; 13 (6%) by law firms and representatives of the legal profession; and 7 (4%) by employers. The remaining responses (9) were submitted by research companies, charities and think-tanks.
10. The percentages set out below relate to the total number of responses received to each particular question.

What is the impact of strike action on the public?

Question 1: Do you agree these are the key impacts industrial action would have in these sectors? Why/ why not?

11. A total of 151 respondents answered this question, which sought views on an initial assessment of the adverse impacts that industrial action can cause in these areas – such as on the capacity of these services to prevent serious safety or security risks, or on the public's ability to go to work and in supporting economic activity. The most common response (40%) was agreement that these were the key impacts. Respondents commented that reduction of service levels in these areas could have a disproportionate impact on the safety and wellbeing of the public, and in some cases could be life-threatening. Where the disruption is to people's ability to go to work, this could be more serious for the low-paid or single parents.
12. 23% of respondents, of which a third were trade unions, disagreed with this statement. Many commented that some disruption to the public is the objective of strike action, and is an inevitable result to ensure that strike action is an effective mechanism for the workforce to have collective bargaining with employers. Some felt that the public is often supportive of this cause despite the disruption caused.
13. Some respondents (11%) highlighted that contingency arrangements would usually be put in place in certain sectors to mitigate the impact of strike action. This would maintain service levels for the duration of any strike action, such as in the health and fire services. And despite the impacts caused, workers would often return to their posts if a serious incident occurs during the period of any industrial action.

Question 2: What other impacts are there of strike action in

- a) Fire services,
- b) Health services,
- c) Education services,
- d) Transport services,
- e) Border Force, or

f) Nuclear decommissioning?

If relevant, please include specific examples of your experience of strike action taken in these sectors.

14. The table below illustrates the examples of other impacts given by respondents.

Sector	Examples of impacts given
Fire services – 76 responses	25% of respondents provided examples, including: <ul style="list-style-type: none"> • Risks to national resilience due to reduced service levels, and diversion of capacity from other public services to provide cover for industrial action in this area • Limited availability to help in other emergencies such as road accidents or medical emergencies • Limited ability to undertake preventative and community safety work
Health services – 63 responses	13% of respondents provided examples, including: <ul style="list-style-type: none"> • Exacerbated impact on the elderly and vulnerable who may require constant care • Increased impact of cancelled appointments on those who need routine appointments or services • Pressure on hospital finances due to the cancellation of operations
Education services – 70 responses	16% of respondents highlighted the impact on children’s education, and that the disruption to routine is worse for a child with special needs. They highlighted that continued or prolonged school closures as a result of strike action would be particularly detrimental for children’s education. 23% of respondents provided other examples, including: <ul style="list-style-type: none"> • The impact on parents and carers who have to take time off work in order to look after their children • The impact on service levels in other public services if parents cannot go to work – this would be more significant in other public services which tend to employ a higher proportion of women, such as in the health sector or local authorities
Transport services – 69 responses	20% of respondents reiterated that the main disruption is to people’s ability to travel to work. 19% gave examples of other impacts, including: <ul style="list-style-type: none"> • Travel is not only for work but also for important appointments (health) or for education • Impact is greatest where no alternative modes are available
Border Force – 48 responses	10% of respondents gave examples, including: <ul style="list-style-type: none"> • Security issues, such as delays in interviewing asylum seekers • As temporary staff may not have received adequate training, this could lead to increased security risks • Staging of strike action itself may lead to increased risks if it leads people to think security will be reduced on that day as a result
Nuclear decommissioning – 44 responses	9% of respondents gave examples, including: <ul style="list-style-type: none"> • Environmental impact of incorrect management of sites

15. Around 20% of respondents commented that whilst strike action can lead to increased risks to public health and safety as well as wider disruption, strike action can also have a positive impact. This was the view of a mix of trade unions, users of public services, and public sector employees. For example, strike action could increase public understanding of the

level of pressure placed on public services, and would potentially highlight safety concerns. A small number felt that there were no further impacts of strike action.

What are 'important public services' in these sectors?

Question 3: What factors do you think are important in defining 'important public services'?

- **Protection against loss of life/ serious injury**
- **Maintenance of public safety and national security**
- **Enabling economic activity across a significant area of the economy**
- **Enabling significant numbers of people to get to their place of work**
- **Others (please specify)**

16. 123 respondents answered this question. The main factor people considered to be important was the protection against loss of life and serious injury (54%), followed by maintenance of public safety and national security (51%), enabling movement of significant numbers of people (31%), and enabling economic activity across a significant area of the economy (30%).

17. 55% of respondents cited other important factors, such as: protection of the vulnerable and elderly; disruption to children's education; and services fundamental to daily life. 5% commented that all public services should be considered important. 2% of respondents felt that legislation would be clearer if there were fewer factors to consider.

18. 5% of respondents felt that the factors should reflect the guidelines suggested by some of the supervisory bodies of the International Labour Organisation (ILO) regarding 'essential services'. These are the services where the ILO's supervisory bodies have taken the position that it is acceptable to limit or prohibit strike action. The supervisory bodies have defined "essential services" as those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

Which occupations and functions should be subject to the 40% important public services threshold?

Question 4: Do you agree these are occupations and functions in

- a) Fire services,
- b) Health services,
- c) Education services,
- d) Transport services,
- e) Border security, or
- f) Nuclear decommissioning

the Government should consider when defining those subject to the 40% important public services threshold? When answering, please consider those key in avoiding the adverse impacts discussed above.

19. The table below illustrates the key comments from respondents on the occupations and functions suggested by the consultation document.

Sector	Comments on occupations and functions
Fire services – 124 responses	<p>28% agreed with the proposed list. Respondents commented that it was sufficiently clear and comprehensive to identify the occupations directly involved in the provision of frontline services and in responding to emergencies. One respondent commented that all those related to the functioning of emergency fire services should be brought into the threshold, and not just firefighters.</p> <p>58% disagreed with the proposed list, of which just under half were from trade unions. Many of the comments indicated that respondents disagreed with the overall proposals in general, and did not provide views on the occupations suggested. Some respondents felt that firefighters' duties have shifted towards fire prevention and community protection, rather than emergency response, so the impact of strike action on public safety may be reduced.</p>
Health services – 115 responses	<p>17% agreed with the proposed list. Respondents highlighted that the health sector is a very diverse and varied employment area, where not all posts are critical to patient safety, so the scope of the list would need to be carefully drawn.</p> <p>66% disagreed with the proposed list, but this included a mixture of those who felt the category was too broad (and so should only include critical care and emergency services), and those who felt it was too narrow (see further comments in answer to question 5 below).</p>
Education services – 118 responses	<p>17% agreed with the proposed list, with many respondents commenting that the proposed list could be extended to wider categories of staff (see further comments in answer to question 5 below). A small number felt that the inclusion of any support workers would need to be clearly defined.</p> <p>47% disagreed with the proposed list, and again this involved mixed comments. For example, some respondents felt that strike action in education services pose no significant risk to the public. However, others felt that the range of services should be extended to other categories of staff (again, see further comments in answer to question 5 below).</p>
Transport services – 119 responses	<p>23% agreed with the proposed list, with many respondents listing more specific occupations within those already listed. A small number commented that the list could be extended to wider categories of staff (see further comments in answer to question 5 below).</p> <p>38% disagreed with the proposed list, as respondents felt that strike action in transport services was unlikely to pose risks to the public. Some felt that, as the types of roles and services in the transport sector are very varied, it is important that the scope of the list is drawn consistently across different types of transport services.</p>
Border Force – 105 responses	<p>20% agreed with the proposed list. A small number commented that the occupations listed are key to maintaining national security and so a restriction on strike action would be justified.</p> <p>56% disagreed with the proposed list, though many of the comments indicated that respondents disagreed with the overall proposals in general, and did not provide views on the occupations suggested. Some respondents also felt that the list of occupations needed to be more tightly defined, and include managers if their absence would disrupt the delivery of services.</p>

Sector	Comments on occupations and functions
Nuclear decommissioning – 104 responses	<p>17% of respondents agreed with the proposed list and considered that there were important services in this sector.</p> <p>48% disagreed with the proposed list, though many of the comments indicated that respondents disagreed with the overall proposals in general, and did not provide views on the occupations suggested decommissioning sector. Some also felt that strike action was unlikely to cause significant disruption to the public.</p>

20. Around 55% of all comments were outside the scope of the question. Across the sectors, many respondents felt that it was essential to give unions and employers clarity around the final list of occupations, so that they understand whether a ballot needs to be conducted under the 40% threshold. Respondents also highlighted the need for a consistent approach across all of the sectors, where the impact and severity of strike action could vary.

21. Some respondents raised concerns that discriminating between different occupations and functions within the same sector requires a judgement call about staff's significance to the delivery of services, and could damage staff relationships and morale. They suggested that a connection to frontline services should be the key factor in distinguishing between different groups of staff.

22. One respondent felt that instead of defining the application of the 40% threshold by reference to occupations and functions, the focus should be on the impact of industrial action instead. This would invoke the 40% threshold where the effect of industrial action is aimed at third parties, rather than the employer, particularly if the public have no direct interest in the dispute and cannot affect the outcome of negotiations.

Question 5: What other occupations and functions should the Government consider within these six sectors?

23. 127 respondents answered this question. The most common suggestion (28%) was that no other occupations or functions should be included. A number of respondents suggested other occupations that should be caught by the threshold, including:

- Ground staff and baggage handling staff in airports, airline pilots (transport services)
- Teachers at further education colleges and private schools, specialist staff who work with children with special needs, nursery staff (education services)
- Mental health staff, residential and social care, cleaners and porters, radiographers and bio-medics (health services)
- Public sector workers with police-like powers; those co-responding in emergency situations; outsourced public activities (other public services)

24. Some respondents raised concerns that a specified list of occupations could quickly become out of date. The nature of employees' duties could change over time, and workers with the same occupational title might be ascribed different duties by different employers.

Question 6: (If relevant) Please explain why the additional occupation or function should be covered.

25. 52 respondents answered this question. The most common reason given (17%) was that the service delivered by the suggested occupations is essential to the public's health and safety, or are similar to the occupations already listed or restricted in terms of industrial action.

Government response to Q1-6

26. Strike action can have a widespread impact and be highly disruptive to the public's daily lives and safety, and leave individuals with no alternative to access the important services they need. The Government has carefully considered comments that the purpose of strike action is to cause some disruption to an employer's business so will inevitably impact economic activity and inconvenience some individuals, and that strike action should not be restricted on this basis alone. However, there are some public services in which strike action could have serious consequences for the wider public over and above disruption to the employer. It therefore needs to be balanced with the risks and costs which it places on the public as a whole. The Government's clear intention is to ensure that, where strike action could have such wide-ranging effects, it should only proceed if it receives strong backing from the relevant union members.
27. The Government has noted comments that the impact of industrial action in certain sectors could and has in the past been mitigated by contingency agreements. However, it is often the case that some disruptive impact remains. Furthermore, as these arrangements are often the result of a voluntary agreement between employers and workers, they can break down or not be agreed in the first place. This leaves insufficient cover for services and puts public safety and security and health at risk, both directly and indirectly.
28. Many respondents commented that the services subject to the 40% threshold should reflect the guidelines of 'essential services' suggested by some of the ILO's supervisory bodies in their reports as ones where restrictions on strike action may be justified. The Government has taken the reports of these bodies into account, but as these bodies fulfil an informal advisory role, the Government does not consider that the 'essential services' listed by these bodies as definitive. The purpose of the threshold is to ensure that unions obtain a strong mandate for strike action in important public services, rather than to prevent it from taking place.
29. The Human Rights Act 1998 requires that any regulations are exercised in a way which is compatible with the European Convention of Human Rights (ECHR). The 40% threshold will set additional conditions which must be met before lawful strike action can proceed, and Article 11 of the ECHR is therefore relevant. Article 11 provides that restrictions on rights relating to strike action are permitted if they are justified by a legitimate aim and proportionate. The Government has carefully considered these issues and the available evidence of the impact of strike action in the six sectors, and for the reasons set out below, is satisfied that it is justified and proportionate to apply the 40% threshold to the services identified below.

30. If further evidence is obtained on the impact of strike action in other services within the specified sectors, or demonstrates that the impacts on the public services listed below have shifted in significance, then the Government will consider this accordingly.
31. For ease of reference, the full list of important public services in the specified sectors and some examples of the workers who would be covered under each service are included at Annex A of this document.

Fire services

32. The following services will be defined as 'important public services' in the fire sector for the purposes of the 40% threshold:
- Firefighting services, including dealing with calls for help and organising their response
33. Since 2013, there have been 49 separate periods of strike action held by the Fire Brigades Union (FBU), each lasting between one hour and four days. The reduced availability of appropriately trained staff inevitably makes it more difficult to maintain high standards of service, and strike action in these services may cause increased risks to public safety.
34. Contingency arrangements in the past have been successful and the impact of strike action mitigated. It is however self-evident that there is an increased risk to the life and injury during strike action. There are no alternative services readily available and contingency arrangements cannot necessarily be relied upon for the duration of the strike action, as these are voluntary in nature. Whilst any replacement service for fire control staff will be provided by trained operatives, they may be unable to utilise the full capabilities of control technology in order to optimise performance. A return to work agreement in the event of a major incident was agreed between the FBU, the Local Government Association and the Government. It does however remain a voluntary arrangement.
35. Certain non-contractual activities can also be affected by strike action, such as preparation for the fire and rescue service's role in response to a marauding terrorist firearms attack.

Health services

36. The following services will be defined as 'important public services' in the health sector for the purposes of the 40% threshold:
- Publicly-funded emergency, urgent and critical healthcare services including emergency ambulance services, A&E services in a hospital, services in high-dependency units and intensive care in hospitals and other care services provided by a hospital for illnesses, conditions or injuries which require immediate attention in order to prevent serious injury, serious illness or loss of life
37. The NHS assists over 1 million patients in England every 24 hours. This affects the vast majority of the population, as only a small proportion have private healthcare insurance and choose to pay directly for their care. The NHS also provides some services in private hospitals and ambulance services. The whole of the population also relies heavily on the NHS for emergency care. There are on average over 1.8 million attendances at A&E departments and over 260,000 emergency responses by the ambulance service every month. The specified services will include doctors, nurses and other workers in the

ambulance services, maternity services, A&E services, intensive care, and high dependency unit services. In practice, these services are predominantly provided in NHS hospitals but this will also include where these services are provided in private hospitals and are publicly funded.

38. Delay in accessing care in emergency, urgent or critical care services either in a hospital or from an ambulance trust could have particularly severe consequences for patients, and is likely to result in increased risk to life or limb. Strike action affecting these services can therefore bring serious risks to these patients. Whilst voluntary arrangements are often put in place during periods of industrial action to maintain service levels, these cannot necessarily be relied upon to safeguard the public in future industrial action. Adequate cover may also be difficult to maintain for more than 24 hours.
39. During the 2014 strike over pay, media coverage suggested that those in less serious situations faced lengthy delays for an ambulance. Only patients with renal dialysis, and some oncology and paediatric appointments would be able to access Patient Transport Services. Further, crews would be instructed to return to the picket line once they had taken a patient to hospital, meaning that an ambulance trust would not be able to allocate the crew to an incident occurring on their way back to the picket line.

Education services

40. The following services will be defined as 'important public services' in the education sector for the purposes of the 40% threshold:
- Teaching of pupils aged 5-16 in state funded schools
 - School leadership (headteachers and principals) of pupils aged 5-16 in state funded schools
41. The state-funded school system educates 7.8 million pupils in England. This helps to achieve a highly educated society in which opportunity for young people is equal, and also allows working parents to work during the hours that their children are at school. As the system is publicly funded, if schools are closed in the short term as the result of a strike then there are no alternative options available for children. Strike action therefore disrupts children's education, particularly if it takes place over a prolonged period, and also impacts working parents.
42. The impact of a strike by teachers and/or headteachers would depend on the size and shape of a school and the number of teachers on strike. There have been eight instances of national or regional strike action in schools in England since June 2011.
43. In July 2014 an NUT and support staff strike closed approximately 21% of schools, and media coverage suggested this affected 1 million children across the country. As well as having an impact on pupils' education, a strike of this magnitude can cause disruption for hundreds of thousands of parents. We estimate that a similar sized strike, applied equally across households and type of households with school age children, would mean:
- 800,000 to 850,000 working households could be impacted;
 - 150,000 to 200,000 working lone-parent households could be impacted, where the implications would be more severe;

- 600,000 to 700,000 working days could be lost even in households with two working parents, if both parents were due to work on the day the strike action took place and could not make alternative arrangements

44. In November 2011, a strike in England resulted in approximately 62% of schools closing. This was balloted by a combination of the NAHT (which represents school leaders) and the ATL, NASUWT and NUT (which represent both teachers and head teachers) and school support staff unions. Ahead of this strike, it was estimated by HM Treasury that a closure of two thirds of state schools would lead to a 3-4% (or £160 million) decrease in private sector output for the duration of the strike because of working parents who would be unable to make alternative childcare arrangements.

Transport services

45. The following services will be defined as ‘important public services’ in the transport sector for the purposes of the 40% threshold:

- London bus services
- Certain passenger railway services (including metro, underground and tramway services)
- Civil air traffic control
- Airport security services
- Port security services conducted by a port in accordance with the requirements of the International Ship and Port Facility Security Code

London bus service

46. A London-wide bus strike can bring widespread disruption, often disproportionately disrupting the lives of those who are more vulnerable or on low income. These services will include bus drivers and other workers directly involved in the running of bus services.

47. Bus use in London has grown by 118m journeys in the last five years. More than 6.5m journeys would be disrupted by 24-hour strike action affecting the London-wide bus network, affecting an estimated £5m of fare revenue. During the most recent strike action last year (two days in January and February 2015), TfL achieved a partial service but this resulted in 7.5m fewer journeys. A London-wide bus strike would affect 21% of all daily journeys (including those by car and on foot) that are made in London, as many travellers rely on the bus at some stage of their journey to work.

48. Certain groups would be disproportionately affected by a London-wide strike. Just over half of night bus passengers are going to or from work – they would have no other options in the event of a strike. Around 40% of people using buses are on concessionary fares – such as for those aged under 16 or over 60, disabled travellers, apprentices, veterans, jobseekers. Some 50% of bus passengers have an annual household income below £20,000, and a third of those use the bus at least five times a week. One in 10 bus passengers is travelling to school, college or a healthcare appointment. Buses are the most accessible form of public transport in London – the vast majority of people who have mobility problems, wheelchair users, or parents/carers with buggies would have no other alternative transport option.

49. Buses in London are a tightly regulated service, and the impact of strike action in this area is well documented. Outside of London, bus services are deregulated and there is limited available evidence of the impact of strike action in those areas. We therefore consider that it would not be justified and proportionate to define local bus services outside of London as 'important public services' for the purposes of the 40% threshold, and will not specify these services in regulations.

Passenger railway services

50. The national rail network enables people throughout the country to get to work and make other important journeys such as attending hospital appointments, visiting a relative who is unwell, or getting to or from school. Strike action affecting railway services will have a major impact on the ability of people to work or go about their daily lives, and consequently on the economy. In some cases, alternative transport options may not be available across all affected areas. Passenger railway services will cover (but are not limited to) train drivers, conductors, guards, safety staff, maintenance and signalling and electrical control staff.

51. In 2014/15, in the weekday morning peak (07:00-10:00) 563,000 passengers arrived in London each day (out of just over a million all day), 39,000 in Birmingham, 31,000 in Manchester and 26,000 in Leeds – and across the network as a whole, some 4.5 million passenger journeys were made per day. In 2015, the Department for Transport estimated that the daily economic cost of national strike action by Network Rail staff in 2015 would likely be £80 million, depending on the extent to which those who normally commute to work by train are able to work from home. For London's tube network, as many as 4 million journeys could be disrupted from a single day of coordinated strike action. Disruptions to the various light rail systems across the country would also cause localised disruptions to commuters and localised economic losses.

Air traffic control

52. Air traffic controllers are essential to the operation of the UK's aviation sector and enable people to travel around, and in and out of the UK. They also provide an essential safety service both to UK traffic and to aircraft overflying the UK. Strike action in this area would halt most of the air traffic system, including closure of all of the major UK airports. It would be very difficult to find replacement cover for relevant workers as they are specifically trained and licenced to work on individual air traffic sectors.

53. 201,000 passengers arrive at or depart from Heathrow Airport alone daily. ACAS have estimated that an air travel related strike affecting 70,000 passengers would cost businesses not party to the dispute around £38 million. However, DfT estimate that the number of affected passengers would be significantly higher. If there were a total 24 hour stoppage strike by controllers at Swanwick, all commercial air traffic in England would stop. This would affect approximately 250,000 passengers across airports on the day with substantial knock on effects over the next 2 or 3 days.

Airport and port security services

54. Airport and port security services are critical to operations. In some cases, industrial action could lead to cancellation of all or a significant number of flights, and lead to a delay to the movement of goods and passengers at ports. Security functions (such as screening and access control) can only be carried out by trained staff and are critical to the functional operation of an airport or port.

55. If these functions could not be carried out because of strike action, this would lead to an interruption of operations, with the potential effect of bringing an airport or port to a standstill, affecting in the most severe cases hundreds of thousands of passengers. The number of passengers likely to be affected by the cancellation of flights is set out in paragraph 53 above. Within ports, 21.3 million passengers use international short sea routes per annum, with 13.3 million concentrated through Dover.

Other transport services

56. The consultation document proposed a number of further transport services for consideration, including road management services, rail freight and maritime freight services, and international rail passenger services. The Government has carefully considered the views of respondents and acknowledges that, whilst strike action in these areas could have a significant economic impact, it would not have the same level of immediate adverse impact on the public's travel needs as a strike affecting passenger services. In general, alternative means of transport are available in the event of a strike affecting these services: international rail passengers can switch to planes or ferries; businesses can reorganise their supply chain so that freight can still be transported and the disruption and economic consequences minimised. These services will therefore not be considered 'important public services' for the purposes of the 40% threshold.

Border Force

57. The following services will be defined as 'important public services' in the border force for the purposes of the 40% threshold:

- Services related to border control functions in respect of the control of entry and exit of people and goods into and from the UK

58. The Border Force maintains national security and public safety at the UK's borders. Strike action in this area could affect security levels and the capacity to enable people and goods to move safely and quickly across the border. The specified services will include designated staff physically present at the border or where goods are first encountered in the UK, staff who work in command centres and those who provide intelligence and targeting information to officers at the border.

59. In the year ending September 2015, there were 122.3 million journeys made to the UK. The current threat level is severe, and it is likely that organised crime groups would target strike days to illicit commodities. Home Office data suggests that where Border Force strikes do occur, the fall in staffing levels is commonly between 10 and 40%. The fall in staffing levels can vary significantly across ports and, where staffing levels are reduced, this can impact on Border Force's capacity to attend to freight and secondary search activity. Reduced staffing levels therefore increase the pressure on Border Force to manage potential threats to border security.

Nuclear decommissioning

60. The UK's civil nuclear legacy is a major public liability and represents the largest, most important environmental restoration programme in Europe. Tackling the legacy safely, securely and cost-effectively, while minimising the burden for taxpayers, is a national priority.

61. The nuclear legacy is closely regulated for public and environmental safety. It is also closely protected for national security. Nevertheless there is a strong public interest in decommissioning our nuclear legacy to reduce the residual hazard as quickly and efficiently as possible.
62. The Nuclear Decommissioning Authority is responsible for the decommissioning and clean-up of our nuclear legacy. This costs the UK approximately £3 billion per year with a forecast lifetime cost of around £70 billion (discounted) or £118 billion (undiscounted)¹.
63. The sector is a complex heavy industry sector with interdependencies between workforces both within and between sites. The Government is therefore working to understand better these interdependencies, and the implications of forthcoming business changes and supporting workforce reform plans, before specifying important public services for the purposes of the 40% threshold in this sector and bringing forward regulations.

Support staff in ancillary roles

Question 7: Do you agree with the Government's proposed approach to ancillary workers? Why/ why not?

64. 146 responses were received for this question. Respondents who agreed with the approach (23%) felt that 'ancillary' should apply to those who are vital to the safe and secure running of the relevant public service, or to enable an emergency response.
65. The majority (53%) disagreed with the proposed approach to ancillary workers, as they felt this reduced clarity in terms of how the 40% threshold should be applied. Respondents raised concerns that the term 'ancillary' would be too open to interpretation. Some ancillary workers may typically only be partially involved in supporting the delivery of an important public service. These factors would make it difficult for unions and employers to understand who would potentially be covered under the threshold.

Question 8: Please give examples of ancillary workers in the six sectors discussed that you think should be subject to the 40% important public services threshold.

66. 109 respondents answered this question. 31% of answers gave specific examples, including cleaners, porters and caretakers, managers, call centre staff, operational and control staff, and maintenance and security staff. But 48% reiterated that no ancillary workers should be included.

Question 9: (If relevant) Please explain why the ancillary worker(s) you have cited should be covered.

67. 51 respondents answered this question. 39% of respondents felt that the ancillary workers they had suggested should be included because they play an important part in delivering the relevant service. 22% felt they should be included for safety reasons.

¹ The undiscounted estimate of £118 billion is within an uncertainty range of between £95 and £218 billion.

Private sector delivery of public services

Question 10: Do you agree with the Government's proposed approach to private sector workers? Why / why not?

68. 150 respondents answered this question. 29% agreed with the approach and felt that it would be logical to include private sector workers. They commented that this approach ensures that Government policy is consistent and achieves the objective of protecting the public interest, particularly where public funding is involved.
69. The majority of respondents (54%) disagreed with the approach. They reiterated concerns about the need for clarity – many felt that the inclusion of private sector workers could add another layer of complexity for unions and employers in determining how to apply the 40% threshold.

Disputes which involve workers subject to the 40% threshold and also other workers exempt from it

Question 11: How common are disputes involving some workers who would fall within scope of the 40% important public services threshold, and others who would not?

- Frequent
- Infrequent
- Never
- Not sure

70. 123 responses were received for this question. Just under half (46%) felt that this scenario would be infrequent. 19% felt it would be frequent, with 21% unsure and 4% commenting that such disputes would never occur. Of those who felt it would be frequent, it was suggested that it would be common for disputes involving pay and pensions or other conditions to affect an entire workforce.

Question 12: Please give examples of a dispute that has or could include only a small proportion of workers undertaking "important public services" (using the definition used in this consultation).

71. 91 respondents answered this question. 38% of comments provided examples of disputes. Many of these were examples of strike action taken by small proportions of workers which interrupted the services of the whole organisation, but the striking workers were not undertaking 'important public services'. Some of the relevant examples involved the following groups: air traffic controllers, who are a small proportion of the workforce in airports but whose absence would disrupt operations and rail station staff, whose absence could prevent the smooth running of the rail network.

Question 13: Do you agree that the Government should require a ballot to be run under the 40% important public services threshold if a *majority* of workers involved in the dispute are subject to the 40% threshold? Why/ why not?

72. 135 respondents answered this question. A minority of respondents (20%) agreed and felt that this would be the simplest and fairest approach, and the most proportionate way to deliver the Government's policy objectives.

73. Many respondents (68%) disagreed with this approach, of which just under half were by unions. A small number felt that the 40% threshold should only apply to a ballot if all workers affected by the dispute are subject to it. Concerns were also raised by possible complexities that this approach would create in determining when the 40% should apply. Respondents felt that unions might find it difficult to know the role of each employee and assess whether the threshold applies, and questioned how a difference in judgement could be resolved if employers came to a different conclusion. Respondents also gave examples of difficulties of calculating the 'majority' where there are workers whose duties might be split between carrying out an 'important public service' and not, and where there is a single aggregated ballot covering a large number of organisations.

Question 14: What are the practical and administrative considerations a trade union would have to make to calculate whether a ballot ought to be conducted under the 40% important public services threshold?

74. 97 respondents answered this question. The most common consideration suggestion was legal requirements (32%), followed by costs involved in gathering further details of job functions from members (30%), particularly where employees carrying out similar roles have different job titles across different employers or even within a single organisation. Respondents were concerned that these costs may divert resources from unions' other responsibilities. 20% felt that new systems would need to be implemented as a result of the threshold in order to identify workers accurately, whilst 11% felt the exercise would be straightforward to do.

75. A number of respondents raised concerns about how unions and employers would resolve disputes about whether an assessment of whether the 40% threshold applies to a ballot has been correctly made. Some went on to suggest that the risk of disputes could be mitigated and administrative requirements simplified if greater responsibility was placed on the employer or workers to keep records up-to-date, and disclose information upon request.

Government response to Q7-14

76. The purpose of these questions was to consider the simplest and fairest way for the 40% threshold to be applied in practice. The Government has noted concerns of respondents around the need for greater certainty about the scope of the threshold, so that unions and employers have clarity about when a ballot should be conducted under the 40% threshold.

77. The consultation proposed the inclusion of ancillary workers because there may be staff who support frontline staff in delivering important public services, and whose absence may have an impact on the delivery of important services. The Bill, as currently drafted, would allow for any ancillary worker that is engaged in activities that support the provision of an important public service to potentially be caught by the 40% threshold. While there was some support for the benefits that this proposal sought to achieve, support for this specific

proposal was limited. Respondents commented that this would not offer unions and employers certainty about who would be included in the threshold. The Government has carefully considered the views of respondents and will therefore amend clause 3 of the Trade Union Bill to remove the broad reference to ancillary workers. Going forwards, there will not be a distinct category for ancillary workers – only those who deliver the specified services will be subject to the 40% threshold, and unions would not need to determine whether any additional workers would also be in scope of the threshold.

78. As the support from respondents in respect of including private sector union members was mixed, the Government has concluded that the fairest approach is to consider what is justified and proportionate for the specified services in each of the sectors, as not all of the services are provided in the same way.
79. Health and education services are predominantly provided and funded by the public sector. While private provision is also available, the vast majority of the population rely on the services provided by the public sector, and strike action affecting these services would have the most significant impact on the wider public. Private sector union members will therefore not be included in these services (unless they are delivering the specified publicly-funded health services, set out in paragraph 37), as strike action taken by those union members is less likely to have a widespread impact on significant numbers of people.
80. The fire, transport and border security services do not have such a parallel system of provision. In some cases, the existence of a threshold would be ineffective if private sector union members were included, as a large number of relevant workers are employed by the private sector, and some of the specified services are provided entirely by private sector workers. Private sector union members will therefore be included in the threshold if they are delivering the specified services in these sectors.
81. We have carefully considered the concerns raised by respondents about the complexity of the workability of the 40% threshold, and the need to ensure it is straightforward for unions and employers to assess when a ballot should be conducted under the 40% threshold. The Government considers that the simplest approach is to require ballots to be run under the 40% threshold where a majority of workers involved are carrying out an important public service, and will therefore take this proposal forward. Whether the 40% threshold applies or not will be dependent on the trade dispute and which workers are involved. This means that the 40% threshold would not apply to a ballot if some workers carry out a specified service but are in the minority of eligible union members. The Government recognises that trade disputes will often affect different sets of workers, and consider that it is fair and proportionate to require ballots to meet the 40% threshold only where the main focus of proposed strike action will take place in an important public service. We will also issue guidance to clarify which workers are captured by each of the important public services listed, in order to assist unions and employers when they come to assess how a ballot should be conducted.

Conclusion

82. The Government would like to thank all the respondents for taking the time to respond to this consultation.
83. We will bring forwards secondary legislation which will specify the important public services set out in this response. Skeleton regulations are attached at Annex B of this document - please send any comments on the skeleton regulations to labourmarket.consultations@bis.gsi.gov.uk. We will also amend the Trade Union Bill (clause 3) to remove the reference to ancillary workers.

Annex A: List of ‘important public services’ subject to the 40% threshold

Services to be included in the 40% threshold	Specific examples of relevant occupations
Fire	
Firefighting services including dealing with calls for help and organising their response	Firefighters, firefighter managers and control centre staff and managers who coordinate the response
Health	
Publicly-funded emergency, urgent or critical care including emergency ambulance services, A&E services in a hospital, services in high-dependency units and intensive care in hospitals and other care services provided by a hospital for illnesses, conditions or injuries which require immediate attention in order to prevent serious injury, serious illness or loss of life	Doctors, nurses and other workers in the ambulance services, maternity services, A&E services, intensive care and high dependency unit services – including where these services are publicly funded and provided in private hospitals.
Education	
Teaching	Teachers in state schools who teach children aged 5-16
School leadership	Headteachers and Academy Principals of pupils aged 5-16 in state-funded schools
Transport	
London bus services	Bus drivers, emergency and control room staff
Passenger railway services (including metro, underground and tramway services)	Train drivers, conductors, guards, safety staff, signalling and electrical control staff
Civil air traffic control	Licensed civil air traffic controllers
Airport security services	Airport workers who are directly involved in the operation and application of airport security
Port security services	Port security services conducted by a port in accordance with the requirements of the International Ship and Port Facility Security Code
Border security	
Services related to border control functions in respect of the entry and exit of people and goods into and from the UK	Designated staff at the border who implement entry and exit checks, staff undertaking intelligence and targeting functions (eg national security and customs alerts or referrals)
Nuclear decommissioning	
Services to be specified at a later date, and proposed regulations will be subject to the affirmative procedure and further parliamentary scrutiny	

Annex B: Skeleton regulations

[This instrument contains a draft outline of proposals for secondary legislation arising out of clause 3 of the Trade Union Bill. It is a working draft and has been prepared purely for illustrative purposes and for assisting with discussion during the passage of the Bill. Further work and discussions will be required before the Regulations can be finalised.]

Draft Regulations laid before Parliament under section 226(2F) of the Trade Union and Labour Relations (Consolidation) Act 1992, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No. XXXX

TRADE UNIONS

The [Draft] Industrial Action (Important Public Services) Regulations 2016

Made - - - - - ***

Coming into force - - - - - ***

The Secretary of State, in exercise of the powers conferred by section 226(2D) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁾, makes the following Regulations.

A draft of these Regulations was laid before Parliament in accordance with section 226(2F) of the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁾ and approved by a resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the [Draft] Industrial Action (Important Public Services) Regulations 2016 and come into force on [DATE TO BE INSERTED].

(2) In these Regulations, “the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992.

Health Services

2.—(1) Publicly-funded emergency, urgent or critical healthcare services are important public services for the purposes of section 226 of the 1992 Act.

(2) Emergency, urgent or critical healthcare services include—

- (a) services provided in an emergency by an ambulance or associated transport service;
- (b) accident and emergency services in a hospital;
- (c) services which are provided in high-dependency units and intensive care in a hospital; and
- (d) other care services (including diagnosis and treatment) provided by a hospital for illnesses, conditions or injuries which require immediate attention in order to prevent serious injury, serious illness or loss of life.

⁽¹⁾ 1992 c.52. Sections 226(2)(2A) was inserted by section 3 of the Trade Union Act 201[X] (c.X).

⁽²⁾ Section 226(2)(2F) was inserted by section 3 of the Trade Union Act 201[X] (c.X).

Education of those aged under 17

3.—(1) Teaching and other services provided by teachers and persons appointed to fulfil the role of a head teacher at a school other than a fee-paying school are important public services for the purposes of section 226 of the 1992 Act.

(2) A school is a fee-paying school if a majority of its pupils have fees for their attendance at the school paid for them by individuals.

(3) Paragraph 1 does not include services to pupils who are—

- (a) under the age of 5; or
- (b) aged 17 or over.

Fire Services

4. Fire-fighting services, including dealing with calls for help and organising their response, are important public services for the purposes of section 226 of the 1992 Act.

Transport Services

5.—(1) The following transport services are important public services for the purposes of section 226 of the 1992 Act—

- (a) any bus service which is a London local service as defined in section 179(1) of the Greater London Authority Act 1999⁽³⁾;
- (b) passenger railway services (including metro, underground and tramway services);
- (c) civil air traffic control services;
- (d) airport security services; and
- (e) port security services conducted by a port in accordance with the requirements of the International Ship and Port Facility Security Code.

(2) Passenger railway services include—

- (a) maintenance of trains or of the network;
- (b) signalling or controlling the operation of the network;
- (c) ticket sales and other services which enable trains to operate.

(3) Railway services do not include—

- (a) heritage, museum or tourist railway services operating on their own network; or
- (b) railway services which relate only to routes that start or terminate outside Great Britain.

Border Security

6. Services related to border control functions in respect of the entry and exit of people and goods into and from the United Kingdom are important public services for the purposes of section 226 of the 1992 Act.

[Date]

[Signature]

⁽³⁾ 1999 c.29.

Annex C: List of Individuals/Organisations consulted

Abellio
Arriva
ASLEF
Association of Colleges
Association of Revenue and Customs
ATL
BDA
BECTU
Birmingham Law Society
Birmingham Railway Ltd
BMA
British Air Transport Association
British Ports Association
British Pregnancy Advisory Service
Bryson Consulting
Buckinghamshire and Milton Keynes Fire Authority
Building and Woodworkers International
Cambridgeshire Fire and Rescue Service
CBI
Centre for Research in Equality and Diversity
Chartered Society of Physiotherapy
Child Poverty Action Group
CIPD
Community
CWU
CWU (Northern Ireland)
DAC Beachcroft LLP
Defra
Derbyshire Fire and Rescue Service
Derry Trades Union Council
DWF LLP
East of England Local Government Association
EDF Energy
Educational Institute of Scotland
Employment Lawyers Association
Equity
European Trade Union Federation
Eurostar International Ltd
FBU
FBU (Northern Ireland)
FDA
Gateshead Council
Glasgow Labour Group
GMB
Govia Thameslink Railway Ltd
Hampshire Fire and Rescue Service

Hertfordshire County Council
HMRC
Home Office
IBOA
Independent Pilots Association
Institute of Employment Rights
International Trade Union Confederation
Irish Congress of Trade Unions
Isle of Wight Fire and Rescue Service
ISS UK Ltd
ISU Independent Trade Union
Kent County Council
Leeds City Council
Lewis Silkin
Local Government Authority
Liberty
London and South Eastern Railway Ltd
Manchester City Council
Middlesbrough Council
Morrish Solicitors LLP
NASUWT
National Association of Head Teachers
National Coalition for Independent Action
National Union of Journalists
National Union of Teachers
Nautilus
NAVCA
New Economics Foundation
NHS
North Yorkshire Fire and Rescue Service
Nottingham CityCare Partnership
Pattinson and Brewer Solicitors
Pinsent Mason
Prospect
Public Service International
Reading Borough Council
RMT
Royal College of Midwives
Royal College of Nursing
Ryanair Ltd
Sefton Labour Group of Councillors
Simpson Millar LLP
SIPTU
Society of Chiropractors and Podiatrists
Society of Radiographers
St Helens Council
Staffordshire Fire and Rescue
STUC
Thales UK Ltd
The Bakers Food and Allied Workers Union
The Employee Relations Institute

Trafford Council
Transport for London
TSSA
TUC
Tyne and Wear Fire and Rescue Service
UCATT
Unison
Unite
Unite the Union
USDAW
Warwickshire Fire and Rescue Service
West Midlands Fire Service
Women's Budget Group

Academics from the following institutions:

Brookenhurst College
Lambeth College
Lewisham and Southwark College
South Thames College
University of Edinburgh
University of Leeds
University of Manchester
University of the West of England



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available from www.gov.uk/bis

Contacts us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000
Email: enquiries@bis.gsi.gov.uk

BIS/16/15