

# The Transport Strikes (Minimum Service Levels) Bill

<b>Lead department</b>	Department for Transport
<b>Summary of proposal</b>	Strike action on the transport network can lead to widespread disruption. The Government intends to introduce statutory Minimum Service Agreements, requiring employers, operators and trade unions in the transport sector to provide a minimum service level during industrial action on the network.
<b>Submission type</b>	Impact assessment (IA) – 18 October 2022
<b>Legislation type</b>	Primary
<b>Implementation date</b>	TBC
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DfT-5238(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	9 November 2022

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The assessment of direct impacts on business and trade unions is fit for purpose at this stage. The RPC will expect to see further IAs for the related measures at secondary legislation stage to validate an EANDCB figure, if impacts are above the <i>de minimis</i> threshold.

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying regulatory provision (IN)	Qualifying regulatory provision (IN) – subject to confirmation at secondary legislation stage.
<b>Equivalent annual net direct cost to business (EANDCB)</b>	Not quantified at this stage	Further IAs to be submitted at secondary legislation stage for validation of an EANDCB figure.
<b>Business impact target (BIT) score</b>	Not quantified at this stage	See above

<sup>1</sup> The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

<b>Business net present value</b>	Not quantified at this stage
<b>Overall net present value</b>	Not quantified at this stage

## RPC summary

Category	Quality <sup>2</sup>	RPC comments
EANDCB	Green	An overall EANDCB figure is not provided because this depends on details to be set out in secondary legislation. The RPC will expect to validate EANDCB figures for the measures at secondary legislation stage if they are above the <i>de minimis</i> threshold.
Small and micro business assessment (SaMBA)	Green	The SaMBA is fit for purpose at this stage. The IA acknowledges that smaller businesses could face proportionately higher familiarisation and administrative costs. The RPC expects the SaMBA to be developed further at secondary legislation stage.
Rationale and options	Satisfactory	The IA considers three options alongside the “do nothing” counterfactual. The first two options involve voluntary arrangements; the IA describes why these options are unlikely to achieve the policy objective.
Cost-benefit analysis	Satisfactory	The IA provides a largely qualitative explanation of the main costs and benefits of the proposal, since the uncertainty around the details in the secondary legislation means that full monetisation is not currently feasible.
Wider impacts	Satisfactory	The IA contains a brief but proportionate discussion of the wider impacts of the policy. The IA includes a useful discussion of the risks and potential unintended consequences of the policy that may arise, including the risk of judicial reviews.
Monitoring and evaluation plan	Good	The IA contains a good quality plan for post-implementation review at this stage, stating that the policy will be evaluated within the first three years from when the legislation comes into force and that detailed evaluation plans will be developed for each transport service for which MSLs are introduced. The plan helpfully shows what monitoring data exists or can be collected in future to answer the evaluation questions.

<sup>2</sup> The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

## Summary of proposal

The IA states that strike action on the transport network can lead to widespread service disruption, as well as wider negative impacts on the UK economy. The Government intends to introduce statutory Minimum Service Agreements (MSAs), requiring employers, operators and trade unions in the transport sector to provide a minimum service level (MSL) during industrial action on the network.

The objective is to reduce the adverse effects of strike action on transport users, the movement of freight and the wider economy, while maintaining workers' right to strike in a proportionate way.

In the event of a dispute, the policy provides for an initial negotiation period of three months between the employer and the unions. The coverage, structure and content of the MSAs and MSLs will be specified in secondary legislation, with the Secretary of State for Transport able to set interim MSLs prior to the parties reaching agreement.

## EANDCB

The Department explains why it has been unable to provide an EANDCB figure at this stage. This is because the transport services covered by the proposal and the detailed requirements relating to MSAs and MSLs will not be set until secondary legislation stage.

It is worth noting for external readers that trade unions are classified as 'voluntary and community bodies' (often more commonly referred to as 'civil society organisations') in the better regulation framework; direct impacts on these bodies count towards the Business Impact Target in the same way as direct impacts on businesses.

The IA quantifies staff costs relating to familiarisation with the broad framework set out in the primary legislation. This uses data from the Annual Survey of Hours and Earnings and estimates time involved from previous IAs. The IA correctly accounts for non-wage labour costs.

Given uncertainty around the detail of the proposal at this stage, the IA's partial quantification and qualitative assessment are proportionate. However, the RPC expects fuller monetisation of direct impacts on business and trade unions at secondary legislation stage, to confirm the BIT status and potentially validate an EANDCB figure, subject to framework requirements.

The IA indicates that the monetised familiarisation costs relate to the primary legislation. This implies these costs should be 'scored' for BIT reporting purposes at the time of implementation of the primary legislation. However, although in practice many businesses and trade unions will expect that the proposal will apply to them and are likely to familiarise themselves at primary legislation stage, it appears there is no requirement to do so until and if it is confirmed they are 'in scope' of the policy at secondary legislation stage. The IA would benefit from providing further clarity and discussion on this issue. Most importantly, the Department will need to ensure that

the EANDCB at secondary legislation stage captures the full impact (including familiarisation) of the whole policy (i.e. covering both the primary and secondary legislation).

The IA monetises costs to businesses and trade unions associated with the primary legislation, i.e. familiarisation with the broad framework of the legislation. The present assessment could be strengthened by providing indicative or illustrative estimates (or explaining further why this is not possible at this stage) for other costs that appear to be associated with the primary legislation, i.e. those referred to in paragraphs 52-54 (for employers) and 61-62 (for trade unions).

The IA acknowledges that familiarisation costs are likely to be higher at secondary legislation stage, as the regulations will include more detail on requirements. Although, as noted above, the IA explains why it is not possible to provide estimates of this impact at this stage, it could be strengthened by discussing further the nature and potential scale of these costs relative to those estimated.

## SaMBA

The SaMBA is fit for purpose at this stage. It includes a breakdown of the numbers of businesses in the sector by size, acknowledging that the policy may mean that smaller businesses are required to devote a greater proportion of their resources to complying with the requirements.

The IA states that, as the primary legislation powers apply broadly to the transport sector, *“it is not possible to exempt small and micro businesses at this stage”* but also that the related secondary legislation *“should give due regard to the business impacts identified in this Impact Assessment so that they do not disproportionately burden small or micro businesses”*. The IA would benefit from addressing the recent framework requirement relating to assessment of the impacts on businesses with up to 500 employees; this will be expected at secondary legislation stage, subject to framework requirements.

The RPC will expect to scrutinise the SaMBAs at secondary legislation stage for measures above the *de minimis* threshold.

## Rationale and options

### *Rationale*

The rationale for intervention is explained in terms of the negative externality placed on transport users who are not party to any dispute between transport workers and employers. The IA states that this impact is disproportionate and that *“Industrial action is designed to impose an economic cost on the employer, in order to encourage the employer to resolve the grievance”* but it should also acknowledge that, by design, such action is intended to impose a cost on transport users and is a large part of its effectiveness. The IA would benefit from discussing the rationale in the context of operators now being able to use agency staff to replace striking workers. It should also explain what it is that the impacts of strike action are considered “disproportionate” to, and whether this is always the case.

### Options

The IA considers three options alongside the “do nothing” counterfactual. The first two options involve voluntary MSAs, with and without government incentives such as pay allowances or additional leave. The IA describes why these options are unlikely to achieve the policy objective.

The third option, which is the Government’s preferred option, is to require statutory MSAs, making employers and trade unions responsible for ensuring that required staffing levels are available during strike action so that a minimum level of service can be provided by the operator.

It is not clear from the IA whether these options are assessed against or take into account any MSL rules already in place.

## Cost-benefit analysis

The IA provides a largely qualitative explanation of the main costs and benefits of the proposal, since the uncertainty of how the secondary legislation will work means that full monetisation is not currently feasible.

The main quantified costs of the policy include familiarisation and administration costs to government, transport operators and unions. The main benefits are reduced negative impacts of strikes on transport users and the wider economy. There are also unquantified operational costs and benefits to transport businesses of running a minimum service level during strikes.

The summary table on page 14 of the IA indicates that the lost utility arising from the restricted right to strike is incurred directly by workers; the IA should also recognise that this directly affects union bodies themselves since it impacts their negotiating power and could therefore make membership less attractive.

The IA would benefit from discussing further the impact on trade unions and their members of reducing “*the current protections from potential damages claims under statutory immunity*” (paragraph 56) and the removal of “*the automatic unfair dismissal protection from employees named on the notice who do not comply and continue to withdraw their labour*” (paragraph 97).

The IA would also benefit from clarifying the implications of non-compliance with the requirements, in particular the relative responsibilities of employers and unions for ensuring a minimum level of service is provided and any penalties for the parties involved if the requirements are not met.

### Evidence and data

The IA uses data from a 2014 IA on ‘Certification of trade unions’ membership registers’ and the enactment IA on the Trade Union Act 2016 to inform its estimates of familiarisation costs. The IA would benefit from discussing whether there is any post-implementation evidence relating to these measures.

The IA would also benefit from international comparisons of the proposals, in particular, countries where MSL provisions are in place (such as Italy and France), and the impacts of service obligations in other sectors.

### *Impact on operational costs and (revenue) benefits*

The IA discusses impacts on operational costs and benefits but could be improved by explicitly discussing impacts on customer refunds and therefore this aspect of revenue impacts on train companies. More generally, the IA could discuss further the net benefit (or cost) to operators of running existing services, the impact of public sector funding to provide services and the likely net benefit (or cost) of providing a minimum service. The IA at secondary legislation stage should discuss further the direct or indirect nature of the proposal's impact in this and other areas, and should consider how it may impact privately run rail franchises differently to those run by central government.

## **Wider impacts**

The IA contains a brief but proportionate discussion of the wider impacts of the policy. It provides a good discussion of the risks and potential unintended consequences of the proposal, including the risk of judicial reviews challenging the determination of MSLs. The latter should be considered in the justice impact test at secondary legislation stage. On the risk of legal challenge, the IA would benefit significantly from discussing the relevance of ILO conventions 87 and 98, in particular how the framework of conditions for the use of minimum services is being considered.

Wider economic impacts described include those on household finances, productivity and reduction in supply chain disruptions caused by strikes. The discussion on '*Impact on pay and conditions in other sectors*' (paragraph 87) covers significant wider issues and the IA should develop this further, particularly with regards to the benefits that have previously arisen in some sector(s) due to strike action in another sector.

The department may also want to consider the impacts on both operators and customers of the quality of service provided by MSLs. This may need particular consideration with regards to extended transport networks in which multiple operators serve coordinated schedules. Conversely, the IA could also consider the impact of the measure on competition between operators.

## **Monitoring and evaluation plan**

The IA contains a good quality plan for post-implementation review at this stage, stating that the policy will be evaluated within the first three years from when the legislation comes into force and that detailed evaluation plans will be developed for each transport service for which MSLs are introduced.

Paragraph 125 lists some of the questions that the Department plans to answer in the post-implementation review. However, it should be clearer on how the objective of "*fairly balancing the disbenefits from restricting the right to strike against the benefits to the wider public*" will be assessed, given its apparently subjective nature.

The rest of the plan helpfully shows what monitoring data exists or can be collected in future to answer the evaluation questions. It states that most of this will be

collected from the operators, but it may benefit from considering whether the trade unions could be a useful source of data, particularly on the additional time and resources spent on negotiation on their side.

## **Regulatory Policy Committee**

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).