



Home Office

## Minimum Service Levels (MSLs) – border security Equality Impact Assessment (EIA)

### 1. Name and outline of policy proposal, guidance, or operational activity

#### About Minimum Service Levels (MSLs)

The introduction of MSLs is designed to enable people to continue to attend their place of work, access education and healthcare, and to protect the UK's security and infrastructure during strikes, whilst preserving the ability to strike. Where MSLs are applied, there should be a more consistent level of service for the public from strike to strike, as well as minimising the circumstances in which there are no services at all. This will help protect the public and guard against disproportionate risks to lives and livelihoods.

MSLs exist in a range of countries within Europe and globally as a legitimate mechanism to balance the ability to strike with the needs of the public. These are generally negotiated between employers and unions and can also cover issues like the notice period that has to be given before industrial action takes place.

In Portugal, when a strike is declared in key sectors, the organisers are obliged by law to provide a minimum level of service, normally agreed between employers and unions by collective agreements. An arbitration board determines minimum services if they fail to agree. In France, minimum service level legislation has been in place since 2008, with the levels agreed through negotiations with trade unions. Spain allows for public hearings on MSL rules. In Italy, the rules are also collectively agreed with unions.

When setting an MSL, the interference with Article 11 of the European Convention on Human Rights, which is the freedom of assembly and association, must be justified. MSLs are justified as they seek to protect the rights and freedoms of others, including the public. This is set out within the memorandum on the European Convention on Human Rights, which accompanied the Strikes (Minimum Service Levels) Act 2023 at its introduction to Parliament.

The International Labour Organisation, which is an agency of the United Nations, has stated that MSLs are justifiable:

- For services the interruption of which would endanger the life, personal safety or health of the whole or part of the population;

- For services where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and
- In public services of fundamental importance.

## **Border security and MSLs**

Strike action in public services can lead to adverse impacts for users of these services, as well as generating wider social, economic and environmental damage to the UK and its economy.

In the border security sector, without a permanent skilled presence at the border, there is a significant risk to the security and economic wellbeing of the UK. Border security professionals in many countries, such as France, Spain and Germany, are banned from striking. We are not proposing a ban, but in order to protect fundamentally important public services, we believe that border services are in scope of what MSLs seek to achieve. Strikes within these services would cause interruption which would endanger public safety, as they are services of fundamental importance.

## **The Strikes (Minimum Service Levels) Act 2023**

The [Strikes \(Minimum Service Levels\) Act](#) ('the 2023 Act') received Royal Assent on 20 July 2023. It creates a framework for delivering MSLs in the event of strike action in key sectors. The sectors are:

- health services
- fire and rescue services
- education services
- transport services
- decommissioning of nuclear installations and management of radioactive waste and spent fuel
- border security

The Act creates a number of powers and processes to support the delivery of MSLs.

First, it creates a power for the Secretary of State to make statutory regulations setting out what 'relevant services' are in scope for 'border security' for the purposes of MSLs.

Second, it creates a further power for the Secretary of State to make statutory regulations setting out what the MSL should be in respect of those relevant border security services.

We envisage that for relevant border security services, the Secretary of State for these purposes would be the Home Secretary.

Third, the Act provides that in the event of strike action, an employer would be able to issue a 'work notice' to a trade union, identifying the members of staff required to work on a strike day, and the work they are required to do, in order to meet the MSL. Such work notices must not identify more persons than are reasonably necessary for the purpose of providing the levels of service under the MSL regulations.

Fourth, a union would have to take 'reasonable steps' to ensure that those of its members identified in a work notice complied with a work notice and did not take strike action. A union which failed to take such reasonable steps would lose their protection from tort liability, which means employers could take court action against them. This could lead to a union being required to pay damages or the court could issue an injunction to prevent the strike from taking place. A person identified in a work notice who participated in a strike would lose their automatic protection from unfair dismissal for industrial action – in the same way as individuals who participate in 'wildcat' strikes do today.

## **Consultation**

The Secretary of State is required to consult before making statutory regulations setting out what relevant services are in scope for border security for the purposes of MSLs, and also before making statutory regulations setting out the actual border security MSL. The Home Secretary is therefore launching a consultation in order to meet these requirements in respect of border security. The consultation will start Friday 11 August and will last for 6 weeks, ending on Thursday 21 September 2023.

## **2. Summary of the evidence considered in demonstrating due regard to the Public-Sector Equality Duty.**

### **Introduction**

We have considered the potential equalities impact of these changes on two cohorts: Border Force employees; and the travelling public.

### **Data Quality**

Border Force holds organisational data about the age and sex of its employees. It does not have data of similar quality about other protected characteristics. We have used the data we have in the assessment below.<sup>1</sup>

We have worked on the preliminary basis that all employees of Border Force would be in scope for a border security MSL. However, as we finalise the policy, we may determine that only some employees should be in scope, depending on the specific role they carry out and the services they provide.

Any potential impact on the travelling public that is set out below is based on an analysis of the policy by subject matter experts.

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<sup>1</sup> Border Force organisational data as of 28 February 2023.

The Act does not extend to Northern Ireland, and therefore no data from Northern Ireland has been analysed for the purposes of this assessment.

## Summary

Under Section 13 of the Equality Act 2010 ('the 2010 Act'), direct discrimination is defined as 'less favourable' treatment because of a protected characteristic. Indirect discrimination is doing something in a way that has a less favourable impact on someone who shares a protected characteristic than it does on others who do not share it, unless that treatment is objectively justified (as set out in section 19 of the 2010 Act).

Regarding Border Force employees, we have management information about the sex and age of Border Force employees, which shows that c. 60% are male and that over 30% of Border Force's total workforce are aged between 50-59. We do not have data of comparable quality about other protected characteristics. Our assessment is that as the policy will apply to Border Force as a whole, there is no anticipated direct discrimination against any of the nine protected characteristics. Any possible indirect disadvantage on males or those aged 50-59 resulting from this policy would be proportionate and justified to ensure the border remains secure in the event of strike action. Any possibility of indirect impact will not, in our view, amount to indirect discrimination.

Regarding the travelling public, again, the policy will apply to this sector of the population as a whole. There is no anticipated direct or indirect discrimination. The policy may have a positive impact on disabled people. While the extent of the impact will be determined by how the MSLs are implemented nationally, broadly, MSLs could enable a greater number of ports to be operable in the event of strike action. This could make travel easier for disabled people than it otherwise would have been.

We will seek to gather more evidence to inform equalities analysis as part of the consultation. This will help us to continue to consider the potential equalities impacts of the proposal.

### **3a. Consideration of limb 1 of the duty: Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act.**

#### **Age**

Direct Discrimination – No direct impacts have been identified on the grounds of age.

Indirect Discrimination – Over 30% of Border Force's total workforce are aged between 50-59, which may in practice result in a higher proportion of this cohort being subject to a work notice. However, any indirect disadvantage resulting from this policy is justified to ensure the border remains secure in the event of strike action. There is therefore no unlawful indirect discrimination.

#### **Disability**

**Reasonable Adjustments** – There is an additional duty under the 2010 Act to make reasonable adjustments for a person who is placed at a substantial disadvantage because of their disability when compared to a person who does not share their disability.

**Discrimination arising from disability** – Section 15 of the 2010 Act provides that a person A discriminates against a disabled person B if, A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. However, this does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

Direct Discrimination – No direct impacts have been identified on the grounds of disability.

Indirect Discrimination – No indirect impacts have been identified on the grounds of disability.

### **Gender Reassignment**

Direct Discrimination – No direct impacts have been identified on the grounds of gender reassignment.

Indirect Discrimination – No indirect impacts have been identified on the grounds of gender reassignment.

### **Marriage and Civil Partnership**

Direct Discrimination – No direct impacts have been identified on the grounds of marriage and civil partnership.

Indirect Discrimination – No indirect impacts have been identified on the grounds of marriage and civil partnership.

### **Pregnancy and Maternity**

Direct Discrimination – No direct impacts have been identified on the grounds of pregnancy and maternity.

Indirect Discrimination – No indirect impacts have been identified on the grounds of pregnancy and maternity.

### **Race (colour, nationality, ethnic or national origins)**

Direct Discrimination – No direct impacts have been identified on the grounds of race.

Indirect Discrimination – No indirect impacts have been identified on the grounds of race.

## **Religion or Belief**

Direct Discrimination – No direct impacts have been identified on the grounds of religion or belief.

Indirect Discrimination – No indirect impacts have been identified on the grounds of religion or belief.

## **Sex**

Direct Discrimination – No direct impacts have been identified on the grounds of sex.

Indirect Discrimination – c. 60% of Border Force's total workforce is male, which, in practice, could mean that those employees subject to a work notice are more likely to be male than female. However, any indirect disadvantage resulting from this policy would be justified to ensure the border remains secure in the event of a strike. There is therefore no unlawful indirect discrimination.

## **Sexual Orientation**

Direct Discrimination – No direct impacts have been identified on the grounds of sexual orientation.

Indirect Discrimination – No indirect impacts have been identified on the grounds of sexual orientation.

**3b. Consideration of limb 2: Advance equality of opportunity** between people who share a protected characteristic and people who do not share it.

**Age** – We have not identified any specific ways in which we could implement the policy so as to advance equality of opportunity for people who share this protected characteristic.

**Disability** – While the extent of the impact will be determined by how the MSLs are implemented nationally, broadly, MSLs could enable a greater number of ports to be operable in the event of strike action. This could make travel easier for disabled people than it otherwise would have been.

**Gender Reassignment** – We have not identified any specific ways in which we could implement the policy so as to advance equality of opportunity for people who share this protected characteristic.

**Maternity and Pregnancy** – We have not identified any specific ways in which we could implement the policy so as to advance equality of opportunity for people who share this protected characteristic.

**Race** – We have not identified any specific ways in which we could implement the policy so as to advance equality of opportunity for people who share this protected characteristic.

**Religion or Belief** – We have not identified any specific ways in which we could implement the policy so as to advance equality of opportunity for people who share this protected characteristic.

**Sex** – We have not identified any specific ways in which we could implement the policy so as to advance equality of opportunity for people who share this protected characteristic.

**Sexual Orientation** – We have not identified any specific ways in which we could implement the policy so as to advance equality of opportunity for people who share this protected characteristic.

**3c. Consideration of limb 3: Foster good relations** between people who share a protected characteristic and persons who do not share it.

**Age** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**Disability** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**Gender Reassignment** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**Maternity and Pregnancy** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**Race** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**Religion or Belief** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**Sex** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**Sexual Orientation** – We have not identified any specific ways in which we could implement the policy so as to foster good relations for people on the basis of this protected characteristic.

**4. Summary of foreseeable impacts of policy proposal, guidance or operational activity on people who share protected characteristics**

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
<b>Age</b>	Negative	c. 30% of Border Force's total workforce is aged between 50-59, which mean employees in this age bracket could disproportionately be more likely to be subject to a work notice.	Any adverse impact is in our assessment proportionate in order to achieve our legitimate policy aim of helping to ensure the border remains secure in the event of strike action.
<b>Disability</b>	Positive	While the extent of the impact will be determined by how the MSLs are implemented nationally, broadly, MSLs could enable a greater number of ports to be operable in the event of strike action. This could make travel easier for disabled people than it otherwise would have been.	N/A
<b>Gender Reassignment</b>	None Identified	N/A	N/A
<b>Marriage and Civil Partnership</b>	None Identified	N/A	N/A
<b>Pregnancy and Maternity</b>	None Identified	N/A	N/A
<b>Race</b>	None Identified	N/A	N/A
<b>Religion or Belief</b>	None Identified	N/A	N/A
<b>Sex</b>	Negative	c. 60% of Border Force's total workforce is male, which could mean that those employees subject to a work notice are more likely to be male than female.	Any adverse impact is in our assessment proportionate in order to achieve our legitimate policy aim of helping to ensure the border remains secure in the event of strike action.
<b>Sexual Orientation</b>	None Identified	N/A	N/A



**5. In light of the overall policy objective, are there any ways to avoid or mitigate any of the negative impacts that you have identified above?**

We believe the policy will have a primary impact of maintaining border security and a secondary impact of mitigating against the effects of industrial action on those not directly involved in the dispute, while continuing to enable workers to exercise their choice to strike.

Any adverse impact is in our assessment proportionate to achieve a legitimate policy aim. We do not identify any unlawful discrimination.

We do not identify any specific actions to address negative impact but will look to explore and gather more evidence to inform equalities analysis following consultation.

**6. Review date**

This impact assessment will be reviewed following the consultation, which closes on Thursday 21 September 2023.

**7. Declaration**

I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that due regard has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.

**SCS sign off:**

**Name/Title:** Helen Evans

**Unit/Directorate:** Border Strategy, Performance and Security Unit  
Border Policy and International Migration Directorate

**Date:** 26 July 2023

**Date sent to PSED Team: 11/08/2023**