



Department for
Business & Trade

Code of Practice on ‘reasonable steps’ in relation to Minimum Service Levels

Consultation

Closing date: 6 October 2023

Ministerial foreword	3
General information	4
Why we are consulting	4
Consultation details	4
How to respond	4
Confidentiality and data protection	5
Quality assurance	5
Policy background	6
Policy objectives	7
Assessing options	7
The proposed ‘reasonable steps’	8
The Code	9
Consultation questions	11
Specific questions	11
General questions	11
Next steps	12

Ministerial foreword

The Strikes (Minimum Service Levels) Act 2023 is a new piece of legislation that will re-balance the ability to strike with the rights and freedoms of the public to go about their daily lives, including getting to work and accessing key services.

Since June 2022, there have been more than 4 million working days lost to strikes, far more than in any previous year over the last 30 years. Industrial action has affected around one in ten businesses, and of those affected, around one in four on average reported not being able to fully operate due to industrial action. This has led to knock-on impacts on our economy, at a time when the Government is aiming to bring down bills and halve inflation.

We have passed this legislation to ensure that people have confidence that when workers strike, people's lives and livelihoods are not put at undue risk. The Government firmly believes that the ability to strike is an important part of industrial relations in the UK, rightly protected by law, and understands that an element of disruption is inherent to any strike. While a number of unions have now accepted pay deals, there is no guarantee that the level of strike action experienced over the last year, which caused severe disruption and threatened the lives and livelihoods of the public, will not happen again.

Minimum service levels will simply ensure that the public can continue to access, for example, work, healthcare and education, and give the confidence that an ambulance will be there when they need one.

The Strikes Act enabled minimum service levels to be implemented via regulations. To help ensure minimum service levels are achieved during strikes, where regulations have been brought in, an employer may issue a work notice identifying persons who are required to work and the work they must carry out during the strike to secure minimum levels of service. To encourage compliance, unions must take 'reasonable steps' to ensure members who are identified on the work notice on a strike day do not take part in strike action and comply with the work notice, in order to maintain protection from certain liabilities in tort. If a trade union fails to take reasonable steps, the employer could seek damages from the union or an injunction to prevent the strike action taking place.

During the Act's passage through Parliament, the Government committed to bringing forward a Code of Practice, setting out more detail on these reasonable steps, to give unions and employers clarity on how unions can meet the requirement.

We are pleased to bring forward a new draft Statutory Code of Practice, and this consultation which seeks feedback on its effectiveness in achieving the above aim. The consultation is an opportunity for the public, employers, unions and workers to provide their views on the draft code, and we hope that you will take the time to consider it and the questions it poses.

Ultimately, we want the Code to help all parties to achieve minimum service levels, where they are applied, by playing their part in ensuring that the disproportionate impact strikes can have on the public is reduced.

General information

Why we are consulting

The Government is consulting to gather views on the draft Statutory Code of Practice on the reasonable steps a union must take in relation to minimum service levels (“the Code”), in line with the statutory requirement under section 204 of the Trade Union and Labour Relations (Consolidation) Act 1992 (The “Act”) to publish a draft of the Code, and consider any representations made in response. In accordance with the same legislation, the government consulted the Advisory, Conciliation and Arbitration Service (ACAS) prior to preparing and publishing the Code.

The Code will help with the implementation of minimum service levels by providing practical steps that trade unions can take to fulfil their obligations under the Act. It will include guidance on actions trade unions can take so that they can meet the requirement to take ‘reasonable steps’ in order to maintain their legal protections during lawful strike action.

This is an opportunity for all interested parties and groups to review the draft Code, consider its provisions and provide their views on it. The consultation will remain open for 6 weeks. We will analyse all submissions, and take the views expressed into account before publishing a government response and final version of the Code in due course.

Consultation details

Issued: 25 August 2023

Respond by: 6 October 2023

Enquiries to: minimumservicelevels@businessandtrade.gov.uk

Consultation reference: Statutory Code of Practice on ‘reasonable steps’ in relation to the Strikes (Minimum Service Levels) Act 2023.

Audiences: Employers and workers, business representative groups, trade unions, those representing the interests of groups in the labour market and all other interested parties.

Territorial extent: This applies across Great Britain (England, Wales & Scotland).

How to respond

Email to: minimumservicelevels@businessandtrade.gov.uk

When responding, please use the above reference, and state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

A response template is available alongside this consultation document and the draft Code of Practice at <https://www.gov.uk/government/consultations/minimum-service-levels-code-of-practice-on-reasonable-steps>

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request. We will process your personal data in accordance with all applicable data protection laws. See our privacy policy for more detail.

We will summarise all responses and publish this summary on [GOV.UK](https://www.gov.uk). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's consultation principles.

If you have any complaints about the way this consultation has been conducted, please email:

beis.bru@beis.gov.uk.

Policy background

Since June 2022, there have been over 4 million days lost due to labour disputes¹. This has disrupted people's access to work, education, and healthcare services (among others), highlighting the disproportionate impact strikes can have on the public.

On 20 July 2023, the Strikes (Minimum Service Levels) Act became law. The purpose of this legislation is to balance the ability to strike with the rights and freedoms of others to access key public services during periods of strike action.

Minimum service levels are a common way of managing the ability to strike with the needs of the public across many European countries, as well as other developed nations across the globe.

The Strikes (Minimum Service Levels) Act 2023 amends the Trade Union and Labour Relations (Consolidation) Act 1992 ("the Act") to enable minimum service levels to be applied in six key sectors. These 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.

Regulations can be introduced to specify the minimum service level which applies to the services within any of the key sectors outlined above. Once regulations are in place, employers which provide the services set out in the regulations can issue a work notice to specify the workforce required to secure the minimum service level. A work notice is given to the union(s) which have notified the employer of strike action for the period the work notice covers. The effect of section 234D of the Act is that where individuals are identified in a work notice and it is shared with a trade union with a view to the trade union taking reasonable steps, this will not breach obligations of confidence or similar restrictions on the employer. However, any such disclosure should be done in accordance with data protection legislation, taking care to ensure that all data protection principles are complied with. When sharing personal data with trade unions, due regard should be given to minimising the data that is shared, ensuring that only personal data necessary for identifying the relevant workers is shared.

Once a work notice has been given to a trade union, in order to maintain protection from certain liabilities in tort, that union must take reasonable steps to ensure that all members

1

<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/f8xz/lms>

of that union who are identified within the work notice comply with the notice, as per Section 234E of the Act. Employers should also notify the workers identified in a work notice that they are required to work and the work that is required of them. Employees who take strike action contrary to a work notice will lose their automatic protection from unfair dismissal for industrial action, meaning employers may take disciplinary action and dismiss employees as a result, in a similar way to where an employee has an unauthorised absence. The combination of these measures is intended to ensure compliance for those who have been required to work through a work notice, to attend work on the day of the strike and contribute to the minimum service level being achieved.

If a trade union fails to take reasonable steps then the union would lose protection from liability in tort, which they would normally have under Section 219 of the Act. The employer could then pursue legal action to seek an injunction to prevent the strike action from taking place or for damages to be paid to the employer. This is in line with other existing requirements for lawful strike action, as specified within the Act.

Policy objectives

The Code has been drafted to act as practical guidance and provide clarity to trade unions on how they can meet the requirement to take reasonable steps to ensure their members identified in a work notice comply with that notice and do not take strike action. The Code also provides clarity to employers and union members on what to expect leading up to and on the day of strike action, where a work notice has been given to secure a minimum service level.

The purpose of the Code is to set out a clear and fair process for trade unions to follow, consistently, which leads to an appropriate level of encouragement from them to their members identified in a work notice. The process has been designed to balance potential burdens of undertaking the reasonable steps, whilst providing a route for trade unions to maintain their protections during strike action.

The ability to take strike action is an important part of UK industrial relations, and whilst employers and unions have a role to play in trying to resolve trade disputes before strike action occurs, this is not always possible. Therefore, recognising the disproportionate impact strike action can have on the public, the Code seeks to help trade unions to comply with their obligation to take reasonable steps, so maintaining their protection against liability whilst helping to protect the public.

Assessing options

Prior to announcing the Code of Practice, the Government considered other options for setting out the 'reasonable steps' that trade unions must take to be compliant with the legislation. These options included specifying them within legislation as well as non-statutory guidance.

The Government believes that a Code of Practice is the best option for providing clarity on how the requirement to take reasonable steps can be met. This is because it carries a

statutory backing and will be taken into account by a Court or Tribunal where considered to be relevant, while also giving the Government the flexibility to amend the Code in the future, in accordance with the Act, should there be any changes needed following implementation of the policy.

A Code of Practice as provided for by the Trade Union and Labour Relations (Consolidation) Act 1992 also has the benefits of being subject to statutory consultation and approval in Parliament, ensuring that interested parties have the opportunity to provide their views on the Code.

The proposed 'reasonable steps'

The draft Code sets out five steps that trade unions should consider when seeking to satisfy the requirement to take reasonable steps once they have received a work notice from an employer to secure a minimum service level.

Step 1: Identification of members - the Act sets out that a work notice, given to the union or unions by the employer, will identify the workers and the work required to secure the minimum service level. This will include a range of workers, some of whom are likely to be union members. This step is about unions identifying their members on the work notice. This enables them to take reasonable steps in regard to those workers. Without identifying which of their members are identified in the work notice, unions could not go on to complete step 2.

Step 2: Encouraging individual members to comply with a work notice – referred to as a 'compliance notice' in the Code of Practice, this communication encourages members identified in the work notice to comply with a work notice and not to take strike action (for the period in which they are required to work by the work notice). The compliance notice also sets out that employees could face disciplinary proceedings and potentially be dismissed if the employee has been notified they have been identified in a work notice by the employer, and they choose to take strike action contrary to a work notice. This notice also sets out that picketing supervisors will be instructed by the union to use reasonable endeavours to ensure that, if the member indicates to the picketers or the picket supervisor that they are required to work during the strike, the picket does not seek to encourage them to take strike action.

The compliance notice is proposed to be sent to each individual member identified in the work notice, which will help ensure that they comply with that work notice.

Step 3: Communication to the wider membership – referred to as an 'information notice' in the Code of Practice, this communication is to all members of the union which the union believes it has induced or may induce to take strike action. This notice outlines, for the benefit of all members who receive it, that a work notice has been given to the union, and that some members are required to work. The notice also sets out the similar messaging regarding picketing as Step 2. The information notice helps reinforce messaging to those who receive a compliance notice, whilst informing all members how the intended strike action will be affected by the work notice, including for those who intend to attend a picket.

Step 4: Picketing – this step is where picket supervisors will be instructed by the union to take reasonable endeavours to ensure that union members who are identified in the work notice, and who identify themselves as such at the picket of this, will not be encouraged by those on the picket to take strike action. A picket is a key environment in which workers may be encouraged to withdraw their labour and so it is necessary that reasonable steps are taken at picket lines, alongside the other recommended steps.

Step 5: Assurance – this step sets out that a trade union should ensure that it does not undermine any of the reasonable steps that it takes and to correct actions by union officials or members which may also undermine the reasonable steps. This will help ensure that a union maintains its protection from certain liabilities in tort, as well as maximise the effect of the reasonable steps it has taken to ensure that its members who have been identified in a work notice comply with that notice and do not take strike action.

Steps 1, 2 and 3 should be taken as soon as practicable after the union receives the work notice to provide sufficient notice to the members identified in the work notice that they are encouraged to comply with that notice, as well as making the wider membership aware of the arrangements for the strike day(s) covered by the work notice. The communications in steps 2 and 3 should preferably be sent by electronic means, such as email, or alternatively, in certain circumstances, by first class post. The proposed structure of each communication is included within the Code, as well as template communications, as annexes, to help trade unions undertake these steps in a consistent and effective way and to reduce the burden of doing so.

The Code

We encourage you to read the Code in full before responding to the consultation. We have set out a high-level description of each section below.

Introduction

This section sets out the background and objectives of the Code of Practice.

The requirement to take reasonable steps.

This section outlines when the Code of Practice (and suggested reasonable steps) apply, and the consequences of failing to take those steps.

Recommended ‘Reasonable Steps’

This section lists the proposed reasonable steps a union must take to be compliant with the legislation (as described above).

Annex A – ‘compliance notice’ template

This annex provides a template that unions can use to fulfil step 2 – ‘Encouraging individual members to comply with a work notice’.

Annex B – ‘information notice’ template

This annex provides a template that unions can use to fulfil step 3 - 'Communications to the wider membership'.

Consultation questions

Specific questions

1. Paragraphs 15 to 20 of the Code set out the first proposed reasonable step, 'identification of members'. Is there anything else, or alternatives, unions could do prior to or immediately after receiving a work notice to facilitate the following steps?
2. Paragraphs 21 to 28 of the Code set out the second proposed reasonable step, 'encouraging individual members to comply with a work notice'. Does this step (and the draft template at Annex A) contain sufficient information to help workers identified in the work notice comply with the work notice and not to strike? Or are there alternatives to this step for unions to take to encourage individual members to comply with a work notice?
3. Paragraphs 29 to 33 of the Code set out the third proposed reasonable step, 'communications to the wider membership'. Do you agree or disagree that it is reasonable for unions to communicate with all members who are being encouraged by the union to strike, both to reinforce messages to members identified in a work notice and to explain, for the benefit of a broader group of members who may be involved in the strike, how the strike will be affected where a work notice is given by the employer?
4. Does step three, 'communications to the wider membership' (and the draft template at Annex B) contain sufficient information to inform the wider membership on the implications of a work notice for them?
5. Paragraphs 34 to 40 of the Code set out the fourth proposed reasonable step on 'picketing'. Is there anything else that could be done on the picket line to ensure a minimum service level is met?
6. Is there anything else picketing supervisors can do as part of step four, 'picketing', to encourage members identified in a work notice to comply?
7. Are there any other actions that the Code could list under step five, 'assurance', that unions should not take in order to not undermine the other reasonable steps?
8. Are there any further or alternative steps that should be included within the Code which will be useful and appropriate for trade unions to take in order to meet the requirement to take reasonable steps?

General questions

9. Will the Code help trade unions to meet the requirement to take reasonable steps as per Section 234E of the Act? If not, why is that the case?
10. Does the Code strike an appropriate balance between the reasonable steps being proportionate in encouraging members to comply with a work notice whilst balancing this with the ability to take strike action?
11. Do you have any other comments about the draft Code?

Next steps

Following the closure of this consultation, we will analyse the responses. We will consider any views expressed and representations made before finalising the Code of Practice. We will also publish a Government response to this consultation.

The Government will bring the finalised Code for approval by Parliament when Parliamentary time allows.

The Government will also make consequential amendments to the Picketing Code under Section 205 of the Act to reflect the changes brought in by the Strikes (Minimum Service Levels) Act.

Legal disclaimer

Whereas every effort has been made to ensure that the information in this document is accurate, the Department for Business and Trade does not accept liability for any errors, omissions or misleading statements, and no warranty is given or responsibility accepted as to the standing of any individual, firm, company or other organisation mentioned.

Copyright

© Crown Copyright 2023

You may re-use this publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence visit:

www.nationalarchives.gov.uk/doc/open-government-licence or email: psi@nationalarchives.gov.uk.

Where we have identified any third-party copyright information in the material that you wish to use, you will need to obtain permission from the copyright holder(s) concerned.

This document is also available on our website at gov.uk/government/organisations/department-for-business-and-trade

Any enquiries regarding this publication should be sent to us at

enquiries@businessandtrade.gov.uk.