



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, and has been found to include the right to strike, 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 held a six-week consultation between 11 August and 21 September 2023 in order to meet these requirements. We published an initial equality impact assessment when we launched the consultation. We now publish this updated assessment to take into account the consultation responses we received.

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

Consultation responses

Consultation responses broadly fall into two categories: responses about potential impacts on the workforce; and responses about potential impacts on the travelling public. The workforce in question is to a greater extent Border Force, albeit that there will be also a lesser impact on HM Passport Office.

Some consultation respondents said that being required to work on a strike day could have a negative impact on employees who have protected characteristics. For example, it was said that there could be a negative impact on disabled employees or on employees who wish to attend religious ceremonies on a strike day. It was also said that there could be a negative impact on employees with caring responsibilities for children, older people or disabled people. Some respondents also said that there could be a negative impact on women in the workforce because women were said to be more likely to be carers than men, and more likely to be part-time workers. However, the impact of these considerations would be no more pronounced on a strike day than it would have been on a normal working day, and would not arise from the introduction of the policy itself.

Some consultation respondents said that the policy could also have negative impacts on the travelling public. It was said that on a strike day, there may not be sufficient staff to provide the appropriate level of support to travellers with a protected characteristic or who are vulnerable. This could mean that disabled travellers or women who are pregnant or who have very young children are not appropriately supported. It could also mean that there are not enough trained staff to provide appropriate support where there are safeguarding concerns or concerns that someone may be a victim of modern slavery. However, the introduction of minimum service levels should mean that there are additional staff available to provide appropriate support to these cohorts.

In response, we will ensure that a further equality impact assessment is undertaken as and when the policy is operationalised. We will plan to identify, mitigate and to monitor potential impacts on the workforce, noting that the policy is likely to have greatest impact on Border Force and to a lesser extent HM Passport Office. We will also consider how to use MSLs to ensure that appropriate levels of trained staff are in place on a strike day to mitigate potential risks to the travelling public. This should ensure that on a strike day, there is a positive impact on the cohorts of travellers identified by consultation respondents, who benefit from there being a minimum level of service in place.

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.

Some consultation respondents identified that there may be a negative impact on employees who are required to work on a strike day and who have caring responsibilities for children or older people. However, the impact of these considerations would be no more pronounced on a strike day than it would have been on a normal working day, and would not arise from the introduction of the policy itself.

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.

Some consultation respondents identified that there may be a negative impact on disabled employees who are required to work on a strike day. Some consultation respondents also identified that there may be a negative impact on employees who are required to work on a strike day and who have caring responsibilities for disabled people. However, the impact of these considerations would be no more pronounced on a strike day than it would have been on a normal working day, and would not arise from the introduction of the policy itself.

Some consultation respondents identified that there may be a negative impact on members of the travelling public who are disabled, if there are not enough trained staff to provide appropriate support on a strike day. However, the introduction of minimum service levels should mean that there are additional staff available to provide appropriate support to these cohorts.

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.

Some consultation respondents identified that there may be a negative impact on members of the travelling public who are women who are pregnant or who have very young children, if there are not enough trained staff to provide appropriate support on a strike day. However, this would arise from the industrial action itself, rather than the introduction of this policy, which is likely to ensure more staff are available to provide support.

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.

Some consultation respondents identified that there may be a negative impact on employees who are required to work but who wish to attend religious ceremonies on a strike day. However, the impact of these considerations would be no more pronounced on a strike day than it would have been on a normal working day, and would not arise from the introduction of the policy itself.

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.

Some consultation respondents identified that there may be a negative impact on female employees who are required to work on a strike day, because women were said to be more likely to be carers or part-time workers. However, this would be no more pronounced on a strike day than it would have been on a normal working day, and does not arise from the introduction of the policy itself.

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
Age	Negative	<p>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.</p> <p>Some consultation respondents identified that there may be a negative impact on employees who are required to work on a strike day and who have caring responsibilities for children or older people. However, the impact of these considerations would be no more pronounced on a strike day than it would have been on a normal working day, and would not arise from the introduction of the policy itself.</p>	<p>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.</p> <p>We will ensure that a further equality impact assessment is undertaken as and when the policy is operationalised.</p> <p>We will plan to identify, mitigate and to monitor potential impacts on the workforce.</p>

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
Disability	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.	<p>We will ensure that a further equality impact assessment is undertaken as and when the policy is operationalised.</p> <p>We will plan to identify, mitigate and to monitor potential impacts on the workforce.</p>
	Negative	Some consultation respondents identified that there may be a negative impact on disabled employees of Border Force who are required to work on a strike day. Some consultation respondents also identified that there may be a negative impact on employees who are required to work on a strike day and who have caring responsibilities for disabled people. However, the impact of these considerations would be no more pronounced on a strike day than it would have been on a normal working day, and would not arise from the introduction of the policy itself.	<p>We will also consider how to use MSLs to ensure that appropriate levels of trained staff are in place on a strike day to mitigate potential risks to the travelling public. This should ensure that on a strike day, there is a positive impact on the cohorts of travellers identified by consultation respondents, who benefit from there being a minimum level of service in place.</p>

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
		Some consultation respondents identified that there may be a negative impact on members of the travelling public who are disabled, if there are not enough trained staff to provide appropriate support on a strike day. However, the introduction of minimum service levels should mean that there are additional staff available to provide appropriate support to these cohorts.	
Gender Reassignment	None Identified	N/A	N/A
Marriage and Civil Partnership	None Identified	N/A	N/A
Pregnancy and Maternity	Positive Negative	Some consultation respondents identified that there may be a negative impact on members of the travelling public who are women who are pregnant or who have very young children, if there are not enough trained staff to provide appropriate support on a strike day. However, the introduction of	We will ensure that a further equality impact assessment is undertaken as and when the policy is operationalised. We will also consider how to use MSLs to ensure that appropriate levels of trained staff are in place on a strike day to

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
		minimum service levels should mean that there are additional staff available to provide appropriate support to these cohorts.	mitigate potential risks to the travelling public. This should ensure that on a strike day, there is a positive impact on the cohorts of travellers identified by consultation respondents, who benefit from there being a minimum level of service in place.
Race	None Identified	N/A	N/A
Religion or Belief	Negative	Some consultation respondents identified that there may be a negative impact on employees who are required to work but who wish to attend religious ceremonies on a strike day. However, the impact of these considerations would be no more pronounced on a strike day than it would have been on a normal working day, and would not arise from the introduction of the policy itself.	We will ensure that a further equality impact assessment is undertaken as and when the policy is operationalised. We will plan to identify, mitigate and to monitor potential impacts on the workforce.
Sex	Negative	c. 60% of Border Force's total workforce is male, which could mean that those employees subject to a work	Any adverse impact is in our assessment proportionate in order to achieve our legitimate policy aim of helping to ensure

Protected Characteristic Group	Potential for Positive or Negative Impact?	Explanation	Action to address negative impact
		<p>notice are more likely to be male than female.</p> <p>Some consultation respondents identified that there may be a negative impact on female employees who are required to work on a strike day, because women were said to be more likely to be carers or part-time workers. However, this would be no more pronounced on a strike day than it would have been on a normal working day, and does not arise from the introduction of the policy itself.</p>	<p>the border remains secure in the event of strike action.</p> <p>We will ensure that a further equality impact assessment is undertaken as and when the policy is operationalised.</p> <p>We will plan to identify, mitigate and to monitor potential impacts on the workforce.</p>
Sexual Orientation	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 will ensure that a further equality impact assessment is undertaken as and when the policy is operationalised. We will plan to identify, mitigate and to monitor potential impacts on the workforce. We will also consider how to use MSLs to ensure that appropriate levels of trained staff are in place on a strike day to mitigate potential risks to the travelling public. This should ensure that on a strike day, there is a positive impact on the cohorts of travellers identified by consultation respondents, who benefit from there being a minimum level of service in place.

6. Review date

This impact assessment will be reviewed as and when the policy is operationalised.

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: Simon Cubley

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

Lead contact: Jonathan Sanders

Date: 26 October 2023

For monitoring purposes all completed EIA documents and updated EIAs **must** be sent to the PSED@homeoffice.gov.uk

Date sent to PSED Team: 6 November 2023