Department for Business & Trade

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

Consultation Response

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Ministerial Foreword

The Government is focused on making the hard but necessary long-term decisions to deliver the change that the country needs to put the UK on the right path for the future. That is why earlier this year, Parliament passed the Strikes (Minimum Service Levels) Act 2023. The Act seeks to balance the ability of workers to strike with the rights and freedoms of the public to go about their daily lives, including getting to work and accessing key services.

Most major European countries, such as France, Italy and Spain, have had some form of minimum service level regime for many years and organisations such as the International Labour Organisation have recognised that such approaches can be an appropriate way of balancing the ability to strike with the rights of the wider public.

To help facilitate the securing of minimum service levels once regulations are in place, trade unions must take 'reasonable steps' to ensure that members who are identified in a work notice for a strike day do not take part in strike action and comply with the work notice. If a trade union fails to take these reasonable steps, the employer could seek damages from the trade union or an injunction to prevent the strike taking place.

In August 2023, the Government consulted on a draft statutory Code of Practice which set out more detail on the reasonable steps trade unions should take.

This Response summarises the feedback we received and sets out changes we have made to the Code of Practice as a result, as well as our next steps. The Code has been designed to balance the benefits and potential burdens of the reasonable steps, whilst helping to provide clarity for trade unions on maintaining their statutory protection during strike action. Ultimately, the Code will help all parties to achieve minimum service levels where they are applied and moderate the disproportionate impact strike action can have.

We are grateful to all those who contributed to the consultation.

Kevin Hollinrake – Minister for Enterprise, Markets, and Small Business

Executive Summary

The Government is committed to balancing the ability to strike with the rights and freedoms of the public to access essential services. To achieve this, we have legislated so that, where regulations are in place in respect of certain services, minimum service levels can be implemented on strike days to prevent a major loss or total shutdown of those services, and to protect the lives and livelihoods of the public.

The Strikes (Minimum Service Levels) Act 2023 ("the 2023 Act") enables minimum service levels to be implemented via regulations in the following six sectors:

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

Once a minimum service level is in place, if a trade union gives an employer notice of strike action, the relevant employer can issue a work notice identifying the persons required to work and the work they must carry out during the strike to meet the minimum service level for that strike period. Once a work notice has been given to a trade union, that union must take "reasonable steps" to ensure that all members of that union who are identified in the work notice comply with the notice. If they do not take these reasonable steps, they could face damages claims, or an injunction to prevent the strike from taking place.

Individuals that are identified in a work notice, but do not comply and take strike action instead, could face disciplinary action, which could include dismissal.

The Government consulted on a draft statutory Code of Practice which set out five practical steps unions can take to help maintain their statutory protection from liability in tort. This response summarises the feedback we received, and changes made to the Code as a result.

Of the reasonable steps proposed, steps 3 and 4 ("communications to the wider membership" and "picketing", respectively) proved the most controversial, with many responses saying they were unnecessary, burdensome and difficult to implement. In response, step 3 has been removed entirely, and step 4 has been simplified. All other steps remain broadly as they were, bar some relatively minor and technical changes to clarify and improve the drafting.

The updated Code of Practice will be laid in Parliament. Subject to receiving the approval of each House of Parliament, it is our expectation that the Code will come into force in mid-December, in time for it to take effect alongside the first set of minimum service level regulations as they come into force.

Introduction

The Government sought views via a public consultation on the draft statutory Code of Practice on the reasonable steps a trade union should take under the Strikes (Minimum Service Levels) Act 2023.

The five reasonable steps proposed were:

- **Step 1: Identification of members** – Unions should identify their members in a work notice;
- **Step 2: Encouraging individual members to comply with a work notice** – Unions should send an individual communication to each member identified in a work notice to encourage them to comply with that notice and not to strike;
- **Step 3: Communication with the wider membership** – Unions should communicate with wider union members to explain that a work notice has been issued to cover the upcoming strike action and how that notice will affect the strike;
- **Step 4: Picketing** – Picket supervisors will be instructed by the union to use reasonable endeavours to ensure that union members who are identified in the work notice, and who inform the picket of this, will not be encouraged by those on the picket to take strike action;
- **Step 5: Assurance** – Trade unions should ensure that they do not undermine any of the steps that they take and correct actions by union officials or members which may also undermine the reasonable steps.

The consultation ran from 25 August to 6 October 2023. 46 responses were received, comprising: 10 responses from individual members of the public and 36 responses from organisations, including trade unions, employers, public bodies, local government representatives and the Devolved Administrations.

This response sets out the feedback we received and the Government's response. Many of the responses received made broader policy points which Parliament extensively considered before passing the Strikes (Minimum Service Levels) Act 2023. This Response will refer to the points that were heard during Bill passage where they are relevant to the updated Code, but will not seek to repeat the detailed discussion and debate that took place during Bill passage.

The document will largely follow the structure of:

- proposed reasonable step as consulted on
- feedback received
- Government response
- changes to the Code of Practice

Throughout the document, where we refer to the 'draft Code' we mean the version as consulted upon, and the 'updated Code' refers to the version which is being laid before Parliament.

Feedback on the Reasonable Steps

Step 1 – Identification of members

Proposal
After receiving a work notice from an employer, the trade union should identify its members from among the workers identified in the work notice as being required to work to secure the minimum service level.

Feedback received
A range of responses were received. Some respondents were concerned that the requirement for a union to ensure that its membership data is accurate and up to date is inconsistent with the law relating to record keeping and balloting.

A number of respondents were concerned about data on union membership being shared between employers and unions, particularly as trade union membership is special category data under UK GDPR law. Some respondents suggested greater clarity was required regarding the timescales for step 1.

A number of respondents stated that paragraph 20 of the draft Code ("If a trade union does not identify its members within the work notice, or reasonably believes it has not done so, then they should take other steps as reasonable to ensure they reach their affected membership") was unclear, in particular, as to what alternative steps would be regarded as fulfilling that recommendation.

Government response and changes made to the Code of Practice
The Government recognises the requirement for unions to ensure its membership data is accurate and up to date, as set out in paragraph 16 of the draft Code, could be clarified so as to accurately reflect existing obligations. We have therefore amended the first sentence of that paragraph (paragraph 17 of the updated Code) so that it is in line with the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). This sentence now reads: "Section 24 of the [1992] Act requires that a union keeps its membership register as accurate and as up to date as reasonably practicable".

The Government does not believe that special category data needs to or is likely to be released as part of the minimum service level process. On receipt of a work notice from the employer, the trade union will come under obligations to take reasonable steps under section 234E of the 1992 Act. This "legal obligation", or alternatively "legitimate interests", will provide a lawful basis (under UK GDPR Article 6) for the reasonable steps which the union is required to take under that section. Under the Code, the first of those steps is identifying their members from the workers identified in the work notice. Trade unions may use data contained in the work notice, and other necessary data (such as addresses) which they hold about their members to take the necessary reasonable steps to ensure that their members identified in the work notice comply with it. The reasonable steps do not require trade unions to reveal the identities of their members to third parties. Equally, the union should dispose of any personal data of non-members of the union who are identified in the work notice, in accordance with their obligation under the relevant data protection legislation.

To address the data protection concerns, paragraph 18 of the updated Code clarifies that, when engaging with employers, unions should not disclose to employers any information about who their members are. Additionally, the Code states that employers must also ensure that the work notice does not include any special category data, including a person's union membership status.

Regarding paragraph 20 of the draft Code, the Government recognises that the first sentence of this paragraph did not sufficiently explain the steps that a trade union should take when it failed to identify its members within the work notice. The main intention of this paragraph was to clarify that a failure to identify a small number of members, and therefore omitting those members from subsequent steps, may not constitute an overall failure by the union. We have therefore deleted that first sentence, whilst retaining the text to reflect that intention (paragraph 21 of the updated Code).

Step 2 – Encouraging individual members to comply with a work notice

Proposals

Once a union has identified its members, it should issue each of those members with an individual communication or notice (a 'compliance notice'), advising them not to strike during the periods in which they are required by the work notice to work.

Feedback received

While some respondents agreed that step 2 contained sufficient information to help workers identified in a work notice comply with it; others raised concerns.

As with step 1, respondents were concerned about the data protection implications of this step. Responses also raised concerns that step 2 (and the draft Code more generally) conflicted with the UK's human rights obligations. Some responses to the consultation also recommended alternative means of communication, such as oral briefings in the workplace.

Some respondents suggested that, by encouraging a member to comply with a work notice, the Code effectively requires a trade union to perform the same role as an employer and noted that while the trade union would be required to contact an identified worker, an employer would be under no such obligation to do so.

Respondents felt the Government should not be seeking to dictate the content of a union's communications with its members.

Some respondents stated that step 2 failed to explain legal issues with sufficient clarity, in particular that it is not the case, as stated in paragraph 25d(ii) and 25e of the draft Code, that an identified worker "must comply" with a work notice.

Respondents also said the draft Code and template compliance notice at Annex A failed to provide guidance about a worker's rights if the employer seeks to deploy them in inappropriate roles, or information on the protections afforded to workers against unfair treatment by employers.

Additionally, a small number of respondents were concerned about the financial cost to unions should it become necessary to send out an individual communication or notice to members identified in a work notice via first class post.

Government response

On the further data protection concerns around step 2 (and the remaining steps), the Government is confident that undertaking any of the reasonable steps will not breach the privacy rights of individuals. In taking steps 1 and 2, the union is simply processing certain data that it holds about its membership in order to communicate with some of its members (as it will regularly do as a matter of course on different topics). There should be no identification of which workers are union members, outside the confines of the administration of the union.

With regard to the human rights concerns around step 2, we do not believe that a trade union can take reasonable steps to ensure compliance with a work notice by its members, as is required by

the legislation, unless it communicates with them. For the Code of Practice, it is then a question of the means of communication and the degree of content. The Government's view is that the fairly detailed guidance contained in the Code is helpful to trade unions, workers and employers in providing relative clarity and certainty. In particular, by following the guidance, trade unions will have a fair degree of assurance of maintaining protection against liability under section 219 of the 1992 Act, so meeting the concern expressed by the Joint Committee on Human Rights during passage of the 2023 Act. However, we recognise that there is a balance to be struck between competing concerns.

The proposed content of the compliance notice at paragraph 25 and Annex A of the draft Code is of moderate length and is intended to provide both context and practical guidance for members, to give them a sense both of what they are guided to do and why. The Government's view is that something would be lost if any of that proposed content were removed.

The Government also believes that the pro forma draft at Annex A of the Code is helpful, especially while the legislation is relatively new. In the absence of such drafts, the communications required under step 2 of the draft Code could be implemented inconsistently, which would likely lead to confusion. This is also not the only example of the content of communications between unions and their members being provided for in or under legislation (see, for example, the requirements for the content of voting papers at section 229 of the 1992 Act).

In addition, trade unions are recommended to use the pro forma draft communication at Annex A of the draft Code but are also not restricted from amending this or proceeding in a different way, provided that they meet their overarching obligation to take reasonable steps to ensure that their members comply with the work notice (see paragraph 14 of the draft Code).

On the suggestion that step 2 could be delivered orally rather than in written form, we believe that written communication is important for the sake of both clarity and practicality. Oral communication would be less helpful for many union members and would arguably impose a greater practical and resource burden on the trade union. The Government has therefore sought to focus most of the reasonable steps set out in the Code on pro forma written communications with members, which can be sent straightforwardly by email wherever the union and members have an email address.

While the Government agrees that the employer is not required by the 2023 Act to give to its workers a notice specifying the work that they are required to carry out, the Code does not suggest that there is any such requirement. However, in the normal course of the employer conducting its business, once the employer has decided to give a work notice, it has every incentive to ensure that its relevant workers are aware of the work that they are required to do and to give them notice of this. The Code encourages the employer to do this, without suggesting that this is a legal obligation: which is evidenced by the sentence 'the member should receive from the employer' in paragraph 25d of the draft Code.

On the suggestion that Step 2 requires a trade union to behave like an employer, the Government does not agree that any part of the Code requires a trade union to step into the role of an employer or to relinquish its role as a union. It is expressly recognised at paragraph 11 of the draft Code that the union is not required to take any steps outside its normal powers. At its core, the Code provides that unions, when under an obligation to take reasonable steps to ensure their members comply with a work notice, should encourage members identified in the work notice to work as required by the notice and, to that extent, not to strike on days they are required to work. That is consistent both with the role envisaged for the union by Parliament in the 2023 Act and with the normal functions of unions in advising and encouraging their members on different matters.

Regarding the statement at paragraph 25d(ii) and 25e of the draft Code, that an identified worker "must comply" with a work notice, the Government agrees that the Act gives neither the employer nor the state the power to compel individuals to work. However, workers are required by contract to

work for their employer. In addition, an employee who fails to comply with a work notice may lose protection against unfair dismissal under section 238A of the 1992 Act, as was referred to in paragraph 25e of the draft Code. All workers may be subject to disciplinary proceedings if they fail to comply with a work notice and choose to take strike action instead. In that sense therefore, workers identified in a work notice "must comply" with it (language supported by Parliament through paragraph 8(3) of the Schedule to the 2023 Act). In the Government's view, it is important that this position is plainly expressed to those trade union members who are sent a compliance notice.

The Government also does not agree that the compliance notice needs to provide further guidance about a worker's rights if the employer seeks to deploy them in inappropriate roles. The template compliance notice already makes clear that the work required should be work that the worker normally does or work which the worker is capable of doing and is within their employment contract. It therefore follows that a worker need not comply with a work notice if they are incapable of carrying out the work or it falls outside their contract. It is important that the template compliance notice be of reasonable length, and it cannot seek to comment on every possible scenario. We expect that it will be rare that an employer tries to require a worker to carry out an inappropriate role. If this did occur, a trade union would be free to advise its member accordingly; and that would be consistent with the reasonable steps required of the union under section 234E of the Act.

On the concerns about the burden step 2 places on trade unions, particularly if they have to use first class post, we anticipate that the vast majority of compliance notices will be sent via email. While we recognise the use of first class post will have a cost, we do not anticipate that this will be substantial in the large majority of cases.

Changes made to the Code of Practice

While the Government does not agree that the Code of Practice dictates the content of communications between trade unions and their members, we have added paragraph 27 to the updated Code, emphasising that while the trade union is recommended to use the draft compliance notice, it is not required to do so.

Further, following our clarification to paragraph 20, as described earlier in this response document (that failure to identify a small number of union members and issue a compliance notice would not automatically constitute a failure to take reasonable steps), we have reinforced this message in paragraph 31 of the updated Code.

Step 3 – Communications with the wider membership

Proposals

The union should send a communication to its wider membership explaining that a work notice has been issued in relation to the upcoming strike action and how that notice will affect the strike.

Feedback received

Some respondents agreed that step 3 would help to inform wider members that a work notice had been issued and that it would assist with relationships between employees. Where respondents considered it reasonable for unions to communicate with all members, they also generally agreed that step 3 and the proposed communication template (Annex B) contained sufficient information to inform the wider membership.

However, other respondents commented that this step was onerous, inconsistent with paragraph 10 of the draft Code, or outside of the scope of the 2023 Act altogether. Some additionally suggested that non-compliance with step 3 of the draft Code would not constitute a failure to take reasonable steps (in contrast to the position stated in paragraph 13 of the draft Code). Finally,

some responses raised concerns over the drafting of Paragraph 32 of the draft Code, and whether the compliance notice should direct workers to the trade union or their employer.

Government response

On the concerns that step 3 contradicted paragraph 10 of the draft Code or was outside the scope of the 2023 Act, the Government is confident that step 3 of the draft Code is consistent with the text of paragraph 10 of the draft Code, with the remainder of the Code, and with sections 203 and 234E of the 1992 Act. The purpose of the information notice is to help to ensure that members of the union who are identified in a work notice comply with it.

The information notice would reinforce the compliance notice for those members identified in the work notice and act as a safeguard both for the employer and for those identified members (reducing the chance that they slip accidentally into non-compliance with the work notice). It also explains the context of the work notice and the position of identified members to those members who are not identified but who are likely to go on strike. That explanation facilitates the delivery of the minimum service level by improving the understanding of all trade union members induced to take part in the strike and smooths the way to compliance by identified members with the work notice, who would then be less likely to face a lack of understanding from lawfully striking colleagues.

The information notice does not require or encourage a member who is not identified in a work notice to do anything, apart from requesting those members not to encourage members who explain that they are required to work by a work notice to withdraw their labour. Such a request and encouragement are directed at ensuring that union members identified in the work notice comply with it. We therefore do not believe that there is any “overreach” and we believe that the ability to strike of members who are not identified in the work notice remains unaffected.

On the suggestion that not complying with step 3 would not constitute a failure to take reasonable steps - paragraph 13 of the draft Code is framed as an encouragement to unions to take each of the steps set out in the Code. The Government considers that these would be reasonable steps for a union to take and the draft Code therefore provides practical guidance to that effect. However, that paragraph also states that unions can take additional or different steps if they consider this reasonable. Paragraph 7 also makes clear that the Code does not itself impose any legal obligations.

Finally, on the comments that paragraph 32 of the draft Code suggested a worker contact their employer, paragraph 32 states that the information notice may explain that if members are unsure what to do on a strike day, including whether they are required to work under the work notice, they should contact their local union representative or their employer. This suggestion, which is framed as an option for the union, is intended to be helpful to individuals, who have a relationship with their employer as well as their union. The employer will have prepared the work notice and may therefore be expected to have the best understanding of it.

Changes made to the Code of Practice

Whilst, as set out above, the information notice proposed in step 3 of the draft Code helps to reinforce the compliance notice for members identified in the work notice, and helps others taking part in the strike to understand the position of those workers identified in the work notice, the Government recognises it may be an additional burden on trade union time and resources and is less important than the other steps. Consequently, we have removed Step 3 and the template information notice in Annex B from the updated Code of Practice.

Unions may nevertheless want to consider sending a general communication about the work notice to all members involved in the strike, but a failure to do so would be unlikely to constitute a failure to take ‘reasonable steps’.

Step 4 – Picketing

Proposals
The union should instruct the picketing supervisor (if present) or another union official or member to use reasonable endeavours to ensure that picketers avoid, so far as reasonably practicable, trying to persuade members who are identified in a work notice not to cross the picket line at times when they are required by the work notice to work. Union members who have been identified in a work notice can take steps to show the picket that they have been identified in a work notice. Additionally, the picket supervisor, if present, should encourage any such worker to attend work.

Feedback received
The majority of respondents did not suggest anything else that could be done on the picket line to help secure that a minimum service level is met.

A number of respondents were concerned that step 4 of the draft Code was outside the scope of the 2023 Act, undermined the roles of a picket and that it was inconsistent with sections 220-220A of the 1992 Act, which provide that it is lawful for a person, in contemplation or furtherance of a trade dispute, to peacefully persuade any person to abstain from working. Other responses voiced concerns about the handling of special category data if unions were expected to share details of those named in the work notice with picket supervisors. Finally, some responses suggested it could compromise the role of the picket supervisor, or lead to the targeting of trade union members and picketers by the employer.

Government response
While the 2023 Act does not expressly refer to picketing, section 234E and amended section 219 are clear that a union which fails to take reasonable steps to ensure that all members identified in the work notice comply with the notice, will lose its protection from certain liabilities in tort. The Government therefore considers it would be difficult for a union to comply with the requirement to take reasonable steps without moderating its picketing activities in any way. Without step 4, a union could use the picket to reverse or change the messages contained in the compliance notice and encourage its members, including those identified in a work notice, to strike. The Government considers that this would be contrary to Parliament's intention which is, as set out within the 2023 Act, to facilitate a minimum level of service through the requirement for unions to take reasonable steps. Furthermore, the provision of guidance on this aspect is within the powers in section 203 of the 1992 Act. which provides that the Secretary of State may issue Codes of Practice containing such practical guidance as he thinks fit for the purpose of promoting the improvement of industrial relations.

In relation to picketing, trade unions should act consistently with the other steps referred to in the Code. Picketing is a very specific aspect of strike action and it would be a significant omission if the Code made no provision about it.

Step 4 requires the picket supervisor or other picketers to respect the position of a member who decides to explain that they are identified in a work notice, and who may therefore need to cross the picket line to comply with it.

The picket supervisor and other pickets remain free to exercise lawful persuasion as normal in relation to other workers. There is no conflict between sections 220 – 220A and section 234C of the Act and nothing to prevent a union from acting consistently with each of those sections and with the draft Code.

On the targeting of trade union members and picket supervisors, the 2023 Act is clear that an employer must not have regard to whether a person is a trade union member, or whether they have or have not taken part in trade union activities or made use of trade union services, when issuing a work notice. This applies to any trade union, including a particular branch or section of a

trade union. If a worker considers they have been unfairly targeted, then they may raise a grievance with their employer or take legal action to challenge whether the work notice complied with the law.

Changes made to the Code of Practice

The Government considers the inclusion of step 4 (now step 3 in the updated Code) as important to achieve the overarching policy objective of the Code. However, we have amended the obligation on the union in step 4 (step 3 in the updated Code) from a positive one (focused on encouraging named individuals to attend work) to a negative one (making clear that those on the picket should refrain from encouraging those named on a work notice to strike, at times when they are required by the work notice to work). Consequently, we have removed paragraph 38 of the draft Code, which recommended that the picket supervisor, if present, should encourage a worker, who decided to disclose to the picket they had been identified in a work notice, to attend work. This change leaves pickets able to act consistently with the Code by simply exercising no persuasion in relation to such a worker.

In addition, we have added a new paragraph specifying that trade unions are not required to notify the picket supervisor of the names of those identified on a work notice, and the picket supervisor or other picketers are not required to ask whether a worker is identified on a work notice (paragraph 34 of the updated Code).

Step 5 – Assurance

Proposals

Trade unions should ensure they do not undermine the steps they take to meet the reasonable steps requirement and should take swift action to correct any actions of union officials or members which seek to undermine the steps the union has taken or will take to comply with the requirement.

Feedback received

A small number of respondents suggested that trade unions should take actions to ensure they have suitable systems and staff available to carry out the reasonable steps. It was also suggested that trade unions should take steps to limit any further communications, including social media, to members identified in a work notice.

Some respondents also said that step 5 was unclear and contradictory.

Government response and changes made to the Code of Practice

The Government considers the inclusion of Step 5 (now Step 4 in the updated Code) in the Code as important to ensure that any other actions a union may take, do not undermine the other reasonable steps. However, we recognise the drafting of the step could be clearer and have therefore re-drafted to be clear that if a union sends a general communication to members which includes a call to strike, then it should use reasonable endeavours to tailor that message in so far as it applies to its members identified in a work notice.

On the suggestion that trade unions should not further communicate with members identified in a work notice, we do not feel that it would be proportionate to recommend this in order to meet the ‘reasonable steps’ requirement.

Other General Comments

In addition to the specific comments on particular steps, respondents gave a number of more general reflections on the Code. The main issues raised are set out below.

Human Rights and International Obligations

Some respondents stated the Code of Practice itself was a breach of Article 11 (Freedom of assembly and association) of the European Convention on Human Rights.

We do not agree with this view. The Government is required to act proportionately in pursuing its legitimate aim of protecting the rights and freedoms of others through minimum service levels, balancing this aim with the rights of trade unions and their members to freedom of association. The 2023 Act does not provide for any state sanction, either criminal or civil, for breach of the legislation by any trade union or worker. Rather, the legislation builds on the existing structure of the 1992 Act, primarily by qualifying the protection of the trade union from tort liabilities in section 219 of the same Act.

The strikes, against which the 2023 Act provides a measure of protection, are called and organised by trade unions. It therefore follows that some proportionate degree of interference in the relationship between a trade union and its members is unavoidable, if the legislation is to achieve its legitimate aim. That is why section 234E of the 1992 Act (inserted by the 2023 Act) provides that a union which calls a strike, and which fails to take reasonable steps to ensure that all its union members identified in a work notice comply with the notice, will lose its statutory protection from proceedings in tort by the employer.

During the passage of the Bill which became the 2023 Act, evidence provided to the Joint Committee on Human Rights stressed the importance of clarity and foreseeability as to what constitute 'reasonable steps'. The Committee encouraged the Government to provide this greater clarity in the Bill. The Government recognised the importance of this clarity and committed in Parliament to issue a Code of Practice under section 203 of the 1992 Act.

The Government is therefore satisfied that the steps set out in the Code are proportionate and consistent with the rights of unions and their members to freedom of association.

Timescales and the ability to vary a work notice

Some respondents also voiced concerns about the time a union would have to carry out the reasonable steps, particularly if the work notice is varied by the employer. In some cases, respondents requested that the Government add suggested timescales to the Code for each of the reasonable steps.

The Government recognises the time that unions will have to take the reasonable steps required by section 234E of the Act is relatively short. If an employer decides to issue a work notice, it must be issued to the trade union a minimum of 7 calendar days prior to the strike day unless a later day is agreed with that trade union, and the employer can vary the work notice before the end of the 4th calendar day prior to the strike, or later if agreed with the trade union. These timings are largely dictated by the period of notice of industrial action required under section 234A of the 1992 Act: a minimum of 14 days. Following such a notice, it will take time for employers to decide whether to issue a work notice and, if so, to prepare it. Broadly speaking, section 234C therefore divides the period of 14 days into two halves: the first half for the employer and the second half for the trade union.

The Code does not seek to recommend further time limits within the period of 7 days for the trade union to take its reasonable steps. In the Government's view, this would place unnecessary limits on the flexibility permitted to trade unions. The Government considers that the time within which

the trade union is required to take reasonable steps such as sending the compliance notice, whilst short, is adequate, particularly given the use of email as the primary method to contact members.

Guidance for employers and interaction with other guidance

Some respondents questioned the rationale for bringing forward a statutory Code of Practice for trade unions, but not for employers, who will be responsible for issuing any work notice. Some respondents also suggested the draft Code of Practice exceeded the scope of the 2023 Act by referring readers to the Code of Practice on Industrial Action Ballots and Notice to Employers, and the Code of Practice on Picketing.

The Government's commitment in Parliament was to issue a Code of Practice on the reasonable steps to be taken by a trade union. This was in response to recommendations from the Joint Committee on Human Rights and points raised in both houses during Parliamentary passage of the Bill which became the 2023 Act, and in recognition that additional detail on the 'reasonable steps' provision would give trade unions more legal certainty and foreseeability with regard to their obligations in the Act. No similar commitment was needed or given in relation to other provisions of the 2023 Act.

A statutory Code of Practice has advantages for trade unions, including being able to provide more detail than would in practice be possible in primary legislation, as well as providing greater certainty for employers and workers. Although the Code is not in itself binding, following it should help to provide some assurance for trade unions that they are taking 'reasonable steps' and, hence, the maintenance of their statutory protection under the 1992 Act.

The Government considers that a statutory Code of Practice is less needed in relation to work notices, in respect of which section 234C of the Act already contains more detailed provision.

The Code of Practice and guidance on issuing work notices (which the Government will publish imminently) are being prepared so as to be consistent with each other and capable of being read together.

Additionally, in the Government's view, there is nothing in the Code of Practice on Industrial Action Ballots and Notice to Employers which conflicts with this Code of Practice as proposed. These are separate subjects unaffected by the 2023 Act.

The Government considers paragraph 6 of the draft Code, which refers to relevant other Codes, to be helpful. However, given the comments in response to this consultation, a clarifying sentence has been added to that paragraph in the updated Code which reads: "For avoidance of doubt, neither of those other Codes of Practice, nor that other guidance, is incorporated into this Code of Practice."

Language

A number of respondents suggested the terminology used in the draft Code – in particular, 'should' and 'must' and 'employee' and 'worker' - could be clarified.

The Government agrees that the precise use of language in the Code is important and has sought to achieve this. The use of "must" and "should" is explained at paragraph 8 of the draft Code. "Employee" and "worker" have their usual legislative meanings, as under the 1992 Act, and have been briefly explained at paragraph 9 of the updated Code for clarity. Following the consultation, we have reviewed the use of language throughout the Code to ensure consistency and accuracy, and in some cases we have amended the language to ensure clarity.

Next Steps

The Department will lay the updated Code of Practice on Reasonable Steps in Parliament for approval by both Houses of Parliament. Subject to that approval, a commencement order (a statutory instrument) will then be laid in Parliament to bring the Code into effect.

Alongside the Code, the Government has introduced to Parliament regulations to implement minimum service levels for passenger railway services, border security and NHS ambulance services and the NHS Patient Transport Service. Subject to Parliamentary approval, those regulations will come into force after the Code comes into effect.

The Government will also make consequential amendments to the Picketing Code under Section 205 of the 1992 Act, to reflect the changes brought in by the 2023 Act, and will publish non-statutory guidance for employers, trade unions and workers on issuing work notices under section 234C of the 1992 Act (as inserted by the 2023 Act).

Further information on minimum service levels for hospital and fire and rescue services will be made available in due course.

Department for Business & Trade

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