



Department  
for Transport

# **Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023**

Guidance on the regulations

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# Contents

Contents	3
Introduction	4
Background	5
1. Scope of Services covered by the Regulations	6
Train operation services	6
Infrastructure services	8
Light rail services	9
Out of scope services	9
2. The Minimum Service Level for Train operation services - Category A	10
FAQs	10
3. The Minimum Service Level for Infrastructure services - Category B	18
FAQs	19
4. The Minimum Service Level for Light rail services - Category C	22
FAQs	23

## Introduction

1. Section 234B of the Trade Union and Labour Relations (Consolidation) Act 1992 ('the Act'), as amended by The Strikes (Minimum Service Levels) Act 2023, enables the Secretary of State to make regulations to specify relevant transport services to which minimum service levels can apply during strikes, and to set out what those minimum levels of service will be. The Act then enables employers to issue a work notice to trade unions who have notified them of a strike in a relevant service to secure the provision of the minimum service level during that strike.
2. The Secretary of State for Transport has [made] regulations to provide for minimum service levels for certain passenger rail services known as The Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023 ("the Regulations"). This guidance accompanies the Regulations, and it is intended for use by employers and unions whose employees or members deliver a service as defined in the Regulations. It sets out what passenger rail services are in-scope of the Regulations and what minimum service levels apply in the event employers issue work notices. It also includes some illustrative examples of the types of workers who may be impacted by work notices relevant to minimum service levels for passenger rail services. The Department will review the guidance periodically to ensure it is still helpful in setting out how the minimum service levels are likely to work in practice.
3. This guidance is non-statutory. The document gives general guidance only and is not a substitute for professional legal advice. Authoritative interpretations of the law can only be given by the courts.
4. The advice in this guidance only relates to minimum service levels for passenger rail services. This document may be read in conjunction with other related guidance and codes of practice including:
  - [Code of Practice: Reasonable Steps](#)
  - [Department for Business and Trade's Work Notice Guidance](#)

## Background

5. The Act allows employers to issue a 'work notice' to a trade union ahead of the strike in certain services where;
  - Minimum service levels for those services are set out in regulations; and
  - the trade union gives the employer a notice of strike action which relates to the services set out in the regulations.
6. A work notice is a document, issued by an employer to the trade union, which identifies the workers required and the work they must carry out during the strike to secure the minimum levels of service set out in the minimum service level regulations. Further details regarding work notices and how to prepare and issue them are set out in the [Work Notice Guidance](#). When issuing a work notice, employers must comply with their licence, contractual and other legal obligations, including employment law, data protection, equality, and health and safety requirements.
7. As set out in the Act, once a work notice has been given to a trade union, that union is required to take “reasonable steps” to ensure that all of its members who are identified within the work notice comply with the notice. By doing so, the trade union will not lose its protection from proceedings in tort brought by the employer in relation to an act done by the union to induce a person to take part, or to continue to take part, in a strike. Such proceedings could include the employer seeking damages from the union or an injunction to prevent the strike action taking place. Further details regarding the obligations on a union to take "reasonable steps" and the consequences of not doing so are set out in the Code of Practice: Reasonable Steps.
8. The Act (and therefore the Regulations) only applies to strike action and does not apply to other types of industrial action, such as action short of a strike (which includes overtime bans, on-call bans or call-out bans).
9. The Regulations set out the minimum service levels for passenger rail services and came into force on 8 December 2023. The Regulations apply to any strike which takes place after the day the Regulations came into force, even if the strike has been called under a strike ballot which is dated before the Act gained Royal Assent (20 July 2023), or if notice of the strike was given to the employer before the Regulations came into force.

# 1. Scope of Services covered by the Regulations

10. The Regulations set out the relevant passenger rail services which a minimum service level can apply to, and what the relevant minimum service level is for each of those services. It is only the employers who provide the services as defined in the Regulations who are able to issue work notices to secure the provision of the minimum service level during a strike.
11. Given the complexities of the operation of passenger rail, the Regulations define passenger rail services into 3 distinct types of services and apply different minimum service levels to each of these different services. This section of the guidance sets out the scope of those passenger rail services, which are as follows:
  - Train operation services
  - Infrastructure services
  - Light Rail services

## Train operation services

12. Train operation services covers services for the carriage of passengers by railway (and refuelling of trains) but only if undertaken by Train Operating Companies (TOCs) who provide passenger services under the following arrangements:
  - Franchise agreements awarded by the Secretary of State or Welsh or Scottish Government;
  - As an operator of last resort in England, Scotland or Wales;
  - Agreements with a passenger transport executive or local transport authority; or
  - Under agreements with Transport for London (or their subsidiaries)

- 13.** Operators in scope of the regulations include the following franchises/concessions (and their successors):
- Caledonian Sleeper
  - Chiltern
  - Cross Country
  - East Anglia
  - East Midlands
  - Elizabeth line
  - Essex Thameside
  - Greater Western
  - InterCity East Coast
  - London Overground
  - Merseyrail
  - Northern
  - ScotRail
  - South Eastern
  - South Western
  - Thameslink, Southern & Great Northern
  - TransPennine Express
  - Wales & Borders
  - West Coast
  - West Midlands
- 14.** "Services for the carriage of passengers by railway" means that all activities associated with the carriage of passengers (and not just the movement of trains) are captured by this minimum service level. In other rail legislation, maintenance of trains is defined separately from "services for the carriage of passengers by railway", so the scope of train operation services does not include these maintenance services, other than refuelling of trains undertaken by the in-scope train operating companies (and not by their subcontractors).
- 15.** Although operators of light rail systems would appear to be captured by both the above definition and the definition of the scope of the Light Rail Services minimum service level, only the minimum service level for light rail applies to them.
- 16.** This precise definition means that the following types of train operators are not in-scope services for the purposes of the Regulations (and therefore cannot issue work notices to their workers to secure minimum service levels):
- rail freight operating companies;
  - open access operators; and
  - Sub-contractors of the persons described above.
- 17.** Train operating companies that operate international rail services (i.e., services which commence or terminate outside Great Britain); and heritage, museum and tourist rail services are also excluded from the regulations. This means whilst they could fall within the above definition for train operating services, they are unable to issue work notices.

- 18.** The train operating companies who are not covered in the above definition in the Regulations are not subject to the train operation services minimum service level, but they may benefit from the availability of the Infrastructure Services minimum service level which is out in Category B of the Regulations. These operators may therefore want to familiarise themselves with the meaning of infrastructure services and the relevant chapter for the Infrastructure services minimum service level further below in this guidance.

## Infrastructure services

- 19.** The definition of infrastructure services in the Regulations relates to certain services provided by an Infrastructure manager. An 'Infrastructure manager' for the purposes of the Regulations means infrastructure managers as defined in the Railways (Access, Management and Licencing of Railway Undertakings) Regulations 2016 ("the 2016 Regulations"), as well as persons who deliver all of those infrastructure services listed in the Regulations on behalf of those infrastructure managers. This means that sub-contractors who deliver just some of the listed infrastructure services are not in-scope of this definition (and therefore cannot issue work notices to their workers to secure minimum service levels).
- 20.** The definition of infrastructure manager in the 2016 Regulations excludes the following railway infrastructure, so these facilities are not included within the meaning of infrastructure manager under the Regulations:
- which consist of, or are situated on, branch lines and sidings whose main operation is not directly connected to the provision of train paths;
  - are within a maintenance or goods depot, or a marshalling yard;
  - are within a railway terminal, port, factory, mine, quarry, nuclear site or site housing electrical plant;
  - which consist of, or are situated on, networks reserved mainly for local, historical or touristic use; and
  - are within a military establishment.
- 21.** Infrastructure managers in scope of the regulations include Network Rail (High Speed) Limited, Network Rail Infrastructure Limited, and Rail for London (Infrastructure) Limited.
- 22.** The infrastructure services that are in scope are set out in regulation 2 of the Regulations, and broadly covers the operation and reactive maintenance of the network. 'Reactive maintenance' means maintenance that is necessary to ensure the availability, provision or operation of the relevant infrastructure being referred to in the Regulations (e.g. such as network, or rolling stock etc). This would not include planned/scheduled maintenance. The construction of infrastructure is also not included in scope, so no work notices can be issued to require such persons to work on a strike day. Though these services are out of scope for the purposes of the Regulations, these services could be managed during a strike period as they would be managed now, for example using contingent staff. Further information is set out in Chapter 3 'The Minimum Service Level for Infrastructure services - Category B' below.



- 23.** As with train operating services, although operators of light rail systems would appear to be captured by both the above definition and the definition of the scope of the Light Rail Services minimum service level, the minimum service level for light rail defined below only applies to light rail services.

## Light rail services

- 24.** The definition of light rail services covers train operation services and infrastructure services (both as explained above) but only as they relate to the train operators and infrastructure managers of the following light rail systems as listed in the Regulations:
- Blackpool Tramway
  - Docklands Light Railway
  - Edinburgh Trams
  - Glasgow Subway
  - London Trams
  - London Underground
  - Manchester Metrolink
  - Nottingham Express Transit
  - Sheffield Supertram
  - Tyne & Wear Metro
  - West Midlands Metro
- 25.** No light rail services for any other light rail systems other than listed, (e.g. other tramways or metros) are included in the scope of the Regulations.

## Out of scope services

- 26.** The guidance on the definition of the relevant services above sets out which services are in and out of scope of the relevant definitions for minimum service levels. There are other aspects of passenger railway services which are also not covered by the relevant services in the Regulations which means no work notices can be issued in respect of those services.
- 27.** Station services is one aspect of passenger rail services which are not covered by the Regulations. This means that duties performed by staff at stations cannot be included in work notices, even where those services are carried out by the TOCs and infrastructure managers listed above. Though these services are out of scope for the purposes of the Regulations, these services could be managed during a strike period as they would be managed now, for example using contingent staff. Further information is set out in Chapter 2 'The Minimum Service Level for Train operation services - Category A' below.

## 2. The Minimum Service Level for Train operation services - Category A

28. The Category A minimum service level applies to all train operation services (as described from paragraph 12 of Chapter 1 above) but excludes train operation services which come within the definition of light rail services (i.e., on the 11 defined light rail systems). For the MSL that applies to train operation services for those 11 light rail systems, see Chapter 4. The minimum service level for all other in-scope train operation services is described below as well as the answers to FAQs on implementing this minimum service level.
29. If a strike is called that affects train operation services (as described in the earlier Chapter), the minimum service level is to **provide the train operation services necessary to operate the equivalent of 40% of the timetabled services during the strike period**. Timetabled services refers to the origin station to destination station train journeys listed for that operator in the National Rail Timetable. Further information regarding the components of this minimum service level are set out in the FAQs below.

### FAQs

#### 30. How do operators decide whether to issue work notices?

Strike action may impact train operators differently depending on the nature of the strike, for example, the duration of the strike action or the group of employees who have been balloted to strike. The Department is also aware that strikes may in some circumstances be managed by reliance on non-striking staff, including staff who normally undertake other duties who are contractually required or voluntarily offer to cover different roles. This is often referred to as using 'contingent staff'. In considering whether or not an employer intends to issue a work notice there are a number of factors that can be considered and examples of these are described in the 'Deciding to issue a work notice' section of the [DBT Work Notice Guidance](#). In considering whether to apply the train operation services minimum service level, it is anticipated that the relevant operator would also consider matters such as the following:

1) Whether the scope of the strike action relates to the carriage of passengers by railway and/or refuelling of trains by TOC staff, or whether it relates to other services that the operator provides, such as station services. Station services are not included in the scope of 'train operation services' so the operator cannot use a work notice for strikes on these services and should rely on its non-statutory strike planning arrangements (e.g. by using contingent staff) to provide those services on the strike day. If the strike relates partly to the in-scope train operation services and partly to out-of-scope services (e.g. station services), then a work notice may be used for the in-scope services only;

2) The extent of the impact it is anticipated the strike will have on the train operation services (i.e. services for the carriage of passengers by railway and/or refuelling of trains). If the operator thinks that the impact will be quite minimal or that they can provide greater than 40% of their timetabled services during the strike without using a work notice (e.g. by using contingent staff), then issuing a work notice should not be necessary. This is likely to be the case for strikes which will only impact a small element of the operator's services. If the operator thinks that the impact of the strike is that they are likely to only be able to provide 40% of their timetabled services or less, then the use of a work notice is recommended.

### **31. What services are included in the train operation services minimum service level?**

The train operation services minimum service level is to **provide the train operation services necessary** to operate the equivalent of 40% of the operator's timetabled services.

As explained in Chapter 1 above, the meaning of train operation services includes 'services for the carriage of passengers by railway', and the refuelling of trains undertaken by the train operators themselves (not by sub-contractors). 'Services for the carriage of passengers by railway' covers all activities associated with the carriage of passengers (and not just the movement of trains) and refuelling of trains by the operator is also covered.

The meaning of 'the train operation services necessary' referred to in the minimum service level would therefore include:

- a) all on-train services (such as driving of trains, guards, catering and other on-train services the operator considers necessary)
- b) all other services associated with enabling these train services to run such as timetabling services, passenger communications, HR, finance and managerial services, internal cleaning, train fuelling and empty rolling stock vehicle movements before and after a passenger train journey.

The above services must only be that necessary to secure the equivalent of 40% of the operator's timetabled services during the strike period.

### **32. What is meant by the operator's timetabled services?**

The operator's timetabled services are those train services attributable to the particular employer (i.e. operator who is considering issuing a work notice) as set out in the National Rail Timetable (NRT). Operators will be familiar with the NRT which is produced by Network Rail for passengers and planners and covers services on the national rail network. It is published to apply from December (Principal) and May (Subsidiary) each year and is made available online<sup>1</sup>.

A service listed in the NRT also has a precise meaning for the purposes of the minimum service level. A service means each origin station to destination station train journey listed in the timetable.

For the avoidance of doubt, timetabled services only relate to train services and any bus, ferry or other services listed in the NRT are not applicable.

### **33. What is the significance of a timetabled service referring to origin station to destination station train journeys?**

Each timetabled service is counted as each full train journey from its origin station to its destination station as described in the NRT.

For example, the NRT may timetable journeys for an operator from London to York and London to Edinburgh via York running during the strike period. In this example, London-York would be a timetabled service and London-Edinburgh would be a timetabled service.

The operator will need to consider its timetabled services in this way when assessing its total timetabled services during the strike period so it can calculate the 40% of timetabled services referred to in the minimum service level. More information on how to calculate these percentages is included in questions 36 and 37 below.

### **34. Which version of the National Rail Timetable should operators be using to assess its timetabled services?**

Operators must use the most recently published version of the NRT that covers the period of strike. Whilst the NRT is published to apply from December and May each year, we understand the NRT may be published many weeks prior to the date they apply from.

Therefore, if a strike is called on the 20<sup>th</sup> November for the 13<sup>th</sup> December, and a new NRT was published on the 18<sup>th</sup> November commencing on the 11<sup>th</sup> December then this latest timetable should be used. However, if the strike was called for the 9<sup>th</sup> December, then the previous version of the NRT should be used.

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<sup>1</sup> <https://www.networkrail.co.uk/running-the-railway/the-timetable/electronic-national-rail-timetable/>

### 35. What is a strike period?

The Regulations refer to **“a service is a timetabled service ... if it is a service to be provided by that person which is specified in the National Rail Timetable as operating during the strike period”**. The strike is the whole period during which the trade union has notified the employer that it will induce its members to strike.

This notification of the strike period could for example be specified by the trade unions as:

- a) a set time period e.g. from 12:01am to 11:59pm on 1 November; or
- b) that members who are due to commence shifts during particular times will be induced to strike for the whole period of their shifts (for example, ‘members will be instructed to strike for the duration of any shift which commences between 4:59am and 11:59pm on 1 November’). This means, using this example, that the strike period covers the duration from 4:59am up to the end of the shift of the last person rostered to commence their shift before the cut off time at 11:59pm, which would likely mean that the strike period would end at some point during 2 November.

### 36. How do train operators calculate all their timetabled services (100%) for the strike period?

In order to calculate 40% of the timetabled services, operators will first need to be clear what all (100%) of their timetabled services would be during the strike period.

The operators should start by identifying all their timetabled services (as described in questions 32 and 34 above) for the strike period. If the strike is to take place between 12:01am and 11:59pm hours on a particular Saturday, the timetabled services will be all origin station to destination station journeys which are listed on the NRT for that operator on that date and between those times. As the minimum service level relates to origin station to destination services, it is recommended that operators count all the timetabled services which depart from their origin station during the hours of the strike period. These services do not need to have reached their destination station during the strike period, but this also means that services which are already in transit prior to the strike period commencing, would not be counted as ‘timetabled services for the strike period’.

However, the Regulations state that a service is only a timetabled service (for the purposes of calculating the minimum service level) ‘where a network or station is available to operate such a service’. Operators should therefore discount any timetabled services they know will not be able to operate during the strike because the entire route of that service will be closed due to the unavailability of the network.

Where only part of the route is closed, or the origin/destination station is unavailable, at the time of performing the calculation, then these timetabled services should still be included when calculating the total timetabled services for the strike period, as these routes could partially operate.

For example, if the line between London and York is to be closed on the day of the strike (for example, due to engineering work) then timetabled services between London and York should not be counted for the purposes of identifying the total number of timetabled services, but trains between London and Edinburgh via York should be included, as they could run in-part (i.e. from York to Edinburgh).

Operators should calculate all their timetabled services (100%) for the strike period prior to the point of consulting with Trade Unions on the work notice, but after the strike notification has been received. Once the 100% has been calculated, there is no obligation on the operator to recalculate this, but if the availability of the network changes significantly after this point then operators may wish to consider recalculation. If this change in availability is after the issue of the work notice, and the operator wishes to recalculate, they will need to comply with the requirements regarding variation of a notice set out in the Act (and as further explained in the [DBT Work Notice Guidance](#)).

**37. How do train operators then calculate the equivalent of 40% of the timetabled services?**

Once the total number of timetabled services during the strike period has been identified, operators then must plan to run the equivalent of 40% of the total number of services.

Those planned train journeys must be between any of the same origin and destination stations as the timetabled service listed in the NRT from which the total timetabled services during the strike period (i.e. the 100% services) was calculated. However, whilst the NRT also lists precisely what time each of those train journeys depart and arrive at each station on its journey including the destination, the reference to ‘the equivalent of’ within the regulations means that the services planned to be run by the operator as part of the 40% need not be at precisely the same times or stop at precisely the same intervening stops as the train services listed within the NRT.

However, where the operator knows (before a work notice is issued) that a particular origin station or destination station will be unavailable during the strike period e.g. due to part of the network to that station being closed (or scheduled to be closed) or the station itself closed (e.g. for maintenance), then the operator can still include services on that route by planning to operate a shorter route from/to the next available station on that route from the one that was closed.

**38. Are there any requirements on which services a train operators should choose when calculating the 40%?**

The Regulations do not specify which services should or should not run during a strike period and the operator therefore has a discretion as to which services to run.

Operators are best placed to make decisions on which train services should run and how passengers are best served on a strike day. However, the aim of the minimum service level policy is to enable passengers to make important journeys such as to access work, healthcare and education and also to protect the wider economy (such as retail and the night-time economy) from disproportionate impacts of strike action.

Operators may feel it is appropriate to run more services on certain routes than others, or no services at all on some routes, but it is hoped that operators would bear these aims in mind when considering which timetabled services to select.

When deciding which services to run, operators may prioritise time of day (i.e. running services during peak hours), by frequency or by geography.

Operators should also consider any other obligations that they are required to comply with (e.g. contractual obligations or safety and accessibility requirements) when selecting which services will run to form part of the 40%.

**39. Do train operators need to choose services which require as few staff as possible?**

No, operators should instead consider the recommendations in question 38 above when selecting the services to run to deliver the equivalent of 40% of timetabled services.

**40. Do operators have to deliver exactly the 40% of timetabled services during the strike period?**

The work notice to secure the provision of the minimum service level (i.e. to secure the provision of the train operation services necessary to operate the equivalent of 40% of the timetabled services) must be issued to the trade unions no later than 7 days prior to the strike day, unless a later day is agreed with the trade union. This is further explained in the [DBT Work Notice Guidance](#).

We understand there are operational issues that could arise after the work notice has been issued, including on the day of the strike, that could mean the operator is unable to deliver the 40% minimum service level despite the work notice seeking to secure this. Whilst the work notice (if issued) must include only those persons and work required by them that is reasonably necessary to secure the minimum service level, there are no consequences under the Act or the Regulations if the operator is unable to secure the 40% minimum service level on the day of the strike.

Work notices can only include staff reasonably necessary to secure the 40% minimum service level, and as such if work notices are issued the operator should not plan to deliver a service level above 40% during the strike period.

Train operators should plan to deliver a number of services which is as close to a 40% service level as is reasonably practicable. Work notices cannot be issued to secure a service at a level less than the minimum level of service.

**41. Should the work notice be varied if there are changes in what network or stations are available to operate services?**

As set out in [DBT Work Notice Guidance](#), work notices can be varied until the end of the 4th day before each strike date (unless a later time is agreed with the trade union). This can provide flexibility to make changes for reasons such as sickness, a change in circumstances or administrative errors.

However, once the final work notice has been issued, then there are some circumstances where the operator may wish to alter its planned 40% service within the parameters of the agreed work notice. For example, should infrastructure become unavailable on the day due to bad weather, the operator should use its normal service recovery plans to operate the best service it can within the scope of the work notice (i.e. the persons and work specified on the work notice).

Where work notices have been issued to secure the provision of the services planned to deliver the minimum service level, it is recognised that some of those planned services may have to be cancelled or truncated such that the number of services delivered on the day falls below the minimum service level. This could be for a number of reasons, for example: infrastructure closing, mechanical failures and bad weather.

**42. What happens if there is a strike that affects both train operators and infrastructure?**

If operators have been told by their relevant infrastructure manager(s) that infrastructure will not be available because of strike action, then this should be considered using the process set out in question 36, as with any other cause of infrastructure unavailability.

**43. Can work notices be used to secure train operation services that will take place outside the strike period?**

No. The Regulations set out the minimum service level as the provision of the train operation services necessary to operate the equivalent of 40% of the timetabled services **during the strike**. The Act describes what a work notice must include to secure the MSL and this includes who must work during the strike (and what work they must do) in order to secure the minimum service level. The work notice can therefore only be used to secure train operation services during the strike and a work notice cannot be used to require a person to work outside of the strike period.

However, a work notice can include all train operation services necessary to operate the 40% timetabled services during the strike period. As described in question 31 above this can include on-train services and all other services associated with enabling these train services to run. This may include, for example, returning rolling stock to depots after a train journey has been completed if this is usual operational practice.



**44. How detailed should work notices be in describing work?**

Guidance on drafting work notices can be found in the [DBT Work Notice Guidance](#).

We would expect that work notices would be framed in such a way as to allow flexibility on provision of the services to secure the minimum service level during the strike, such as referring to driving trains rather than driving a train which departs at a particular time.

### 3. The Minimum Service Level for Infrastructure services - Category B

45. The Category B minimum service level applies to all infrastructure services (as described from paragraph 19 of Chapter 1 above) but excludes infrastructure services which come within the definition of light rail services (i.e. on the 11 defined light rail systems). For the minimum service level that applies to infrastructure services for those 11 light rail systems, see Chapter 4. The minimum service level for all other in-scope infrastructure services is described below as well as the answers to FAQs on implementing this minimum service level.
46. Category B in the regulations sets the minimum service level for infrastructure services, namely that during the strike all the infrastructure services (as defined in the Regulations) will be provided on the priority routes listed in the regulations and '5-mile radius infrastructure' between the hours of 6am and 10pm. This minimum service level can be used by all infrastructure managers who manage infrastructure included in the list of priority routes. This includes Network Rail Infrastructure Limited, Network Rail (High Speed) Limited, and Rail for London (Infrastructure) Limited.
47. The Regulations define the priority routes mostly by means of a list of routes between principal stations in the Schedule of the Regulations, noting where a route goes via or avoids certain stations to ensure clarity of the precise route. In addition to the list of routes in the Schedule, the meaning of 'priority routes' also includes the Channel Tunnel Rail Link which is also defined within the regulations. This list and definitions of priority routes in the Regulations should be used for formal planning and validation purposes, however a map (the Priority Route Map - PRM) is available on GOV.UK<sup>2</sup> as a visual representation for illustrative purposes only.

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<sup>2</sup> [Minimum service levels for passenger rail: government response and policy approach - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

## FAQs

### **48. How does an infrastructure manager decide whether to issue a work notice?**

In considering whether or not an employer intends to issue a work notice there are a number of factors that can be considered and examples of these are described in the Deciding to issue a work notice section of the [DBT Work Notice Guidance](#). This includes whether the employer may be able to deliver a higher service with or without using the work notice. For example, the infrastructure manager may consider whether they will be able to operate more routes than those set out in the list of priority routes in the regulations, because if work notices are to be issued, only these routes can be opened by the infrastructure manager.

### **49. What does '5-mile radius infrastructure' mean?**

As well as the priority routes, the minimum service level also requires that infrastructure services are provided in relation to certain infrastructure within a 5-mile radius of those priority routes. This 5-mile radius infrastructure is any part of the network that consists of loops or sidings within a 5-mile radius of the priority routes. It also includes lines which connect the priority routes with depots or freight terminals which are within that 5-mile radius. This enables the minimum service level to cover the infrastructure up to the entrance of that depot or freight terminal if within a 5-mile radius. However, the meaning of 5-mile radius infrastructure only covers lines which connect the priority routes with depots or freight terminals and does not include infrastructure within those depots or freight terminals.

### **50. What services are included in the infrastructure services minimum service level to operate the priority routes? Can infrastructure managers issue a work notice to provide just some of the infrastructure services?**

The minimum service level is to provide all the defined infrastructure services between the hours of 6am and 10pm on the priority routes and the 5-mile radius infrastructure. The meaning of the infrastructure services is defined in Regulations and some terms further explained from paragraph 19 of Chapter 1 above. To secure this minimum service level, infrastructure managers would need to plan their work notice such that all these infrastructure services can be provided. For example, one aspect of the infrastructure services is “the operation or reactive maintenance (or both) of a railway signalling system or of any other railway communication equipment” and the minimum service level requires these services to be secured for all priority routes and the 5-mile radius infrastructure.

As explained in paragraph 22 of Chapter 1 above, the scope of infrastructure services does not include services such as construction services or pre-planned maintenance, so the minimum service level does not relate to these services and so cannot be considered when preparing a work notice. Where this is a strike affecting these out-of-scope services, provision of such services could be managed during the strike as they would be managed now, for example using contingent staff.

**51. Can infrastructure managers use the minimum service level to provide services before 6am and after 10pm to get ready for the strike? If not, can infrastructure managers use contingency staff outside of those hours?**

The minimum service level relates to the services to be provided during the strike but only permits the infrastructure services to be provided between 6am and 10pm. For example, if a notice of strike is given that a strike will be between the hours of 12pm and 12am on a single day, the minimum service level means infrastructure can only be provided between the hours of 12pm and 10pm. If the minimum service level is used (by the infrastructure manager issuing a work notice), no infrastructure services can be provided outside of these times.

The Act provides that work notices must not identify more persons than are reasonably necessary for the purposes of providing the levels of service under the minimum service regulations. As the minimum service level for infrastructure services is limited to the hours of 6am to 10pm, work notices can only require workers to work during these times. The MSL is to provide the infrastructure services for all of that period if the strike covers all of that period or longer. For example, if the strike is from 12am to 12pm on a single day and an infrastructure manager decides to issue a work notice to secure the minimum service level, they must secure the MSL from 6am to 12pm. The infrastructure manager cannot use work notices for example to only provide the infrastructure services between 7am and 9pm because that suits their shift patterns or planning better.

If work notices are used to secure the minimum service level, the work notice must be planned to provide the infrastructure services during the strike but only between the hours of 6am to 10pm.

**52. Can infrastructure manager use minimum service levels to provide just some of the priority routes?**

In order to make use of the infrastructure minimum service level to mitigate impact on those select routes and secure a service, the infrastructure manager would need to issue work notices to secure all of the priority routes listed in the regulations for which they are responsible - work notices cannot be used to deliver only some of the priority routes on their own.

**53. What happens if there are strikes that affects both train operators and infrastructure managers at the same time?**

The train operation services minimum service level and the infrastructure services minimum service level are designed to be used in parallel with one another where necessary. In the event a strike were to take place that affects both categories of service, we recommend infrastructure managers should communicate with train operators as soon as practical of their intention make use of the infrastructure services minimum service level or not. This will give train operators early notice as to the likely infrastructure availability in order to then plan their approach to the train operation minimum service level and work notices.

**54. Do infrastructure managers have to deliver infrastructure services on all of the priority routes during the strike period? What if operational requirements on the day mean it isn't possible?**

The work notice to secure the provision of the minimum service level (i.e. to secure the provision of the infrastructure services on the priority routes listed in the regulations and the 5 mile radius infrastructure) has to be issued to the trade unions no later than 7 calendar days prior to the strike, unless a later day is agreed by the trade union. This is further explained in the [DBT Work Notice Guidance](#).

We understand that operational issues could arise after the work notice has been issued, including on the day of the strike, that could mean the infrastructure manager is unable to deliver the minimum service level despite the work notice seeking to secure this. Whilst the work notice (if issued) must include only those persons and work required by them that is reasonably necessary to secure the minimum service level, there are no consequences under the Act or the Regulations if the infrastructure manager is unable to secure the minimum service level on the day of the strike.

**55. Should the work notice be varied if there are changes in infrastructure availability?**

As set out in the [DBT Work Notice Guidance](#), work notices can be varied until the end of the 4th day before each strike date (unless a later time is agreed with the trade union). This can provide flexibility to make changes for reasons such as sickness, a change in circumstances or administrative errors. As set out in the guidance, before varying a work notice, an employer is required to consult the trade union about any proposed variation to the number of persons to be identified and/or to the work specified, which will have impacts on the reasonable steps trade unions have to take.

However, once the final work notice has been issued, then there are some circumstances where the infrastructure manager may wish to alter its planned service within the parameters of the agreed work notice. For example, should infrastructure become unavailable on the day due to bad weather, the infrastructure manager should use its normal service recovery plans to operate the best service it can within the scope of the work notice (i.e. the persons and work specified in the work notice). The DBT Work Notice Guidance states that employers may therefore want to ensure that the work specified in the work notice will allow some limited re-tasking or re-deployment of workers if necessary.

## 4. The Minimum Service Level for Light rail services - Category C

56. The Category C minimum service level applies to light rail services, being both train operation services and infrastructure services (as described in paragraphs 14 and 22 of Chapter 1 above) as they relate to the 11 light rail systems described in paragraph 24 of Chapter 1 above. The minimum service level for the in-scope light rail services is described below as well as the answers to FAQs on implementing this minimum service level.
57. If a strike is called that affects light rail services (as described in the earlier Chapter), the minimum service level is to **provide the light rail services necessary to operate the equivalent of 40% of the timetabled services during the strike period**. Light rail services means both train operation services and infrastructure services. Timetabled services refers to the trains listed as operating for that light rail system during the strike period, in the most recently published timetable on the day the notice of strike was received from the trade union. Where there are a number of lines for a particular light rail system, and different timetables for those lines, then timetabled services refers to the aggregate of all those timetables. The meaning of 'train' in the regulations (and in this guidance) also includes trams. Further information regarding the components of this minimum service level are set out in the FAQs below.

## FAQs

### 58. How do operators decide where to issue work notices?

Strike action may impact light rail system operators differently depending on the nature of the strike, for example, the duration of the strike action or the group of employees who have been balloted to strike. The Department is also aware that strikes may in some circumstances be managed by reliance on non-striking staff, including staff who normally undertake other duties who are contractually required or voluntarily offer to cover different roles. This is often referred to as using 'contingent staff'. In considering whether or not an employer intends to issue a work notice there are a number of factors that can be considered and examples of these are described in the deciding to issue a work notice section of the [DBT Work Notice Guidance](#). In considering whether to apply the light rail services minimum service level, it is anticipated that the relevant light rail operator would also consider matters such as the following:

1) Whether the scope of the strike action relates to the light rail services in scope of minimum service levels e.g. where the strike relates to train operations, whether it relates to the carriage of passengers by railway and/or refuelling of trains by its staff, or whether it relates to other services that the operator provides, such as station services. Station services are not included in the scope of train operation services so the light rail operator cannot use a work notice for strikes on these services and should rely on its non-statutory strike planning arrangements (e.g. by using contingent staff) to provide those services on the strike day. If the strike relates to services related to running the infrastructure, whether it relates to those services which are within the meaning of infrastructure services as described in Chapter 1 above. For example pre-planned maintenance services are not in scope of that term. If the strike relates partly to the in-scope light rail services and partly to out-of-scope services (e.g. station services or pre-planned maintenance services), then a work notice may be used for the in-scope services only;

2) The extent of the impact it is anticipated the strike will have on the light rail services (i.e. services for the carriage of passengers by railway and/or refuelling of trains, and/or the specified infrastructure services). If the light rail operator thinks that the impact will be quite minimal or that they can provide greater than 40% of their timetabled services during the strike without using a work notice (e.g. by using contingent staff), then issuing a work notice should not be necessary. This is likely to be the case for strikes which will only impact a small element of the light rail operator's services. If the light rail operator thinks that the impact of the strike is that they are likely to only be able to provide 40% of their timetabled services or less, then the use of a work notice is recommended.

**59. What services are included in the light rail services minimum service level?**

The light rail services minimum service level is to **provide the train operation services and infrastructure services necessary** to operate the equivalent of 40% of the operator's timetabled services.

As explained in Chapter 1 above, the meaning of train operation services includes 'services for the carriage of passengers by railway', and the refuelling of trains undertaken by the light rail operators themselves (not by sub-contractors). 'Services for the carriage of passengers by railway' covers all activities associated with the carriage of passengers (and not just the movement of trains) and refuelling of trains by the light rail operator is also covered.

The meaning of 'the train operation services necessary' referred to in the minimum service level would therefore include:

- a) all on-train services (such as driving of trains, guards and other on-train services the light rail operator considers necessary)
- b) all other services associated with enabling these train services to run such as timetabling services, passenger communications, HR, finance and managerial services, internal cleaning, train fuelling and empty rolling stock vehicle movements before and after a passenger train journey.

The meaning of infrastructure services is also as set out in Chapter 1. Where a light rail operator provides both train operations and infrastructures services they will therefore be able to issue work notices which cover both the train operation services and the infrastructure services necessary to operate the equivalent of 40% of the light rail systems timetabled services.

Where the employer is an infrastructure manager only, i.e. they do not also provide the train operation services, they would not be able to issue work notices to secure the minimum service level as they would not have the power to amend the timetabled services for that light rail system.

**60. What is meant by the operator's timetabled services?**

The operator's timetabled services are all the trains listed as operating in the timetable published by the person who provides the train operation services for that light rail system.

The regulations state that the timetable used must be one that was last made available to the public by the train operator on the day the notice of strike received from the trade union.

**61. What if a light rail operator has a number of timetables for different lines across its light rail system?**

Where multiple, separate, timetables exist covering different lines the timetable (for the purposes of the Regulations) means the aggregate of those individual timetables, i.e. the aggregate of all trains on all the timetables for that light rail system.



**62. Which version of the timetable should the light rail system operators be using to assess its timetabled services?**

When assessing the timetables services for the purposes of the minimum service level, operators must use the most recently published version (i.e. that was available to the public) of the timetable for that light rail system, at the point of receiving the notice of strike from the union, that covers the strike period.

**63. What is a strike period?**

The Regulations refer to “**a service is a timetabled service ... if it is a train listed as operating during the strike period**”. The strike is the whole period during which the trade union has notified the employer that it will induce its members to strike.

This notification of the strike period could for example be specified by the trade unions as:

- a) a set time period e.g. from 12:01am to 11:59pm on 1 November; or
- b) that members who are due to commence shifts during particular times will be induced to strike for the whole period of their shifts (for example, ‘members will be instructed to strike for the duration of any shift which commences between 4:59am and 11:59pm on 1 November’). This means, using this example, that the strike period covers the duration from 4:59am up to the end of the shift of the last person rostered to commence their shift before the cut off time at 11:59pm, which would likely mean that the strike period would end at some point during 2 November.

**64. How do light rail operators calculate all their timetabled services (100%) for the strike period?**

In order to calculate 40% of the timetabled services, operators will first need to be clear what all (100%) of their timetabled services would be during the strike period.

The operators should start by identifying all its timetabled services (as described in questions 60 and 63 above) for the strike period. If the strike period is between 12:01am and 11:59pm hours on a particular day, the timetabled services will be all services during that period. It is recommended that operators count the total number of trains which are scheduled to depart on the timetable during the hours of the strike period. The timetable may, for example,:

- a) list the scheduled trains as individual journeys (e.g. in columns), in which case each journey should be counted as one train; or
- b) list the first and last train and how frequently the trains will depart in between (e.g. every 20 minutes). In this scenario each departing train (including the first and last) should be counted as one train;

- c) be an orbital line, with the timetable indicating when the service starts and ends on a particular day and should call at each station around the orbital. In this scenario, each rotation of the orbital line which is scheduled to operate on the timetable should be counted as one train.

These trains do not need to be able to reach their destination station during the strike period, but this also means that trains which are already in transit prior to the strike period commencing, would not be counted as 'timetabled services for the strike period'.

Operators should calculate all their timetabled services (100%) for the strike period prior to the point of consulting with Trade Unions on the work notice, but after the strike notification has been received. Once the 100% has been calculated in order to work out the 40%, there is no obligation on the operator to recalculate this. If the operator wishes to recalculate, they will need to comply with the requirements regarding variation of a notice set out in the Act (and as further explained in the [DBT Work Notice Guidance](#)).

**65. How do light rail operators then calculate the equivalent of 40% of the timetabled services?**

Once the total number of timetabled services during the strike period has been identified, the light rail operator then plans to run the equivalent of 40% of the total number of services (i.e. 40% of the number of trains).

The light rail operator has the flexibility to choose which train journeys it plans to provide as the 40%. The planned train journeys need not be between the same origin and destination stations as the timetabled service from which the total timetabled services during the strike period (i.e. the 100% services) was calculated.

Whilst the light rail operator's timetable may list or indicate precisely what time each of those train journeys was due to depart and arrive at each station/stop on its journey including the destination, the reference to 'the equivalent of' within the regulations means that the services planned to be run by the light rail system operator as part of the 40% need not be at precisely the same times or stop at the same stops as the services within the timetable.

In deciding which train journeys it plans to provide, the light rail operator may also want to consider any infrastructure that it knows will be unavailable, for example, due to planned maintenance work.

**66. Are there any requirements on which services a light rail operator should choose when calculating the 40%?**

The Regulations do not specify which services should or should not run during a strike period and the light rail operator therefore has a discretion as to which services to run.

Light rail operators are best placed to make decisions on which train services should run and how passengers are best served on a strike day. However, the aim of the minimum service level policy is to enable passengers to make important journeys such as to access work, healthcare and education and also to protect businesses (such as retail and the night-time economy) from disproportionate impacts of strike action. Operators may feel it is appropriate to run more services on certain routes than others, or no services at all on some routes, but it is hoped that operators would bear these aims in mind when considering which timetabled services to select.

When deciding which services to run, operators may prioritise time of day (i.e. running services during peak hours), by frequency or by geography.

Operators should also consider any other obligations that they are required to comply with (e.g. contractual obligations or safety and accessibility requirements) when selecting which services will run to form part of the 40%.

**67. How should operators determine what infrastructure to open?**

Operators should first determine the 40% of services, as set out above, and then determine what infrastructure would be needed to secure this service. The work notice should then secure the train operation services and the infrastructure services necessary to operate the 40% of services.

**68. Do light rail operators need to choose services which require as few staff as possible?**

No, operators should instead consider the recommendations in question 66 above when selecting the services to run to deliver the equivalent of 40% of timetabled services.

**69. Do light rail operators have to deliver exactly the 40% of timetabled services during the strike period?**

The work notice to secure the provision of the minimum service level has to be issued to the trade unions no later than 7 calendar days prior to the strike, unless a later day is agreed with the trade union. This is further explained in the [DBT Work Notice Guidance](#).

We understand there are operational issues that could arise after the work notice has been issued, including on the day of the strike, that could mean the operator is unable to deliver the 40% minimum service level despite the work notice seeking to secure this. Whilst the work notice (if issued) must include only those persons and work required by them that is reasonably necessary to secure the minimum service level, there are no consequences under the Act or the Regulations if the operator is unable to secure the 40% minimum service level on the day of the strike.

Work notices can only include staff reasonably necessary to operate the 40% minimum service level, and as such if work notices are issued the light rail operator should not plan to deliver a service level above 40% during the strike period.

**70. Should the work notice be varied if there are changes in what services can be made available during the strike?**

As set out in [DBT Work Notice Guidance](#), work notices can be varied until the end of the 4th day before each strike date (unless a later time is agreed with the trade union). This can provide flexibility to make changes for reasons such as sickness, a change in circumstances or administrative errors.

However, once the final work notice has been issued, then there are some circumstances where the light rail operator may wish to alter its planned 40% service within the parameters of the work notice. For example, should infrastructure become unavailable on the day due to bad weather, the operator should use its normal service recovery plans to operate the best service it can within the scope of the work notice (i.e. the persons and work specified on the work notice).

Where work notices have been issued to secure the provision of the services planned to deliver the minimum service level, it is recognised that some of those planned services may have to be cancelled or truncated such that the number of services delivered on the day falls below the minimum service level. This could be for a number of reasons, for example: infrastructure closing, mechanical failures and bad weather.

**71. What happens if there is a strike that affects only staff working on the infrastructure of the light rail system?**

Where a light rail operator is responsible for both the train operation services and the infrastructure services for the light rail system, a strike may only directly impact the infrastructure services and not the train operation services. In this scenario, light rail operators should calculate the 40% of services in the same way as if the strike affected any other group of staff, and then what train operation and infrastructure staff are required to operate that service.

**72. Should infrastructure staff and train operations staff be on the same work notice?**

Yes, the minimum service level is to secure train operation services and infrastructure services – so if minimum service levels are used, staff delivering each of those services should be placed on the same work notice as one minimum service level is being secured by that employer.

**73. Can an employer who only provides the infrastructure services for the light rail systems issue work notices?**

Where the light rail operator is an infrastructure manager only i.e. they do not also provide the train operation services, they would not be able to issue work notices to secure the minimum service level as they would not have the power to plan and amend the timetabled services for that light rail system.

**74. Can a light rail operator who is not responsible for any of the infrastructure for the light rail system, or who is responsible for only some of the infrastructure, issue work notices to secure opening the infrastructure?**

Where a train operator is not responsible for any of the infrastructure for the light rail system (or has sub-contracted responsibility for all of the infrastructure services to another employer), the train operator cannot issue work notices to secure opening the infrastructure (i.e. they can only issue work notices to secure the train operation services the operator is responsible for). This is because the work notice can only list employees of the train operator. Nonetheless, work notices may be issued to secure train operations over all the infrastructure of the system that is available, irrespective of who is responsible for the infrastructure.

Where a train operator of a light rail system is also the infrastructure manager for some but not all the infrastructure for the light rail system (or has contracted responsibility for some of the infrastructure services to another employer), the operator can issue work notices to secure the provision of the infrastructure services (as well as the train operation services) but only on the infrastructure which the train operator is responsible for as infrastructure manager. Nonetheless, work notices may be issued to secure train operations over all the infrastructure of the system that is available, including infrastructure the train operator is not also the infrastructure manager for.

Whether the light rail operator is the infrastructure manager for all, some, or none of the infrastructure for the light rail system should not impact the calculation of the total timetabled services during the strike period, i.e. the 100% services (as described in question 64).

**75. Can a light rail system use priority routes kept open by an infrastructure manager under the infrastructure services PRM?**

If parts of the light rail system also operate on the heavy rail network, and the Category B minimum service level is used by the infrastructure manager of that network to operate the priority routes, those priority routes should be accessible to light rail operators.

Light rail systems cannot issue work notices to secure the opening of this infrastructure (as they do not operate it), but they can issue work notices to their workers (such as train/tram operators) to operate a service over that infrastructure.

**76. Can work notices be used to secure light rail services that will take place outside the strike period?**

No. The Regulations set out the minimum service level as the provision of the light rail services (i.e. the train operation services and infrastructure services) necessary to operate the equivalent of 40% of the timetabled services **during the strike**. The Act describes what a work notice may include to secure the minimum service level but this includes who must work during the strike (and what work they must do). The work notice can therefore only be used to secure the light rail services during the strike and a work notice cannot be used to require a person to work outside of the strike period.

However, a work notice can include all light rail services necessary to operate the 40% timetabled services during the strike period. As described in question 59 above this can include, for example, on-train services and all other services associated with enabling these train services to run. This may include, for example, returning rolling stock to depots after a train journey has been completed if this is usual operational practice.

**77. How detailed should work notices be in describing work?**

Guidance on drafting work notices can be found in the [DBT Work Notice Guidance](#).

We would expect that work notices would be framed in such a way as to allow flexibility on provision of the services to secure the minimum service level during the strike, such as referring to driving trains rather than driving a particular train which departs at a particular time.

**78. Can light rail systems not listed in the Regulations utilise minimum service levels?**

No. Only the 11 light rail systems listed in the Regulations are in-scope for the light rail services MSL and able to utilise minimum service levels.

The names of the listed systems in the regulations were the names of the systems commonly in use at the time of the laying of the regulations and should the name of the system subsequently change it would continue to be able to utilise MSLs.