

Title: Strikes (Minimum Service Levels) Bill IA No: BEIS078(F)-22-LM RPC Reference No: RPC-BEIS-5259(1) Lead department or agency: Department for Business and Trade Other departments or agencies: Department for Health and Social Care, Department for Transport, Home Office	Impact Assessment (IA)			
	Date: 21/02/2023			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
Summary: Intervention and Options	Contact for enquiries: lm.correspondence@beis.gov.uk			
	RPC Opinion:			

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Qualifying provision
£0.0m*	£0.0m*	£0.0m*	

What is the problem under consideration? Why is government action or intervention necessary?

Trade unions can play an important and constructive role in the modern workplace. The Government accepts that when unionised workers take industrial action, it is likely to cause negative externalities, as employers subject to industrial action are unable to provide services (such as education, or transport, or healthcare) to their full extent, which can risk the lives and livelihoods of the public and negatively impact other employers who are not involved in the industrial dispute. However, for some public services the negative externalities of industrial action can significantly affect the wider economy and community.

Voluntary MSLs (derogations) can be agreed ahead of strikes, but unfortunately, they are not widely used across key sectors and where they are used, their use can be inconsistent. It is therefore not possible to rely on voluntary agreements to sufficiently mitigate the disproportionate impact strikes can have on the wider public, including on lives and livelihoods. Government intervention is therefore necessary to apply minimum service levels via regulations to help mitigate the impacts of industrial action on those not directly involved in the dispute while continuing to enable workers to exercise their choice to strike.

What are the policy objectives of the action or intervention and the intended effects?

Objective: The policy aims to limit the impacts of strike action on the lives and livelihoods of the public. It seeks to strike a balance between the right of unions and their members to strike with the need for the wider public to be able to access key services. It does this by enabling Government to apply minimum levels of service on strike days for key sectors.

Intended effects: The introduction of multi-sectoral Minimum Service Levels (MSL) legislation is designed to enable people to continue to attend their place of work, access education and healthcare, and go about their daily lives during strikes, whilst balancing this against the ability to strike. Where MSLs are applied, there should be a more consistent level of service for the public from strike to strike, as well as minimising the circumstances in which there are no services at all. This will help protect the public and guard against disproportionate risks to lives and livelihoods.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: 'No change' counterfactual.

Option 1: Voluntary MSLs (derogations) without legislative intervention within key public services

Option 2 (preferred): Provide Secretaries of State the power to implement MSLs via regulations for key sectors.

Option 3: Outright ban on strikes in some critical emergency sectors

Will the policy be reviewed? It will be reviewed. If applicable, set review date: TBC

Is this measure likely to impact on international trade and investment?		No		
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Withdrawn

* In order to estimate the impact of this measure and subsequent legislation, we would need to make a number of assumptions around the level of service that would be required under future legislation and how this compared to the counterfactual. Hence, we have developed a simple model that looks at the impacts from potential employers involved in an industrial dispute within key public services and carried out break even analysis. This shows that if workers were required to work despite strike action and were able to reduce annual average working days lost by 2%, maintaining the same productivity as usual, then the impact of this policy would be neutral (break-even). This does not include non-monetised impacts, most notably the wider (significant) benefits on the rest of the economy if employers facing strike action can maintain some activity. Hence, we are confident that this policy change and subsequent legislation is likely to be net beneficial to the UK economy, however, we are unable to robustly estimate the size of this impact.

Summary: Analysis & Evidence

Policy Option 2

Description: Setting minimum service levels in a range of key sectors

FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2023	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: £0.0m*

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	4.3		0.0	4.3

Description and scale of key monetised costs by 'main affected groups'

There will be small one-off familiarisation costs for unions (£0.13m) and for employment businesses (£4.3m). We have undertaken break-even analysis. We are confident that this measure will deliver net benefits to UK economy. For example, if only 2% of working days lost a year through industrial action in key sectors are covered by existing workers due to MSLs, it is likely to deliver positive impacts on the economy. This does not include non-monetised impacts, most notably the wider (significant) benefits on the rest of the economy if employers facing strike action can maintain some activity.

Other key non-monetised costs by 'main affected groups'

Government:

- Administrative and familiarisation (direct)
- Enforcement costs (direct)

Businesses (employers and trade unions)

- Operational costs (direct)

Key public service workers:

- Lost utility arising from the restricted ability to strike (direct)
- Indirect cost associated with less strength of bargaining power in relation to workplace disputes, which could result in lower pay and working conditions than they might otherwise have achieved (indirect).

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	£0.0m*		£0.0m*	£0.0m*

Description and scale of key monetised benefits by 'main affected groups'

We have undertaken break-even analysis, and this conservatively suggests that only 2% of working days lost through industrial action a year would need to be covered by existing workers at their usual productivity rate for the policy to break even. If employers have more workers working during strike action, then the potential impacts of this policy are likely to be significantly higher. Hence, if we conservatively assume 2% of workers that are on strike are required to work, the increased output for business is estimated to be £1 million across key sectors.

Other key non-monetised benefits by 'main affected groups'**Wider Impacts:**

- Avoided negative impacts on economic output, leisure expenditure, supply chains and other modes (indirect)

Consumers:

- Improved user experience due to increased and more reliable key public services on strike days (direct)
- Avoided impacts on access to work or ability to earn a living (direct)
- Avoided impacts on private and family life, education, and health (direct)

Businesses (operators and infrastructure managers):

- Increased revenue from service operation (direct)

Key assumptions/sensitivities/risks**Discount rate**

3.5%

Our working assumption for the purpose of assessing the costs and benefits is that they would raise service levels compared with Option 0. At this stage, details around the level of service that would be required under Minimum Service Levels have not been established. Scale of impacts will depend on the extent to which service levels are increased and disruption is limited by the legislation compared with Option 0.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.5	Benefits: NQ*	Net: 0.5	
			2.5

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I. Policy background and problem under consideration

1. Workers in the UK can take industrial action against their employer¹. It is used as a last resort when workers have a grievance with their employer over aspects of their employment relationship. Industrial action is designed to impose an economic and financial cost on the employer, in order to encourage the employer to resolve the issue in dispute and reach a settlement with the union(s). Workers taking industrial action will also face a cost as they will lose their pay for the hours they don't work. They can also face certain detriments from the employer (e.g., loss of bonus, withdrawal of fringe benefits, etc.).
2. In addition, when unionised workers take industrial action it can cause negative externalities, as employers facing industrial action are unable to provide services (such as education or transport) to the same extent as they would normally, negatively impacting on other employers and individuals who are not involved in the industrial dispute. In some public services the negative externalities of industrial action can affect the wider economy and community significantly. 'Currently in the UK, any derogations to provide a minimum level of service in a given sector are subject to voluntary agreement by individual unions, and often negotiated at a local level (which makes effective contingency planning harder).'
3. Results from the Business Insights and Conditions survey (BICS) show evidence of the extent of the wider impact of industrial action on businesses in 2022. In November, 15.6% of businesses said they were affected by strike action (rising from 9.9% in August, 12.6% in September, and 12.5% in October). Of these businesses affected, 19.7% (or 3.1% of all businesses) said they were unable to operate fully because of the strikes in November (compared to 3.0% of all businesses in October, 3.4% of all businesses in September, and 2.4% of all businesses in August)². The BICS figures showed that of businesses affected by strikes, very few were actually facing industrial action from their workers, as is apparent from the ONS Labour Disputes Survey, or indeed the number of industrial action ballots that take place every year. The ONS estimates that there were around 2.77 million enterprises in 2022 (based on the Inter-Departmental Business Register, the sampling frame for BICS)³, which would broadly mean around 429,000 enterprises were affected by the strikes in November.
4. In addition, evidence from the ONS Labour Disputes Survey suggests that on average from 2010 to 2019, strike action accounted for around 450,000 working days lost per year. However, recent data from the ONS⁴ shows that industrial action has increased during 2022, which has led to a significant rise in the number of working days lost because of labour disputes (see **Table 1** below). These figures are significantly above

¹ GOV.UK, Taking part in industrial action and strikes, <https://www.gov.uk/industrial-action-strikes/your-employment-rights-during-industrial-action> (accessed 21 June 2022)

² Business insights and impact on the UK economy - Office for National Statistics (ons.gov.uk)

³ UK business: activity, size and location - Office for National Statistics (ons.gov.uk)

⁴ <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/previousReleases>

the monthly average of 19,500 working days lost in 2019, with 417,000 working days lost in October 2022 being the highest figure since November 2011.

Table 1: ONS Labour Market Statistics - Number of working days lost due to labour disputes.

Month, 2022	Number of working days lost because of labour disputes
June	70,500
July	87,600
August	356,000
September	205,000
October	417,000

Source: ONS Labour Market Overview, UK

- Furthermore, the Department for Transport's internal records suggest that in rail there has been a greater threat of economic disruption from industrial action in recent years: 160 disputes have been lodged by trade unions against employers within rail since 2019. The records indicate that there have been 59 different disputes lodged by unions, and since 2019 there hasn't been a single day where there hasn't been a mandate for strikes outstanding.

International Comparison

- Many European countries already have legislation on MSLs, **Table 2** below provides a summary of countries operating MSLs in legally defined sectors.

Table 2: Comparator minimum service level agreements (MSL)

Country	MSL set by	Sectors
Denmark	Codes of practice - legally required to ensure a basic level of service is maintained in sectors deemed 'essential'.	Health, emergency services
France	Government - MSLs are mandated in critical areas, including hospitals, to maintain public order and services. No MSLs in the private sector, apart from air travel.	Health, communications, education, transport
Ireland	Management and unions - legally required to ensure a basic level of service is maintained in sectors deemed 'essential'.	Health, utilities, emergency services, transport
Spain	Legal decree - MSLs may be decided on a case-by-case basis by government or regional authorities where the services threatened by strikes are deemed essential for the public.	Transport
Belgium	Trade unions and authorities - employers and unions are obliged to agree to MSLs which meet essential needs. If they do not, Ministers can step in.	Health, transport
Italy	Employers, unions and government - MSLs can be extended to all public services where strike action would compromise the right to life, health, freedom and the security, freedom of movement, social security, education and freedom of communication. MSLs are generally agreed between the administration and unions and these agreements are assured by an independent Guarantee Authority.	Health, education, emergency services

Source: The European Public Service Union⁵ (EPSU)

7. Further, the International Labour Organisation recognises MSLs can be an appropriate solution to protect the public from serious consequences of strikes⁶. The ILO itself accepts limitations on strikes is permissible where there is danger to life, personal safety or health of the whole or part of the population. As the minimum service levels framework is developed, the Government will continue to consider its international obligations, including under the ILO.

⁵ <https://www.epsu.org/>

⁶ <https://www.ilo.org/legacy/english/dialogue/ifpdial/llg/noframes/ch5.htm>

8. Minimum service levels do not go as far as other countries in tackling the disruption caused by strikes on the ability to access blue light services. For example, some countries such as Canada, Australia, and parts of the USA, have banned or have the ability to ban strikes outright in such services⁷, as shown in **Table 3**.

Table 3: Examples of countries with no-strike policies

Country	Sectors	Examples of workers effected by no-strike policies
Australia	Emergency services	Police, firefighters
Canada	Health, emergency services, public transport ⁸ , public security services	Police, prison guards, firefighters, hospital workers, Canadian Security and Intelligence Service employees.
USA	Emergency services	Police, firefighters

⁷ See the following: https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3706&context=scholarly_works See the following: [Canada] Quebec Labour Code [Quebec]; Labour Relations Code, section 96 [Alberta], Police Officers Bargaining Act, section 3 [Alberta] https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3706&context=scholarly_works [Australia] Fair Work Act 2009 - Section 424; https://www.pc.gov.au/data/assets/pdf_file/0005/187844/sub0106-workplace-relations.pdf and [USA] <https://onlabor.org/overview-how-different-states-respond-to-public-sector-labor-unrest/#:~:text=For%20that%20reason%2C%20police%20and,in%20an%20incredibly%20vulnerable%20state>

⁸ This applies to Toronto Transit Commission (TTC) workers.

II. Rationale for intervention

9. Strike action in key public services such as ambulance and fire, can put lives and welfare at risk. More generally, strikes in key public services, such as rail services, can lead to adverse personal and financial impacts for users of these services, as well as generating wider social, economic and environmental impacts on the UK and its economy. Whilst a substantial number of users and economic agents bear the impact of strike action, they are neither party to any dispute nor have any avenue to have their interests formally represented. The impact of strike action on these parties represents a negative externality which is not reflected in the interests of employers and trade unions.
10. Recent examples of the negative externalities associated with strike action across key public services include:
 - a. Ambulance worker strikes in December 2022 meant only Category One services were guaranteed an immediate response to a life-threatening condition, such as cardiac or respiratory arrest. Category 2 and 3 services, which cover those suffering from a serious condition or an urgent problem (such as stroke or chest pain) and may require rapid assessment and/or urgent transport, were not guaranteed service.
 - b. The CEBR forecasted the direct cost of all strikes and the indirect cost of worker absences due to rail strikes to be at least £1.7 billion over the eight-month period to January 2023⁹ or 0.1% of expected GDP over this period. CEBR also state “that unresolved industrial disputes are having an adverse impact on growth at a time when many forecasters expect the economy to be in a recession.”
 - c. Furthermore, according to UK Hospitality, the disruption caused by the rail strikes will cost the hospitality industry in lost sales and subsequent impacts an estimated £2.5bn for the period from June 2022 to the beginning of January 2023¹⁰. Further work would be required on these estimates to verify the scale of these impacts.
 - d. Similarly, the Night Time Industries Association (NTIA) has predicted this loss in trade will cost its members £2bn in total¹¹. The NTIA also estimated that UK rail strikes led to clubs and venues seeing a 50% downturn in trade over the busiest weekend of the year (Friday 16th and Saturday 17th December 2022).
11. This shows that frequent strike action, especially in public services, can have a disproportionate impact on the wider economy. As such, the rationale for introducing a framework for MSLs for key public services in the case of strikes is to provide a balance between the ability for workers to strike with the rights of the wider public to go about their daily business, including to attend their place of work, access education and

⁹ <https://cebr.com/reports/eight-months-of-strike-action-to-have-cost-the-uk-economy-at-least-1-7bn-adding-to-existing-recessionary-pressures/>

¹⁰ <https://www.bbc.co.uk/news/business-64143946>

¹¹ See: [Rail strikes 'cost UK hospitality sector £1.5bn in December alone'](#)

healthcare among other things. By enabling a minimum level of service provision during strikes in certain key sectors, the wider negative effects on the economy would be reduced with there being a direct benefit to the service users.

12. Furthermore, as mentioned earlier, many European countries already have legislation on MSLs. Evidence from these countries suggests that MSL observance has helped to limit disruption when industrial action takes place. For example:

- a. In Italy, law 146/1990 regulates the ability to strike in essential public services and defines the role of the Guarantee Authority which oversees application of the law. This law was reformed in the year 2000¹², mandating that enterprises delivering essential public services must reach collective agreements with trade unions or workforce representatives which stipulate the indispensable services to be guaranteed even in the event of strike action. In a recent 24-hour national strike by Airport ground staff, limited disruption was caused to travellers because of Italian law mandating a MSL¹³.
- b. In France, during October 2022, requisitioning was launched in order to ensure adequate fuel provision as a result of strikes by Exxon Mobil workers¹⁴. Also, French primary schools must provide a minimum level of care. If less than 25% of teachers are on strike, schools must remain open. If more than 25% of teachers strike, local authorities must also organise an alternative care option for pupils.

Policy Options

13. The policy objective adheres to the SMART principle:

- a. Specific – Government may decide to only set a MSL in regulations for a key public service where it considers adequate voluntary arrangements don't already exist and where there will be a benefit in doing so.
- b. Measurable – If a MSL is provided during strike action, the Government will monitor the level of service provided within the relevant service to understand the extent to which the public has been able to attend their place of work, access healthcare and education, among other things, in addition to understanding the benefit the MSL may have to the economy and society.
- c. Achievable – The Government is confident that the legislation complies with its obligations under ECHR and that there is a strong rationale for the Government to

¹² On 4 April 2000, parliament definitively approved law 83/2000, which made changes to law 146/1990 on the right to strike in essential public services. (Eurofound.europa.eu)

¹³ See: ITA Airways cancels flights due to Italian airport staff strike on Monday (thelocal.it)
See: Ground handlers in Italy prepare for Monday strike action (businesstravelnewseurope.com)

¹⁴ <https://www.reuters.com/business/energy/french-refineries-strike-continues-despite-requisition-threat-french-media-2022-10-12/>

have the ability to apply MSLs in key sectors, which will help the passage of the Bill through Parliament.

- d. Relevant – the measures outlined within the proposed approach are part of the Governments continuous responsibility to protect the public and prevent undue risks to lives and livelihoods. As some trade unions have been reluctant to agree voluntary minimum service or safety levels during recent strike action, it is therefore necessary for the Government to act.
- e. Time-bound - It is likely that some Government departments will be consulting on proposals to apply MSLs within specific service to inform key regulations on minimum service levels during the Bill passage to ensure that where needed, minimum service levels can be imposed in certain sectors to ensure their benefit is realised quickly.

Description of options considered

Option 0: Do Nothing

- 14. The 'Do Nothing' option would mean that unions and their members would not be required to meet minimum levels of service with employers across key sectors in Great Britain ahead of strikes taking place.
- 15. The level of service provided on strike days would depend on the extent to which workers are absent and the disruption caused to the employer's ability to provide a service. This would primarily be determined by the willingness of workers involved in the dispute to take strike action on the days specified. In some public services, workers planning to strike might also agree voluntarily to maintain some services (such as emergency services – see para 7). There would be no ability for employers to require some workers to work on strike days to ensure that a certain level of service was maintained.
- 16. Strike action would continue to be especially disruptive for key public services. Transport strikes are more likely to impact sectors where employers are unable to work from home. According to BICS, only a small proportion of employees in the education sector are currently working from home – the December 2022 BICS found that 7.5% of employees in education were working from home¹⁵. Similarly in Human Health and social work activities, 6.3% of employees were working from home. This implies these workers are among industries with the lowest proportion of people currently working from home and hence more likely to be impacted by transport strikes.
- 17. There are also currently some ways that employers facing industrial action can obtain cover for the work affected by industrial action:

¹⁵ Business Insights and Conditions Survey data (Wave 71). Based on responses from 9,225 UK businesses referencing the period 1 November 2022 to 30 November 2022. Data from currently trading businesses only.

- a. directly employing new staff (this can be done with or without using an employment agency – a business that sources workers for direct hires by an employer).
- b. the employer could use a training provider to train these workers before utilising them contracting the work out to a service provider.
- c. employ agency workers to provide cover on the day(s) of industrial action.

18. There is some evidence to show that employers are currently using these options to mitigate the effects of industrial action:

- a. In the recent IWGB union strike¹⁶, subcontracted workers were brought in as a short-term measure to ensure continuity of operations and safety on University College London campus during the period of industrial action by the striking guards.
- b. Similarly, when Drapers' Priory School teachers and support staff went on strike, agency workers were brought in to maintain pupils' education provision¹⁷.

19. But not all employers have been able to fully make use of these options due to significant administration costs hiring staff, finding a ready supply of labour available for direct hire at short notice for a short-term post or due to costs. This highlights why a do-nothing option does not achieve the policy objective and why intervention is required.

Option 1: Voluntary MSLs with no government incentives in key public services

- 20. Voluntary arrangements can exist in areas already such as ambulance and fire services to ensure that urgent and emergency cover is provided. The use of voluntary arrangements could be expanded into additional sectors, with the Government setting out expectations and principles for their introduction through non-statutory guidance.
- 21. The level of service that could be provided by employers on a strike day as part of a voluntary agreement would depend on the extent to which MSLs are mutually agreed (negotiated) between employers and their trade unions, the associated level of service contained within the agreement, any penalties/consequences for failing to meet the MSL, including the extent to which workers will engage, as well as ensuring these agreements are updated, maintained and implementable prior to and during each strike. Given these constituent parts, implementing such agreements effectively across large parts of the country and a large number of employers can be challenging without sufficient incentivisation.

¹⁶ See: <https://iwgb.org.uk/en/post/strike-at-ucl-for-equal-rights>

¹⁷ See: <https://www.romfordrecorder.co.uk/news/23047029.harold-hill-school-defends-use-agency-staff-strikes-amid-union-criticism/>

22. The incentive to enter into voluntary MSLs currently can be related to providing emergency cover during strikes, such as for ambulance and fire services. This stems partly from Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992. This section outlines that it is a criminal offence for someone to wilfully and maliciously break a contract of service, in this case in relation to taking industrial action, which they know will endanger life or cause serious bodily injury.
23. In healthcare for example, voluntary MSLs are called derogations. These are agreed at a local level between unions and employers, but they can also be agreed at a regional level. Agreeing a derogation or voluntary MSL can also have reputational benefits too, by demonstrating that the union members will protect those most in need where a derogation has been implemented.
24. Expanding voluntary MSLs to additional sectors and services, beyond those where voluntary MSLs can sometimes occur, will likely require additional incentives beyond the need to provide emergency cover (and the potential for criminal sanctions) or reputational benefits. This is due to these incentives having greater relevance and therefore influence in some sectors compared to others. It is considered that mechanisms that protect unionised workers from the potential reduction in bargaining power that an MSL might lead to may be necessary. There could be financial incentives (such as an associated pay increase, discounted travel or other work-related benefits) or non-financial incentives (which relate more to working conditions such as job security, flexible hours, additional annual leave and other related benefits). Incentives for the employer may include Trade Union agreement to enter into an MSL, which would provide for continuity of service to a degree and a less severe financial hit in the event of strike action. As outlined, it is possible for sufficient incentives to be agreed between the relevant parties, but there may be instances where sufficient incentives are not mutually agreed and therefore agreements are not made.
25. In the health sector, health unions have an obligation to maintain 'life-preserving' care, as outlined above¹⁸, but even with this level of service provided, it is below a level normally regarded for patient safety. For example, in the December 2022 ambulance worker strikes¹⁹, only Category One services were guaranteed (an immediate response to a life-threatening condition, such as cardiac or respiratory arrest) Category 2 and 3 services, which cover those suffering from a serious condition or an urgent problem (such as stroke or chest pain) and may require rapid assessment and/or urgent transport, were not guaranteed service. This demonstrates that where voluntary agreements can be made, the impact strikes have on the wider public can still be significant and disproportionate.

¹⁸ The Trade Union and Labour Relations (Consolidation) Act 1992 makes it a criminal offence for any individual to wilfully and maliciously break their contract of employment through industrial action if they know or have reasonable cause to believe that the probable consequences of doing so will endanger human life or cause serious bodily injury. [Industrial Action Handbook | Employment and Pay | Royal College of Nursing \(rcn.org.uk\)](#)

¹⁹ [Deals struck to ensure 'life and limb' cover during NHS ambulance strike | Emergency services | The Guardian](#)

26. Without sufficient incentive, in all cases and between all parties in all circumstances, the number, consistency and effectiveness of voluntary agreements is unlikely to achieve an outcome that minimises or appropriately addresses the negative externalities on key service users and the wider economy. It is therefore necessary for further intervention to be made to achieve this outcome.

Option 2 (preferred option): Provide Secretaries of State the power to implement MSLs via regulations for key sectors.

27. This option utilises new primary legislation to establish a broad framework for the introduction of MSLs in key public services and provides a mechanism for employers to secure an MSL via a work notice, which sets out the workforce that is expected to work during the strike. The minimum service levels themselves will be applied to specific services, via secondary legislation by the Government, following consultation.

28. This would enable MSLs to be applied for services within key sectors across Great Britain. These include 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.

29. Where an MSL applies to a specific service and once a trade union provides a notice of strike action to an employer, the employer can then roster the workforce required to secure the MSL. The employer cannot roster more people than reasonably necessary to meet the MSL, must consult with the relevant union and have regard to their views before issuing the work notice. Work notices must be issued to the union which has called strike action at least 7 days prior to the strike starting. The work notices can be varied after they are issued up until the end of the fourth day prior to the strike starting, or sooner if this is agreed by the union which has called strike action. The employer must not have regard to whether the worker is or is not a member of a trade union in developing the work notice and the union that is striking must take reasonable steps to ensure that the workers named on the work notice do not participate in the strike.

30. Taking this legislative approach ensures that minimum service levels can be applied to services recognised as important for society to function effectively, and which therefore would benefit from them, and that they can be applied across all employers within the relevant services across Great Britain and across all strikes. This broad application has an advantage in providing more certainty to service users over voluntary agreements, which may not apply consistently, regularly, or effectively for each strike within the relevant services. A further advantage is that the MSLs will be consulted on by Government and be laid before parliament before they are implemented, which provides the opportunity, which they would not normally have, for key stakeholders and elected officials to provide feedback on what the MSL should be. This provides a greater opportunity for the views and needs of the wider public to be incorporated into the development of the MSL.

31. This option would deliver the desired outcomes and meet the policy objective by maintaining a worker's ability to strike while reducing the disproportionate impact strikes can have on the wider public, ensuring that they can continue to access key services like healthcare and transport, whilst mitigating the impact strikes have on the economy, lives and livelihoods.

Option 3: Outright ban on strikes in critical sectors

32. Option 3 would utilise new primary legislation to introduce a ban on taking strike action in some critical public service sectors, as seen in other similar economies (as discussed in the rationale for intervention Rationale for intervention section). This would completely prevent some workers from exercising their ability to strike and always being required to work instead.
33. However, the Government does not currently consider this option to be appropriate, as this option would undermine the Government's intentions for the potential of adequate voluntary agreements being arranged within these critical services. It would not meet the policy objective (maintaining a worker's ability to strike while reducing the disproportionate impact strikes can have on the wider public) and finally outright banning strikes would significantly narrow the scope and impact of the policy given it would cover significantly less services than compared to Option 2, which would be less impactful in mitigating the disproportionate impact strikes can have on the wider public, including on lives and livelihoods.
34. Therefore, this option would not deliver the desired outcomes and meet the policy objective.

III. Focus of this Impact Assessment

35. This Final Stage Impact Assessment provides stakeholders with our current analysis of the costs and benefits of the policy proposal outlined in the Bill.
36. We assess any monetised costs over a ten-year appraisal period and present our estimates in terms of present value costs for this period for business (NPV) and equivalent annualised net direct costs to business (EANDCB). As per current regulatory guidance, EANDCB are presented in 2019 prices and use 2020 as the base year for the present value calculation. All other impacts are given in 2022 prices and use 2023 as the base year for the present value calculation.
37. The Impact Assessment will be subject to full Regulatory Policy Committee scrutiny.

Rationale and evidence to justify the level of analysis used in the IA

38. The Bill will establish a broad framework for the introduction of MSLs and their operation. Details on the levels of service that would be required under minimum service levels (MSLs) will not be included in the primary legislation but will be set by government in subsequent secondary legislation. Therefore, at this stage it is not possible to provide detailed quantified estimates of the expected costs and benefits of this option.

Scope of policy

39. Not all sectors of the UK economy will be directly impacted by the preferred policy option, as the proposed MSL policy measure only applies to a range of key public service sectors²⁰: health services; education; fire services; transport services; decommissioning of nuclear installations and management of radioactive waste and spent fuel; border security²¹. Government may decide to only set an MSL in regulations where it considers adequate voluntary arrangements don't already exist and where there will be a benefit in doing so. As such, not all trade unions are affected by this policy measure.

Numbers in scope

40. To estimate the costs and benefits of this policy, we need to understand the number of employers and unions who will be impacted. The Government is proposing to introduce primary legislation to create the framework for MSLs, which could apply to key sectors only. The details on what minimum service levels looks like for specific services would be consulted on by relevant Government departments.
41. The purpose of this section is to outline the potential number unions, employers, and workers that could be impacted by regulations made under these powers. We take each

²¹ These were sectors previously defined as important public services in the Trade Union Act 2016: <https://www.legislation.gov.uk/ukpga/2016/15/contents/enacted>

of these groups in turn, and for convenience, we refer to this section when discussing these groups to avoid repetition in later sections of the Impact Assessment.

42. Note that although this Impact Assessment considers all key sectors as per the scope of the power in the Bill, the Government at this stage only has plans to consult on and set out MSL requirements in regulations for ambulance services, fire services and rail services.
43. For the other key sectors covered in the Bill, which includes health services, education, nuclear decommissioning, other transport services and border security, the Government expects to continue to reach voluntary agreements where needed and would only look to consult on minimum safety levels as required.

Trade Unions impacted by MSLs

44. Research into unions involved in the services expected to be covered in the MSL policy suggest that around 33 unions could be affected. These include unions specifically active in health, transport services, education, fire services, and border security, as well as more general unions such as Unite, GMB, PCS and Prospect.

Trade Union members impacted by MSLs

45. Research into the same unions described in para.44 suggest that around 3.9 million members could be affected. This is a conservatively high estimate, as this is for all public sector employees²² and subsequent secondary legislation will decide which sectors and respective services will be required to operate a minimum level of service.

Employers impacted by MSLs

46. The legislation gives Government the power to produce regulations setting out an MSL for a service where it feels that it required. The Government has been clear that where adequate voluntary arrangements exist there may be no need to bring forward regulations in an area. Because of this it is difficult to assess the number of employers who will be affected. The details on what minimum service levels looks like for specific services would be consulted on by relevant Government departments, so further analysis will be undertaken for the introduction of any MSL in a key public service sector.
47. An example of the range of key public services that could be covered are those found in the guidance on the key public services Regulations 2017²³. These services are:
- a. Hospitals and ambulance services,
 - b. Teaching in primary and secondary education (excluding fee paying schools),
 - c. Firefighting services,

²² See: <https://www.gov.uk/government/statistics/trade-union-statistics-2021> (May, 2022)

²³ Key public services Regulations 2017 – guidance on the regulations - GOV.UK (www.gov.uk)

- d. London bus services,
- e. Passenger rail services (including metro, underground and tramway services) and maintenance of trains and networks, signalling and operation of the networks and other related rail services,
- f. Civil air traffic control services,
- g. Airport Security services,
- h. Port security services,
- i. Border security services

48. We use these services as a proxy for employers affected by the MSL requirements.

49. According to the Department for Transport, there are around an estimated:

- a. **47 employers in rail.** (Train operating companies/organisations including Network Rail, with some controlled by the same organisation, such as Transport for London and the London Underground and Overground.
- b. **17 employers operating bus services** in London (with some overarching ownership through Abellio and Avanti)²⁴.
- c. **56 Airports/air traffic control** (NATS and Serco are involved in air traffic control/airport services).
- d. **600 employers operating buses** (outside of London).

50. The British Ports Association has 98 member organisations with responsibility for ports and harbours in Britain²⁵. It is likely that some rail maintenance services, and possibly airport air traffic control, airport security and port security services have been contracted out so other companies would need to familiarise themselves with the proposed Bill. However, it is likely that the airports and ports will have responsibility for security and safety, so familiarisation would be necessary at the individual organisation level.

51. The Border Force covers border security and would have responsibility for all the locations where it works. There are 48 fire services in Great Britain²⁶.

52. There are around 217 NHS trusts in England²⁷, 7 in Wales²⁸ and 15 in Scotland²⁹, plus 12 ambulance trusts³⁰. Potentially MSLs would be operated at this level, though potentially negotiations could be at a higher level through NHS Employers.

53. For primary and secondary education, a large number of employers would be affected. In England, according to the Government³¹, there are 1,449 multi-academy trusts, 1,236

²⁴ Who runs your bus - Transport for London (tfl.gov.uk)

²⁵ Our Members - British Ports Association

²⁶ Chief Fire Officers (nationalfirechiefs.org.uk)

²⁷ A- Z List of All NHS Acute (Hospital) Trusts in England (www.nhs.uk)

²⁸ Source: <http://www.wales.nhs.uk/nhswalesaboutus/structure>

²⁹ Source: <http://www.gov.scot/Topics/Health/NHS-Workforce/NHS-Boards>

³⁰ Source: <http://aace.org.uk/uk-ambulance-service/>

³¹ Get Information about Schools - GOV.UK (get-information-schools.service.gov.uk)

single academy trusts, and 11,892 local authority maintained schools. There are 2,461 publicly funded schools in Scotland³², and 1,470 publicly funded schools in Wales³³. It is expected that the employer's role will be to determine which employees need to work (this is our assumption for familiarisation in this impact assessment). In England there are around 150 Local Education Authorities, with 32 Scottish Unitary Authorities and 22 Welsh Local Authorities³⁴.

Table 4: Summary of proxy estimate of the potential employers impacted by MSLs

Type of employer	Estimated number impacted (GB)
Rail	47
Bus services (London)	17
Airport/air traffic control	56
Bus services (outside of London)	600
Port	98
Fire services	48
Border Force	-
NHS trust	239
Ambulance trust	12
Educational institution	18,508
Local authority	204
Total	19,289

Individuals

54. We define 'individuals' as those who are not involved in labour disputes, or more simply, the majority of Great Britain's population. For this reason, we do not provide an estimate but still consider the impacts of the policy on these individuals.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

55. This section describes the potential costs and benefits that may arise as a result of the proposal in comparison to the Do Nothing option. The Bill will establish a broad framework for the introduction of MSLs and their operation. Details around the levels of service that would be required under MSLs will not be included in the primary legislation. More information will be set out through regulations which will allow the Secretary of State that is responsible for each affected sector to set out the content and structure of the MSL.

³² <https://www.gov.scot/publications/foi-202200317073/>

³³ <https://gov.wales/address-list-schools>

³⁴ [Education and schools](#) | [Local Government Association](#) | [Local authority role and duties](#) | [Policy for Scottish education](#) | [Scottish education system](#) | [Education Scotland](#) | [About us - WLGA](#)

56. Because MSLs for a range of key public services are not yet determined, it is not possible to provide detailed quantified estimates of the expected costs of this option. There are currently too many unknowns (e.g., how many strikes will there be in the future, how the MSL will compare to the counterfactual level of service etc) to robustly monetise the potential costs of implementing Option 2 (preferred option). Therefore, the comparison of costs in this section largely provides a qualitative assessment of the expected costs associated with increased service levels during strikes. These will be reviewed as secondary legislation is prepared, with a view to increasing the scope of costs monetised for the particular services to which MSLs will be applied.
57. However, we have monetised familiarisation with the legislation, as we would assume unions and employers in the affected services would need to understand what the legislation required of them.
58. We have also undertaken break-even analysis to provide illustrations of possible impacts on business with some assumed inputs, though the real impact on the labour market and wider economy will be more complex (see **Benefits** section).
59. For the purposes of this impact assessment, we break down the costs into trade unions and other businesses i.e., employers of their members. In the EANDCB, however, both unions and employers are considered as businesses.

Option 0 – Do Nothing

60. The Do Nothing option involves a continuation of the status quo in relation to strikes. This means that strikes will continue to present the risk of significant disruption. Some of the main detrimental impacts of strikes include disruption to service users, impacts on revenue for businesses and government, disruption to planned maintenance, and impacts on the wider economy. Evidence in relation to these impacts is presented in the comparison of options below.

Options 1 and 2: Minimum Service Levels

61. The two policy options considered for this policy measure all involve a form of Minimum Service Level. For Options 1, agreements would be voluntarily reached, while these would be mandatory in Option 2. As Option 3 has been ruled out at this stage, we have not undertaken any further analysis on this option, however, the impacts identified will be similar and larger (it's the equivalent of setting a MSL at 100%).
62. Our working assumption for the purpose of assessing the costs and benefits is that both Options 1 and 2 would raise service levels and reduce disruption compared with Option 0 on strike days. It is possible that the proposal could also impact days adjacent to strike days, which in the case of some sectors, also tend to face disruption (i.e., if medical appointments need to be rearranged). At this stage, details around the level of service

that would be required under Minimum Service Regulations have not been established, therefore, it is not possible to provide quantified estimates of the expected costs and benefits of each option.

63. Rather, this section provides evidence on the expected costs and benefits associated with increased service levels during strikes, which may be applicable to both options. In theory, both options could result in the same level of service, so costs and benefits have been assessed for all options together. However, we note that the likelihood of these benefits realising under Option 2 will be highest. This is because there will be greater certainty that a statutory MSL will be in place. For this reason, we anticipate that costs and benefits, to different parties to varying degrees, are likely to be largest in magnitude for Option 2.

Option 2 (preferred option) – Statutory MSLs set through Minimum Service Regulations

Familiarisation costs

64. It is expected that key sectors will be required to familiarise themselves with the legislation and any relevant guidance produced to support the policy. We cover familiarisation costs to trade unions and employers in turn.

Trade Unions

65. We assume that it would take between half a day and two days in meetings for the union General Secretary and four other senior directors, with a best estimate of one day (of 8 hours), to familiarise themselves with the proposed policy. This is based on the evidence obtained from unions in the consultation on the assurance of trade union membership registers, as set out in the related impact assessment³⁵, which placed additional requirements on unions to maintain their membership registers. This involved reading and understanding legislation, as well as consulting legal advice. A similar approach was also taken in the Trade Union Act 2016 Enactment Impact Assessment.

66. We consider this to be a conservative estimate, due to the potential that much of the detail will be included in subsequent secondary legislation, and as mentioned above, because a number of listed unions (including many of the smallest) are unlikely to be affected by the policy.

67. Estimates from the Annual Survey of Hours and Earnings (ASHE)³⁶ suggest that the median hourly wage of a General Secretary or a senior union official is £30.83³⁷. These

³⁵ BIS, Certification of trade unions' membership registers and investigatory powers for the Certification Officer Impact Assessment, December 2014, p10 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414353/bis-15-143-trade-union-assured-register-of-members-final-impact-assessment.pdf - this placed additional requirements on unions to maintain their membership registers.

³⁶ ASHE (2022) Table 14.6a Hourly pay - Excluding overtime (£) - For all employee jobs: United Kingdom, 2022

³⁷ We use the median wage of Functional manager and directors n.e.c as a proxy for a General Secretary or union senior official wage (SOC 1139).

values are then uplifted by 17.9% to cover the non-wage labour costs. The calculations are presented in **Table 5** below.

Table 5: Calculating the estimated familiarisation cost for union officials.

	Number of Officials	Median Hour Pay (Uplifted)	Time Taken (Hours)	Number of Unions	Total (nearest 000)
General Secretary	1	£36.35	8	33	£10,000
Other Senior Official	4	£36.35	8	33	£38,000
Total					£48,000

Legal Advice to Unions

68. We also expect that unions will get legal consultation on the reform as part of the familiarisation process. Using a similar methodology and assumptions to the Trade Union 2016 Enactment Impact Assessment (see **para.65**), we assume that this will take 8 hours – this is a best estimate of between 4 and 16 hours. The 2016 IA, based on evidence from unions, assumed that it would cost £250 per day for legal advice. We use the Bank of England inflation calculator to uprate this value to find it in November 2022 prices (£315).

Table 6: Estimated legal consultation cost to unions

	Number of Unions	Legal Cost (hourly)	Hours taken	Total Legal Cost (to nearest 000)
Option 1	33	£314.66	8	£83,000

69. **The total familiarisation cost to unions is estimated at around £131,000.** It is likely that further familiarisation will be required when the secondary legislation setting out specific details of the MSLs is introduced. Separate impact assessments will cover these proposed regulations.

70. Unions may also have to amend their Rule Books if there are sections relating to industrial action and member discipline, hence would incur the cost of following set processes for doing so e.g., writing amendments, and debating these at the relevant conference. We have been unable to monetise the cost of unions taking relevant factors into account. We will aim to investigate these impacts when subsequent secondary legislation is brought to Parliament. Unions will also likely have to issue amended strike action guidance to their members, to give advice as to what they should do when industrial action takes place under an MSL, for example how picket lines should deal with those members that are required to work on a strike day. We are not able to monetise this at this stage but will aim to do so when subsequent secondary legislation is brought to Parliament.

Employers

71. Option 2 (preferred option) also requires employers to put MSLs into practice operationally if there are strike days affecting them. They will therefore need to familiarise themselves with the legislation.
72. We assume that senior management teams would similarly take 8 hours to familiarise themselves with the legislation as there are similar responsibilities placed on employers and unions by this policy.
73. For most employers we assume to be familiarising themselves with the legislation, we assume a chief executive or senior official, a HR manager or director, a legal professional, or a senior manager or professional in the specific industry would form the management team familiarising themselves. For single academy trusts, which would essentially be a school, we assume 3 senior education professionals would form the management team. Estimated median hourly wages for the relevant occupations, taken from the Annual Survey of Hours and Earnings 2022, uprated by 17.9% to take account of non-wage labour costs³⁸, are used to estimate the costs per organisation.
74. The median hourly wage rates (excluding overtime) and estimated related labour costs are set out in **Table 7** below.

³⁸ Estimated from latest ONS Index of Labour Costs per Hour publication

Table 7: Hourly median wages and labour costs for employer management team occupations

Occupation	Median hourly wage (excl. overtime) £	Median hourly labour costs (includes labour costs) £
Chief executives and senior officials	37.43	44.13
HR managers and directors	24.59	28.99
Managers and directors in transportation and distribution	18.38	21.67
Health service and public health managers and directors	24.1	28.41
Senior officers in fire, ambulance, prison and related services	23.37	27.55
Senior professionals in education establishments	33.54	39.54
Legal professionals	23.27	27.44
Senior officers in protective services	27.35	32.25

75. It is difficult to precisely estimate the number of employers who might face strike action. Evidence from 2018 and 2019 trade union annual returns suggest that only a minority of trade unions have balloted for industrial action³⁹. Therefore, it isn't sensible to expect all employers with a recognised trade union would familiarise themselves with this change, as many would have no reason to.
76. The trade union annual returns for 2018 and 2019 report that there were around 1,014 ballots in 2018 and 1,346 in 2019, an average of 1,180. But it should be noted that some of these ballots will be asking about strike action and non-strike action for the same dispute, so some disputes will be counted twice. Also, some employers will face multiple ballots. Therefore, this is likely to be an overcount of employers who potentially face industrial action: ballot numbers are much higher than reported levels of industrial action, as some ballots will not pass the legal requirements for action, and unions will not necessarily need to proceed with action when the ballot has been successful.
77. Our approach is to take a conservative approach and estimate that all employers will familiarise themselves with this change at some stage within the first year of the appraisal period. We expect these costs to be realised early as the plan for government to begin some consultations on MSLs for some key sectors.

³⁹ The annual returns from 2019 are the most recent returns available where there are no distortive impacts due to the Covid-19 pandemic.

78. This gives an estimated *one-off* familiarisation cost for employers of:

[number of employers] x [hourly labour cost of familiarisation team] x [number of hours to familiarise]

= £4.2 million

79. Because it is also yet to be determined which public services will be required to have MSLs in place, we provide a conservative estimate of the number of employers affected. Much of the specifics will be set out in following secondary legislation, and our estimates will be tailored accordingly to this. To some extent, MSLs will require action at the individual employer level, and possibly the individual establishment level.

80. As mentioned earlier, some services in sectors like health still operate during industrial action. Therefore, if MSLs were implemented in the health sector (or any other Key sector operating services during industrial action), we would need to consider whether there would be a gain in services for users and employers. Government may decide to only set an MSL in regulations where it considers adequate voluntary arrangements don't already exist and where there will be a benefit in doing so. The policy will be designed in a way so as not to restrict the ability to strike for all key sector workers, just those who are rostered to deliver the MSL that has been implemented.

Table 8: Estimated familiarisation costs to employers

Employers	Estimated number of employers	Estimated hourly labour cost of familiarisation team £	Hours taken	Total familiarisation cost £m
Rail	47	122	8	0.05
London Buses	17	122	8	0.02
Airports, air traffic control	56	122	8	0.06
Buses (excluding London)	600	122	8	0.6
Ports	98	122	8	0.1
Multi Academy trusts	1,449	140	8	1.6
Single Academy Trusts	1,236	119	8	1.2
Local authorities, Local Education Authorities	204	140	8	0.2
NHS Trusts	239	129	8	0.3
Ambulance services	12	128	8	0.01
Fire services	48	128	8	0.05
Border Force ⁴⁰	1	133	8	0.001
Total				4.2

Note: Totals may not sum due to rounding.

81. **This indicates an overall estimated one-off familiarisation cost to employers of £4.2 million over the 10-year period.**

82. It is expected there will be further familiarisation costs for employers when the policy is specified in secondary legislation.

Ongoing costs

83. The potential ongoing costs from the MSL policy considered are as follows:

- a. Potentially increased costs to employers from providing minimum service levels (the costs of running services, including wages for workers that would otherwise have been striking)
- b. Possible costs to Government of enforcement through the courts (administering cases and potential litigations)
- c. Costs of implementing MSL to employers and unions

⁴⁰ For Border Force workers, wages are not published. We therefore assume familiarisation would require one each of the following staff: Chief executives and senior officials; HR managers and directors; legal professionals; and senior officers in protective services.

- d. Cost to workers from the reduced power of strike action

Additional costs to employers from providing minimum service levels

84. The additional costs of providing a MSL depends on the service levels set, and the extent to which they are greater than those currently provided on strike days. Given the assumption that the proposal would result in a higher level of services during strike action relative to Option 0, one of the implications of increased key public services on strike days will be the increase in operational costs incurred by operating companies. Total operational costs vary significantly across and within key sectors but typically involve fixed costs (vehicles, infrastructure, performance regimes etc.) and variable costs (staff salaries, fuel, electricity etc.). Increased service provision would increase variable costs. These have not been monetised here as the nature of these costs will vary by mode and depend on the requirements identified in secondary legislation. These will be considered alongside secondary legislation.
85. Overall, it would be expected that the costs to the employer of running minimum service levels would be outweighed by the benefits.

Ongoing costs to government

Enforcement costs

86. Government (including Local Government and devolved authorities) will incur some costs around the enforcement of MSLs. These include the costs of administering cases through a public court for claims between non-government entities.
87. It is anticipated that this cost will depend on a number of factors, including the number of disputes arising and the potential arrangements for imposing MSLs on the relevant parties. Some of the practicalities of implementation and enforcement will be determined by secondary legislation, which could have some impact on such costs. Furthermore, the cost of enforcing penalties/remedies for breach of MSLs is currently uncertain/unknown.

Ongoing costs to trade unions

88. It is possible that Government setting MSLs in any key sector could have an adverse impact on union membership by either raising the barrier to industrial action or increasing the strength of mitigating actions. It is also possible that some individuals may currently be reluctant to join a union due to concerns around impact of disproportionate industrial action on the public in absence of statutory MSLs. This legislation may therefore in theory, mean some individuals feel more empowered to join a union as this concern will no longer apply.

Ongoing costs to employers and unions

Putting MSLs into operation, and enforcement

89. There would be a requirement for employers to inform workers and unions of those workers required to work to provide the minimum levels of service, and to consult unions while selecting the workers required. This would need to be done at least 7 days prior to the strikes starting. For unions, they would be required to take reasonable steps to ensure that workers specified to work, as part of a work notice, do not take part in strike action.

90. Further details on these costs will be covered in subsequent secondary legislation.

Ongoing costs to workers

Reduced benefits of being in a union

91. There are a number of benefits of being part of a union. One of these benefits is that unions help counterbalance the bargaining power that employers have over their staff. Strike action may in some cases lead to improved terms and conditions, including increased pay deals. If the proposed policy were to change the balance between unions and employers, this may reduce the value that workers receive by being part of a union.

92. If the policy reduces the impacts of strikes, this could lead to potential reductions in future pay or working conditions for these workers compared with the Do Nothing scenario under each policy measure. This potential reduction in terms and conditions for workers in unionised sectors over time (if bargaining power is substantially weakened) could have a downward effect on terms and conditions more generally in the labour market.

93. Employers would be required to pay wages to workers for any additional hours worked under any of the proposed requirements. However, we also assume that workers who now provide hours worked would incur a cost (given the counterfactual is that the worker preferred and wanted to strike). Therefore, we assume that there is a net loss to workers, as workers were originally willing to forego their wages to strike.

Benefits

94. The potential ongoing benefits from this change are as follows:

- a. Greater access to key public services during strike action, in particular to ensure that the risk to life, personal and public safety is minimised.
- b. Less disruption to day-to-day business activity
- c. Higher economic output

95. We are unable to monetise these benefits due to the uncertainty around the extent to which the minimum level of services will be maintained during strikes, which subsequent secondary legislation will set.
96. These benefits largely depend on the extent that workers, trade unions and employers change their behaviour in response to the policy changes. Therefore, these benefits are inherently difficult to monetise robustly. Where this is the case, we have identified these and explained the likely impact in a qualitative manner. However as mentioned, we have undertaken break-even analysis to illustrate a scenario where the policy breaks even over 10 years.
97. We consider the non-monetised benefits to each of employers, government, and the wider economy in turn.
98. In addition, some of the benefits will depend on the specific detail that is determined through secondary legislation. Where this is the case, we will provide more detail in the Impact Assessments which will accompany that legislation.

Ongoing benefits to employers

MSLs in key public services

99. Employers involved in the trade dispute will be able to run some guaranteed services during strike days. This will mitigate the damage involved with not being able to run these services. The benefit could reflect higher revenue on strikes days, a reduction in costs incurred due to contractual obligations to deliver services to certain timetables⁴¹, a reduction in losses due to efficiencies of scale (e.g., for operations and stock maintenance), and avoided re-organisation costs (e.g., plans put in place beforehand to mitigate the impact of the strikes). For commercially operating employers there is likely to be a financial benefit (assuming the revenues from running minimum services and avoided costs, outweigh the costs of running these services).
100. Employers not involved in the workplace dispute will be able to take advantage of minimum service levels on strike days, mitigating the negative effects on their activities. Reducing the negative externalities from strike action on wider business activity will have a positive impact, as more activity will be able to take place normally. This will result in additional output and have a positive impact on GDP. This is expected to be the main benefit due to this policy. As presented previously, the BICS survey suggested nearly 15.6% of businesses were affected by strike action in the UK in November, nearly all of them not involved in disputes. 19.7% of these businesses were not able to operate fully.
101. To be beneficial to employers involved in the trade dispute and other employers, the guaranteed services would need to be higher than the level of service they can currently provide during strike action; or at a similar level but guaranteed in advance. The extent of

⁴¹ For instance, Network Rail has to compensate freight operating companies for service variation and cancellation costs following strike action – and Network Rail would be covered by the MSL policy.

the benefits will depend on the minimum service levels that will be guaranteed, which are subject to subsequent consultation and secondary legislation. It is expected that the minimum services provided would be higher than currently achieved on strike days. As yet MSLs are not available for employers to apply without agreement from the union.

102. We provide an illustrative break-even analysis below to explore at a very high-level the potential effects of setting MSLs in key public services.

Break-even analysis

103. This illustrative analysis follows the approach taken in the 2022 Draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022⁴². This is because of the similarity in the impact of the policy to business in reducing the number of working hours lost to strike action and the subsequent output gained.

104. Over the period 2015 to 2019, there has been an annual average of 93 disputes involving strike action, which accounted for an annual average of around 253,000 working days lost. Some strike action took place in nearly all broad industry groups across the 5-year period. Over the five years to 2019, public administration, education, health and social care accounted for nearly 56% of working days lost, with transport and storage accounting for 30%. Close to 40% of these disputes involving industrial action involved just 1 day of strike action, with a further fifth involving two days⁴³.

105. We assume that the pattern of industrial action that occurred in this period is likely to be representative of industrial action that will occur in the following 10 years.

106. The policy option would allow employers facing industrial action to continue day-to-day business operations to a certain degree, depending on the level of service. It is difficult to estimate what proportion of working days lost by individuals may be covered by setting MSLs. The information on working days lost is available at a broad sector level, and data from the LFS suggests that key sector workers have assignments in some broad sectors.

107. Government will assess the costs and benefits and decide whether it is in the public's best interest to set MSLs in any key sectors following further consultation. The Government will need to consider factors like the length of strike and the potential impact on customers, suppliers and the wider economy. Any direct impacts would be at the discretion of government in considering the effect on key service employers facing strike action. Government may decide to only set an MSL in regulations where it considers adequate voluntary arrangements don't already exist and where there will be a benefit in doing so. The policy will be designed in a way so as not to restrict the ability to strike for all key sector workers, just those who are rostered to deliver the MSL that has been implemented.

⁴² <https://www.legislation.gov.uk/ukdsi/2022/9780348236675/impacts>

⁴³ BEIS analysis of the Labour Disputes Survey

108. There is a lack of robust information available that would enable quantification of the extent to which MSLs would be used to ensure certain services are provided in key sectors. We do not know which workers (specific jobs and specific key services) will be subject to MSLs, as these will be determined by subsequent secondary legislation.

Impacts

109. To estimate potential impacts, we have calculated the average annual hours lost through strike action⁴⁴, the estimated output per hour⁴⁵ by broad industry (using ONS GVA estimates for Q4 2020 to Q3 2021, and ONS productivity hours data for the same period) and the costs employers of worker labour. This time period is used because the latest available data for ONS productivity hours data provides data up to Q3 2021.

110. It is expected that the minimum services provided would be higher than currently achieved on strike days. For the purpose of this illustrative analysis, we assume that the baseline service provided is zero i.e., all workers are on strike and not working. We also assume that MSLs would be set across all key sectors to provide a conservatively high indication of the potential benefits.

Table 9: Estimated annuals hours lost from strikes, output per hour and cost of workers

Industry group	Annual working hours lost	Average output per hour (£)	Average hourly cost to employer for worker (£)	Estimated total output lost (£, millions)
Transport and Storage	594,048	29.8	15	17.7
Public administration and defence	88,650	30.5	19	2.7
Education	679,172	30.5	17	20.7
Human Health and social work	293,550	30.5	15	8.9
Total				50.1

111. For this approach, we use a simple model to estimate the net benefit from a worker continuing to work during strike action (the difference between the average output for a worker working minus the average cost for having a worker working) and multiply this by take up rate to ensure that these impacts offset the other monetised costs from this policy.

⁴⁴ This was based on the average annual days lost in 2015 to 2019 by broad industry, converted into hours using median weekly hours worked for a full-time worker (converted into days by dividing by 5).

⁴⁵ Average output per hour is calculated by dividing the total GVA for an industry by the total productivity hours for the same industry.

112. We do not know precisely which workers (specific jobs and specific industries or employers) took strike action in 2015 to 2019, or which will be taking action in the future. We also do not know precisely how many workers would be required to work even if they had voted to strike, as subsequent secondary legislation will set any minimum service level. Therefore, we take a simple modelling approach: this assumes that a certain proportion of working hours lost will be recovered, with the same proportion applied across each industry group. Then the related costs and outputs for these estimated recovered hours are calculated. We recognise that this is a simple assumption. In each broad industry, the estimated hourly output is higher than the estimated hourly cost for a worker, so that indicates that if an employer is able to generate more output than costs because of a MSL requirement, there might be a benefit in setting a MSL.
113. This would depend on how productive workers that are required to work are. We have not identified any evidence to suggest that workers would be any less productive than usual if they were required to work because of a MSL. However, there may be some workers who have to cover roles and/or responsibilities that they otherwise would not have if fellow workers were on strike and are not required to work under a MSL. Because subsequent secondary legislation will set out what MSLs would look, we make the conservative assumption that workers will maintain the same productivity, even if they have voted to strike but are required to work under a MSL requirement. We consider these associated risks of this assumption in the **Risks and assumptions** section of the Impact Assessment.

114.As such, to estimate the impact of this measure, we would need to make a number of assumptions and do not have the evidence to do this, hence, we have developed a simple model that looks at the impacts from the businesses perspective and carried out break even analysis.

Business impacts from different take up rates and relative productivity of workers required to work:

As pointed out, it is difficult to estimate what the potential impacts would be because MSLs will not be set in specific key sectors until subsequent secondary legislation is consulted on. The simple model developed provides illustrations of possible impacts on business with some assumed inputs, though the real impact on the labour market and economy will be more complex.

We set out further illustrated impacts, based on the model developed, to exemplify the point that direct impacts will depend on the number of strike hours recovered by workers required by a MSL to work. We make no assessment of the likelihood of these scenarios.

By continuing with the assumptions that we have discussed, we get the following annual net benefit to employers of output minus worker costs during strikes:

Working hours recovered	Annual net benefit (£)	10-year NPV (discounted)
10%	2.4m	£20.9m
20%	4.8m	£41.8m
30%	7.1m	£62.6m

As best practice, we discount the benefits in each year of the 10-year appraisal period using the Green Book associated discount factors. As seen from above, we would expect that any additional increase in the number of working hours recovered would result in a proportionate increase in the benefit to employers in terms of output.

115.MSLs will only be implemented when the net benefit is positive. We also don't have evidence on how productivity may be affected. A break-even point for the policy over 10 years is estimated to be achieved if workers are as productive as usual and if 2% of working hours lost were recovered. It produces an estimated output of £1 million with a cost of around £0.52 million.

116.It should be noted that 2% of workers is only an indicative estimate of the level of staff required to produce a net-beneficial output for the industries covered. In reality, staffing levels would need to be significantly higher in order for services to continue running effectively during strike action. For example, in the case of rail, if only 2% of drivers or railway signallers were required to work during strike action, then typically a substantial number of services would be unable to run.

117. This also does not include non-monetised impacts, most notably the wider (significant) benefits on the rest of the economy if employers facing strike action can maintain some activity. Hence, we are confident that this policy change is likely to be net beneficial, however, we are unable to robustly estimate the size of this impact.

Ongoing benefits to wider economy

MSLs in key public services

118. The wider public not involved in the workplace dispute will be able to take advantage of minimum service levels on strike days, mitigating the negative effects of these strikes on their activities.

119. For members of the public, there is a benefit in there being a minimum level of service available during strikes in the public services covered. This would provide them with confidence that if they faced a serious health emergency, or a dangerous fire, that they would still be able to access these vital services. Alternatively, the public would also have confidence that if they needed to make a vital journey, perhaps to a hospital, a school, or their place of work, that some public transport services would be running. While the specific services requiring MSLs have yet to be finalised, they may include, among others, passenger rail transport, publicly funded school education, fire services and NHS hospital and ambulance services.

120. For rail passengers, minimum service levels during strikes will enable some regular or planned journeys for work or personal reasons to take place as usual. A recent survey found that 15% of adults said that their travel plans had been disrupted by rail strikes in June 2022.⁴⁶ This will potentially provide the following benefits to individuals:

- a. They will be able to get to work on time, without additional costs and time of using alternative travel arrangements (such as a car). This may enable some workers in precarious employment, such as a zero hours contract, to earn a wage on strike days. It may have benefits for these travellers of reduced impacts on work/life balance. A recent survey found that 24% of those who has travels plans disrupted by the rail strikes in June 2022 reported spending more money on travel to overcome the disruption.⁴⁷
- b. Individuals who were using rail services to get to a medical appointment, or for education would be more able to use their normal services, and to benefit from attending the service they were due to attend, thus suffering no delay in medical advice or treatment or loss in education. They would similarly potentially benefit from not having extra costs or time for travel. In recent years in England⁴⁸ and

⁴⁶ ONS (2022). Public opinions and social trends, Great Britain: 22 June to 3 July 2022.

<https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/publicopinionsandsocialtrends/greatbritain/22juneto3july2022>

⁴⁷ ONS (2022). Public opinions and social trends, Great Britain: 22 June to 3 July 2022.

<https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/publicopinionsandsocialtrends/greatbritain/22juneto3july2022>

⁴⁸ Department for Transport (2021). National Transport Survey – Trips to and from school per child per year by main mode: England, 2020. <https://www.gov.uk/government/statistical-data-sets/nts03-modal-comparisons>

Scotland⁴⁹, around 1% of school students used rail as their main mode of travel to their place of education. The survey referred to above found that, of those who said that the rail strikes in June 2022 had disrupted their travel plans, 1% had been unable to attend a medical appointment.⁵⁰

- c. Individuals travelling for leisure would also be more able to use the rail services they had planned to use, potentially reducing their travelling costs and time. They would be able to participate in the leisure activity they had planned, potentially benefitting their quality of life. This is likely to also have some benefit to the leisure services industry. In the survey referred to above, of those whose travel plans were disrupted in June 2022:
 - i. 34% were unable to take part in leisure activities (e.g., could include going to a restaurant or cinema)
 - ii. 6% were unable to care for family or friends
 - iii. 5% were unable to going holiday.

Ongoing benefits to government

Higher economic output

The potential reduction in negative externalities on the wider economy could result in higher economic output.

⁴⁹ Transport Scotland (2022). Transport and Travel in Scotland. <https://www.transport.gov.scot/publication/transport-and-travel-in-scotland-2020-results-from-the-scottish-household-survey-pdf-version/>

⁵⁰ ONS (2022). Public opinions and social trends, Great Britain: 22 June to 3 July 2022. <https://www.ons.gov.uk/peoplepopulationandcommunity/wellbeing/bulletins/publicopinionsandsocialtrendsgreatbritain/22juneto3july2022>

IV. Summary of costs and benefits

121. This section provides a summary in **Table 11** below of the estimated costs and benefits of Option 2 (preferred option) at this stage in our analysis. As mentioned throughout the Impact Assessment, we will continue to build our evidence base going forward and welcome stakeholder input and feedback.

122. This Impact Assessment is only able to monetise a small proportion of the impacts associated with the MSLs. This is because the costs and benefits of the proposal are expected to depend heavily on the service levels mandated by a Minimum Service Regulation during a strike, which have not been defined yet. Detailed analysis of this will follow alongside the relevant secondary legislation.

123. Overall, the magnitude of costs and benefits of the proposal to different parties are expected to increase to varying degrees as the required service levels increase. For example, increases in service levels lead to higher benefits (increases in the avoided negative impacts) of strike action to businesses (including increased revenue for operators), consumers and government. However, they are also likely to lead to greater costs (disbenefits) to unions, union workers and increases in operational costs associated with providing additional services during strikes.

124. Estimates of familiarisation costs to employers and unions have been provided in this Impact Assessment to give a sense of possible scale, but these are based on high level assumptions about the amount of time and number of employees per organisation required to familiarise with the requirements of the proposal.

Table 10: Summary of estimated costs to business for Option 2 (preferred option)

Type of business	Estimated number in scope	Estimated total cost (£m)
Trade Unions	33	0.1
Employers	4,007	4.2
Total		4.3

Note: Totals may not sum due to rounding.

125. The Impact Assessment also provides illustrative analysis of the benefit to employers who are able to operate a minimum service during strikes. This shows that under conservative assumptions about the impact on the disruption avoided that the policy change will be net beneficial for businesses. However, this does not cover the large benefit to the wider economy of mitigating disruption to third parties (non-striking workers, businesses, consumers), nor the potential impacts on union power.

126. Since service levels can vary substantially depending on the type of service and type of strike, the impacts of the proposal would also be sensitive to the assumption on service levels during strikes used in the Do Nothing option. This proposal is expected to have greater impacts in cases where strikes would have caused larger service level reductions with little or no alternative options available (the worst-case scenario could be the complete shutdown of a given network).

Table 11: Current estimated costs and benefits of the preferred policy option

Policy Measure (preferred option)	Summary of key costs/benefits to business	Direct cost/benefits to business ⁵¹	NPV (2022 prices) £m	EANDCB (2022 prices) £m
Statutory MSLs set through Minimum Service Regulations	Familiarisation costs for trade unions (including consulting legal advice) and for employers.	Yes*	-4.3	0.5

*As mentioned, we have estimated direct costs from this change. However, we undertaken break even analysis and are confident that this measure will deliver net benefits to the economy.

⁵¹ Regulatory Policy Committee (2019) – RPC case histories – direct and indirect impacts

An impact on business is likely to be direct if:

The measure bans, restricts, liberalises, increases or decreases the cost of a business activity, and if the impact falls on those businesses subject to the regulation and accountable for compliance.

The impacts are generally immediate and unavoidable ('first round'), perhaps involving a shift in the supply and/or demand curve to a new equilibrium immediately following the measure. There are relatively few 'steps in the logic chain' between the introduction of the measure and the impact taking place. Impacts that occur subsequent to this adjustment to a new equilibrium, for example as a result of a significant reallocation of resources or innovation, are likely to be indirect. An impact resulting from the 'pass-through' of regulatory impacts, such as higher prices to consumers, is an important category of an indirect effect, where the pass-through could be viewed as a 'second round' impact. The impacts are in the market being regulated (a 'partial equilibrium effect'). These impacts are sometimes sufficiently large to result in further impacts in related markets and/or the wider economy ('general equilibrium effects'). These further impacts are likely to be indirect.

V. Risks and assumptions

127. The analysis reflects the potential impacts of this policy. The Strikes (Minimum Service Levels) Bill will establish a broad framework for the introduction of MSLs and their operation. Details around the levels of service that would be required under MSLs will not be included in the primary legislation. More information will be set out through regulations which will allow the Secretary of State that is responsible for each affected sector to set out the content and structure of the MSL.
128. Our working assumption for the purpose of assessing the costs and benefits is that they would raise service levels compared with Option 0. At this stage, details around the level of service that would be required under MSLs have not been established. The scale of impacts will depend on the extent to which service levels are increased by the legislation compared with Option 0. However, the government is only likely to do this where the benefits outweigh the cost, so as not to impose significant burden or cost on trade unions or employers. We therefore assess that the policy is likely, on balance, to be net beneficial to the UK economy and society.
129. In appraising the preferred option, we also qualitatively consider the potential risks at a high-level. The inclusion of these risks in the impact assessment does not indicate we expect them to happen and in our view, it is not possible to accurately quantify them.
130. One risk some Trade Unions have raised is that where MSLs are in place, some of those who are rostered to deliver the service do not turn up for work. Where rostered staff, as part of a work notice, do not attend work, they will need to follow the requirements set by the employer within the relevant absence policy. Failure to attend on the grounds that they are participating in strike action would be unauthorised and could be subject to disciplinary action. Trade Unions will also have a duty under the legislation to take reasonable steps to ensure their members named in a work notice comply with these duties.
131. It should also be noted that taking part in unofficial industrial action (so called “wildcat strikes”) has been very rare in recent years which supports the idea that workers would be reluctant to lose the protection that comes with official industrial action. We have also not seen any evidence from areas where strike action is prohibited by law (e.g., the police or prison officers) that officials take unofficial strike action. Additionally, it is considered that where voluntary MSLs are implemented, compliance with these arrangements is generally high. The combination of the factors outlined above may therefore reduce likelihood of this risk being realised.
132. Given the highly skilled nature of certain job roles in key sectors, such as specific driver route training, signallers, and air traffic controllers, there is a reliance on staff complying with the work notice given to them to work in order to secure the MSL. If non-compliance occurs this may limit the objectives of the preferred option.

133. In addition, there is a potential increase in strike action prior to MSLs being introduced, as unions may seek to cause disruption which is not mitigated by an MSL before they are implemented, in order to maximise their leverage. This risk may be mitigated by the costs to unions and their members, principally loss of pay, of taking industrial action.
134. According to unions, a further consequence of this policy could be the increase in staff taking action short of striking which is not prohibited by this legislation^{52,53}. This is due to the incentive unions have to cause disruption in order to encourage employers to reach a favourable settlement in response to a dispute. Where services are reliant on staff working additional hours, this could have a significant negative impact on the level of services provided and it is important to note that such action could continue even when MSLs are in place, (so it could be that instead of taking strike action, action short of strike becomes a more prevalent form of lawful protest). Although hard to quantify, as discussed in the subsequent paragraph, this is likely to be less disruptive than industrial action without MSLs in place. It may nevertheless lead to a prolongation of the dispute. There is also a risk that morale of staff that are rostered to work during a strike could be impacted although the precise impact of this is impossible to quantify. This is in part because of the wide range of different factors that impact on employee engagement. It is also noted that this possibility could only occur where there is a pre-existing industrial dispute.
135. It is unclear what the net impact of a move from strike action to action short of a strike would be, but it is likely, on balance, to be lower than strike action without any form of MSL. This is because the impact of action short of strike can be mitigated through the changing of some working practices, such as not relying on overtime or ensuring that overtime working is incorporated into the employment contracts of workers. However, as staff would be paid their normal wage and carry out their contracted functions during action short of a strike, it is possible – although hypothetical - for such actions to be more protracted, which could build in a lower level of service or performance (if employers continued to rely on workers' goodwill).
136. A final risk we have considered is that the preferred policy approach could mean a general increase in tension between unions and employers. This may result in more adverse impacts in the long term, such as an increased frequency of strikes for each dispute⁵⁴. However, this is very speculative. Strikes themselves are influenced by a range of factors, such as the nature of the dispute, the level of support for strikes from union members and the ability of employers and unions to reach a settlement. It is therefore not possible to predict with any certainty that strikes will increase as result of this policy. Additionally, it is also possible that in some cases, MSLs could lead to settlements between unions and employers being reached more quickly than they may otherwise would have. This is because the disruption caused by strike action would be

⁵² TUC "this Bill will prolong disputes and poison industrial relations – leading to more strikes" [Union movement vows to fight anti-strike Bill](#) | LRD

⁵³ RMT unions might have to resort to novel methods such as extensive overtime bans and work to rule.

⁵⁴ Strikes bill: Unions criticise plans as unworkable: <https://www.bbc.co.uk/news/uk-64219016>

reduced where MSLs are applied, which could encourage unions to compromise more frequently and union members to vote in favour of employer offers if they realise more favourable offers may not be achievable.

Sensitivity Analysis

137. This Impact Assessment has monetised only a small proportion of the costs and benefits associated with the proposal and subsequent secondary legislation. Additional analysis will be undertaken alongside the relevant secondary legislation. Therefore, a sensitivity analysis has not been conducted, although illustrative analysis was provided to demonstrate the potential scale of benefits to employers. However, the costs and benefits of the proposal are expected to depend heavily on the service levels mandated by MSLs during a strike. These impacts will be assessed in detail once possible alongside the relevant secondary legislation.

Withdrawn

VI. Impact on small and micro businesses

138. The details on what MSLs look like for specific services would be consulted on by relevant Government departments. As this will apply broadly to key sectors, it is not possible at this stage to exempt small and micro businesses. This will be a matter for the regulations which apply MSLs to specific services.
139. We assume that trade unions are mostly present in larger employers where it is easier for unions to organise and recruit a large number of members. For example, published BEIS analysis of the Labour Force Survey (LFS) suggests that just 14.9% of employees in workplaces with less than 50 employees are trade union members. This is more than half the membership density in workplaces with 50+ employees (30.0%). Other variables such as trade union presence and whether the employees pay is affected by collective agreement is also twice as large in medium and large businesses (50+ employees) than in SMBs (less than 50). Therefore, at this stage, we do not expect any disproportionate impact on small and micro businesses (SMBs).
140. As indicated from the employers identified in the familiarisation section, we expect that most employers that would have to operate MSLs would be medium or large employers. We would expect very few to be micro and small, though we do not have evidence of employment levels in all freight rail businesses or all schools. Ports and airports were also referred to above, and it is possible that some of these would be small employers, in addition to some transport services such as bus services.
141. Given the presence of small and micro businesses across some key sectors, secondary legislation to introduce MSLs for specific key services should give due regard to the business impacts identified in this Impact Assessment, so that they do not disproportionately burden small or micro businesses. For example, when developing secondary legislation, relevant departments should consider providing more granular breakdowns of the composition of specific key sectors to assess whether small and micro businesses will be disproportionately affected.
142. On the other hand, since June 2022 the fortnightly BICs survey⁵⁵ has asked participating businesses the question “Was your business affected by industrial action on industrial action”. **Table 12** below provides a breakdown of the impact of industrial action on businesses across all industries by size band.
143. Generally, all businesses reported being increasingly affected by industrial action as the frequency of strike action rose towards the end of 2022. One of the intended effects of the policy is to mitigate the impacts of strike action on businesses, so in this case we would expect the policy to proportionally benefit small and micro businesses that have been affected.

⁵⁵ Voluntary fortnightly business survey (BICS) about financial performance, workforce, prices, trade, and business resilience.
<https://www.ons.gov.uk/economy/economicoutputandproductivity/output/datasets/businessinsightsandimpactontheeconomy>

Table 12: Businesses across all industries affected by industrial action in 2022 by size band

Month	Business size				
	Micro	Small	Medium	Large	All businesses
June	6.7%	8.2%	18.1%	9.3%	6.9%
July	5.9%	7.0%	16.1%	7.5%	6.0%
August	9.6%	12.1%	23.9%	9.9%	9.9%
September	12.4%	15.0%	24.7%	11.8%	12.6%
October	12.4%	13.8%	23.4%	10.9%	12.5%
November	15.0%	20.6%	37.5%	16.6%	15.6%

144. Although we expect that small businesses would not be disproportionately affected, it may require the time of a more senior official of an organisation to familiarise with the change. For the purposes of this impact assessment, we have assumed a senior director and a HR official would familiarise. Smaller organisations are less likely to have a HR department. In this case we expect that only the senior director would familiarise and so this cost to small businesses is accounted for.

145. There is likely to be direct benefits to small and micro businesses. While smaller businesses are much less likely to have unionised workforces than larger employers, some industrial action may affect smaller workplaces. If this policy helps to mitigate the impacts of strike action in key public services which might have otherwise been the case, there will be wider benefits to the economy, which will benefit all sizes of business, including small businesses and micros.

VII. Wider impacts

Public Sector Equalities Duty Assessment

146. The Bill will establish a broad framework for the introduction of MSLs in a range of key public services. However, details around which specific key public services would be required under minimum service levels (MSLs) will not be included in the primary but subsequent secondary legislation will set any minimum service level. Therefore, at this stage it is not possible to provide a detailed PSED in respect of specific MSLs. Government will undertake more detailed PSED analysis in advance of regulations under the Bill that set these MSLs.

147. However, we expect for specific 'key public services' the demographics will be different in comparison to the general UK labour market. For example, according to the Department for Transport's Impact Assessment for the Transport Strikes (Minimum Service Levels) Bill 2022, we expect union members in the transport sector are more likely to be male than employees in general. Government will take into account demographics in each specific sector when developing subsequent secondary legislation.

148. There will also be benefits to the wider public that use the services that can run more effectively due to MSLs.

149. For the Impact Assessment, the protected characteristics consist of nine groups: age, race, sex, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership. While it is not feasible to provide an analysis of all the demographics of these specific groups, we can consider those for union members across some broad key industries. We provide a high-level overview in **Tables 13-17** below. These tables use the latest data from the Labour Force Survey, as outlined in BEIS' annual trade union membership publication. The data suggests the following for the key industry groups covered in the analysis, compared to total employees in the UK:

- a. **Key sectors** (includes health, education, rail, fire, and border security)
 - i. Members are more likely to be female, more likely to be aged 35 to 50 or over 50, more likely to be Christian, more likely to have a disability and more likely to be from an ethnic minority.
- b. **Hospital or ambulance services**
 - i. Members are more likely to be female, more likely to be Christian, more likely to be aged 35 to 50, more likely to have a disability and more likely to be from an ethnic minority.
- c. **Primary or secondary education**

- i. Members are more likely to be female, more likely to be aged 35 to 50, more likely to be Christian and more likely to be of White ethnicity.

d. Rail or urban public transport services

- i. Members are more likely to be male, more likely to be Christian and more likely to be aged over 50.

Table 13: Breakdown of key public sectors by sex

Industry	Trade union or staff association member in industry		All employees	
	Male	Female	Male	Female
Relevant public services	29%	71%	50%	50%
Hospital or ambulance services	24%	76%		
Primary or secondary education	24%	76%		
Rail or urban public transport services	86%	14%		

Table 14: Breakdown of key public sectors by disability

Industry	Trade union or staff association member in industry		All employees	
	Equality Act Disabled	Not Equality Act Disabled	Equality Act Disabled	Not Equality Act Disabled
Relevant public services	18%	82%	16%	84%
Hospital or ambulance services	19%	81%		
Primary or secondary education	17%	83%		
Rail or urban public transport services	17%	83%		

Table 15: Breakdown of key public sectors by age

	Trade union or staff association member in industry			All employees		
Industry	16 to 34	35 to 50	Over 50	16 to 34	35 to 50	Over 50
Relevant public services	26%	41%	33%	35%	35%	30%
Hospital or ambulance services	28%	40%	32%			
Primary or secondary education	26%	43%	31%			
Rail or urban public transport services	17%	34%	50%			

Table 16: Breakdown of key public sectors by ethnicity

	Trade union or staff association member in industry		All employees	
Industry	White	Other Ethnicity	White	Other Ethnicity
Relevant public services	86%	14%	87%	13%
Hospital or ambulance services	78%	22%		
Primary or secondary education	91%	9%		
Rail or urban public transport services	82%	18%		

Table 17: Breakdown of key public sectors by religion

	Trade union or staff association member in industry			All employees		
Industry	No religion	Christian	Other religion	No religion	Christian	Other religion
Relevant public services	41%	51%	8%	49%	43%	8%
Hospital or ambulance services	38%	52%	10%			
Primary or secondary education	42%	51%	7%			
Rail or urban public transport services	41%	54%	6%			

Fire and rescue services

150. LFS data suggests that a low proportion of employees overall, and therefore the number of survey respondents who work in this industry is low, which can lead to a wide margin of error around results making it more difficult to analyse workforce demographics for this industry using the LFS.

151. To mitigate for this, for fire and rescue services we use the best available data. The best available data on Fire and Rescue service (FRS) relates to employee demographics from the Home Office covering the Fire and Rescue service in England, which accounts for a large part of total GB employment in the service. Therefore, we use this data to provide an analysis of the demographics of fire and rescue service employees.

152. It is important to note the statistics for disability and religion contain “not stated” proportions that are high and variable across different Fire and Rescue Authorities (FRAs) who are the employers of FRS staff, meaning that they may not be fully representative of the FRS workforce, so should be treated with caution and are published as “Experimental Statistics” to reflect these quality limitations. For this reason, all statistics are published at an England-level only because FRS level figures would require heavy suppression.

153. The data suggests the following for the fire and rescue services, compared to total employees in the UK (taken from the LFS):

a. Fire and rescue services

- i. Employees are more likely to be male, and more likely to be aged over 35.

Table 18: Fire and rescue services by gender

FRS employees		Total UK employees	
Male	Female	Male	Female
81.4%	18.6%	50.1%	49.9%

Table 19: Fire and rescue services by disability (firefighters only)⁵⁶

Firefighters		Total UK employees	
Equality Act Disabled	Not Equality Act Disabled	Equality Act Disabled	Not Equality Act Disabled
5.4%	94.6%	15.6%	84.4%

⁵⁶ For data protection reasons we have combined or suppressed any categories with very small figures. For this reason, statistics are published at an England-level, firefighter only level because FRS level figures would require heavy suppression. Again, due to high number of FRS employees where disability status isn't known it is difficult to robustly compare with total UK employee figures.

Table 20: Fire and rescue services by age

FRS employees			Total UK employees		
16 to 35	36 to 45	46+	16 to 35	36 to 45	46+
29.0%	31.3%	39.7%	39.1%	22.5%	38.4%

Table 21: Fire and rescue services by ethnicity⁵⁷

FRS employees		Total UK employees	
White	Other Ethnicity	White	Other Ethnicity
94.4%	5.6%	87.3%	12.7%

Table 22: Fire and rescue services by religion⁵⁸

FRS employees			Total UK employees		
No religion	Christian	Other religion	No religion	Christian	Other religion
47.4%	46.7%	5.9%	49.1%	42.8%	8.1%

Border security

154. Similarly to fire and rescue LFS data, border security data from the LFS suggests that a low proportion of employees overall, and therefore the number of survey respondents who work in this industry is low, which can lead to the same data interpretation issues. For this reason, we are unable to provide quantitative figures, so statistics are not provided in this Impact Assessment because figures would require heavy suppression, as these could potentially be disclosive. However, we still provide an interpretation of what the LFS data suggests:

a. Border security

- i. Members are more likely to be male.

155. It is important to note that 'border security' may go wider than 'Border Force', but that at this stage, we use 'Border Force' protected characteristics as a proxy for the protected characteristics of all those working in 'border security'.

Summary

156. In summary, the Bill measures are expected to deliver benefits to both the economy (and therefore all members of society who benefit from economic growth) and individuals who rely on key public services.

⁵⁷ 3,852 FRS employees did not declare their ethnicity – accounting for 8.7% of the total. The figures shown here have been calculated excluding those who did not declare their ethnicity. However, it is difficult from these data to determine if the FRS differs from employees overall, due to the numbers not declaring.

⁵⁸ 13,213 FRS employees did not state their religion and 1,312 FRS employees' religion was not collected - Some fire authorities do not collect information on the religion of their staff. This accounts for 32.8% of FRS employees. The percentages presented here are calculated excluding those whose religion was not stated or those where the data were not collected. However, given the extent of the missing data it is not possible to compare robustly against employees overall.

157.Despite there being instances in which protected characteristics appear more likely to be affected in certain industries, we do not expect there to be a disproportionate impact on these workers. Any negative impact of the preferred option would affect all union members in the affected industries given the high proportion of employees covered by collective agreements in these industries (**Table 23**), and also non-union employees covered by the agreements (if there is a weakening of worker's bargaining power). In general, while there may be an immediate benefit to workers not involved in the dispute, there is a potential longer-term impact on terms and conditions. We discuss this potential cost from the policy to workers of potential reductions in future pay or working conditions earlier in this Impact Assessment (see **paras.91-93**).

Table 23: Proportion of key public sector workers' pay determined by collective agreement

Industry	Proportion of workers' pay determined by collective agreement
Relevant public services	85.4%
Hospital or ambulance services	87.4%
Primary or secondary education	83.5%
Rail or urban public transport services	87.5%
Fire services	94.5%
Border services	68.9%

Source: BEIS analysis of the Labour Force Survey (LFS)

Advancing the equality of opportunity

158.The Public Sector Equality Duty (PSED) requires the Department to have due regard to the need to advance equality of opportunity between people who share a protected characteristic and those who do not.

159.The MSL policy is designed to have a net positive impact on all users of key public services and all workers in key public sectors regardless of their personal characteristics. Since users of public services span the entire population, we determine that the benefits of the Bill measures will be distributed in accordance with the population without any negative equality impacts on protected groups. Where certain protected groups use particular key public services more frequently than average, they will disproportionately benefit from provision of a guaranteed minimum level of service during strike action in this service. As such, any negative impacts on equality resulting from the preferred option are considered justified and proportionate.

Eliminating discrimination and other prohibited conduct

160. The PSED requires BEIS to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act. As above, since users of public services span the entire population, we determine that the benefits of the Bill measures will be distributed in accordance with the population without any negative equality impacts on protected groups. No other forms of discrimination are considered to arise as a result of this policy.

Fostering good relations

161. The PSED requires BEIS to have due regard to the need to foster good relations between people who share a protected characteristic and those who do not. The MSL policy would apply to Great Britain, and to all users of key public services and all workers in key public sectors regardless of their personal characteristics. This policy should not impact diversity in the workforce, from skills to ethnicity to social background.

162. We have assessed the risks to workplace relations in the **Risks and assumptions** section of this Impact Assessment. We have provided mitigations for any potential negative consequences of the policy, suggesting that there is limited risk to workplace relations worsening from implementing MSLs in key sectors.

Trade and Investment

163. As set out in the Better Regulation Framework guidance, all Impact Assessments must consider whether the policy measures are likely to impact on international trade and investment.

164. We do not believe that the introduction of powers under the Strikes (Minimum Service Levels) Bill will have any impact on international trade. This is because the Bill's powers are limited to Key sectors, and these sectors are not internationally traded⁵⁹. As a result, we do not foresee any effects on the UK's ability to trade or provide services overseas. Furthermore, MSLs will not introduce requirements on foreign-owned companies that go above and beyond those which are UK-owned.

⁵⁹ "As most physical goods can be shipped fairly easily, manufacturing, agricultural production and resource extraction are considered tradable sectors. Conversely, non-tradable services typically include governmental services, education, health care, the construction sector and retail." <https://www.oecd-ilibrary.org/sites/9789264293137-5-en/index.html?itemId=/content/component/9789264293137-5-en>

VIII. Monitoring and Evaluation

165. The preferred option considered in this Impact Assessment falls outside of the statutory review requirements under the Small Business Enterprise and Employment Act 2015 as will be delivered through primary legislation.

166. However, the Government is keen to monitor the impact of the change, we expect this will be undertaken through survey of individuals and businesses and through discussions with employers in the services covered. The Government will develop more detailed plans once the secondary legislation is developed, involving:

- a. Regular discussion with key stakeholders to understand how this change has impacted unions, employers directly involved in industrial action and businesses more generally.

167. We will continue to monitor the level of industrial action through the ONS Labour Force Survey, union membership and collective agreement coverage, to see if there has been any possible impact on any occupations or industries, and any indication of an impact on bargaining power.

Post implementation review

168. The primary legislation will provide powers to enable implementation of MSLs in relevant key public services. The post implementation review (PIR) will evaluate both how the primary legislation is achieving its objectives, as well as the implementation through secondary legislation. This will include an assessment of how the intended outcomes are being achieved at a sector level, and how such outcomes align with the original objectives of the policy.

169. Given the uncertainties associated with the policy and its implementation, detailed evaluation plans will be developed for each key public service for which MSLs are introduced. The policy will be evaluated within the first five years from when the secondary legislation comes into force. This will be a sufficient period to observe the effectiveness of the policy and collect adequate data for an evaluation study. However, if an event triggers a need for this evaluation to be conducted earlier, then this will be undertaken as soon as is practically feasible. Such triggers may include the need to learn lessons on implementation to inform whether the policy could be extended to other sectors.

170. The PIR will include an evaluation of the extent to which the policy has delivered its objectives in the following areas:

- i. How has the objective of fairly balancing the cost (disbenefits) from limiting the ability to strike against the benefits to the wider public from better

protecting their rights (to private life, to access health care, to access key worker employment) been achieved?

- ii. What impact has the policy had on union membership?
- iii. How have wider economic impacts and environmental impacts been incorporated into the factors that government considered when setting MSLs?
- iv. How has the policy impacted the number of strikes, actions short of a strike and the likelihood of reaching an agreement during a dispute.
- v. What have been the impacts on key service operators?
- vi. Have there been unintended consequences from the policy, or through any mechanism put in place to deliver the policy?
- vii. What are the lessons learned that could be transferred to other areas?

171. It is anticipated that the evaluation will include both a process evaluation as well as an impact evaluation. This will explore the process of developing secondary legislation, its implementation, the costs of familiarisation and other administrative functions needed to deliver the policy. This will aim to establish the cost of the different aspects of the process of implementing the policy and enforcing it. The impact evaluation will focus on the impacts on users of key public services, operators, workers, the wider economy and the environment.