
BMA briefing – Strikes (Minimum service levels Bill)

January 2023

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Summary

- **The BMA calls on MPs to oppose the Strikes (minimum service levels) Bill and to urge Government to ensure there is meaningful engagement with unions on pay, instead of heavy-handed tactics that put workers' rights and jobs at risk.**
- The BMA strongly opposes the Strikes (minimum service levels) bill, which would amend the Trade Union and Labour Relations (Consolidation) Act 1992 to:
 - enable employers to issue work notices identifying staff required to work to ensure minimum service levels in public services, and;
 - remove protections for trade unions from legal action if they fail to ensure minimum service levels, and for staff from unfair dismissal if they strike when a work notice has been issued.
- It gives the Secretary of State wide-ranging powers to specify the levels of service required during strikes in public services via regulations subject to the affirmative resolution procedure. These are not defined in the bill and therefore transfer huge powers to the secretary of state to define them via statutory instrument with apparently no restrictions on this power or protections against over-reach.
- The Bill risks contravening the UK's obligations under Convention 87 of the International Labour Organisation that protects the right to organise. It diminishes unions' rights and responsibilities to represent their workers, infringes workers' rights to strike and threatens key public sector workers with losing their jobs if they fight for better conditions. Any proposals which could reduce an already too small workforce are completely unacceptable.
- The BMA has long called on the Government to ensure safe-staffing levels across the NHS, but it has failed to take the action needed to do so. It is ironic that the Government is now focusing on minimum staffing levels as a reason to curtail strike action when protecting the NHS goes to the heart of why healthcare workers are striking and considering striking.
- It is an established principle amongst healthcare unions that strike action should be coordinated in such a way as to allow critical services to continue to function (e.g. Consultants covering for Junior Doctors in emergency care).
- To protect the NHS and patient care, the Government must focus on addressing the NHS workforce crisis and retaining and recruiting the staff needed.

- This must mean addressing years of pay erosion that has left doctors demoralised and turning to better paid jobs abroad and outside the NHS and funding workforce expansion.
- **It remains unclear how the Government expects the consultation process to work or when regulations will be brought in and for which sectors – the BMA asks MPs to use the Second Reading of the Bill as an opportunity to press the Government for greater clarity on these points.**

BMA concerns

Removal of protections for unions and workers

Clause 1 introduces the Schedule, which amends the 1992 Act. Part 1 of the Bill Schedule inserts provisions to require a union to take reasonable steps to ensure compliance by its members with a work notice in relation to minimum service, and to enable employers to sue unions where this is not done.

The BMA is deeply concerned that if enacted, these measures not only represent an intrusion on legitimate trade union activities, but also undermine workers' rights to representation and leave unions unable to effectively represent their members.

Part 2 of the Bill Schedule meanwhile removes workers' automatic protection from unfair dismissal if they participate in strike action contrary to a work notice. Rather than protecting patient care, enabling employers to fire workers who strike would only serve to exacerbate existing workforce shortages.

The UK already has some of the toughest trade union laws in Europe. Whilst the Government has pointed to minimum service level requirements in countries including France, Spain and Italy, none of these countries have anything approaching the overall cumulative extent of restrictions found in the UK in terms of the balloting and notification requirements, and the restrictions on the circumstances in which industrial action can be taken.

Conversely, the imposition of tighter restrictions on trade unions may have the inadvertent effect of prolonging or increasing the frequency of workplace disputes, as concluded by the Government's own [Impact Assessment](#) on the Transport Strikes Bill.

Regulation-making powers and procedures

The Bill gives significant wide-ranging powers to the Secretary of State to make minimum service regulations that would specify the levels of service required in relation to strikes in the public services.

The Bill places a requirement on the Secretary of State to consult 'such persons as they consider appropriate' before making the regulations, while employers will be required to consult unions and 'have regard to their response' before setting any work notice.

These requirements fall far short of ensuring any meaningful consultation, risk unrealistic service levels being set and make clear the intention of using the regulations to curtail existing and expected strike action.

It remains unclear how the Government expects the consultation process to work or when regulations will be brought in and for which sectors – the BMA calls on MPs to press the Government for greater clarity on these points.

What the BMA is calling for

Instead of allowing existing and expected strikes to continue with the intention of then relying on heavy-handed legislation to undermine this legitimate action, the Government should be focused on meaningful negotiation with unions and addressing the critical, ongoing challenges facing the NHS.

This must mean addressing years of pay erosion that has left doctors demoralised and turning to better paid jobs abroad and outside the NHS.

Healthcare staff made significant sacrifices throughout the Covid-19 pandemic and continue to work in an increasingly overstretched healthcare system, which is struggling with the highest waiting lists and backlog of care since records began. However, the Government has shown itself unwilling to properly reward healthcare staff, leaving them forced into taking or considering taking industrial action.

Junior doctors in England have seen their pay eroded by over 26% in the past 15 years. In a recent BMA survey of more than 4,500 junior doctors:

- nearly half (45.3%) said they have struggled to afford their rent or mortgage
- half (50.8%) have had difficulty paying to heat and light their homes in the past year
- Seven in ten (71.4%) junior doctors surveyed said they have undertaken extra shifts on top of their standard contracts over the past year.

Instead of committing to address the situation, the Government has exacerbated it by restricting the DDRB from making pay recommendations for staff on multi-year deals. Junior doctors in England have been held to a multi-year agreement which delivers a pay uplift of just 2%, failing to recognise their significant sacrifices during the Covid-19 pandemic or the context of soaring inflation. This is despite the DDRB warning that failure to provide an uplift above the multi-year settlement would 'have a significant effect on motivation, affecting retention, productivity, and ultimately patient care'¹.

It is this that has led to the BMA balloting our junior doctor members in England on industrial action, not unions acting irresponsibly.

The BMA calls on MPs to oppose the Strikes (minimum service levels) Bill and to urge Government to ensure there is meaningful engagement with unions on pay, instead of heavy-handed tactics that put workers' rights and jobs at risk.

¹ DDRB & DHSC (July 2022) Review Body on Doctors' and Dentists' Remuneration 50th Report: 2022
<https://www.gov.uk/government/publications/review-body-on-doctors-and-dentists-remuneration-50th-report-2022>