EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS ACT 2025 (MINIMUM SERVICE LEVELS) (CONSEQUENTIAL REVOCATION) REGULATIONS 2026

2026 No. 42

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Kate Dearden, Parliamentary Under-Secretary of State for Employment Rights and Consumer Protection at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 James Silcox, Deputy Director for Trade Unions and Collective Rights, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Trade Union Policy team at the Department for Business and Trade can be contacted by email at the following address with any queries regarding the Code of Practice: tradeunionpolicy@businessandtrade.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This legislation revokes the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) following the repeal of the Strikes (Minimum Strikes Levels) Act 2023 and the related amendments made by the Employment Rights Act 2025 ("the 2025 Act") to the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) in which the instrument has legal effect) is Great Britain.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

5. Policy Context

What is being done and why?

5.1 The 2025 Act repeals the entirety of the Strikes (Minimum Service Levels Act) 2023 ("the 2023 Act"). As part of implementing that policy change, and using the consequential powers in section 154(1) and (2) of the 2025 Act, the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) is revoked.

What was the previous policy, how is this different?

5.2 The Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) provides practical guidance for trade unions on the 'reasonable steps' they should take in order to comply with the requirements in the 1992 Act relating to minimum service levels, including section 234E of the 1992 Act (as inserted by the 2023 Act.

5.3 As a result of the 2025 Act, employers can no longer impose work notices on trade unions for minimum service levels during strike action. The revocation of the Code on Reasonable Steps to be taken by a Trade Union is therefore appropriate to reflect the revised position under the 1992 Act.

5.4 Following the repeal of the 2023 Act and the related amendments of the 1992 Act by the 2025 Act, the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) no longer reflects legislation under the 1992 Act, and, accordingly, the guidance it provides no longer has any practical relevance.

6. Legislative and Legal Context

How has the law changed?

6.1 The Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) was issued in December 2023 under sections 203(1)(a) and 204(2) of the 1992 Act.

6.2 The 2025 Act repeals the 2023 Act, which inserted sections 234B to 234G into, and made other related amendments to, the 1992 Act, including section 234E (work notices: no protection if union fails to take reasonable steps).

6.3 The 2023 Act allowed minimum service levels to be set by the Secretary of State in certain public service sectors during strike action and allowed employers to issue work notices in connection with those requirements. The repeal of that Act means that there is no longer any power for the government to set minimum service levels and employers in the specified sectors can no longer issue work notices relating to minimum service levels during strike action.

6.4 As part of implementing these changes and using the consequential powers in section 154(1) and (2) of the 2025 Act, these regulations revoke the Code on Reasonable Steps for to be taken by a Trade Union (Minimum Service Levels). These regulations are subject to the negative resolution procedure and in accordance with section 154(5) of the 2025 Act, the regulations are to be laid before Parliament and will come into force unless either House resolves that they should not do so.

Why was this approach taken to change the law?

6.5 This approach revokes the Code to conform with the revised position in primary legislation.

7. Consultation

Summary of consultation outcome and methodology

7.1 Where changes to a Code of Practice reflect primary and secondary legislation, consultation is not required. Trade unions and businesses have been engaged throughout the passage of the 2025 Act, to which the changes to this Code are directly linked.

8. Applicable Guidance

8.1 The Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) is itself statutory guidance.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the revocation of the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) is consequential on amendments to the 1992 Act (made by the 2025 Act). The impacts of changes to the 1992 Act are considered in the Impact Assessment produced in relation to the 2025 Act.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the revocation of the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) is consequential on amendments to the 1992 Act (made by the 2025 Act).

9.3 There is no, or no significant, impact on small or micro business because the revocation of the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) is consequential on amendments to the 1992 Act (made by the 2025 Act).

9.4 There is no, or no significant, impact on the public sector because the revocation of the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) is consequential on amendments to the 1992 Act (made by the 2025 Act).

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 As the revocation of the Code on Reasonable Steps to be taken by a Trade Union (Minimum Service Levels) simply reflects repeals, and related amendments, to the law made by the Employment Rights Act 2025, no review is required.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").