EXPLANATORY MEMORANDUM TO

THE STRIKES (MINIMUM SERVICE LEVELS: FIRE AND RESCUE SERVICES) (ENGLAND) REGULATIONS 2024

2024 No. 417

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Home Office and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Chris Philp MP, Minister of State for Crime, Policing and Fire at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

2.2 Zoe Wilkinson, Deputy Director for Fire Safety at the Home Office, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Kevin Finch at the Home Office (Telephone: 07587 299660 or email: kevin.finch@homeoffice.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The purpose of this instrument is to reduce the risk to public safety posed by strike action within the fire and rescue service by setting minimum levels of service on strike days to protect the lives and property of the public as well as the safety of firefighters.

4.2 This instrument introduces minimum levels of service for fire and rescue services provided by fire and rescue authorities (FRAs). The levels of service are set so that on each day of the strike an emergency incident response is provided to calls for help that are assessed as requiring a fire and rescue service response as if the strike were not taking place on that day. The instrument applies to all fire and rescue authorities in England, as defined by the Fire and Rescue Services Act 2004.

4.3 In order to meet the minimum service level as defined by this instrument, FRAs may choose to issue work notices to a trade union that has given notice of a strike. The work notice names employees who are required to work during strike action. The issuing of a work notice then requires steps to be taken by the union in dispute to inform members of the work notice. If a union does not comply with the required steps then they are no longer protected from legal action in relation to the strike. Should an employee not comply with being named on a work notice then they lose their protection from dismissal.

Where does the legislation extend to, and apply?

4.4 The extent of this instrument (that is, the jurisdictions which the instrument forms part of the law of) is England and Wales.

4.5 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Fire and rescue services are critical to public safety in responding to incidents, such as fires and road traffic accidents, that put lives, property or the environment at risk. It is vital to ensure that people have access to the emergency services when they need them. Before the Strikes (Minimum Service Levels) Act 2023 ('the 2023 Act'), there was no legislation setting out a minimum level of service on a strike day, and therefore cover during strikes in the fire and rescue service was dependent on FRA business continuity plans, voluntary agreements with unions and arrangements for military or private contractors to provide defensive firefighting capabilities.

5.2 Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 ('the 1992 Act') already makes it an offence for a person to wilfully and maliciously break a contract of service or hire, knowing or having probable cause to believe that the consequence of doing so, either alone or in combination with others, will endanger human life or cause serious bodily injury. However, this is a higher threshold than the Government is seeking to provide through minimum service levels.

5.3 These regulations define a minimum level of service for control rooms, emergency incident response and fire safety. This will ensure that an FRA, through the use of work notices, has personnel available to ensure that emergency calls are answered, there is suitable equipment and personnel available to respond to emergencies and serious fire safety issues can be managed while strikes are taking place. This may include deploying trained staff to crew national resilience assets should they be required.

What was the previous policy, how is this different?

5.4 Before the 2023 Act, there was no legislation setting out a minimum level of service on a strike day. Some FRAs were unable to provide assurances that they would meet their statutory duties and considerable expense would have been incurred to ensure a sufficient level of service during a strike. This policy defines a minimum level of service and through the use of work notices an FRA is able to ensure it has personnel available to meet that level of service and comply with its statutory duties as an FRA.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2023 Act was introduced to amend the 1992 Act in order to enable the relevant Secretary of State to make regulations that set minimum service levels to be met through work notices during strikes in a range of sectors. Before the 2023 Act, neither the 1992 Act nor any other legislation enabled the setting of minimum service levels in any sector on a strike day.

6.2 This instrument is made under section 243B of the 1992 Act, as inserted by Part 1 of the Schedule to the 2023 Act.

6.3 This instrument defines an emergency incident response as any one or more of the following services—

a) extinguishing fires;

b) protecting life or property in the event of fires;

c) rescuing people, or protecting people from serious harm, in the event of a road traffic accident;

d) discharging functions conferred by an order under section 9 of the Fire and Rescue Services Act 2004 (FRS 2004);

e) taking action in response, or for the purpose of enabling action to be taken in response, to an event or situation of a kind mentioned in section 11(2) of the FRS 2004;

f) the management, direction and control of any of the services mentioned in paragraphs (a) to (e);

6.4 This allows FRAs to ensure the activities carried out on a strike day are limited to those which are essential to public safety and enable them to prioritise as such.

6.5 This instrument provides that the fire and rescue services provided by all FRAs in England, as defined by the FRS 2004, and FRA contractors, are relevant services. An English FRA contractor does not include those contracted to provide services only for periods of strike action. This enables those FRAs to issue work notices to trade unions in relation to any industrial action which relates to those relevant services and of which the union has given notice to the employer under section 234A of the 1992 Act.

6.6 This instrument excludes fire and rescue services provided by organisations outside of the FRS 2004, such as the Defence fire and rescue service or rescue and firefighting services provided to licensed aerodromes.

6.7 Wholetime and on call firefighters are included in these regulations, however volunteer firefighters are excluded. A volunteer firefighter has the meaning given in paragraph 2(1), Part 1 of Schedule 1 of the Firefighters' Compensation Scheme (England) Order 2006(c). This is a member of the FRA who: (a) is obliged to attend at the station to which he is attached for training, development and maintenance duties for an average of two hours each week and, promptly, at any time in response to a call; and (b) receives no retaining or other fee in respect of those duties. Services that are provided on a voluntary basis are excluded from these regulations. These are services that go beyond what is set out in FRA employees' contracts of employment.

6.8 The minimum levels of service for FRA control rooms is such that all emergency calls for help must be answered and assessed as they would be if a strike were not taking place. The control room must be able to discharge their usual functions in ensuring an emergency response is dispatched where appropriate and that personnel and equipment can be mobilised in line with the FRA's Community Risk Management Plan. A call for help means a request for fire and rescue services made by a person, either at an FRA premises or by telephone or other device, that is received by an English FRA or an English FRA contractor. This includes all 999 calls, anyone contacting a fire service by email with an emergency or an individual approaching a fire and rescue premises. Control rooms will support callers to identify their exact location, deliver vital fire safety advice where required and continue their responsibility for the needs of firefighters by dispatching further resources as required, arranging relief crews, liaising with other agencies and providing important operational information for the duration of each incident.

6.9 For emergency incident responses this instrument makes provision that the minimum level of service is that an English FRA has available 73% of the appliances and vehicles that would usually be available as if a strike were not taking place. In addition it provides that national resilience assets are available as if a strike were not taking place. National resilience provides specialist capabilities, personnel and resources which enhance the ability of the sector to respond effectively to large-scale, critical incidents or incidents that would overwhelm a community risk management plan. Those incidents may be natural disasters, industrial accidents or terrorist attacks. These could include:

a) Chemical, Biological, Radiation, Nuclear, Explosive (CBRNe):

i) Mass Decontamination - specialist teams that enable the fire and rescue service to efficaciously decontaminate large numbers of people following contact with a substance.

ii) Detection, Identification and Monitoring (DIM) – specialist teams that provide the fire and rescue service with the ability to make an assessment on the potential presence of chemical, biological and radiological agents.

b) Enhanced Logistics Support (ELS): Teams of personnel and vehicles utilised to assist with the management of large numbers of assets and resources at strategic holding areas which may be in attendance at large scale, major and/or protracted incidents.

c) High Volume Pumping (HVP): Used to move significant volumes of water over long distances, either in response to floods, or to provide a water supply to fight fires in locations where large amounts are required.

d) Urban Search and Rescue (USAR): Respond to large scale building collapse and/or major transport incidents and provide technical rescue capability for operations at height and confined spaces.

e) Marauding Terrorist Attack (MTA) specialist capability: Specialist fire and rescue service teams who work closely with police and ambulance services to provide a multi-agency response to MTA incidents.

6.10 The FRA must have available personnel to safely crew and deploy these appliances, vehicles and assets in response to emergency incidents and to provide management, control and direction of those services as they would if a strike were not taking place. In considering the most appropriate percentage level at which to set the minimum service level (MSL), the Government has acknowledged the principle of the ability to strike but considered this against the need to protect public safety. The 73% figure is based on evidence from Home Office modelling using fire and rescue services' appliance usage data and data regarding the average availability of appliances. The analysis calculates the proportion of days that each fire and rescue service (FRS) had more pumping appliances simultaneously mobilised than an MSL would ensure were available. It then applies a risk rating to each FRS based on the proportion of days on which they would exceed the MSL. At 73% only one FRS is not rated green through a Red, Amber, Green rating system. More detail of the modelling is contained in the consultation response.

6.11 Fire safety services are defined in this instrument as services related to the safety of persons or property for the purpose of reducing the risk of an event or situation requiring an emergency incident response arising. It provides that the minimum level of service is such that an English FRA can ensure fire safety services are available

where an urgent intervention is needed and has been requested in advance of the strike or is requested during strike action. Requests may come in from a third party or internally. Requests for fire safety services must be answered and assessed as if a strike were not taking place and a response organised and provided where same day action is required. For example, an urgent call may come into a control room highlighting a blocked fire exit in licensed premises, or where a serious fire safety defect has been uncovered within a residential building that potentially requires urgent enforcement action under the Regulatory Reform (Fire Safety) Order 2005.

6.12 These regulations are intended to reduce the risk to lives, property and the environment that strike action poses by setting minimum levels of service within fire and rescue services.

7. Consultation

Summary of consultation outcome and methodology

7.1 In February 2023 a consultation was launched on potential approaches for implementing minimum service levels for fire and rescue services during periods of strike action. During the consultation, which ran until 11 May 2023, there was also engagement with the fire and rescue sector to test potential approaches.

7.2 The consultation was open to members of the public, unions and other representative groups for the fire and rescue service workforce, operational and political leaders working in the fire and rescue sector, and staff working in the wider fire safety, public safety, and protection sectors.

7.3 The majority of the consultation responses were submitted via the online survey tool, although some were sent to the Home Office via email. During the consultation period, the Home Office engaged in workshops with senior leaders and key personnel from FRSs to discuss the challenges and opportunities posed by the various policy options. These sessions helped identify further questions and issues to be considered as part of the development of MSL policy. Following this, the Home Office hosted deep-dive sessions and bilateral discussions to discuss specific issues in more detail and address any questions or concerns.

7.4 A total of 72 responses were received to the consultation survey. These included responses from the majority of the fire and rescue authorities in England, from trade unions who represent fire and rescue staff, other organisations in the sector, fire and rescue service employees and members of the public. This enabled the department to take these views into account in its development of the policy and decisions on the minimum level of service for fire and rescue services.

7.5 The consultation set out a proposal on the scope of the essential services to be included within any MSL for fire and rescue services and five possible approaches for the implementing the MSL. Two thirds of responses strongly agreed that firefighting, rescues, dangerous substance clean up, crewing of national resilience assets and services necessary to carry out the preceding duties such as control room services should be included in the MSL. A further 12% tended to agree with those essential services. Additionally, 80% of respondents strongly agreed that during prolonged strikes, fire and rescue services should be able to respond to major incidents such as a marauding terrorist attack, 44% agreed that fire protection activities such as enforcement activities should be carried out and 36% agreed that fire prevention activities should be carried out.

7.6 Of the options proposed to deliver MSLs for fire and rescue, the responses showed a preference for option 4, a national MSL benchmark set by the Home Secretary and chief fire officers and their organisations deciding specifics for their own local areas, with 54% strongly agreeing that it would provide an adequate level of response to mitigate fire and rescue risks during strike action. When asked about the potential benefits of this option, responses stated that national consistency would be a key benefit with the addition of local flexibility.

7.7 The department considered the outcome of this as part of the development of the policy, with the policy framework being amended in light of feedback on the operational viability of proposals.

7.8 The department wrote to the Scottish and Welsh governments to invite them to respond to the consultation but they declined involvement and registered that they would not support the implementation of MSLs for Scotland or Wales.

7.9 The full response to the consultation can be found at Minimum service levels for fire and rescue services - GOV.UK (www.gov.uk).

8. Applicable Guidance

8.1 The Department for Business and Trade has produced a Code of Practice outlining steps a trade union should take to comply with the 2023 Act. This was laid before Parliament on 7 November 2023 and came into effect on 8 December 2023.[1]

8.2 The Government has published guidance to assist employers and unions in developing work notices that are consistent with the requirements of the regulations. This guidance is non-statutory.[2]

8.3 The Home Office has produced a fact sheet with further information about these regulations which is available at Minimum service levels for fire and rescue services - GOV.UK (www.gov.uk).

8.4 Further guidance specific to the fire and rescue sector is due to be published once the regulations are in force. This guidance will be non-statutory.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Economic Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 There is no significant impact on business, charities or voluntary bodies beyond a reduction in the risk to the lives, property, and the environment that strike action brings.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is minimal. English fire and rescue authorities who are in scope of the regulations will be impacted by the implementation of these regulations. This will impose some familiarisation and administration costs to those organisations.

[1] https://www.gov.uk/government/consultations/minimum-service-levels-code-of-practice-on-reasonable-steps
[2] https://www.gov.uk/government/publications/minimum-service-levels-msl-issuing-work-notices/minimum-service-levels-issuing-work-notices-a-guide-for-employers-trade-unions-and-workers

9.5 These regulations will reduce the risk to lives, property and the environment that strike action brings, therefore benefitting the public, businesses and firefighters.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that in the event of a strike, the department will continue to work with fire and rescue services to ensure the impact of strikes, including additional impacts due to MSLs, are monitored. This will involve tracking the usage of the legislation with respect to work notices and the reasonable steps taken by employers and unions to comply with the legislation. It is not anticipated that any additional impact evaluation will be required in the review period beyond this monitoring of activity.

10.2 This instrument does not include a statutory review clause in line with the Small Business, Enterprise and Employment Act 2015 as it would be disproportionate in regard to the economic impact of these regulations.

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 The Minister of State for Crime, Policing and Fire, the Rt Hon Chris Philp, has made the following statement regarding Human Rights:

"In my view the provisions of The Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations 2024 are compatible with the Convention rights."

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").