

Transport Strikes (Minimum Service Levels) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Transport, are published separately as Bill 168-EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Anne-Marie Trevelyan has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Transport Strikes (Minimum Service Levels) Bill are compatible with the Convention rights.

ENVIRONMENTAL STATEMENTS

Secretary Anne-Marie Trevelyan has made the following statements under section 20(2)(a) and (3) of the Environment Act 2021:

In my view—

- (a) the Transport Strikes (Minimum Service Levels) Bill contains provision which, if enacted, would be environmental law, and
- (b) the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.

Transport Strikes (Minimum Service Levels) Bill

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Make provision about minimum service levels in connection with the taking by trade unions of strike action relating to transport services.

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Minimum service levels for transport strikes

The Schedule amends Part 5 and other provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 to—

- (a) impose conditions on the protection of trade unions from legal action in respect of strikes relating to certain transport services where provision has been made for minimum levels of service in the event of a strike, 5
- (b) impose obligations on employers and trade unions in connection with those minimum levels of service,
- (c) provide for the enforcement of those obligations, and 10
- (d) make related provision.

2 Power to make consequential provision

- (1) The Secretary of State may by regulations made by statutory instrument make provision that is consequential on this Act.
- (2) Regulations under this section may amend, repeal or revoke provision made by or under an Act passed — 15
 - (a) before this Act, or
 - (b) later in the same session of Parliament as this Act.
- (3) A statutory instrument containing (whether alone or with other provision) regulations under this section that amend or repeal provision made by an Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 20

- (4) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

3 Extent

- (1) Subject to subsection (2), this Act extends to England and Wales and Scotland. 5
- (2) An amendment or repeal made by this Act has the same extent as the provision amended or repealed.

4 Commencement and transitional provision

- (1) Subject to subsection (2), this Act comes into force at the end of the period of two months beginning with the day on which this Act is passed. 10
- (2) The following come into force on the day on which this Act is passed—
- (a) sections 2 and 3, this section and section 5;
 - (b) section 1 and the Schedule so far as conferring powers to make regulations.
- (3) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act. 15
- (4) The power to make regulations under subsection (3) includes power to make different provision for different purposes.
- (5) Regulations under subsection (3) are to be made by statutory instrument. 20

5 Short title

This Act may be cited as the Transport Strikes (Minimum Service Levels) Act 2022.

- (b) any later day that is agreed between the employer and the union.
- (3) A work notice must—
- (a) identify the persons required to work during the strike in order to secure that the levels of service set out in the minimum service specification are provided, and 5
 - (b) specify the work required to be carried out by them during the strike in order to secure that those levels of service are provided.
- (4) A work notice must not identify more persons than are reasonably necessary for the purpose of providing the levels of service set out in the minimum service specification. 10
- (5) In deciding whether to identify a person in a work notice, the employer must not have regard to whether the person is a member of a trade union. 15
- (6) Before giving a work notice, the employer must—
- (a) take such steps as are reasonably practicable to consult the union, and
 - (b) have regard to the views expressed by it in the consultation.
- (7) The employer may vary a work notice— 20
- (a) before the end of the 4th day before the strike date, or
 - (b) before the end of any later day that is agreed between the employer and the union.
- (8) Before varying a work notice the employer must—
- (a) take such steps as are reasonably practicable to consult the union, and 25
 - (b) have regard to the views expressed by it in the consultation.
- (9) In this section “strike date” means the day on which a strike is intended to begin.
- (10) For the purposes of subsection (9)— 30
- (a) strikes specified in the same notice under section 234A are to be treated as intended to begin on the same day (even if they are discontinuous), and
 - (b) that day is the earliest date specified in the notice as a date on which a strike is intended to begin or take place. 35
- (11) Schedule A2A contains further provision relating to minimum service specifications, including provision relating to—
- (a) circumstances in which an employer or trade union is under a duty to take reasonable steps to enter into a minimum service agreement, 40
 - (b) circumstances in which the Central Arbitration Committee is required to make a minimum service determination,
 - (c) the procedure for the making and variation of minimum service agreements and minimum service determinations,
 - (d) the setting of levels of service by regulations in the absence of a minimum service agreement or minimum service determination, 45

- (e) who is bound by minimum service specifications, and
- (f) the enforcement of requirements relating to minimum service specifications.

234D Work notices: disclosure of information

- (1) Except as provided by subsection (2), a disclosure of information authorised by section 234C does not breach –
 - (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (2) Section 234C does not authorise a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, that section is to be taken into account).
- (3) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).

234E Work notices: no protection if union fails to take reasonable steps

- Where a trade union is bound by a minimum service specification as respects the provision by a person’s employer of a specified transport service, an act done by the union to induce that person to take part, or to continue to take part, in a strike relating to the provision of the service is not protected as respects the employer if –
- (a) the employer gives a work notice to the union in relation to the strike in accordance with section 234C, and
 - (b) the union fails to take reasonable steps to ensure that the persons identified in the notice do not take part, or continue to take part, in the strike.

234F Regulations: consultation and supplementary

- (1) Before making regulations under section 234B or Schedule A2A the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (2) A power to make regulations under section 234B or Schedule A2A includes power to make –
 - (a) consequential, supplementary, incidental, transitional or saving provision;
 - (b) different provision for different purposes.
- (3) Regulations under section 234B or Schedule A2A are to be made by statutory instrument.
- (4) A statutory instrument containing such regulations (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (5) Subsection (1) may be satisfied by consultation before the passing of the Transport Strikes (Minimum Service Levels) Act 2022 (as well as by consultation after that time).

234G Interpretation of terms relating to minimum service levels

In this Part –

“bound”, in relation to a minimum service specification, is to be read in accordance with Part 5 of Schedule A2A;

“minimum service agreement” means an agreement in writing that – 5

(a) is entered into by all of the persons that are subject to the duty under paragraph 1 of Schedule A2A as respects an employer’s provision of a specified transport service, and 10

(b) sets out levels of service to be provided in the event of a strike relating to the provision of the service;

“minimum service determination” means a determination by the Central Arbitration Committee as respects an employer’s provision of a specified transport service that sets out levels of service to be provided in the event of a strike relating to the provision of the service; 15

“minimum service regulations” means regulations under paragraph 15(1) of Schedule A2A (regulations setting out levels of service in the event of a strike relating to the provision of a specified transport service where there is no minimum service agreement or minimum service determination); 20

“minimum service specification” means a minimum service agreement, a minimum service determination or minimum service regulations; 25

“specified transport service”: see section 234B;

“work notice” means a notice in writing that a minimum service specification is to apply in relation to a strike.”

4 After Schedule A2 insert – 30

“SCHEDULE A2A Section 234B(11)

MINIMUM SERVICE SPECIFICATIONS FOR TRANSPORT STRIKES

PART 1

MINIMUM SERVICE AGREEMENTS

Duty to take steps to enter into agreement 35

1 (1) *Where a person becomes subject to the duty under this paragraph as respects an employer’s provision of a specified transport service, the person must take reasonable steps to enter into, before the end of the relevant 3-month period, a minimum service agreement with all the other persons that are subject to the duty as respects the employer’s provision of the service.* 40

(2) An employer becomes subject to the duty under this paragraph as respects its provision of a specified transport service if it –

(a) gives a notice of intent in relation to the service to a trade union that is capable of affecting its provision of that service, or 45

- (b) receives a notice of intent in relation to the service from a trade union that is capable of affecting its provision of that service.
- (3) A trade union that is capable of affecting an employer’s provision of a specified transport service becomes subject to the duty under this paragraph as respects the employer’s provision of the service if the union –
 - (a) gives to the employer a notice of intent in relation to the service,
 - (b) receives a notice of intent from the employer in relation to the service, or
 - (c) is notified by the employer under sub-paragraph (5) of a notice of intent in relation to the service.
- (4) Where –
 - (a) an employer is subject to the duty under this paragraph as a result of giving a notice of intent to a trade union, and
 - (b) it appears to the employer that there is one or more other trade unions that is capable of affecting its provision of the service in question,the employer must as soon as practicable after giving the notice to the first union also give a notice of intent to each such other union.
- (5) Where –
 - (a) an employer is subject to the duty under this paragraph as a result of a receiving a notice of intent from a trade union, and
 - (b) it appears to the employer that there is one or more other trade unions that is capable of affecting its provision of the service in question,the employer must, as soon as practicable after receiving the notice, notify the fact that it has received the notice to each such other union.
- (6) Sub-paragraphs (4) and (5) apply whether or not the other trade union existed, or was capable of affecting the employer’s provision of the service, at the time when the first notice of intent was given.
- (7) For the purposes of this Schedule a trade union is “capable of affecting” an employer’s provision of a specified transport service if any of the trade union’s members is employed by the employer in connection with the provision of the service.
- (8) In this paragraph –
 - “notice of intent” means a notice of intention to make a minimum service agreement in relation to the provision by an employer of a specified transport service;
 - “the relevant 3-month period”, in relation to the provision by an employer of a specified transport service, means the period of 3 months beginning with the seventh day after the day on which a notice of intent is first given in relation to the provision by the employer of that service.

Notifying Central Arbitration Committee that duty under paragraph 1 has arisen

- 2 Where an employer becomes subject to the duty under paragraph 1 as respects its provision of a specified transport service, the employer must, before the end of the period of 7 days beginning with the first day of the relevant 3-month period – 5
- (a) notify the Central Arbitration Committee that the duty has arisen as respects its provision of that service, and
 - (b) notify each trade union that is capable of affecting its provision of that service that the employer has notified the Central Arbitration Committee. 10

Consultation and matters to be taken into account

- 3 (1) An employer who is subject to the duty under paragraph 1 as respects its provision of a specified transport service –
- (a) must consult –
 - (i) any persons specified in regulations made by the Secretary of State, and 15
 - (ii) such regulatory bodies not specified in regulations under paragraph (i) as appear to the employer to have an interest in the proposed minimum service agreement, 20
 - (b) may consult such representative bodies (in addition to any specified in regulations under paragraph (i) of sub-paragraph (a)) as appear to the employer to have an interest in the proposed minimum service agreement, and
 - (c) must inform each trade union that is subject to that duty as respects its provision of the service of the views obtained as a result of the consultation. 25
- (2) The purpose of consultation under sub-paragraph (1) is to obtain the views of the bodies consulted about the provision to be included in the minimum service agreement. 30
- (3) A trade union that is subject to the duty under paragraph 1 as respects an employer's provision of a specified transport service must inform the employer, and each other trade union that is subject to that duty as respects the employer's provision of the service, of the views of any regulatory or representative bodies that the union has consulted in relation to the proposed minimum service agreement. 35
- (4) In making a minimum service agreement, an employer and a trade union must have regard to –
- (a) the views obtained as a result of consultation under sub-paragraph (1), 40
 - (b) the views obtained as a result of any consultation referred to in sub-paragraph (3),
 - (c) the relevant matters (see paragraph 4), so far as applicable to the specified transport service to which the agreement is to relate, and 45

- (d) other minimum service specifications (if any), so far as publicly available, that relate to the specified transport service in question.
- (5) In this paragraph—
 - “regulatory body” means a body that has regulatory functions in relation to the specified transport service; 5
 - “representative body” means a body that represents the views or interests of—
 - (a) members of the public who use the specified transport service, or 10
 - (b) employers who provide the specified transport service.
- (6) This paragraph applies in relation to a proposed variation of a minimum service agreement or minimum service determination under paragraph 13 as it applies in relation to a proposed minimum service agreement. 15

Relevant matters

- 4 (1) The relevant matters are—
 - (a) the need to protect the health and safety of members of the public and of people who are involved in providing the specified transport service; 20
 - (b) the need to protect national security;
 - (c) the need to ensure that people are able to receive health care and social care services;
 - (d) the importance of ensuring that people aged under 17 are able to receive education; 25
 - (e) the importance of ensuring that people are able to travel to and from their place of work or education;
 - (f) the importance of avoiding damage to the economy;
 - (g) the importance of avoiding damage to the environment. 30
- (2) The Secretary of State may by regulations amend this paragraph to change the matters that are relevant matters.

Regulations about minimum service agreements

- 5 (1) *The Secretary of State may by regulations impose requirements on trade unions and employers about the content or structure of a minimum service agreement.* 35
- (2) The requirements about content may, in particular, include requirements about—
 - (a) the levels of service that are to be set;
 - (b) the inclusion in the agreement of provision about the variation or continuation of the agreement. 40

Publication

- 6 (1) An employer who is bound by a minimum service agreement must arrange for the agreement to be published before the end of

the relevant period by such means as appear to the employer to be most appropriate for making it available to the public.

- (2) A trade union that is bound by a minimum service agreement must arrange for the agreement to be published before the end of the relevant period by such means as appear to the union to be most appropriate for making it available to its members. 5
- (3) In this paragraph, “the relevant period” means –
- (a) the period of 14 days beginning with the date on which the minimum service agreement takes effect, or
 - (b) if shorter, the period beginning with the date on which the minimum service agreement takes effect and ending with the date of any strike –
 - (i) of which notice has been given to the employer under section 234A by a trade union that is bound by the minimum service agreement, and 10
 - (ii) which relates to the provision of the specified transport service. 15
- (4) Where the employer notifies the union that it considers that a minimum service agreement contains sensitive information –
- (a) neither the union nor the employer may publish, or arrange for the publication of, that information, and 20
 - (b) this paragraph applies as if it required the employer and the union to arrange for the publication of a summary of the agreement, prepared by the employer, excluding that information. 25
- (5) This paragraph applies in relation to a minimum service agreement as varied (see paragraphs 13 and 14) as if the references in sub-paragraph (3) to the date on which the minimum service agreement takes effect were references to the date on which the variation takes effect. 30
- (6) In sub-paragraph (4), “sensitive information” means information of a description specified by regulations made by the Secretary of State.

PART 2

MINIMUM SERVICE DETERMINATIONS 35

Joint application to Central Arbitration Committee

- 7 (1) This paragraph applies where the duty under paragraph 1 has arisen as respects an employer’s provision of a specified transport service and no minimum service agreement as respects the employer’s provision of that service has been entered into before the end of the first two months of the relevant 3-month period. 40
- (2) The persons who are subject to the duty under paragraph 1 as respects the employer’s provision of the service may jointly apply to the Central Arbitration Committee for a determination under paragraph 9. 45

- (3) The applicants must give the Committee any information they have which is referred to in paragraph 3(4)(a) and (b) (views obtained as a result of consultation).

Notification to Central Arbitration Committee of expiry of relevant 3-month period

- 8 (1) Where the duty under paragraph 1 has arisen as respects an employer's provision of a specified transport service and no minimum service agreement has been entered into before the end of the relevant 3-month period as respects the employer's provision of that service— 5
- (a) the employer must notify the Central Arbitration Committee, and 10
- (b) any trade union that is subject to the duty as respects the employer's provision of the service may notify the Central Arbitration Committee.
- (2) A person who notifies the Central Arbitration Committee under this paragraph must give the Committee any information it has which is referred to in paragraph 3(4)(a) and (b) (views obtained as a result of consultation). 15

Minimum service determination

- 9 (1) A determination under this paragraph is a minimum service determination as respects an employer's provision of a specified transport service. 20
- (2) *Where the Central Arbitration Committee receives an application under paragraph 7, it must (subject to sub-paragraph (6)) make a determination under this paragraph.* 25
- (3) *Where the Central Arbitration Committee is notified under paragraph 8, it must (subject to sub-paragraph (6)) make a determination under this paragraph.*
- (4) As soon as reasonably practicable after making a determination under this paragraph, the Committee must— 30
- (a) give notice of the determination to the persons who are bound by it, and
- (b) arrange for the publication by such means as appear to the Committee to be most appropriate for making them available to the public— 35
- (i) a statement that a minimum service determination has been made as respects the employer's provision of the specified transport service,
- (ii) a statement of who the determination is binding on, and 40
- (iii) information for the purpose of assisting members of the public to find the material relating to the determination that has been published under paragraph 6(1) and (2) (by virtue of paragraph 12).
- (5) Where the Central Arbitration Committee makes a determination under this paragraph, the persons who are bound by the determination are not bound by any minimum service agreement 45

previously entered into as respects the employer’s provision of the service in question.

- (6) But if the Central Arbitration Committee is satisfied that a minimum service agreement has been entered into in accordance with paragraph 3 and any regulations under paragraph 5 as respects an employer’s provision of a specified transport service, it must not make a determination under this paragraph in relation to the employer’s provision of that service. 5

Minimum service determination: procedure

- 10 (1) The Central Arbitration Committee must, before making a determination under paragraph 9, give the persons who would be bound by the determination the opportunity to make representations about the levels of service. 10
- (2) In determining the levels of service, the Committee must have regard to – 15
- (a) representations made by virtue of sub-paragraph (1), and
 - (b) the matters mentioned in paragraph 3(4), including the relevant matters listed in paragraph 4 so far as applicable to the specified transport service to which the determination is to relate. 20
- (3) Subject to sub-paragraphs (1) and (2), the Committee –
- (a) may take such steps as it considers appropriate, and
 - (b) may determine the procedure it intends to follow, for the purposes of determining the levels of service.
- (4) In reliance on sub-paragraph (3)(b) the Committee may, for example – 25
- (a) hold a hearing to consider representations made by the persons to whom the minimum service determination would relate;
 - (b) make such enquiries as the Committee considers appropriate; 30
 - (c) ask any person to give it such information as the Committee considers appropriate.
- (5) The Secretary of State may on giving notice to the Committee intervene in any hearing which relates to a determination under paragraph 9. 35
- (6) If the Committee does not make a determination under paragraph 9 before the end of the period of 4 months beginning with the date on which it receives an application under paragraph 7 or a notification under paragraph 8, it must give a written explanation of why it has not yet made a determination to the persons who would be bound by the determination. 40

When minimum service determination takes effect

- 11 (1) A determination under paragraph 9 has effect, for the purposes of this Part, from the date on which the Central Arbitration 45

Committee gives notice of the determination under paragraph 9(4)(a).

Publication

- 12 Paragraph 6 applies in relation to a determination under paragraph 9 as it applies in relation to a minimum service agreement. 5

PART 3

VARIATION OF MINIMUM SERVICE AGREEMENTS AND DETERMINATIONS

Variation of agreements and determinations

- 13 A minimum service agreement or minimum service determination may be varied by agreement between all the persons who are bound by it at the time of the variation. 10

Variation of agreement or determination on application

- 14 (1) *On an application falling within sub-paragraph (2) or (3), the Central Arbitration Committee must, unless it considers the application to be frivolous or vexatious, decide whether a minimum service agreement or a minimum service determination should be varied.* 15
- (2) An application falls within this sub-paragraph if –
- (a) it is made on the basis of circumstances specified in regulations made by the Secretary of State by a person who is bound by the agreement or determination, and 20
 - (b) it appears to the Committee that the person has taken reasonable steps to agree a variation with the other persons who are bound by it but has been unable to do so.
- (3) An application falls within this sub-paragraph if – 25
- (a) it is made by a trade union that is capable of affecting the employer’s provision of the specified transport service and was so capable at the time when the agreement or determination was made,
 - (b) it appears to the Committee that the union – 30
 - (i) was not subject to the duty under paragraph 1 in relation to the employer’s provision of that service because it was neither given a notice of intent under paragraph 1(4) nor notified under paragraph 1(5), or 35
 - (ii) was not given the opportunity to make representations to the Committee by virtue of paragraph 10(1), and
 - (c) it appears to the Committee that the union has taken reasonable steps to agree a variation with the other persons who are bound by the agreement or determination but has been unable to do so. 40
- (4) On receiving an application under sub-paragraph (2) or (3), the Committee must notify the other persons who are bound by the

agreement or determination of the fact that it has received the application.

- (5) Paragraph 10 (procedure) applies in relation to a decision under this paragraph as it applies in relation to a determination under paragraph 9. 5
- (6) As soon as reasonably practicable after making a decision under this paragraph the Committee must –
- (a) give notice of the decision to the persons who are bound by it, and
 - (b) arrange for the decision to be published by such means as appear to the Committee to be most appropriate for making it available to the public. 10
- (7) Where the Committee decides that the agreement or determination should be varied, the agreement or determination is to be treated as varied in accordance with that decision. 15

PART 4

MINIMUM SERVICE REGULATIONS

- 15 (1) *The Secretary of State may make regulations setting out levels of service to be provided, in the absence of a minimum service agreement or minimum service determination, in the event of a strike relating to the provision of a specified transport service.* 20
- (2) Any regulations under this paragraph must be framed so as to take effect, in relation to an employer and the trade unions that are capable of affecting the employer's provision of the service, no earlier than the end of the period of three months beginning with the day on which the regulations are made. 25

PART 5

PERSONS WHO ARE BOUND BY MINIMUM SERVICE SPECIFICATIONS

Minimum service agreements

- 16 (1) For the purposes of this Part the following are bound by a minimum service agreement as respects an employer's provision of a specified transport service –
- (a) the employer, and
 - (b) each trade union that is capable of affecting the employer's provision of the specified transport service. 35
- (2) Sub-paragraph (1) applies in relation to a trade union falling within paragraph (b) of that sub-paragraph –
- (a) whether or not that trade union existed or fell within paragraph (b) of that sub-paragraph at the time when the agreement was entered into, and 40
 - (b) even if the trade union was not subject to the duty under paragraph 1 as a result of a failure by the employer to comply with paragraph 1(4) or 1(5).

Minimum service determinations

- 17 (1) For the purposes of this Part the following are bound by a minimum service determination as respects an employer's provision of a specified transport service –
- (a) the employer, and 5
 - (b) each trade union that is capable of affecting the employer's provision of the specified transport service.
- (2) Sub-paragraph (1) applies in relation to a trade union falling within paragraph (b) of that sub-paragraph –
- (a) whether or not that trade union existed or fell within paragraph (b) of that sub-paragraph at the time when the determination was made, and 10
 - (b) whether or not the trade union was given the opportunity to make representations to the Committee by virtue of paragraph 10(1). 15

Minimum service regulations

- 18 For the purposes of this Part the following are bound by minimum service regulations, so far as they are not bound by a minimum service agreement or minimum service determination –
- (a) each employer who provides a specified transport service in relation to which the regulations apply, and 20
 - (b) each trade union that is capable of affecting an employer's provision of such a service.

PART 6

ENFORCEMENT 25

Declarations by Central Arbitration Committee on application

- 19 (1) *Where it is alleged on a complaint to the Central Arbitration Committee by an interested party that an employer or a trade union (a "relevant person") has contravened a requirement imposed by this Schedule or regulations under paragraph 5 in relation to an employer's provision of a specified transport service, the Committee must, if it considers that the relevant person has contravened the requirement, make a declaration to that effect.* 30
- (2) A complaint under this paragraph must be brought within the period of three months beginning with the day of the alleged contravention or, where the contravention takes place over a period, the last day of that period. 35

Declarations by Central Arbitration Committee on its own initiative

- 20 *The Central Arbitration Committee may, on its own initiative, make a declaration that a relevant person (within the meaning of paragraph 19) has contravened a requirement imposed by this Schedule or regulations under paragraph 5 in relation to an employer's provision of a specified transport service.* 40

Further provision about declarations

- 21 (1) In considering whether to make a declaration under this Part of this Schedule the Committee may make such enquiries as it considers appropriate.
- (2) A declaration under this Part of this Schedule must be in writing and state the reasons for the Committee’s findings. 5
- (3) An appeal lies to the Employment Appeal Tribunal on any question of law arising from any declaration under this Part of this Schedule.

Issue of penalty notices by Employment Appeal Tribunal 10

- 22 (1) If the Central Arbitration Committee makes a declaration under this Part of this Schedule (see paragraphs 19 and 20), an interested party may, within the period of three months beginning with the day on which the declaration is made, make an application to the Employment Appeal Tribunal for a notice to be issued requiring the relevant person to pay a penalty to the Secretary of State in respect of the contravention. 15
- (2) On an application under this paragraph the Employment Appeal Tribunal must determine whether to issue a notice, and the amount of the penalty if so, in accordance with regulations made by the Secretary of State. 20
- (3) The regulations may make any provision that the Secretary of State considers appropriate in relation to the determination by the Employment Appeal Tribunal of those things.
- (4) The regulations may, in particular – 25
- (a) specify circumstances in which the Employment Appeal Tribunal must not order a payment;
- (b) provide for the amount (or the maximum or minimum amount) of a penalty;
- (c) provide for the date by which a penalty is to be paid. 30

Persons who can apply for declarations and penalties

- 23 In paragraphs 19 and 22 “interested party”, in relation to an employer’s provision of a specified transport service, means –
- (a) the employer, and
- (b) any trade union that is capable of affecting the employer’s provision of the service. 35

Intervention by Secretary of State

- 24 (1) The Secretary of State may by a notice in writing require the Central Arbitration Committee to decide whether paragraph 3 or regulations under paragraph 5 have been contravened in relation to a particular minimum service agreement. 40

- (2) If the Committee considers that paragraph 3 or regulations under paragraph 5 have been contravened in relation to the agreement it must –
- (a) make a declaration to that effect, and
 - (b) make a minimum service determination under paragraph 9 as respects the employer’s provision of the specified transport service in question. 5
- (3) A minimum service agreement that is the subject of a declaration under this paragraph continues to have effect until a determination under sub-paragraph (2)(b) is made as respects the employer’s provision of the specified transport service in question. 10

Damages in proceedings in tort against a trade union

- 25 (1) This paragraph applies to proceedings in tort that are brought against a trade union in reliance on section 234E(b) (union not protected where it fails to take reasonable steps to comply with valid work notice). 15
- (2) In such proceedings, any loss that would have been suffered even if section 234E(b) had not been satisfied is to be disregarded in calculating any amount to be awarded against the union by way of damages. 20
- (3) See also section 22 (limit on damages awarded against trade unions in actions in tort).

PART 7

INTERPRETATION 25

- 26 In this Schedule –
- (a) references to a trade union being “capable of affecting” an employer’s provision of a specified transport service are to be read in accordance with paragraph 1(7);
 - (b) “relevant 3-month period”, in relation to an employer’s provision of a specified transport service, has the meaning given by paragraph 1(8). 30

PART 2

RELATED AMENDMENTS TO THE 1992 ACT

- 5 The Trade Union and Labour Relations (Consolidation) Act 1992 is amended as follows. 35
- 6 In section 22 (limit on damages awarded against trade unions in actions in tort), after subsection (5) insert –
- “(6) See also paragraph 25 of Schedule A2A (damages in tort where work notice is given in relation to minimum service specification).” 40
- 7 In section 234A (notice to employers of industrial action), in subsection (3) –
- (a) omit the “and” at the end of paragraph (a), and

- (b) at the end of paragraph (b) insert “and
 (ba) if the industrial action relates to the provision of a specified transport service, states whether the action intended to begin or take place on each date specified under paragraph (b) is a strike.” 5
- 8 Before section 235 insert –
- “Construction of references to contract of employment”*
- 9 In section 235 (construction of references to contract of employment), for the words from “to 234A” to “union)” substitute “to 234G and Schedule A2A”.
- 10 (1) Section 238A (unfair dismissal: participation in official industrial action) is amended as follows. 10
- (2) In subsection (2) (circumstances in which employee who took protected industrial action is to be regarded as unfairly dismissed) –
- (a) omit the “and” at the end of paragraph (a), and
- (b) after paragraph (a) insert – 15
- “(aa) where the protected industrial action was a strike relating to the provision of a specified transport service, the employee was not a specified worker in relation to that strike, and”.
- (3) For subsection (9) (meaning of “date of dismissal”) substitute – 20
- “(9) In this section –
- “date of dismissal” has the meaning given by section 238(5);
- “specified worker”, in relation to a strike relating to the provision of a specified transport service, means a person who – 25
- (a) is identified in the work notice relating to the strike, and
- (b) before the strike, is given by the employer a copy of that notice and a statement that, under this section, the person is a specified worker in relation to the strike and must comply with the notice.” 30
- 11 In section 299 (index of defined expressions) –
- (a) in the entry relating to the meaning of “contract of employment” in sections 226 to 234, for “234” substitute “234G and Schedule A2A”;
- (b) in the entry relating to the meaning of “not protected” in sections 222 to 226, after “226” insert “, 234A and 234E”;
- (c) at the appropriate places in the list insert –
- “bound (in relation to a minimum service specification, in Part 5) section 234G”
- “minimum service agreement (in Part 5) section 234G” 40
- “minimum service determination (in Part 5) section 234G”

- “minimum service specification (in Part 5) section 234G”
- “specified transport service (in Part 5) section 234B”
- “work notice (in Part 5) section 234G”.
- 12 In paragraph 1(1) of Schedule A3 (Certification Officer: investigatory powers), after paragraph (g) insert – 5
- “(ga) the requirement imposed by paragraph 6(2) of Schedule A2A (duty to publish minimum service agreement);”.

Transport Strikes (Minimum Service Levels) Bill

A

B I L L

To make provision about minimum service levels in connection with the taking by trade unions of strike action relating to transport services.

*Presented by Secretary Anne-Marie Trevelyan,
supported by,
The Prime Minister, The Chancellor of the
Exchequer, Secretary Simon Clarke,
Secretary Jacob Rees-Mogg and Secretary Chloe
Smith.*

*Ordered, by The House of Commons,
to be Printed, 20th October 2022.*

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