House of Commons
House of Lords

Joint Committee on Human Rights

Legislative Scrutiny: Strikes (Minimum Service Levels) Bill 2022–2023

Tenth Report of Session 2022–23

Report, together with formal minutes relating to the report

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Joint Committee on Human Rights

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The Strikes (Minimum Service Levels) Bill (the Bill) has been introduced by the Government against a background of increased industrial action. The Government says that the legislation is necessary to deliver minimum service levels to ensure that lives and livelihoods are not lost in key public policy areas of health, education, fire and rescue, transport, border security and nuclear decommissioning.

Our concern is whether the Bill is compatible with the UK's human rights obligations, most notably the European Convention on Human Rights (the ECHR), which is given effect in domestic law through the Human Rights Act 1998. Article 11 ECHR provides a qualified right to freedom of assembly and association. Whilst Article 11 does not expressly refer to the "right to strike", it has been interpreted by the European Court of Human Rights (ECtHR) to cover the taking of strike action. The ECtHR has referred to the requirements set down by the International Labour Organisation when assessing compliance with Article 11. In addition, a qualified right to strike is provided by Article 8 of the International Covenant on Economic, Social and Cultural Rights, and Article 6 (4) of the European Social Charter, both of which bind the UK in international law.

Compliance with Article 11 of the ECHR requires that any restrictions on strikes are "in accordance with the law" which includes a requirement that the consequences of the law must be foreseeable for those it affects. The restrictions must also be "necessary in a democratic society" to meet a "legitimate aim". This condition requires the restrictions to meet a "pressing social need" and for them to be "proportionate to the legitimate aim pursued".

The Bill gives a wide new power to the Secretary of State to make "minimum service regulations" providing for levels of service where there are strikes in six broad sectors. Where minimum service regulations have been made, employers will have the power to give a "work notice" to a trade union in relation to a strike. A work notice must identify the persons required to work, and the work required to be carried out during the strike to ensure the levels of service required by the minimum service regulations are provided. Prior to giving the work notice, the employer must consult the union about these matters and have regard to any views expressed. A work notice must not identify more persons than are reasonably necessary, and the employer must disregard trade union membership when deciding whether to identify a person in a work notice. Failure to comply with a work notice could lead to an individual employee losing their job, as they would lose legal protections against dismissal. Failure of a trade union to take reasonable steps to ensure work notices are complied with can result in damages of up to £1,000,000 for a trade union, and for the strike to be illegal. This would, therefore, result in exposure to the risk of dismissal for those workers who have taken part (not just those who were subject to, but did not comply with, a work notice).

In our view, the Government has not adequately made the case that this Bill meets the UK's human rights obligations:

- The requirement that trade unions take "reasonable steps" to ensure their members comply with a work notice issued by an employer does not provide the clarity needed to ensure trade unions and employees will know when this

duty has been met and when it has not. As drafted, this provision may fall foul of this requirement under Article 11 of the ECHR that the consequences of the law are foreseeable.

- The lack of any limits on the level of service that the Secretary of State may impose by regulations risks a failure to comply with the Article 11 requirement of being "in accordance with the law" as the Bill arguably currently allows for potentially arbitrary interferences with the right to strike.

- The case has not been adequately made that there is a "pressing social need" for imposing minimum service levels across the breadth of categories currently set out in the Bill. For example, the category of "education services" is so broad that it might apply as much to private tutors and evening class teachers as to school teachers. Similarly, "transport services" could include private taxi drivers. The Bill should be amended so that minimum service level arrangements are limited to those services that are genuinely of fundamental importance.

- The Government's ECHR memorandum that accompanied the Bill asserts that the legitimate aim of the Bill is protecting the rights and freedoms of others and that "strike action in these categories causes significant and disproportionate damage (including financial loss) to the general public and harm to the economy". However, it only provides estimates of the economic costs of previous transport strikes. The impact assessment, which was not published until after the Bill had passed through the House of Commons, lacks detailed evidence and was described as "not fit for purpose" by the Government's independent Regulatory Policy Committee. We would expect to see analysis of the impact of strikes in each of the service areas covered by the Bill in order to properly assess the measures against the "pressing social need" test.

- We do not consider that the Government has given clear and compelling reasons why the current legal protections that apply to strikes and the current practice of establishing voluntary minimum service levels are no longer sufficient to balance the rights of the wider public against the rights of the employees and unions concerned, again undermining the argument that there is a "pressing social need" for this legislation.

- An alternative mechanism, based on negotiation and independent resolution of disagreements, would reflect standards set out by the International Labour Organisation (ILO), would involve lesser interference with Article 11, and would therefore be more likely to meet the requirement of proportionality. Given alternative mechanisms are available, it is not clear why provisions that so seriously impact the right to strike are considered necessary.

- The penalties for trade unions and, most concerningly, for individuals of breaking the law are high. For trade unions, involvement in an illegal strike could result in damages of up to £1,000,000. Any individual worker who participated in a strike that was found to have been illegal could be dismissed. Given the limited foreseeability of the legality of any particular action,

these penalties are particularly concerning. Lesser penalties for individuals (suspensions rather than dismissals) are available and would make these interferences with the right to strike more proportionate.

A number of the written submissions we received in response to our call for evidence on the Bill raised concerns about the possibility that minimum service level requirements could result in discrimination in breach of Article 14 ECHR, taken together with the right to free association under Article 11. We agree that there is potential for minimum service requirements to impact more severely on certain protected groups, most obviously women in respect of nursing. Before minimum services levels for different services are specified it is hard to establish whether they would meet the Article 14 requirement for an objective and reasonable justification. Nevertheless, it is clear to us that discrimination in breach of Article 14 would be less likely if the categories of service to which minimum service levels could apply were narrowed and defined more clearly, and if minimum service levels were, if possible, reached by a process of negotiation or independent arbitration rather than imposed by regulation.

The Government has stated that the Bill brings us in line with other European countries. This is contested. Other countries have different legal arrangements with many providing a constitutional right to strike. Some have introduced minimum service levels, but in some cases these have been found in contravention with international legal obligations. Our interest is not in whether the UK is doing something which is done elsewhere, but in whether the UK is meeting the human rights requirements placed on it. In our view, this Bill is likely to fall short.

1 Introduction

Background to the Bill

1. The Strikes (Minimum Service Levels) Bill was introduced in the House of Commons on 10 January 2023, received its second reading on 16 January and completed its remaining stages on 30 January 2023. It was introduced in the House of Lords on 31 January 2023 and received its second reading there on 21 February 2023.[1] The Bill was introduced and is being considered against a backdrop of widespread and high-profile industrial action in the public sector.

2. When introducing the Bill on 10 January, the then Secretary of State for Business, Energy and Industrial Strategy, Rt Hon Grant Shapps MP said the purpose of the legislation was to protect public safety and that it would bring the UK into line with other European countries:

> I am introducing a Bill that will give the Government the power to ensure that vital public services will have to maintain a basic function, by delivering minimum safety levels to ensure that lives and livelihoods are not lost. We are looking at six key areas, each of which is critical to keeping the British people safe and society functioning: health, education, fire and rescue, transport, border security and nuclear decommissioning. We do not want to use this legislation, but we must ensure the safety of the British public.[2]

3. The Bill is not the first legislative action taken by the Government in recent years with the intention of limiting the disruption caused by strike action. In 2017, the thresholds that must be met for a strike ballot to be valid and the notice period to be given to employers were both increased.[3] In July 2022 legislation was passed that repealed the criminal prohibition on replacing striking workers with agency staff.[4] At around the same time, the amount of damages which could be awarded against a trade union in a legal action was increased by a factor of four[5] — meaning the largest unions can now face damages of up to £1,000,000 for organising a strike that does not comply with legal requirements.[6]

4. In September 2022, the Government introduced the Transport Strikes (Minimum Service Levels) Bill to the House of Commons. This Bill proposed introducing minimum service level requirements, but only in respect of the transport sector. It has not yet received its second reading and appears to have been superseded by the current Bill.

1 The Bill was accompanied by explanatory notes and a European Convention on Human Rights memorandum, but no impact assessment was published until 21 February 2023 (the date of second reading in the House of Lords).
2 HC Deb 10 January 2023, cc432–433
3 Trade Union Act 2016
4 Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022/852, which revoked regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003
5 Tort is the name used for a civil (i.e. non-criminal) legal wrong that causes a claimant to suffer loss or harm.
6 The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022/699, amending section 22 of the Trade Union and Labour Relations (Consolidation) Act 1992

Our inquiry

5. We launched a call for evidence on 20 January 2023, to support our legislative scrutiny of the Bill and its compatibility with human rights obligations. We are grateful to those who responded. In addition, the Committee held an oral evidence session on 8 February 2023 with academic experts and representatives of the Trades Union Congress. We did not receive any written evidence from employers or bodies representing employers, and due to the speed with which the Bill was passing through Parliament we were not able to arrange an additional oral evidence session with such witnesses. As the Bill had its Committee stage on the floor of the House, there was no evidence taken by a Public Bill Committee.

6. We also invited a Minister from the Government Department responsible for the Bill, the then Department for Business, Energy and Industrial Strategy (BEIS), to attend an oral evidence session. Unfortunately, a suitable date could not be found within a time frame that would have allowed us to report on the Bill before it reached Committee Stage in the House of Lords. We were assisted, however, by a detailed written response to a number of questions we sent to the Secretary of State in a letter dated 2 February 2023 and are grateful for that response.[7]

7. Lastly, while this is a reserved matter, we note that the Scottish and Welsh Governments have both made public statements setting out their opposition to the Bill.[8]

7 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023

8 Scottish Government, Strikes (Minimum Service Levels) Bill: letter to UK Government from Deputy First Minister, 24 January 2023; Written Statement: Welsh Government position on the Strikes (Minimum Service Levels) Bill, from Counsel General and Minister for the Constitution, 3 February 2023

2 Protection for industrial action in domestic and international law

Domestic law

8. Unlike many other nations, our domestic law contains no constitutional or statutory recognition of a positive right to engage in industrial action, including strikes.[9] Instead, in the UK strike action is in principle unlawful, most obviously in the case of a worker as a breach of contract, and in the case of a Trade Union as the tort of inducing others to breach their contracts.[10] However, the law provides for some circumstances in which protection against legal action is provided to workers who participate in a strike and to Trade Unions.

9. The key piece of legislation governing industrial action in the UK is the Trade Union and Labour Relations (Consolidation) Act 1992, as amended by the Trade Union Act 2016. This Act sets out the requirements that must be met by a Trade Union before a strike becomes protected. These include a secret ballot of members that must reach a certain threshold — including a 50 per cent turnout of eligible voters with a majority vote in favour of industrial action. There is an additional requirement to meet a threshold of support from 40 per cent of all eligible members in respect of "important public services" as defined in law.[11] These ballots must still be conducted by post, despite the ubiquity of electronic communications. Notice must also be provided to employers at least 14 days in advance of the strike.

10. If all the relevant requirements are met, the strike becomes protected. This means that the Trade Union organising the strike is protected from a tort claim for damages or an injunction for inducing workers to breach their contracts. It also means that employees have an automatic right to claim unfair dismissal if they are dismissed as a result of the strike action.

International protections

11. While domestic labour law does not recognise a right to strike, the right is recognised in numerous international instruments which the UK has ratified. Article 8 of the International Covenant on Economic, Social and Cultural Rights provides that all States Parties will undertake to ensure "the right to strike, provided that it is exercised in conformity with the laws of the particular country."[12] The Council of Europe's European Social Charter[13] includes Article 6(4) which covers recognition of "the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously

9 For example, the right to strike is enshrined in the French, Italian and Spanish Constitutions

10 Tort is the name used for a civil (i.e. non-criminal) legal wrong that causes a claimant to suffer loss or harm.

11 "Important public services" are specifically defined in regulations, but must be services that fall within the following categories: health services; education of those aged under 17; fire services; transport services; decommissioning of nuclear installations and management of radioactive waste and spent fuel; and border security (see s226(2E) of the 1992 Act). We note the similarities between these categories and those covered by the Strikes Bill.

12 United Nations, International Covenant on Economic, Social and Cultural Rights

13 The UK has accepted 60 of the 72 paragraphs of the ESC. It has signed but not ratified the revised Charter, which has been in force since 1999.

entered into."[14] The UK is bound by these instruments as a matter of international law.

12. The International Labour Organization (ILO) is a UN agency that brings together governments, employers and workers from 187 member states, including the UK. It drafts, adopts and monitors the implementation of international labour standards. The UK has ratified a number of ILO Conventions, which are legally binding treaties, including ILO Convention No. 87 on Freedom of Association and the Protection of the Right to Organise.[15] The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)[16] and its Committee on Freedom of Association (CFA)[17] have found that the entitlement to organise and take industrial action is implicit in ILO Convention No. 87. The UK recently re-affirmed its commitment to ILO Convention No. 87 (and all other ratified ILO Conventions) in Article 399 of the EU-UK Trade and Co-operation Agreement, which was approved and given legal effect by Parliament in the European Union (Future Relationship) Act 2020.[18]

13. Decisions of the ILO's CFA have established a detailed set of rules and recommendations on the right to strike. Significantly, the ILO has accepted that minimum service requirements during strike action may be justifiable. However, this is subject to requirements including the following:

> (a) The establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance.[19]
>
> (b) Minimum service should be restricted to the operations which are necessary to satisfy the basic needs of the population or the minimum requirements of the service, while ensuring that the scope of the minimum service does not render the strike ineffective.[20]
>
> (c) Negotiations over the minimum service should be ideally held prior to a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. Any disagreement should be settled by an independent body, like for instance, the judicial authorities, and not

14 Article 6(4) ESC. The Council of Europe is also responsible for the European Convention on Human Rights and the European Court of Human Rights.

15 International Labour Organization, Convention No. 87 on Freedom of Association and the Protection of the Right to Organise

16 International Labour Organization, Committee of Experts on the Application of Conventions and Recommendations

17 The body that determines complaints about violations of freedom of association

18 Official Journal of the European Union, Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, 30th April 2021 and European Union (Future Relationship) Act 2020

19 "Freedom of association - Compilation of decisions of the Committee on Freedom of Association", Sixth Edition 2018, Para 866, Ch 10,

20 "Freedom of association - Compilation of decisions of the Committee on Freedom of Association", Sixth Edition 2018, Para 874, Ch 10

by the ministry concerned.[21]

The European Convention on Human Rights and the Human Rights Act 1998

Article 11 - freedom of assembly and association

14. Strike action is also protected under Article 11 of the European Convention on Human Rights, which forms part of domestic law through the Human Rights Act 1998 (HRA). The HRA renders it unlawful for a public authority to act incompatibly with any of the Convention rights.

15. Article 11 ECHR provides a right to freedom of assembly and association, which expressly recognises the role of trade unions:

> Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.[22]

16. While Article 11 does not expressly refer to the "right to strike", it has been interpreted by the European Court of Human Rights (ECtHR) to cover the taking of strike action: "the right to strike is one of the means whereby a trade union may attempt to be heard and to bargain collectively in order to protect employees' interests, and strike action is clearly protected by Article 11."[23]

17. The ECtHR has confirmed that Article 11 protects both workers and unions.[24] Trade unions may themselves make a complaint under Article 11.[25] The ECtHR has also made clear that:

> The protection against arbitrary, unlawful and unjustified restrictions guaranteed by Article 11 is not limited to bans and refusals to authorise the exercise of Convention rights, but also includes punitive measures taken after such rights have been exercised, including various disciplinary measures.[26]

18. Article 11 provides a qualified, not an absolute, right. This means that interferences with or restrictions on the right may be justified where they are provided for in law, and are necessary in a democratic society (i.e. constituting a proportionate way of meeting a "pressing social need") for one of a range of public interest reasons.[27] In this context, the ECtHR has recognised that "regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole."[28] The ECtHR

21 "Freedom of association - Compilation of decisions of the Committee on Freedom of Association", Para 876, Ch 10; See also the 2012 Report of the CEACR of the 101st International Labour Conference: "The Committee emphasizes the importance of adopting explicit legislative provisions on the participation of the organizations concerned in the definition of minimum services."

22 Article 11 of the European Convention on Human Rights

23 Ognevenko v. Russia, App. No. 44873/09, 2018, § 61

24 Yakut Republican Trade-Union Federation v. Russia, App. No. 29582/09, 2021, § 30

25 Federation of Offshore Workers' Trade Unions and Others v. Norway (dec.), App. No. 38190/97, 2002

26 Straume v Latvia, App. No. 59402/14, 2022

27 See Article 11(2) ECHR

28 National Union of Rail, Maritime and Transport Workers v. the United Kingdom, App. No. 31045/10, § 86, 8 April 2014.

also recognises that states have a "margin of appreciation" when it comes to regulating strike action. Whether that margin should be narrow or wide depends on the nature of the interference in question — i.e. whether the restriction "strikes at the core of trade-union activity" or at a "secondary or accessory aspect of trade-union activity".[29] It is not entirely clear whether imposing minimum service levels during strikes would "strike at the core of trade union activity, but we note that the ECtHR has described Article 11 as: "safeguarding the freedom of trade unions to protect the occupational interests of their members" and acknowledged that: "the ability to strike represents one of the most important of the means by which [they] can fulfil this function ...".[30]

19. The ECtHR has long acknowledged that in interpreting and defining the protections provided by the Convention, it "can and must take into account elements of international law other than the Convention" as well as "the interpretation of such elements by competent organs."[31] In respect of Article 11, the ECtHR has held that it would be inconsistent with this approach for the Court to adopt an interpretation of the scope of freedom of association of trade unions that was much narrower than that which prevailed in international law.[32] In respect of protections for industrial action under Article 11, the ECtHR has in particular referred to and taken into account the standards recognised by the ILO.[33] For this reason, the ILO standards are likely to be highly relevant to the compatibility of the Bill with Article 11 ECHR.

Article 14 - prohibition on discrimination

20. Article 14 of the ECHR prohibits unjustified discrimination in the enjoyment of Convention rights on certain grounds. This is not a free-standing right not to be discriminated against; it requires discriminatory treatment in respect of one of the other rights guaranteed under the ECHR. Article 14 protects against both direct discrimination, i.e. a law, rule or practice that directly treats a certain group in an inferior way, and indirect discrimination, i.e. a law, rule or practice that ostensibly treats everyone in the same way but has a particularly negative effect on a certain group.

21. A measure that impacts on Article 11 rights and does so in a manner that discriminates against individuals on the basis grounds including sex, race and the broad category of "other status" will be in breach of Article 14 unless it can be shown to have an objective and reasonable justification.[34] This requires the difference in treatment to pursue a legitimate aim and for there to be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.[35]

29 National Union of Rail, Maritime and Transport Workers v. the United Kingdom, App. No. 31045/10, § 87, 8 April 2014. In the context of a ban on strike action by elements of the rail industry, the ECtHR has stated that "States have only a limited margin of appreciation" - Ognevenko v. Russia, 2018, § 67.

30 UNISON v. the United Kingdom (dec.), 53574/99, 2002

31 Demir and Baykara v Turkey (GC), App No. 34503/97, 2008

32 National Union of Rail, Maritime and Transport Workers v. the United Kingdom 31045/10, 8 April 2014

33 See Demir v Turkey, 2008 and Ognevenko v. Russia, 2018

34 "Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest, strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms safeguarded by the Convention" - Zarb Adami v. Malta, 17209/02, 2006, § 73

35 Molla Sali v. Greece [GC], 20452/14, 2018, § 135

3 Outline of the Bill

22. The Bill is notable for its brevity, just six short clauses and one schedule in which the substance of the legislation is contained. The Schedule provides for a number of amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA).

Minimum service regulations

23. The core of the Bill is the new power of the Secretary of State to make "minimum service regulations" providing for levels of service where there are strikes in "relevant services".[36] What those relevant services are can be specified by the Secretary of State in regulations, but must come within the following sectors (which stem from the sectors identified as "important public services" in the Trade Union Act 2016):[37]

(a) Health services;

(b) Fire and rescue services;

(c) Education services;

(d) Transport services;

(e) Decommissioning of nuclear installations and management of radioactive waste and spent fuel;

(f) Border security.[38]

Work notices

24. Where minimum service regulations have been made, employers will have the power to give a "work notice" to a trade union in relation to a strike.[39] A work notice must identify the persons required to work, and the work required to be carried out during the strike to ensure the levels of service required by the minimum service regulations are provided. Prior to giving the work notice, the employer must consult the union about these matters and have regard to any views expressed. A work notice must not identify more persons than are reasonably necessary, and the employer must disregard trade union membership when deciding whether to identify a person in a work notice.

Consequences — loss of legal protection

25. The Bill would impose a duty on trade unions to take "reasonable steps to ensure that all members of the union who are identified in the work notice comply with the notice."[40] A failure to meet this duty would result in the strike losing legal protection, so that the trade union could be sued in tort for acts done to induce a person to take part in a strike. A substantial additional consequence of the strike losing legal protection is

36 Sch 1, para 2, new section 234B(1)
37 As confirmed in the letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023.
38 New s234B(3) and (4)
39 sch 1, para 2, new s234C
40 Sch 1, para 2, new s234E

that *any* employee taking part in the strike would be deprived of the presumption that an employee dismissed as a result of taking strike action was unfairly dismissed. This significant consequence is not mentioned in the explanatory notes that accompanied the Bill, a concerning oversight that we initially presumed meant that the consequence was not deliberate. In his letter to the Chair of the Committee, however, the Minister confirmed this consequence was intended as a way of ensuring consistency between MSLs and the existing legal framework:

> Employees participating in a strike which is unprotected as a result of a trade union failing to take 'reasonable steps' will therefore lose their automatic protection from dismissal for industrial action, just as they do currently where the trade union fails to meet its existing obligations under the 1992 Act, such as balloting requirements.[41]

26. If the trade union does meet its obligation to take "reasonable steps", any employee who fails to comply with a requirement to work under a work notice would still lose their automatic protection against dismissal for taking part in industrial action.[42]

41 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023

42 Sch 1, para 8(2)

4 Comparison with other jurisdictions

27. The Government has repeatedly argued that the Bill brings the UK into line with other countries, particularly other European states that have legal requirements for a minimum level of service in some sectors during industrial disputes. For example, during the Second Reading debate on the Bill in the House of Commons on 16 January 2023, the then Secretary of State for BEIS, Rt Hon Grant Shapps MP, said: "The legislation simply brings us into line… with many other modern European nations, such as Spain, Italy, France and Ireland. They use minimum service levels in a common-sense way to reduce the impact of strikes."[43]

28. In contrast, a number of commentators and opponents of the Bill have disputed the accuracy of this comparison. The article "Where does the Strikes Bill put the UK relative to other European countries?"[44] by Professor Catherine Barnard and Dr Joelle Grogan compares the Bill's provisions with the legal position in 35 European countries, including the 27 EU members states. The authors observe that "[t]he UK is only one of five countries (or 14%) where there [is] no specific right to strike in national constitutional law." They go on to explain that while 74 per cent of those countries make provision for minimum service levels during strike action, they restrict them to 'essential services' although "the sectors considered to be essential vary across countries". The article notes that in only "four countries is the minimum service level set without an expectation of an agreement between the trade union and the employer: Romania, Serbia, France and Spain".[45] Further, in 69 per cent of those 35 countries that the authors considered, dispute over minimum services levels between trade unions and employers are resolved by an independent body or arbitration or by the courts, while "The UK Bill does not indicate how a trade union can challenge a minimum service level."

29. Kate Bell, Assistant General Secretary of the TUC, questioned the legitimacy of the comparisons made by the Government:

> We are talking about fundamentally different industrial relations landscapes. In France, collective bargaining is at 95%, compared to around 27% here. In Italy, an employee who refuses to attend work under the terms of their minimum service levels cannot be threatened with the sack. Union

43 HC Deb, 16 January 2023, col 63 [Commons Chamber]; See also a press release dated 5 January 2023 from the then Department for BEIS: "This package of measures will see the UK align with many countries across the world such as France and Spain that already have minimum service agreements in place, to prevent large swathes of their economies being ground to a halt by industrial action."

44 UK in a changing Europe, Where does the Strikes Bill put the UK relative to other European countries?, 7 February 2023

45 The article explains the position in Spain and France as follows: "In Spain, the government has the power to set the minimum service level but must do so in a way that is proportionate, balancing the need of the community for those services and the fundamental right to strike. Spanish practice has also been criticised by unions where government authorities have failed to engage with unions and instead 'imposed disproportionate minimum services that, in effect, restrict the right to strike'. Spanish law also indicates that non-striking workers should be preferentially chosen.

In France, minimum service levels are set by legislation in a number of sectors (e.g. primary schools, air passenger transport, and public hospitals). In other sectors, and in the absence of statutory legislation, the government or administrative authorities may set a minimum level of service. This, however, cannot be the normal level of service and is subject to administrative review. While minimum service level legislation covers the transport sector in France, it has not been used in practice." UK in a changing Europe, Where does the Strikes Bill put the UK relative to other European countries?, 7 February 2023

> rights are fundamental to the constitution of Italy, as they are to France and Spain. There are very different circumstances in which strikes are called in France; there is no obligation to inform the employer, or indeed to seek to conclude an agreement before strike action takes place.[46]

30. In evidence to us, Professor Tonia Nowitz, Professor of Labour Law at the University of Bristol, said that a more accurate comparison would be with Hungary rather than France or Spain:

> The closest analogy ... is actually with the laws that apply in Hungary... where, since December 2010, quite draconian legislation has been introduced in respect of minimum service levels. In 2022, the International Labour Organisation's Committee of Experts called it problematic legislation, because there is no way for the worker's organisations to participate in establishing the minimum service level together with employers and public authorities... They have also said that there is a problem, because there is no way that disagreement on such services will be resolved by a joint or independent body [...].[47]

31. In his oral evidence, Professor Keith Ewing emphasised that other nations who impose minimum service levels may not themselves comply with international legal requirements. He illustrated this point by describing an instance in which the ILO found France to have been in breach of its international obligations in imposing minimum service levels in relation to industrial action at an oil refinery plant.[48] He concluded: "it is not what they have in other countries, it is whether what they have in other countries is consistent with international legal obligations [...]."

32. **It is hard to make precise comparisons between countries where unions operate in different ways and within different industrial relations frameworks. Ultimately, however, the key question from a human rights perspective is not whether the Bill is equivalent to or different from the approach taken by other European nations, but rather how this Bill meets the human rights standards to which the United Kingdom is committed and by which the Government is legally bound.**

46 Q25 [Kate Bell]
47 Q11 [Professor Tonia Novitz]
48 Q3 [Professor Keith Ewing]

5 Compliance with human rights standards

Article 11 ECHR – freedom of association

33. The Government has accepted that the Bill engages the right to freedom of association under Article 11 ECHR.[49] We agree. As the trade union UNISON set out in its written evidence to us:

> While the Bill only provides a framework for the introduction of regulations, it allows regulations which will directly interfere with the "core" of Article 11 because each minimum service level (MSL) directly restricts (i) primary industrial action taken by unions in both public and private sectors and (ii) the individual right to strike of those who are subject to work notices, and who, as a result of clause 8 of the Bill, lose the only right they have under domestic law—unfair dismissal—if they do not work in accordance with the notice.

34. Compliance with Article 11 depends on any restriction on freedom of association meeting the conditions of Article 11(2), which includes the requirement that the restrictions are imposed "in accordance with the law" and that the restrictions are "necessary in a democratic society" to meet a legitimate aim. This last condition requires the restrictions to meet a "pressing social need" and for them to be "proportionate to the legitimate aim pursued".[50]

In accordance with the law

35. The ECHR memorandum that accompanied the Bill maintains that this requirement is met because the restrictions on strike action are all set out in primary legislation, with detail to be provided in regulations that will be subjected to Parliamentary scrutiny through the affirmative resolution procedure.[51] However, the requirement that restrictions on Article 11 are "in accordance with the law" does not only necessitate compliance with domestic law but also relates to the quality of that law. In particular, the law must be sufficiently foreseeable to enable those persons to know how they need to act in order to comply with it.[52]

Foreseeability

36. The requirement of foreseeability is of particular concern in respect of the requirement set out in the Bill for trade unions to take "reasonable steps to ensure that all members of the union who are identified in the work notice comply with the notice".[53] A failure to meet this obligation has huge ramifications for unions and employees alike, and yet it is not clear precisely what is required of a union and what will be deemed insufficient to meet this duty. As the TUC told us:

49 Strikes (Minimum Service Levels) Bill, ECHR memo, para 6
50 See, for example, Observer and Guardian v United Kingdom, 13585/88, 26/11/1991 and Ognevenko v Russia
51 Strikes (Minimum Service Levels) Bill, ECHR memo,, paras 21–22
52 Kudrevičius and Others v. Lithuania [GC], 2015, § 108–110
53 Schedule, Part 1, para 2 (new section 234E to the 1992 Act)

> While the courts may provide clarity as to what constitutes "reasonable steps" over time, this cannot be guaranteed and does not, in any event, help those who will be required to comply with the Bill in its first few years.[54]

37. **Any measure that interferes with Article 11 rights must have consequences that are foreseeable for those affected by it. We are concerned that the requirement for trade unions to take "reasonable steps" to ensure their members comply with a work notice issued by an employer does not provide the clarity needed to guarantee that trade unions and employees will know when this duty has been met and when it has not. Given the serious consequences of a failure to meet this duty, greater clarity is needed in the Bill. As drafted, the provision requiring trade unions to take "reasonable steps" may fall foul of the requirements of Article 11.**

Protection against arbitrary interference

38. For domestic law to meet the qualitative requirements of "in accordance with the law", it must also afford a measure of legal protection against arbitrary interferences with Article 11 rights. In this regard the Bill raises concerns because the power granted to the Secretary of State to make minimum service regulations in respect of certain broad service sectors is effectively unlimited. The Bill simply grants the power to make regulations identifying "service levels" with only a requirement to consult those the Minister considers appropriate. Professor Ewing told us that the ILO Committee of Experts have stated that if a minimum service regime is to be introduced "it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service."[55] We do not see how the Bill ensures this, and agree with the TUC that in principle the Bill "could mean even a service at 90 percent of normal levels could be considered."[56] As the Public Law Project, the independent national legal charity, described in its written evidence:

> The Bill contains no principles, criteria, or limitations on the Secretary of State's law-making power. This means the minimum service level can be defined or set in a way that goes beyond the Government's stated objective of ensuring minimum services or safety in essential sectors. The Secretary of State would therefore be able to set the minimum service levels in a way which restricts Article 11 rights in a manner that goes beyond what is necessary to achieve any legitimate aim. While an affected person could legally challenge this, the scope of the power should be on the face of the Bill rather than left to the judiciary to determine from case to case.[57]

39. **The lack of any limits on the level of service that the Secretary of State may impose by regulations risks a failure to comply with the Article 11 requirement of being "in accordance with the law", as the Bill arguably contains insufficient protection against arbitrary interference with Article 11 rights. *The Bill should be amended to provide some limits on the level of service that the Secretary of State can require. We have included a draft amendment that would achieve this aim in the Annex to the report***

54 Q15 [Kate Bell]
55 (Professor Keith Ewing) SMS0011 Quoting from the ILO Committee of Experts, Giving Globalisation a Human Face (2012), para 137
56 (Trades Union Congress) SMS0005
57 (Public Law Project) SMS0004

(Amendment 2).

40. The very broad categories of service in respect of which minimum service regulations can be made also leaves open the possibility of arbitrary interferences with Article 11 rights, by allowing for minimum service requirements in respect of strikes that do not cause significant disruption. "Health services" could refer to emergency services such as ambulance provision and paramedics, but it could also feasibly refer to pharmacists, physiotherapists and homeopathy. "Education services" could refer to primary schools but also to evening classes and private tutors. "Transport services" could refer to national train routes but also to a local taxi firm. Narrowing or better defining the services covered by the Bill would help to provide legal protection against arbitrary interferences with Article 11. This is discussed further below.

Necessary in a democratic society — pressing social need

Evidence

41. The Government states that there is a pressing social need for the restrictions on Article 11 contained in the Bill as a result of the impact that strikes are having on the lives and livelihoods of the public. The Government's ECHR memorandum that accompanied the Bill asserts that the legitimate aim of the Bill is protecting the rights and freedoms of others and that "strike action in these categories causes significant and disproportionate damage (including financial loss) to the general public and harm to the economy".[58] In our letter to the Secretary of State we asked for more evidence to demonstrate a "pressing social need" in respect of each of the service sectors identified in the Bill.[59] In his response letter, the Minister said:

> The pressing social need for MSLs is quite plain. Strike action can disproportionately impact the public and recent strike action has demonstrated how significant this can be. People have been prevented from attending work and school, they have not been able to access healthcare they so urgently need, and businesses have suffered through great uncertainty due to the strikes. Since last Summer, the disruption from strike action has cost the economy over £6 billion, with UK Hospitality estimating that rail strikes alone have cost the hospitality industry £2.5bn from June 2022 to the beginning of January 2023.[60]

42. This response does not provide additional evidence of economic impact beyond a single category of transport strikes.

43. **Without the Government providing specific evidence establishing a pressing social need for minimum service requirements in respect of each of the very broad categories of service set out in the Bill, compliance with the requirements of Article 11 ECHR remains unclear.**

58 ECHR memo, para 48. In his letter to the Chair of the Committee, dated 21 February 2023, Minister Kevin Hollinrake stated that the Government also considered "that public safety and the protection of health are both legitimate aims on which a Secretary of State may rely when setting MSLs for specified services in the sectors set out in the Bill."

59 Correspondence to the Secretary of State for Business, Energy and Industrial Strategy Committee relating to the Strikes (Minimum Service & Levels) Bill 2022–2023, dated 2 February 2023

60 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023

Existing measures

44. To establish that introducing the power for the Secretary of State to determine minimum service levels meets a pressing social need, it is also important to consider the extent to which existing measures already protect the public against disproportionate disruption.

45. In this respect, it is significant that in the ECHR memorandum that accompanied the Transport Strikes Bill in October 2022, the Government justified the different treatment they were then proposing for strikes in transport services by specifically explaining why other services did not require a minimum services approach. The ECHR memorandum for that Bill states that "in the case of other key public services, important factors exist to mitigate the impacts of industrial action in those sectors on wider society" and identifies specific factors in relation to health services, fire and rescue services and education services:[61]

a) in relation to industrial action in emergency and patient care type services, workers need to have regard to the provisions of section 240 of the [Trade Union and Labour Relations (Consolidation) Act 1992]. This renders unlawful any wilful or malicious breach of contract, where the probable consequences of this will be to endanger life, cause severe injury or expose valuable property to destruction or severe injury. To ensure strike action does not leave employees in breach of this provision, unions in relevant sectors include guidance to their members on their approach to 'life and limb' arrangements."[62]

b) "The Fire and Rescue Services Act 2004 (ss29/30) allows the Secretary of State to provide and maintain services and facilities to fire and rescue authorities and grants him the power (by order) to oblige the authorities to use them. It also provides the Secretary of State with the power to give directions to fire and rescue authorities as to the use and disposal of their property or facilities for the purposes of public safety."

c) "In the education sector, there are various statutory duties on schools (and in particular head teachers or governing bodies) regarding the organisation, management, and control of a school, safeguarding and supervision of children (both on and off site) and health and safety duties regarding pupils which will impact on contingency arrangements needed in the event of strike action."

46. We also heard from union and professional body stakeholders how they already take steps to ensure that their strikes do not cause dangerous consequences for the public. For example, the Royal College of Nursing, describing the Bill as "entirely unnecessary", noted not only the effect of section 240 of the 1992 Act but also that its "standing orders, referenced in our Royal Charter, require that we only authorise any form of industrial action if satisfied that such action will not be detrimental to the wellbeing or interests of patients or clients."[63] As noted above, we did not, however, in the time available, receive written evidence or hear from any employers or bodies representing the interests of employers, who may have offered an alternative perspective.

47. Nevertheless, the factors identified in the ECHR memorandum accompanying the earlier Transport Strikes Bill, forming part of the Government's own analysis just a few

61 See Transport Strikes (Minimum Service Levels) Bill – ECHR memorandum at paras 48 to 53

62 See, for example, the Royal College of Nursing's Industrial Action Handbook.

63 (Royal College of Nursing) SMS0006

months ago, weigh against the assertion that there is a "pressing social need" for minimum service requirements in service sectors other than transport. We noted these factors in our letter to the Secretary of State. In his response, the Minister explained:

> The aims of MSLs are to balance the ability to strike with the rights of the public to access vital public services during strikes. The purpose of section 240 is to allow for criminal prosecutions for those who intentionally endanger life or cause serious injury to a person by going on strike. These are two fundamentally different aims.[64]

48. In respect of the efficacy of existing voluntary arrangements to provide minimum service levels, the Minister stated that:

> [V]oluntary agreements are not always sufficient in balancing the needs of the public with the ability of the workers to strike. In the ambulance service for example, some voluntary arrangements were being disputed right up to the wire during recent strikes. This created uncertainty and left officials with little time available to organise contingency measures such as deployment of military support — leaving the public facing patchy emergency care.[65]

49. The Secretary of State went further than this in the Second Reading debate on the Bill in the House of Commons, stating that in respect of ambulance strikes "the Unions have refused to provide a national safety net".[66] In written evidence to us UNISON, disputed this claim:

> This is not true — UNISON, the largest trade union for ambulance workers agreed cover arrangements with every ambulance Trust at a local level. A national agreement could only have been more general and would have not reflected services needed locally. UNISON National Officials were also in touch with national employers before, and through, both strike days ….[67]

64 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023

65 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023

66 HC Deb, 16 January 2023, c55

67 (UNISON) SMS0003. UNISON gave further detail of the arrangements in place during the ambulance strikes and why local agreement was preferable to national agreement:

"UNISON reached agreement with every ambulance trust prior to the strike date. On every picket line there was a UNISON picket supervisor who carried a radio and was in direct contact with the employers. When an emergency call came through, workers jumped straight into ambulances that were kept ready on the picket line.

Emergency cover provisions are drawn up by each Ambulance Trust employer through negotiations with UNISON and other unions. These negotiations benefit from the experience and expertise of local union representatives and local managers who have a detailed understanding of the specific day-to-day operational needs of their services. Agreements on emergency cover at employer level are more flexible than a national agreement as they are tailored to reflect differing local service needs; variation in anticipated call volume in each Trust; the spread of job groups involved in the industrial action in each Trust relevant to the workplace and differing unions memberships in multi-union environments. Agreements across all the Trusts have allowed for rapid escalation mechanisms to enable additional staff to be deployed from picket lines and continuous dialogue to respond to changes in call volume during the strike period."

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50. Kate Bell, Assistant General Secretary at the TUC, also cast doubt on the benefit of imposing national minimum service levels rather than allowing for them to be agreed at a local level:

> one of the many strange things about this Bill is that it replaces the system done at an employer level—at the level at which the service is delivered—with a minimum service dictated solely by a Minister who will now presume to know the minimum service level required in every ambulance trust and every nuclear site across the country. It replaces a system that has been tailored to the needs of individual workplaces and individual employers with one that has been dictated entirely centrally at ministerial level.[68]

51. Employers do already have ways in which they can obtain cover for the work affected by industrial action. This includes directly employing new staff, contracting out to a service provider and also employing agency workers to provide cover on strike days. The impact assessment published by the Department of Business and Trade notes that "there is some evidence to show that employers are currently using these options to mitigate the effects of industrial action" but "not all employers have been able to fully make use of these options due to significant administration costs hiring staff" and difficulties "finding a ready supply of labour available for direct hire at short notice".[69]

52. One further point that casts doubt on the pressing social need for minimum service regulations is the risk that requiring dissatisfied workers to work could result in unsafe conditions for the public — the opposite of the intended consequence. This was expressed in the written evidence submitted by the British Airline Pilots' Association:

> Whenever airline industrial relations have deteriorated to the point when our members have demanded and voted for strike action, the airline has more often than not taken the decision not to operate aircraft in such a toxic environment. The difficulty in remaining focused on such a safety critical job if your career and livelihood are at stake is not to be underestimated. Airlines do not generally expect that having asked pilots to cross picket lines, they would be fully focused on the safety critical work for which they are responsible.[70]

53. **The Government has not convinced us that there is a "pressing social need" for imposing minimum service levels across the breadth of categories currently set out in the Bill. We do not consider that the Government has given clear reasons why the current legal protections that apply to strikes and the current practice of establishing voluntary minimum service levels are no longer sufficient to balance the rights of the wider public against the rights of the employees and unions involved.**

54. ***The Bill should narrowly and more carefully define the categories of service which it covers so that services where existing protections are sufficient are excluded from its effects. Amending the Bill in this way would require detailed evidence and careful analysis of the need for minimum service levels across the various service sectors. In the absence of such evidence and analysis, we have instead included draft amendments that would achieve a similar aim in the Annex to this report (Amendments 1 & 2).***

68 Q17
69 Strikes (Minimum Service Levels) Bill: impact assessment, 21 February 2023
70 (UNISON) SMS0003

Proportionality

55. The wider question of whether the restrictions the Bill would amount to a proportionate means to achieve the legitimate aim of protecting the rights and freedoms of others depends not only on whether there is a serious problem that needs fixing but on whether the mechanism designed to fix that problem is appropriate. This raises a number of further questions about the regime proposed by the Bill.

Cumulative effect

56. A number of those who gave evidence to us emphasised the need to consider the cumulative impact of the Bill on top of existing constraints on industrial action in domestic law. As we have noted above, this Bill is the most recent in a number of measures by Government that impose restrictions on strike action. The TUC told us that:

> The UK has an incredibly restrictive regime for industrial relations ballots. The Strikes Bill would place an additional layer of constraints on top of that.[71]

57. **When assessing the compatibility of the Bill with Article 11 ECHR it is important to consider the existing legal framework for industrial action as well as the changes that the Bill would make to it.**

Efficacy

58. A formal impact assessment was published by the Department for Business and Trade on 21 February 2023, the same day the Bill had its second reading in the House of Lords. The impact assessment is "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." Precise analysis of the likely benefits of the Bill is not possible, in part because exactly when and in respect of which services it will be used has not yet been confirmed. The Government's independent Regulatory Policy Committee (RPC) has published an opinion on the impact assessment, rating it as "not fit for purpose" and, in respect of the cost-benefit analysis, stating that "the Department makes use of assumptions in the analysis which are not supported by evidence."[72]

59. It is unclear to us whether imposing minimum service levels will have the overall beneficial effect the Government intends. The impact assessment points to economic savings that would result from less disruptive strikes but acknowledges risks that imposing minimum service levels during strike action could result in an increase in industrial action short of striking; could impact on the morale of staff; and could "mean a general increase in tension between unions and employees". The assessment concludes that, on balance, the negative impact if these risks are realised is likely to be less than the impact of strikes going ahead without minimum service levels.

71 (Trades Union Congress) SMS0005

72 The Regulatory Policy Committee is an independent advisory non-departmental public body, sponsored by the Department for Business, Energy and Industrial Strategy. It assesses "the quality of evidence and analysis used to inform regulatory proposals affecting the economy, businesses, civil society, charities and other non-government organisations."

60. We remain concerned that an intervention that forces dissatisfied employees to work at the risk of losing their jobs, and which requires trade unions to take action to ensure their members work when they have chosen to strike, could easily damage relations between the different sides of an industrial dispute and lead to more strike action. Kate Bell of the TUC told us:

> Our aim, and what we think employers want to see, whether they are in the public or private sector, is an improvement in industrial relations. We are very clear that this Bill will certainly not do that. You cannot legislate away the level of dissatisfaction that has been caused by a decade of pay freezes and increasingly heavy workloads. That is at the root of the current level of industrial disputes.
>
> It is also difficult to see this creating a system in which industrial relations are easier to conduct for employers. That is not necessarily an aim that we would have, but even from the employer perspective, this is a highly bureaucratic piece of legislation.[73]

61. **It is difficult to establish that interference with Article 11 rights is proportionate when the likelihood of achieving the intended legitimate aim of the Bill remains unclear. We are concerned that the Bill was passed through the House of Commons before an impact assessment was published and that, once published, the impact assessment has been rated as "not fit for purpose" by the Regulatory Policy Committee.**

Breadth of the measures

62. As discussed above, the Bill would allow for minimum service levels to be imposed in respect of a range of very broadly defined service sectors. The ILO, to which the ECtHR has regard when considering compliance with Article 11 ECHR, has acknowledged that minimum service requirements may be justified, but only in respect of essential services (i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population), services in which a serious strike "could cause an acute crisis threatening the normal conditions of existence of the population", and public services of "fundamental importance". While it is clear that many of the services the Bill covers would fall within these categories (e.g., core NHS services, most fire and rescue services), there are also many that would not. The imposition of minimum service regulations in respect of services that are well outside those envisaged by these ILO categories is in our view likely to be considered disproportionate by the ECtHR.

63. **In addition to helping to establish a pressing social need, narrowing and better defining the categories of services covered by the Bill would also mean that the interference with Article 11 is more likely to be proportionate to its legitimate aims.**

73 Q22

Alternative measures

64. A measure that restricts Convention rights is unlikely to be proportionate if there are alternative, less restrictive measures that could be taken that would be likely to achieve the same aims.[74] While the ILO has said that minimum service requirements may be a suitable alternative to bans on striking, it has stated that such requirements should be established through negotiations between the parties to a dispute and if this is not possible then differences should be "settled by an independent body…and not by the Ministry concerned."[75] Allowing trade unions to take part in the process by which minimum service requirements are established is more likely to ensure that the union will be heard and able to represent its members' interests in accordance with Article 11. Ensuring that an independent body decides on disputes similarly protects against breach of the Article 11 rights from which protection for strike action derives.

65. In this regard it is notable that the Transport Strikes (Minimum Service Levels) Bill, introduced by the Government in October 2022, took a different approach to establishing minimum service requirements during strikes, which was much closer to that recommended by the ILO:

a) It would have imposed a duty on trade unions and employers, following consultation, to take reasonable steps to enter into an agreement on minimum service levels within 3 months;

b) Where no such agreement was reached within this time, it would have required an independent Central Arbitration Committee to make a minimum service determination (after receiving representations from the employer and trade union);

c) The Secretary of State would be able to set minimum service levels by regulations, but these would only apply where no agreement or determination was in place.

66. It is clear that a far greater role was given to trade unions, employers and an independent arbitration body in establishing minimum service levels in the Transport Strikes Bill than is provided for in the Strikes (Minimum Service Levels) Bill. Given that the Government was proposing that this more generous approach was suitable to deal with the problems posed by transport strikes just a few months ago it is difficult to see why a measure that is more restrictive of Article 11 rights should be considered proportionate now.

67. In this regard, the Government argues that "recent industrial action has demonstrated the significant and disproportionate impact strikes can have on the public".[76] While there have been significant public sector strikes over the past few months, we are unclear how they have established that minimum service levels should now be imposed without

74 Lord Reed explained, in a dissenting judgment in the case of Bank Mellat v HM Treasury (No.2) [2013] UKSC 39 at [74], that one of the questions that must be asked in an ECHR proportionality assessment is "whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective".

75 Para 876 of Ch 10 of "Freedom of association - Compilation of decisions of the Committee on Freedom of Association". The Government has suggested that an independent body will decide on disagreements in minimum service levels because the regulations imposing them will be subject to judicial review. The inevitable possibility of legal challenge is not the same as providing in legislation for an independent body to resolve disputes over minimum service levels.

76 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023

negotiation or independent arbitration.

68. The Government further notes that in its view, "applying MSLs via regulations (after a statutory consultation) ensures that more people can have a say on what the MSLs should be before they come into effect, enables MSLs to be implemented sooner, and therefore the lives and livelihoods of the public are protected sooner."[77] The Bill does impose a duty on the Secretary of State to consult before making regulations setting minimum service levels. The ECHR memorandum suggests that this meets the ILO requirements for participation.[78] However, in its written evidence, UNISON disputes this:

> The duty of the Secretary of State to consult before making regulations in the Bill falls far short of the tripartite negotiation envisaged by the ILO. A weak duty to consult is equally incompatible with §882 of the Digest, cited by the Government in the ECHR Memorandum at §35, which requires that any "disagreement" between the collective parties should be determined "by an independent body and not by the administrative body". The reference to "disagreement" underlines that the ILO requires negotiations with a view to reaching agreement, not just consultation.[79]

69. In respect of the argument that minimum service levels can be imposed more quickly if brought in by legislation following consultation, we are again struck not only by the willingness of Government to introduce an alternative system when faced with disruptive transport strikes just a few months ago, but also by the apparent ability of striking bodies such as the Royal College of Nursing to establish specific minimum service levels for specific services in advance of previous strikes.

70. **It is clear from the Government's own Transport Strikes Bill that an alternative mechanism for establishing minimum service levels, involving negotiation between trade unions and employers and independent arbitration, is available. Such an approach would be more consistent with the standards of the ILO and amount to a more proportionate interference with Article 11 rights.** ***In our view, the Bill would be more likely to be compatible with Article 11 if it included a mechanism for establishing minimum service levels that involved genuine collective negotiation between employers and unions and the independent resolution of conflicts. We have included a draft amendment that would achieve this aim in the Annex to this report (Amendment 3).***

Degree of interference

71. The Bill would require certain employees to work despite an otherwise lawful strike taking place. This is in of itself a substantial interference with individual Article 11 rights. The method by which the Bill would allow employers to determine the precise way in which minimum service levels need to be met by employees risks that interference being even more acute. Firstly, the Employment Lawyers Association identified procedural and logistical problems:

> As drafted the Bill, assuming that a trade union has complied with its many procedural obligations in calling a strike, would enable an employer to

77 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023
78 ECHR memorandum at para 35
79 (UNISON) SMS0003

> submit what might be a lengthy "Work Notice" as little as seven days before strike action is to take place. All that an employer is required to do is to consult with the union beforehand and 'have regard' to anything it might say. The employer may then ignore what is said or vary the notice. If the outcome is still that the union does not agree with the content of the Work Notice, first, there is no specific right for the union to challenge the use or scope of the Work Notice and, second, given the timing, any challenge would inevitably mean that the union would be in the position that it must either withdraw the instruction to strike, or proceed in the (highly unlikely) hope that a legal challenge can be made successfully and concluded within what might be one or two days, risking serious legal penalty, should the challenge ultimately not succeed.[80]

72. Furthermore, the employer with whom those striking are in dispute will be able to determine exactly who must break that strike. While the employer must consult with the union there is no obligation on them to do anything more than take that consultation into account. And while the employer must not take into account union membership when deciding who must work, it was pointed out to us in evidence that on the face of the Bill an employer is still free to identify workers on the basis of union *activity*. In his oral evidence, Michael Ford KC, a barrister at Old Square Chambers specialising in Labour Law, noted:

> According to Section 234C(6) [in the Bill], "The employer must not have regard to whether a person is or is not a member of a trade union", but it says nothing about trade union activities…In restricting the non-selection—which itself does not have a sanction—to not taking place on grounds of trade union membership, it is missing the fact that activities are what Article 11 protects…[81]

73. Professor Ewing explained in his evidence to the committee that this means:

> that the employer, in issuing a work notice, can choose to include within the obligation to work the shop stewards and other officials of the trade union in the enterprise: that is, the leaders of the strike at enterprise level. The employer has a discretion to require the strike leaders to cross picket lines and to attend the workplace and thereby to take the strike leaders out of active service for the periods of the strike. This needs some explanation on freedom of association grounds, in the sense that the employer has this opportunity to actively undermine the ability of the union to conduct an effective strike.[82]

74. Also acutely inconsistent with the union's role in representing its members' interests in any dispute is the obligation the Bill would place on unions to ensure that their workers comply with the working notice provided by the employer. This could leave a union being forced to persuade its own members to break a strike or cross the picket that the union itself has organised. The written evidence provided by the TUC commented that:

> This means that a trade union is required by an employer acting with the authority of the state to take steps actively to undermine its own strike

80 (Employment Lawyers Association) SMS0007
81 Q9
82 Q9

> which its members will have voted in a ballot with high thresholds to support. Such an obligation is unprecedented in British law…Trade unions should never be placed in a position by the state where they are required by law to undermine their own interests and the interests of their members, by being compelled by law to act as the coercive instrument of the employer or otherwise face legal sanctions to ensure that the employer's interests are met.[83]

75. **The way in which the Bill would bring minimum service levels into effect, through a work notice issued by an employer backed by an obligation on trade unions to ensure members comply with that work notice, amounts to a serious interference with Article 11 rights. It could result in employers requiring strike leaders to work, and in unions being forced to persuade their own members to break their own strike. An alternative mechanism, based on negotiation and independent resolution of disagreements, would involve lesser interference with Article 11 and therefore be more likely to meet the requirement of proportionality. *The Bill should also be amended to ensure that employers cannot base their decisions as to who must work during a strike and what work they must do on a worker's trade union activity. Such a change to the Bill would be consistent with the current prohibition on employers having regard to union membership. An amendment to achieve this aim is included in the Annex to this report (Amendment 4).***

Consequences

76. The severity of the consequence for a trade union or individual employee who fails to comply with the requirements of the Bill or the minimum service requirements imposed by a work notice is also relevant to the proportionality of the Bill's interference with Article 11 rights.

77. The impact on individual employees of a trade union's failure to comply with the requirement to take reasonable steps to ensure that its members comply with an employer's work notice seems to us to be particularly severe. The Government has confirmed that the consequence of such a failure would be the strike in question losing its protection in law — meaning that any employee taking part in the strike would be deprived of protection against unfair dismissal for participating in the strike.[84] This consequence is plainly very serious, particularly for a failure for which that individual employee was not responsible.

78. The consequence is even more concerning given that it is unclear how an employee will be able to know whether or not the union has met the duty to take reasonable steps under the Bill. While one might expect this to be agreed between employers and unions, this cannot be guaranteed. In any event, it might not be obvious whether unions have met this requirement until the strike actually begins, since a last-minute effort to ensure members comply with a work notice could, in theory, be sufficient. This could leave an employee unsure whether participating in a seemingly lawful strike could result in them losing crucial protection against dismissal.

83 (Trades Union Congress) SMS0005

84 Michael Ford KC explained that "a strike is a fundamental breach of contract, so there is no protection in common law for an individual who is dismissed" (Q1). The only protection against dismissal for a striking worker is the statutory protection, but that would be removed by this Bill.

79. In his letter to the Chair of our Committee, the Minister explained that this consequence for employees was consistent with the current legal framework, whereby an employee is only protected in respect of a strike where the trade union has organised it in accordance with the requirements set down in statute. Furthermore, he explained that in practice, such a consequence is unlikely because employers and trade unions generally let workers know in advance whether a strike will be protected.

80. We are not persuaded that consistency with the existing framework is sufficient justification for what appears to be a disproportionate interference with individual workers' Article 11 rights. Neither do we consider that past practice provides sufficient protection against this interference, not least because it is currently unclear how either an employer or a trade union can be confident that "reasonable steps" have or have not been taken by the union in advance of a strike commencing.

81. **We find it hard to see how it is compliant with Article 11 ECHR to expose any participant in industrial action to the risk of dismissal simply because a trade union fails to take unspecified "reasonable steps" required in respect of those subject to a work notice. In our view, the Government has not provided sufficient justification for this consequence or explained why the minimum service scheme could not be effective without it.** ***We recommend the Bill is amended to protect against this consequence for employees. We have included a draft amendment to achieve this aim in the Annex to this report (Amendment 6).***

82. The consequence for a union for failing to comply with the requirement to take reasonable steps could be acute. A failure to take reasonable steps to ensure members comply with a work notice could cost the largest unions (those with more than 100,000 members) up to £1,000,000.[85] This is a sum that appears great enough to influence trade union behaviour and thus the ability for trade unions to represent their members' interests.

83. The consequence for an individual of striking in breach of a work notice based on a minimum service regulation is also potentially severe, as their protection against dismissal is removed.[86] We asked the Government whether it has considered any alternative penalties other than the loss of protection against dismissal. The Minister's response was:

> Without these measures, or if measures that provided less incentive were implemented, there would be a significant risk the MSLs would not be achieved and strikes in services where MSLs are applied would continue to impact the public disproportionately.[87]

84. **The penalties imposed on trade unions and workers for failing to comply with the requirements of the Bill and of any work notice issued by an employer are severe. In our view, they may amount to a disproportionate interference with Article 11, particularly in circumstances where the strike does not involve essential services and risks to life and limb. The Government should reconsider whether less severe measures, such as loss of pay or suspension from work for employees who fail to comply with work notices, could be effective.**

85 Section 22 of the Trade Union and Labour Relations (Consolidation) Act 1992

86 The ECtHR has described dismissal as 'the heaviest sanction possible under labour law' in Heinisch v Germany [2011] ECHR 1175, para 91.

87 Letter from Minister Kevin Hollinrake to the Chair of the Committee, dated 21 February 2023

Discrimination and Article 14 ECHR

85. A number of the written submissions we received in response to our call for evidence raised concerns about the possibility that minimum service level requirements could result in discrimination in breach of Article 14 ECHR, taken together with the right to free association under Article 11. The Employment Lawyers Association noted in respect of services that fall outside those considered essential by the ILO:

> if the demographics of that sector were such that it comprised a greater proportion of individuals in a group protected under Article 14—for example women—and who were thereby adversely affected, that might amount to indirect discrimination and so an infringement of Article 14.[88]

86. More specifically, the Royal College of Nursing told us that there "are clear equalities impacts flowing from the Bill" and explained:

> Trade union members in the UK are disproportionately women; this is especially true in nursing, as the workforce is disproportionately female. Black British people are also disproportionately likely to be trade union members. As such, efforts to silence the voice of trade union members risk exacerbating existing societal and structural inequalities.[89]

87. The Royal College of Nursing further noted that the impact assessment published for the earlier Transport Strikes Bill recognised that "the proposal may impact protected characteristic groups more than other groups", although the extent of this was uncertain.[90] The recently published impact assessment for the current Bill also accepts that there are "instances in which protected characteristics appear more likely to be affected in certain industries", but does not "expect there to be a disproportionate impact on these workers."[91]

88. **We agree that there is potential for minimum service requirements to impact more severely on certain protected groups, most obviously women in respect of nursing. However, before such requirements are specified it is hard to establish whether they would meet the Article 14 requirement for an objective and reasonable justification. Nevertheless, discrimination in breach of Article 14 would be less likely if, as previously recommended, the categories of service to which minimum service levels could apply were narrowed and defined more clearly, and if minimum service levels were, if possible, reached by a process of negotiation or independent arbitration rather than imposed by regulation.**

88 (Employment Lawyers Association) SMS0007
89 (Royal College of Nursing) SMS0006
90 The Transport Strikes (Minimum Service Levels) Bill impact assessment, 17 October 2022
91 Strikes (Minimum Service Levels) Bill impact assessment, 21 February 2023

Annex

Amendment 1

Schedule, page 3, line 12, at end insert—

"(1A) Minimum service regulations -

(a) may be made only if the Secretary of State reasonably believes them to be necessary to:

(i) protect the life, personal safety or health of the whole or part of the population;

(ii) protect against an acute national crisis endangering the normal living conditions of the population; or

(iii) protect public services of fundamental importance."

Explanatory statement

This amendment would give effect to the JCHR's recommendation by limiting the circumstances in which the Secretary of State could make minimum service regulations in accordance with the principles set down by the International Labour Organisation's Committee on Freedom of Association

Amendment 2

Schedule, page 3, line 12, at end insert—

"(1B) Minimum service regulations must –

(a) not provide for levels of service which are greater than those necessary to satisfy the basic needs of the population or the minimum requirements of the service; and

(b) ensure that the scope of the minimum service does not render ineffective any strike it affects."

Explanatory statement

This amendment would give effect to the JCHR's recommendation by limiting minimum service regulations to the levels indicated as appropriate in conclusions of the International Labour Organisation's Committee on Freedom of Association.

Amendment 3

Schedule, page 3, line 31, at end insert—

"234BA Requirement for opportunity for negotiated settlement and involvement of independent body

(1) The Secretary of State may not make minimum service regulations in respect of any strike of which a trade union gives notice to an employer under section 234A unless —

(a) the employer and the trade union have been given a reasonable opportunity to reach a negotiated agreement on minimum service levels in respect of the strike; and

(b) if the employer and the trade union have not been able to reach an agreement on minimum service levels—

(i) the employer and trade union have both been given a reasonable opportunity to make representations to a quasi-judicial body independent of the employer, trade union and Government; and

(ii) the independent body has been given a period that is reasonable in the circumstances to determine minimum service levels in respect of the strike.

(2) If the employer and trade union have reached a negotiated agreement on minimum service levels in respect of the strike referred to in subsection (1), the Secretary of State may not make minimum service regulations in respect of that strike.

(3) If the independent body referred to in subsection (1)(b)(i) and (ii) above has determined minimum service levels in respect of the strike within the reasonable period:

(a) The employer and trade union are bound by those minimum service levels;

(b) The Secretary of State may not make minimum service regulations in respect of the strike referred to in subsection (1)."

Explanatory statement

This amendment would give effect to the JCHR's recommendation to prevent the Secretary of State making minimum service regulations in respect of a strike unless the trade union and employer have had an opportunity to reach a negotiated agreement on those levels, and where an independent body has had the opportunity to determine the levels in the absence of an agreement.

Amendment 4

Schedule, page 4, line 22, leave out lines 22 to 24 and insert -

"(6) In deciding whether to identify a person in a work notice and in specifying the work required to be carried out by them, the employer must not have regard to whether the person is or is not a member of a trade union (or a particular trade union) or any trade union activity the person has undertaken or otherwise been involved in."

Explanatory statement

This amendment would give effect to the JCHR's recommendation to prevent employers having regard to trade union activity as well as trade union membership when deciding whether to identify an employee in a work notice and when specifying the work they must carry out.

Amendment 5

Schedule, page 6, line 34, at end insert—

"(1A) For subsection (1) substitute—

"(1) For the purposes of this section an employee takes protected industrial action if

(a) he commits an act which, or a series of acts each of which, he is induced to commit by an act which by virtue of section 219 is not actionable in tort, or

(b) he commits an act which, or a series of acts each of which, he is induced to commit by an act which would not have been actionable in tort by virtue of section 219 but for a trade union's failure to take reasonable steps in accordance with section 234E(1)(b)."

Explanatory statement

This amendment would give effect to the JCHR's recommendation by preventing striking workers losing their protection against unfair dismissal as a result of a trade union failing to take reasonable steps to secure that its members comply with a work notice.

Conclusions and recommendations

International comparisons

1. It is hard to make precise comparisons between countries where unions operate in different ways and within different industrial relations frameworks. Ultimately, however, the key question from a human rights perspective is not whether the Bill is equivalent to or different from the approach taken by other European nations, but rather how this Bill meets the human rights standards to which the United Kingdom is committed and by which the Government is legally bound. (Paragraph 32)

Compliance with human rights standards

2. Any measure that interferes with Article 11 rights must have consequences that are foreseeable for those affected by it. We are concerned that the requirement for trade unions to take "reasonable steps" to ensure their members comply with a work notice issued by an employer does not provide the clarity needed to guarantee that trade unions and employees will know when this duty has been met and when it has not. Given the serious consequences of a failure to meet this duty, greater clarity is needed in the Bill. As drafted, the provision requiring trade unions to take "reasonable steps" may fall foul of the requirements of Article 11. (Paragraph 37)

3. The lack of any limits on the level of service that the Secretary of State may impose by regulations risks a failure to comply with the Article 11 requirement of being "in accordance with the law", as the Bill arguably contains insufficient protection against arbitrary interference with Article 11 rights. *The Bill should be amended to provide some limits on the level of service that the Secretary of State can require. We have included a draft amendment that would achieve this aim in the Annex to the report (Amendment 2).* (Paragraph 39)

4. Without the Government providing specific evidence establishing a pressing social need for minimum service requirements in respect of each of the very broad categories of service set out in the Bill, compliance with the requirements of Article 11 ECHR remains unclear. (Paragraph 43)

5. The Government has not convinced us that there is a "pressing social need" for imposing minimum service levels across the breadth of categories currently set out in the Bill. We do not consider that the Government has given clear reasons why the current legal protections that apply to strikes and the current practice of establishing voluntary minimum service levels are no longer sufficient to balance the rights of the wider public against the rights of the employees and unions involved. (Paragraph 53)

6. *The Bill should narrowly and more carefully define the categories of service which it covers so that services where existing protections are sufficient are excluded from its effects. Amending the Bill in this way would require detailed evidence and careful analysis of the need for minimum service levels across the various service sectors. In*

the absence of such evidence and analysis, we have instead included draft amendments that would achieve a similar aim in the Annex to this report (Amendments 1 & 2). (Paragraph 54)

7. When assessing the compatibility of the Bill with Article 11 ECHR it is important to consider the existing legal framework for industrial action as well as the changes that the Bill would make to it. (Paragraph 57)

8. It is difficult to establish that interference with Article 11 rights is proportionate when the likelihood of achieving the intended legitimate aim of the Bill remains unclear. We are concerned that the Bill was passed through the House of Commons before an impact assessment was published and that, once published, the impact assessment has been rated as "not fit for purpose" by the Regulatory Policy Committee. (Paragraph 61)

9. In addition to helping to establish a pressing social need, narrowing and better defining the categories of services covered by the Bill would also mean that the interference with Article 11 is more likely to be proportionate to its legitimate aims. (Paragraph 63)

10. It is clear from the Government's own Transport Strikes Bill that an alternative mechanism for establishing minimum service levels, involving negotiation between trade unions and employers and independent arbitration, is available. Such an approach would be more consistent with the standards of the ILO and amount to a more proportionate interference with Article 11 rights. *In our view, the Bill would be more likely to be compatible with Article 11 if it included a mechanism for establishing minimum service levels that involved genuine collective negotiation between employers and unions and the independent resolution of conflicts. We have included a draft amendment that would achieve this aim in the Annex to this report (Amendment 3).* (Paragraph 70)

11. The way in which the Bill would bring minimum service levels into effect, through a work notice issued by an employer backed by an obligation on trade unions to ensure members comply with that work notice, amounts to a serious interference with Article 11 rights. It could result in employers requiring strike leaders to work, and in unions being forced to persuade their own members to break their own strike. An alternative mechanism, based on negotiation and independent resolution of disagreements, would involve lesser interference with Article 11 and therefore be more likely to meet the requirement of proportionality. *The Bill should also be amended to ensure that employers cannot base their decisions as to who must work during a strike and what work they must do on a worker's trade union activity. Such a change to the Bill would be consistent with the current prohibition on employers having regard to union membership. An amendment to achieve this aim is included in the Annex to this report (Amendment 4).* (Paragraph 75)

12. We find it hard to see how it is compliant with Article 11 ECHR to expose any participant in industrial action to the risk of dismissal simply because a trade union fails to take unspecified "reasonable steps" required in respect of those subject to a work notice. In our view, the Government has not provided sufficient justification for this consequence or explained why the minimum service scheme could not

be effective without it. *We recommend the Bill is amended to protect against this consequence for employees. We have included a draft amendment to achieve this aim in the Annex to this report (Amendment 6).* (Paragraph 81)

13. The penalties imposed on trade unions and workers for failing to comply with the requirements of the Bill and of any work notice issued by an employer are severe. In our view, they may amount to a disproportionate interference with Article 11, particularly in circumstances where the strike does not involve essential services and risks to life and limb. The Government should reconsider whether less severe measures, such as loss of pay or suspension from work for employees who fail to comply with work notices, could be effective. (Paragraph 84)

14. We agree that there is potential for minimum service requirements to impact more severely on certain protected groups, most obviously women in respect of nursing. However, before such requirements are specified it is hard to establish whether they would meet the Article 14 requirement for an objective and reasonable justification. Nevertheless, discrimination in breach of Article 14 would be less likely if, as previously recommended, the categories of service to which minimum service levels could apply were narrowed and defined more clearly, and if minimum service levels were, if possible, reached by a process of negotiation or independent arbitration rather than imposed by regulation. (Paragraph 88)

Formal minutes

Wednesday 1 March 2023

Hybrid Meeting

Members present:

Joanna Cherry KC MP, in the Chair

Lord Alton of Liverpool

Lord Henley

Lord Dholakia

Baroness Meyer

Bell Ribeiro-Addy MP

David Simmonds MP

Draft Report (*Legislative Scrutiny: Strikes (Minimum Service Levels) Bill 2022-2023*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 88 read and agreed to.

Summary agreed to.

Annex agreed to.

Resolved, That the Report be the Tenth Report of the Committee to both Houses.

Ordered, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till 8 March at 2.45pm

Declaration of interests

Lord Alton of Liverpool (Crossbench)

- No relevant interests to declare

Lord Dholakia (Liberal Democrat)

- No relevant interests to declare

Lord Henley (Crossbench)

- No relevant interests to declare

Baroness Kennedy of the Shaws KC (Labour)

- Chaired an inquiry into sexual harassment within the Technical Standards and Safety Authority (TSSA). It published its Report in February 2023

Baroness Lawrence of Clarendon (Labour)

- No relevant interests to declare

Baroness Meyer (Conservative)

- No releveant interests to declare

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Wednesday 8 February 2023

Professor Keith Ewing, Professor of Public Law, King's College London; **Michael Ford KC**, Barrister, Old Square Chambers; **Professor Tonia Novitz**, Professor of Labour Law, The University of Bristol	Q1–12
Kate Bell, Assistant General Secretary, Trades Union Congress (TUC); **Tim Sharp**, Senior Employment Rights Officer, Trades Union Congress (TUC)	Q13–26

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

SMS numbers are generated by the evidence processing system and so may not be complete.

1 British Airline Pilots' Association (SMS0009)

2 Community Union (SMS0010)

3 Employers Lawyers Association (SMS0007)

4 Ewing, Professor Keith (SMS0011)

5 JCHR, TUC submission to (Senior Employment Rights Officer, Trades Union Congress) (SMS0005)

6 Public Law Project (SMS0004)

7 Royal College of Nursing (SMS0006)

8 UNISON (SMS0003)

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website.

Session 2022–23

Number	Title	Reference
1st	Legislative Scrutiny: Public Order Bill	HC 351 HL 16
2nd	Proposal for a draft State Immunity Act 1978 (Remedial) Order	HC 280 HL 42
3rd	The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976	HC 270 HL 43
4th	Protecting human rights in care settings	HC 216 HL 51
5th	Legislative Scrutiny: National Security Bill	HC 297 HL 73
6th	Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill	HC 311 HC 79
7th	Draft State Immunity Act 1978 (Remedial) Order 2022	HC 895 HL 103
8th	Draft Bereavement Benefits (Remedial) Order 2022: Second Report	HC 834 HL 108
9th	Legislative Scrutiny: Bill of Rights Bill	HC 611 HL 132
1st Special Report	Human Rights Act Reform: Government Response to the Committee's Thirteenth Report of Session 2021–22	HC 608
2nd Special Report	Legislative Scrutiny: Public Order Bill: Government Response to the Committee's First Report	HC 649
3rd Special Report	Protecting Human Rights in Care Settings: Government Response to the Committee's Fourth Report	HC 955
4th Special Report	Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill: Government response to the Committee's Sixth report	HC 1179
5th Special Report	The Violation of Family Life: Adoption of Children of Unmarried Women 1949–1976: Government Response to the Committee's Third Report	HC 1180

Session 2021–22

Number	Title	Reference
1st	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill	HC 90 HL 5
2nd	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order)	HC 331 HL 23
3rd	The Government's Independent Review of the Human Rights Act	HC 89 HL 31
4th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Part 4): The criminalisation of unauthorised encampments	HC 478 HL 37
5th	Legislative Scrutiny: Elections Bill	HC 233 HL 58
6th	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People	HC 451 HL 73
7th	Legislative Scrutiny: Nationality and Borders Bill (Part 1) – Nationality	HC 764 HL 90
8th	Proposal for a draft Bereavement Benefits (Remedial) Order 2021: discrimination against cohabiting partners	HC 594 HL 91
9th	Legislative Scrutiny: Nationality and Borders Bill (Part 3) – Immigration offences and enforcement	HC 885 HL 112
10th	Legislative Scrutiny: Judicial Review and Courts Bill	HC 884 HL 120
11th	Legislative Scrutiny: Nationality and Borders Bill (Part 5)— Modern slavery	HC 964 HL 135
12th	Legislative Scrutiny: Nationality and Borders Bill (Parts 1, 2 and 4) – Asylum, Home Office DecisionMaking, Age Assessments, and Deprivation of Citizenship Orders	HC 1007 HL 143
13th	Human Rights Act Reform	HC 1033 HL 191
1st Special Report	The Government response to covid-19: fixed penalty notices: Government Response to the Committee's Fourteenth Report of Session 2019–21	HC 545
2nd Special Report	Care homes: Visiting restrictions during the covid-19 pandemic: Government Response to the Committee's Fifteenth Report of Session 2019–21	HC 553
3rd Special Report	Children of mothers in prison and the right to family life: The Police, Crime, Sentencing and Courts Bill: Government Response to the Committee's First Report	HC 585
4th Special Report	The Government response to covid-19: freedom of assembly and the right to protest: Government Response to the Committee's Thirteenth Report of Session 2019–21	HC 586
5th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 (Public Order): Government Response to the Committee's Second Report	HC 724

Number	Title	Reference
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911
8th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill (Parts 7 and 8): Sentencing and Remand of Children and Young People: Government Response to the Committee's Sixth Report	HC 983
9th Special Report	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing: Government Response to the Committee's Third Report of Session 2019–21	HC 1198
10th Special Report	Legislative Scrutiny: Nationality and Borders Bill: Government Responses to the Committee's Seventh, Ninth, Eleventh and Twelfth Reports	HC 1208

Session 2019–21

Number	Title	Reference
1st	Draft Jobseekers (Back to Work Schemes) Act 2013 (Remedial) Order 2019: Second Report	HC 146 HL 37
2nd	Draft Human Rights Act 1998 (Remedial) Order: Judicial Immunity: Second Report	HC 148 HL 41
3rd	Human Rights and the Government's Response to Covid-19: Digital Contact Tracing	HC 343 HL 59
4th	Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report	HC 256 HL 62
5th	Human Rights and the Government's response to COVID-19: the detention of young people who are autistic and/or have learning disabilities	HC 395 (CP 309) HL 72
6th	Human Rights and the Government's response to COVID-19: children whose mothers are in prison	HC 518 HL 90
7th	The Government's response to COVID-19: human rights implications	HC 265 (CP 335) HL 125
8th	Legislative Scrutiny: The United Kingdom Internal Market Bill	HC 901 HL 154
9th	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill	HC 665 (HC 1120) HL 155
10th	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill	HC 847 (HC 1127) HL 164
11th	Black people, racism and human rights	HC 559 (HC 1210) HL 165

Number	Title	Reference
12th	Appointment of the Chair of the Equality and Human Rights Commission	HC 1022 HL 180
13th	The Government response to covid-19: freedom of assembly and the right to protest	HC 1328 HL 252
14th	The Government response to covid-19: fixed penalty notices	HC 1364 HL 272
15th	Care homes: Visiting restrictions during the covid-19 pandemic	HC 1375 HL 278
1st Special Report	The Right to Privacy (Article 8) and the Digital Revolution: Government Response to the Committee's Third Report of Session 2019	HC 313
2nd Special Report	Legislative Scrutiny: Covert Human Intelligence Sources (Criminal Conduct) Bill: Government Response to the Committee's Tenth Report of Session 2019–21	HC 1127
3rd Special Report	Legislative Scrutiny: Overseas Operations (Service Personnel and Veterans) Bill: Government Response to the Committee's Ninth Report of Session 2019–21	HC 1120
4th Special Report	Black people, racism and human rights: Government Response to the Committee's Eleventh Report of Session 2019–21	HC 1210
5th Special Report	Democracy, freedom of expression and freedom of association: Threats to MPs: Government Response to the Committee's Third Report of Session 2019	HC 1317
6th Special Report	Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 4 (Unauthorised Encampments): Government Response to the Committee's Fourth Report	HC 765
7th Special Report	Legislative Scrutiny: Elections Bill: Government Response to the Committee's Fifth Report	HC 911