



**DORSET & WILTSHIRE  
FIRE AND RESCUE  
AUTHORITY**

Item 24/26

MEETING	Dorset & Wiltshire Fire and Rescue Authority
DATE OF MEETING	12 June 2024
SUBJECT OF THE REPORT	Fire and Rescue Services Minimum Service Levels (MSL) Regulations
STATUS OF REPORT	For open publication
PURPOSE OF REPORT	For consideration and to note
EXECUTIVE SUMMARY	<p>The Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations came into force in March 2024. In the event of a strike, fire and rescue authorities (FRAs) in England are now able to issue work notices in accordance with the regulations.</p> <p>A work notice is a document, issued by an employer to a trade union, which identifies the workers required and the work they must carry out during the strike to secure the minimum levels of service set out in the regulations.</p> <p>Employers and trade unions should consider whether a voluntary agreement covering the provision of services during strike action is appropriate and achievable to deliver minimum service levels, as an alternative to an employer issuing a work notice.</p> <p>The Home Office has produced an overview of MSL regulations relevant to the fire and rescue service, including a number of 'frequently asked questions'. This document can be found at appendix A.</p> <p>The MSL regulations are now in force for the fire and rescue service in England. They provide a mechanism for the Fire and Rescue Authority (as the employer) to issue work notices.</p>

	The decision as to whether to issue work notices will be a matter for the Fire and Rescue Authority and will need to be considered, at the time, based upon the specific circumstances of announced strike action.
RISK ASSESSMENT	In the event of notified strike action, the regulations provide for the issuing of work notices. This could be considered, and potentially used, as an additional control measure in order to provide appropriate levels of service delivery during a strike period.
COMMUNITY IMPACT ASSESSMENT	In the event of notified strike action, the regulations provide for the issuing of work notices. This could be considered, and potentially used, as an additional control measure in order to provide appropriate levels of service delivery during a strike period.
ENVIRONMENTAL IMPACT ASSESSMENT	None for the purposes of this report
BUDGET IMPLICATIONS	None for the purposes of this report
RECOMMENDATIONS	Members are asked to: 1. Consider and note the report
BACKGROUND PAPERS	<p>The Strikes (Minimum Service Levels) Act 2023  <a href="https://www.legislation.gov.uk/ukpga/2023/39/contents/enacted">https://www.legislation.gov.uk/ukpga/2023/39/contents/enacted</a></p> <p>The Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations  <a href="https://www.legislation.gov.uk/uksi/2024/417/regulation/2/made">https://www.legislation.gov.uk/uksi/2024/417/regulation/2/made</a></p> <p>Department for Business and Trade non-statutory guidance on issuing work notices  <a href="https://www.gov.uk/government/publications/minimum-service-levels-msl-issuing-work-notices/minimum-service-levels-issuing-work-notices-a-guide-for-employers-trade-unions-and-workers#following-notice-of-strike-action">https://www.gov.uk/government/publications/minimum-service-levels-msl-issuing-work-notices/minimum-service-levels-issuing-work-notices-a-guide-for-employers-trade-unions-and-workers#following-notice-of-strike-action</a></p>

APPENDIX	Appendix A – FAQs from Fire and Rescue Authorities – Minimum Service Levels
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## **1 Introduction**

- 1.1 This report provides information for Members on the regulations on minimum service levels in fire and rescue services during strike action.

## **2 Minimum Service Levels Act, Regulations, and guidance**

- 2.1 The Strikes (Minimum Service Levels Act came into force on 20 July 2023. It enables minimum service levels (MSL) to be applied to specified services by regulations within these sectors during strike action. The relevant sectors are:

- health services
- fire and rescue services
- education services
- transport services
- decommissioning of nuclear installations and management of radioactive waste and spent fuel
- border security.

- 2.2 Similar arrangements exist in a number of other European countries, including France, Italy and Spain.

- 2.3 The Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations came into force on 21 March 2024. In the event of a strike, fire and rescue authorities (FRAs) in England are now able to issue work notices in accordance with the regulations.

- 2.4 Further non-statutory guidance has been published by the Department for Business and Trade.

## **3 Overview of the law regarding Minimum Service Levels**

- 3.1 Minimum service levels legislation does not apply to other types of industrial action short of a strike.
- 3.2 Once the MSL regulations, which set out a minimum service level, are in force, if a trade union(s) gives notice to an employer of strike action under section 234A of the Act which relates to the services covered by the minimum service level, that employer can issue a notice (known as a work notice) to the trade union ahead of the strike action to specify the workforce reasonably necessary to meet the minimum service level for that strike period. The requirements for issuing work notices are set out in section 234C of the Act.

- 3.3 If an employer decides to issue a work notice, the notice must identify the workers required to work and specify the work that they are required to carry out during the strike to secure the minimum service level (section 234C (4) of the Act). Work notices must not include more workers than are reasonably necessary to provide the minimum service level specified by the relevant MSL regulations (section 234C (5) of the Act).
- 3.4 When deciding who to identify, employers must not take into consideration (section 234C (6) of the Act) whether or not a:
- worker is a member of a trade union, or a particular trade union, including a particular branch or particular section of a trade union
  - worker has taken part in activities of a trade union. This would include strike action
  - worker has made use of trade union services
  - trade union has raised a matter with the employer on behalf of a worker (with or without the worker's consent)
  - worker has consented to a trade union raising a matter with the employer on their behalf.
- 3.5 Before an employer can issue a work notice, they must consult with the trade union which has given notice of strike action about the number of workers and the work to be specified in the work notice and have regard to the trade union's views before issuing the work notice (section 234C (8) of the Act). This obligation applies before giving the original and any varied work notice (where the variation relates to the number of workers, or the work specified) (section 234C (10) of the Act). The employer must consult with all trade unions which have given notice of strike action which relates to the services specified in the MSL regulations for the strike covered by the work notice.
- 3.6 If an employer decides to issue a work notice, it must be issued to the trade union a minimum of seven calendar days prior to the strike day, unless a later day is agreed with that trade union (section 234C (3) of the Act). Once issued, the work notice can be varied by the employer before the end of the fourth calendar day prior to the strike day, unless a later day is agreed with the trade union (section 234C (9) of the Act).
- 3.7 A work notice is valid if it is given in accordance with section 234C of the Act. If the work notice is validly given by the employer to the trade union, trade unions who do not take reasonable steps to ensure that their own members who are identified on the work notice comply with it, will lose their protection under the Act from damages claims by the employer and/or could be subject to an injunction to prevent the strike from taking place (as a result of liability in tort) (section 234E of the Act). This is ultimately a matter to be determined by the courts.

- 3.8 If a trade union fails to take reasonable steps, this would also mean that the strike is not protected under section 219 of the Act, so an employee taking part in that strike, who was induced to strike by that union, would lose their automatic protection from unfair dismissal under section 238A of the Act (whether or not they had been identified in a work notice).
- 3.9 Employees who are specified on a work notice but take strike action contrary to that work notice will lose their automatic protection from unfair dismissal for industrial action, provided they were notified by the employer in writing of the requirement for them to work, of the work they were required to do on the strike day, and that they were required to comply with the work notice (section 238A(9) of the Act).

#### **4 Purpose of a work notice**

- 4.1 A work notice is a document, issued by an employer to a trade union, which identifies the workers required and the work they must carry out during the strike to secure the minimum levels of service set out in the MSL regulations.
- 4.2 An employer can issue a work notice to a trade union where:
- the trade union has given notice of strike action to the employer, and
  - that employer provides a service specified in the MSL regulations.
- 4.3 A work notice cannot be used to secure a minimum level of service during other forms of industrial action, such as an overtime ban, or for periods where there is no industrial action.

#### **5 Alternative arrangements including voluntary agreements**

- 5.1 Employers and trade unions should consider whether a voluntary agreement covering the provision of services during strike action is appropriate and achievable to deliver minimum service levels, as an alternative to an employer issuing a work notice.

#### **6 Detailed arrangements for fire and rescue authorities**

- 6.1 The Home Office has produced an overview of MSL regulations relevant to the fire and rescue service, including a number of 'frequently asked questions'. This document can be found at appendix A.
- 6.2 Several consultation and briefing sessions have been held for fire authority governance leads and chief fire officers across England. These have been attended by the Chair, Vice Chair, Chief Fire Officer, and Assistant Chief Fire Officer (in their national lead role for the on-call duty system).

## **7 Summary and key points**

- 7.1 The MSL regulations are now in force for the fire and rescue service in England. They provide a mechanism for the Fire and Rescue Authority (as the employer) to issue work notices.
- 7.2 The decision as to whether to issue work notices will be a matter for the Fire and Rescue Authority and will need to be considered, at the time, based upon the specific circumstances of announced strike action.

## Appendix A

FAQs from Fire and Rescue Authorities – Minimum Service Levels**Purpose of document**

This document is intended to provide information about the regulations on minimum service levels in fire and rescue services during strike action. It is not guidance and should not be read as such. Non-statutory guidance is currently in development.

**Background information**

The Strikes (Minimum Service Levels) Act 2023 can be found at <https://www.legislation.gov.uk/ukpga/2023/39/contents/enacted>.

The Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations can be found at <https://www.legislation.gov.uk/uksi/2024/417/regulation/2/made>. These regulations came into force on 21 March and apply to England only. If there is strike action, English fire and rescue authorities (FRAs) are able to issue work notices in accordance with the regulations.

The Department for Business and Trade (DBT) has produced non-statutory guidance on issuing work notices. This can be found at:

<https://www.gov.uk/government/publications/minimum-service-levels-msl-issuing-work-notices/minimum-service-levels-issuing-work-notices-a-guide-for-employers-trade-unions-and-workers#following-notice-of-strike-action>.

**Q and A**

- 1. What has introduction of the Strikes (Minimum Service Levels: Fire and Rescue Services) (England) Regulations changed for fire and rescue authorities (FRAs)?**
  - Before the introduction of the Regulations, there was no legislation setting out a minimum level of service on a strike day. Some FRAs were unable to provide assurances that they would meet their statutory duties and considerable expense would have been incurred to ensure a sufficient level of service during a strike. The regulations define a minimum level of service and through the use of work notices an FRA is able to ensure it has personnel available to meet that level of service and comply with its statutory duties.
  - The statutory requirements of an FRA remain unchanged. The legislation allows FRAs to decide whether or not to issue work notices.
- 2. What responsibilities does an FRA have during strike action?**



- The Fire and Rescue Services Act 2004, the Civil Contingencies Act 2004 and the Fire and Rescue National Framework set out an FRA's responsibilities for maintaining business continuity. These include:
  - o Making provision for extinguishing fires in their area;
  - o Protecting life and property in the event of fires in their area;
  - o Rescuing and protecting people in the event of a road traffic collision; and
  - o Rescuing and protecting people in the event of other emergencies.

### **3. Whose responsibility is it to issue a work notice?**

- The Strikes (Minimum Service Levels) Act 2023 sets out that the employer is responsible for issuing a work notice to a trade union. It is the employer who will receive notice of strike action under the Trade Union and Labour Relations (Consolidation) Act 1992.
- Fire and rescue authorities are the employers for fire and rescue services and are responsible for contracting personnel to fire and rescue services.

### **4. How does an FRA decide whether to issue a work notice?**

- Section 5.1 of the DBT work notice guidance<sup>1</sup> contains advice on whether to issue a work notice.
- There is no statutory duty on the employer to issue a work notice. However, the employer should consider any existing legal duties or obligations they may have when deciding whether to issue a work notice: for example, contractual or public law duties.
- FRAs should consider a range of factors when deciding whether to issue a work notice. These could include but would not be limited to:
  - ⊖ what level of cover can be put in place to ensure the FRA is able to meet their statutory obligations under the Fire and Rescue Services Act 2004, the Civil Contingencies Act 2004 and the Fire and Rescue National Framework, which set out an FRA's responsibilities for maintaining business continuity.
  - o levels of attendance during any previous strike action
  - o circumstances which may affect the delivery of the minimum service level, including expected level of demand for the service, and the location and timing of the strike
  - o the duration of the strike, as this may have a bearing on the level of cover that may be available
  - o local voluntary agreements they have with the trade unions to provide for minimum levels of staffing during strike days.

### **5. What is the role of the chief fire officer in the process?**

- As outlined in the National Framework, the chief fire officer must, in exercising their functions, have regard to the FRA's Community Risk Management Plan (formerly the Integrated Risk Management Plan) and any set objectives and priorities which may be outlined in a strategic plan. The fire and rescue authority should give due regard to the professional advice of the chief fire officer while developing the

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<sup>1</sup> <https://www.gov.uk/government/publications/minimum-service-levels-msl-issuing-work-notices/minimum-service-levels-issuing-work-notices-a-guide-for-employers-trade-unions-and-workers#following-notice-of-strike-action>.

Community Risk Management Plan and when making decisions affecting the fire and rescue service.

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**6. Do FRAs have to issue work notices?**

- No. Work notices are an additional tool that fire and rescue authorities can use to provide cover during periods of industrial action. FRAs should consider any existing legal duties or obligations they may have when deciding whether to issue a work notice.

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**7. What are the legal consequences if an FRA doesn't issue a work notice?**

- The Strikes (Minimum Service Levels) Act and the fire and rescue MSL regulations do not change FRAs' legal obligations. FRAs still need to ensure they fulfil their responsibilities under the Fire and Rescue Services Act 2004 during strike action. Work notices are an additional tool to help FRAs deliver those obligations.

**8. Does the FRA need to meet the 73% appliances threshold even if work notices are not issued?**

- No. However, an FRA is still required to meet its statutory requirements on strike days.

**9. Can an FRA use work notices to reach a different percentage level of cover?**

- No. The MSL regulations for fire and rescue specify that if work notices are used, employers must aim to provide cover from 73% of the appliances that would be available if strike action was not taking place.  
The legislation does not allow employers to use work notices to provide a different level of cover.

**10. Can the number of appliances vary between times of day or between different days of strike action?**

- Yes. The regulations stipulate that if work notices are used, an FRS must be able to provide cover from 73% of the appliances that would have been deployable if strike action had not been taking place on that day and at that time. The number of appliances required will therefore vary at different times of day and different times of year.
- The 73% figure is not a proportion of the total number of appliances and vehicles owned by FRAs.

**11. Who decides on crewing levels?**

- The MSL legislation does not prescribe crewing levels to be provided on strike days. It is for FRAs and FRSs to ensure that there are enough personnel available to safely crew and deploy appliances, vehicles and assets in response to emergency incidents.

**12. Can on-call firefighters be included on work notices?**

- Yes. Any on-call firefighters included on a work notice for a specified time would not be permitted to withdraw their services at that time in order to take strike action. However, their existing terms and conditions of employment would remain unchanged.

**13. Which services are included in the regulations?**

- The minimum service level includes emergency incident response (firefighting), control room services and fire safety services. Further detail can be found in the regulations and factsheet available at <https://www.gov.uk/government/consultations/minimum-service-levels-for-fire-and-rescue-services>.