



The Pharmacists' Defence Association's response to the Department of Health and Social Care Consultation: "Minimum service levels in event of strike action: hospital services in England, Scotland and Wales."

November 2023

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## Summary

This consultation by the Department of Health and Social Care (DHSC) is seeking views to inform decisions on the introduction of regulations on minimum service levels (MSLs) in England, Scotland and Wales, to protect patient safety in key hospital services during strike action.

The proposal is that most essential and time-critical hospital services should be covered by MSL regulations. This consultation will help to inform decisions on whether hospital services should be covered and, if so, which hospital services, the appropriate minimum service levels required, and whether any health services outside hospitals should be included.

The Strikes (Minimum Service Levels) Act 2023 applies to England, Scotland and Wales. The act does not apply to Northern Ireland.

The act makes amendments to the Trade Union and Labour Relations (Consolidation) Act 1992 to:

- establish powers for the government to make regulations to set minimum service levels in certain services within key sectors, such as healthcare, fire and rescue, and transport services. As set out in the act, the government must consult before it brings forward regulations for Parliament's approval
- enable employers within specified services to issue work notices to roster the workforce required to secure the minimum service level on a strike day
- add a new obligation for unions to take reasonable steps (outlined in the draft code of practice) to ensure compliance with work notices to the list of requirements necessary for the union's strike action to be protected from liability in tort, where minimum service levels have been made

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## General response

*The PDA opposes the introduction of the Strikes (minimum service levels) Bill.*

*Lack of resources, workload pressures and safe staffing levels are issues of significant concern to PDA members, who believe that it is the responsibility of the government to appropriately fund the NHS to ensure safe staffing levels for patients **every day**.*

*It should be of concern to the Secretary of State for Health and Social Care that the service is consistently operating with sub-optimal staffing levels which is detrimental to patient care – outside of any industrial action taking place. The government should urgently focus on the optimal service level for NHS patient care on any given day of the year and take steps to appropriately fund and resource this to a safe and effective level.*

*There are widely documented chronic challenges facing the NHS and its dedicated workforce, who demonstrated their commitment to patient care and sacrificed so much during the Covid-19 pandemic. The PDA calls on the government to assure that there is meaningful engagement and negotiation with trade unions, who represent the concerns of their members.*

*There is an established principle amongst healthcare unions to ensure that essential services continue to function in the event of industrial action, this Bill is a mechanism to introduce unprecedented powers to the Secretary of State which undermines workers' rights to take industrial action and a trade union's right to organise.*

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## Response to Questions in the Call for Evidence.

### Hospital-based services MSL proposal

During strike action, employers negotiate with trade unions to seek agreement to provide a certain level of cover for priority health services to protect life and health. These agreements, known as 'derogations', mean that certain staff members or groups of staff are exempted from strike action in order to provide the cover needed to care for patients at risk of harm. Derogations are entirely dependent on goodwill from unions and staff. During some strikes, derogations have been agreed in good time, but in others, unions have not agreed them until very late or have not agreed them in advance of the strike commencing, which has particularly affected hospital services.

To what extent do you agree or disagree that current arrangements are sufficient in providing cover for essential services?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 250 words).

*The PDA believes that the current arrangements around derogations are sufficient as part of collective negotiations and agreements between trade unions and employers. Derogations are not only entirely dependent on goodwill from unions and staff, but also on the negotiating position of the employer and the stage of any disputes settled between trade unions and employers.*

*Amongst healthcare unions, the established principle already exists that essential services continue to function in the event of industrial action.*

*The introduction of unprecedented powers for the Secretary of State for Health and Social Care to set yet un-determined minimum staffing levels in regulations undermines the right to lawful strike action.*

*Hospital services are at breaking point irrespective of strike action. The link to a news report last winter shows the scale of staff shortages even without strike action. The NHS Long Term Workforce Plan also acknowledges that "The lack of a sufficient workforce, in number and mix of skills, is already impacting patient experience, service capacity and productivity, and constrains our ability to transform the way we look after our patients". This consultation only covers restricting workers' rights but does not make any proposals or acknowledge the need for Government to always address minimum service levels.*

<https://www.england.nhs.uk/wp-content/uploads/2023/06/nhs-long-term-workforce-plan-v1.2.pdf>

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<https://www.itv.com/news/2022-12-30/nhs-critical-incidents-what-is-the-official-advice-over-the-new-year>

We are proposing to introduce minimum service levels as a further measure to ensure continuity of access to essential services during strike action. The proposal is that hospitals will treat people as they would on a non-strike day who require urgent or emergency treatment in hospital during the period of industrial action and people who are receiving hospital care and are not yet well enough or able to be discharged.

To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action to achieve this aim?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 500 words).

*The proposal has the potential to render ANY strike action as being in breach of minimum service levels. The consultation has not presented any evidence that minimum service levels have not been met during the present series of strike actions or that widespread patient harm has occurred.*

*It is for the Government to present evidence to support putting into legislation any "minimum service level" but the consultation document, to justify this proposal, states that 17 claims for derogations were rejected by the BMA during the recent strikes of August 2023.*

*The BMA has strongly refuted this claim and says that this claim is false and has asked for it to be withdrawn.*

<https://www.bma.org.uk/bma-media-centre/deeply-disingenuous-for-health-secretary-to-say-bma-blocked-locally-agreed-strike-derogations>

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To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for in-patients already receiving hospital care:

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 250 words).

*We disagree with the framing of the question.*

*As we have already stated, there is an established principle amongst healthcare unions to ensure that essential services continue to function in the event of industrial action.*

To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for existing patients requiring urgent elective treatment?

For example priority 1 or priority 2 elective surgery lists, dialysis, elective caesarean, or induction of labour?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 250 words).

*The framing of the question and the wording chosen by the Government is wholly inappropriate. To patients every elective treatment is urgent and an emergency.*

*Emergency treatments have continued throughout strike days and there is no evidence presented that it has not.*

*The current derogations already allow for urgent emergency treatment to be provided for patients as confirmed during the recent strikes. Healthcare professionals enter their professions to serve their patients. They do not enter these professions with the intent to strike.*

*These dedicated healthcare professionals would not be on strike were it not for the fact that over a sustained period their pay increases have fallen well below the rate of inflation due to underfunding by Government.*

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To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for existing patients needing emergency, critical or urgent assessments, diagnostics or treatment?

This does not include routine procedures like knee or hip replacements.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 250 words).

*We disagree with the framing of the question. As stated in our response to previous questions the Government has failed to provide evidence that patients have not received emergency or time-critical treatment whenever required during the strike periods.*

To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for new patients presenting to the hospital requiring unplanned assessment, diagnostics and/or treatment?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 250 words).

*We disagree with the framing of the question. During the recent strikes there is no evidence that emergency unplanned assessments, emergency unplanned diagnostics and emergency unplanned treatment was not provided to patients in need of emergency (as opposed to unplanned) assessment, diagnostics or treatment.*

*Unplanned should not be conflated with emergency.*

We propose that hospitals will treat people as they would on a non-strike day who require urgent or emergency treatment in hospital during the period of industrial action, and people who are receiving hospital care and are not yet well enough or able to be discharged. As such, the minimum service level that is required to ensure this treatment is delivered to patients in hospitals during strike action should be informed by expert clinical judgement, meaning the following sets of patients could expect to be treated as they would on a non-strike day:

- in-patients already receiving hospital care
- existing patients requiring urgent elective treatment that would normally be delivered during the period of industrial action (for example, people on priority 1 or priority 2 elective surgery lists (surgery that is required within 72 hours for priority 1, or 4 weeks for priority 2), people requiring dialysis, transplant patients where a potential donor match is identified, elective caesarean or induction of labour)
- existing patients who could or will need emergency, critical or urgent assessment, diagnostics or treatment in hospital (for example, cancer or cardiac diagnostics and treatment, but not, for example, routine knee or hip replacement)
- new patients presenting to hospital that require unplanned assessment, diagnostics and/or treatment in hospital (for example, people presenting to emergency departments, people in active labour)

To what extent do you agree or disagree with allowing local clinicians to determine whether their patients fall under the categories for MSL outlined in the principles listed above during strike action?

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 250 words).

*To a patient every treatment IS essential, and their treatment is always based on expert clinical judgement regardless of whether industrial action is taking place - the framing of this and prior questions is wholly inappropriate for a healthcare consultation.*

*The Government has not presented a clear evidence case for this proposal. It is also conflating emergency (as in time critical and needed now) assessment/treatment with urgent (as in required as soon as possible) assessment/treatment.*



NHS hospitals in Great Britain are operated by NHS trusts or health boards, who may sub-contract some of their work to other organisations. This may include cleaning or other support services being contracted to a private company, third sector providers, such as social enterprises or charities delivering some services, or other NHS organisations delivering services that support hospital treatments, including blood and transplant services which facilitate treatment requiring blood platelets or donated organs.

This means NHS trusts or health boards may not employ all the staff who are involved in the delivery of essential care provided by hospitals. In writing the MSL regulations the Secretary of State may specify the type of organisations the MSL applies to. This could limit the types of employers who are able to issue a work notice to ensure the continuity of essential hospital services during strike action.

If MSL regulations are introduced for hospital services, which types of employers should be specified to follow these regulations during strike action?

All organisations involved in delivering NHS hospital services including NHS trusts and health boards, other NHS organisations, and private companies and third sector organisations such as charities and social enterprises

All NHS-affiliated organisations contracted to deliver hospital services

Only NHS trusts and health boards

**No employers should be specified by MSL regulations**

Don't know

Prefer not to say

Please explain your position and provide any supporting evidence (maximum 250 words).

*Please see our responses to previous questions.*

We are proposing to introduce a minimum service level that would apply only to hospital care. This measure would not include health services available in the community such as pharmacies, GP surgeries and community health teams.

To what extent do you agree or disagree that MSLs should not include community-based health services?

Strongly agree

Agree

**Neither agree nor disagree**

Disagree

Strongly disagree

Please explain your position and provide any supporting evidence (maximum 250 words).

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*Please see our response to previous questions.*

Do you think there is an alternative option to introducing MSLs in hospitals, to ensure continuity of access to essential services and protect patients from risks to life and life-changing harm during strike action?

Yes

No

**Don't know**

Please explain your position and provide any supporting evidence (maximum 250 words).

*The options to answer the question are wholly inappropriate and inadequate and the terminology used (risks to life) would be covered by the existing arrangements which maintain emergency A&E cover.*

*The "alternative option" already exists and has been working – which are the derogations.*