

ANNEX A

Secretary of State
Department for Business and Trade

By email – minimumservicelevels@businessandtrade.gov.uk

29 September 2023

Dear Secretary of State,

Issuing Work Notices – Response to Consultation

Please find attached the LGA's comments on the draft guidance and statutory Code of Practice on the issuing of work notices following the passing of the Strikes (Minimum Service Levels) Act 2023.

The LGA is the national voice of local government and our members include councils and fire and rescue authorities (FRAs). We work with councils, schools and FRAs to support, promote and improve local government. We are a politically-led, cross party organisation which works on behalf of councils and fire and rescue authorities, PFCCs and Deputy Mayors for fire, to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on issues that matter most to councils and FRAs so they are able to deliver local solutions to national problems. The LGA covers every part of England and Wales, supporting local government as the most efficient and accountable part of the public sector.

The LGA also provides the secretariat for the employers' side of the National Joint Council for Local Authority Fire and Rescue Services (NJC), the national representative body for fire and rescue service employers. The NJC is a UK-wide body and we note that this legislation does not relate to Northern Ireland and may apply differently in Scotland and Wales which presents an inconsistent position which will need to be recognised and accommodated.

In addition to the comments set out on the two documents attached, which should be self-explanatory there are some general points that the LGA would like the department to consider.

Our major concern is the impact this legislation, and the obligations flowing from it, will have on industrial relations in those sectors in which our members are involved. More than two million employees are covered by the collective bargaining arrangements to which the LGA is party. Employers in fire, where the Minimum Service Levels legislation is particularly relevant, have worked with the trade union side of the NJC to maintain a standard of industrial relations that led to the successful agreement of pay and conditions changes without national industrial action for 20 years.

The last national strike action was in 2013/14 concerning a dispute with government about changes to the Firefighters Pension Scheme. As the employers of fire and rescue staff FRAs are directly impacted by the decision to impose regulations on the conduct of industrial action in the sector. To date, industrial action, and its impact on the public, has primarily been managed in two ways. Firstly, by achieving negotiated outcomes to disputes with the recognised representatives of our employees over pay and all other areas of terms and conditions over which employers have control. In this we, on behalf of FRAs, have been very successful compared with other sectors. The only area in recent years where there has been national industrial action related to pension reform and decisions made by the Home Office and HM Treasury over which employers had no control.

The second mitigation approach is to reach agreements with the relevant trade union/s (usually the Fire Brigades Union (FBU) but UNISON, GMB and others also represent various sections of the fire and rescue workforce) on exemptions and return to work triggers in the event of strike action. Generally, these are both national, as was agreed earlier this year when the FBU secured a mandate for strike action; and local, to reflect the particular circumstances of each Fire and Rescue Service (FRS) in implementation. The LGA is deeply concerned that this legislation and the related guidance and Code on which you are consulting, will limit the potential for appropriate management of services during strike action as the context for dialogue between employers and unions will be immediately more oppositional than has historically been the case.

Customarily, to address the balance between the right to strike and reducing risk, agreements have been reached between the employers' side of the NJC and the FBU (through the NJC) to provide cover allowing striking fire personnel to be exempted from strike action by the union so they can respond to any major incident. This has occurred for disputes both with the employers' side of the NJC and those with government and with sufficient time to ensure arrangements are in place prior to any such action. Such agreements allow available people, equipment and resources to respond to such incidents in a safe and co-ordinated way. While voluntary in nature, experience has shown such agreements to be effective during the national strike action as part of the dispute with government on pension reform.

To illustrate, similar provision (a Major Incident Agreement) was put in place more recently, though not in the end required as the dispute related to pay was resolved within the NJC without FBU members commencing strike action. The principles having already been agreed nationally, it is then a matter of expeditiously putting in place a local practical procedure to ensure implementation. Where a major incident would require the deployment of National Resilience assets, the FBU would also exempt from strike action those of its members who are specifically trained and deal with that particular asset in another fire and rescue service as part of their normal duties. The LGA is concerned that these type of agreements at local and national level will not be feasible when this legislation is implemented.

Additionally, the LGA is concerned that the Regulations will expose FRSs to increased legal risk and cost as work notices may well be legally challenged by trade unions, both on principle and on detail of the contents of and operation of individual notices. This would also place FRSs in a precarious position of uncertainty that the current voluntary agreement approach has, to date, successfully avoided. The additional cost and time that would be involved in legal proceedings would both be a distraction at a self-evidently challenging time and a cost for which FRSs do not necessarily have provision.

Finally, the LGA is concerned that the very short consultation period on this guidance and statutory Code will impact on the quality of engagement between government and employers on the implementation of this legislation and consequently its success in achieving the government's stated objectives.

We would welcome further opportunity to engage with the department prior to the finalisation of this guidance, the Code and any intended implementations of related legislative provisions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Marland'. The signature is written in a cursive style with a prominent underline at the end.

Cllr Peter Marland

LGA Economy and Resources Board Chair