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Government moves to restrict strikes in response to historic industrial conflict in the UK

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In the UK, strike movements in 1978-79 and 2010-2011 were followed by the implementation of legal restrictions on the right to strike. The historic strike waves of 2022-23 are no exception with the government's proposal to implement minimum service levels to limit the effectiveness of strike action. This article analyses the potential impact of minimum service levels, looking in more depth at the railway sector, where the proposed legislation is likely to have the biggest impact.

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March 15 2023 was a historic day of strikes in the UK. The strikes were historic in the extent of co-ordinated action, not seen since the late 1970s, within a highly restrictive legal framework for taking strike action. Strikes in the public, privatised services and private sectors coincided with the unveiling of the Spring Budget on 15 March. Civil servants, teachers, lecturers, health workers, tube drivers and Amazon workers all took strike action on the same day. The government has been reluctant to engage in negotiations on public sector pay demands¹, warning against inflationary pressures of pay increases. Unions effectively contested government claims arguing that there have been real terms losses linked to inflation and the cost of living crisis, alongside problems of staffing and working conditions.

Strikes have also been prevalent in the private sector, mainly in the privatised services sector, like transport and postal services, where there have been mixed results for workers. The UK also saw the first strikes in Amazon, with unions demanding a rise to £15 an hour, but have only managed to gain a 50p rise to £11 an hour, as this article goes to press in June 2023.

In response to these high levels of conflict, the government is looking to restrict the right to strike further to limit disruption from industrial action. The Conservative government proposed legislation in 2022 on minimum service levels in transport and in January 2023 a bill was put forward to implement minimum service levels in essential services, including health, fire and rescue, education and transport.

The government has used comparative labour law in its political rhetoric to justify minimum service levels. Yet, as Bogg argues (2023) it is impossible to extricate the laws on minimum service levels in countries like France, where the right to strike is a constitutional right, from the wider web of general legal rules that protect a wide substantive scope for the strike.

In this article, I present a brief history of strike movements since the late 1970s in the UK, and how each wave of strikes, those in 1978-79 and 2010-11, were followed by legal restrictions on the right to strike. The strike waves of 2022-23 are no exception with the government's proposal to implement minimum service levels to limit disruption and, arguably, effectiveness of strike action. The article unpacks the strikes of 2022-23 and analyses the potential impact of minimum service levels, focusing in on the railway sector, likely to be most affected by the proposal.

Strikes since the 'Winter of Discontent' 1978-79 and their legislative consequences

Over the last 50 years, we have seen significant change in labour relations, with a political onslaught on trade unions and a subsequent impact on the representative capacity and influence of trade unions. Trade union membership levels have halved since the peak of 13.5 million members in 1979, stabilising in the early 2000s to be at 6.5 million in 2021. Collective bargaining coverage has declined in both public and private sectors. Coverage in the public

1. A. Culbertson, 'Rishi Sunak says public sector pay rises will fuel inflation. Economists say they won't', *Sky News*, January 4, 2023, <https://bit.ly/42kUuex>.

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sector has fallen from 74.4 per cent in 1996 to 58.2 per cent in 2021, in the private sector from 23.2 per cent to 13.7 percent in the same period.² If we compare the coverage to other European countries, the collective bargaining coverage rate was higher than 90 per cent in five EU member states. Italy (99 per cent) ranked first, followed by France and Austria (both 98 per cent). For Germany, the coverage is 52 per cent.³ The decline in collective bargaining coverage has led to growing wage inequality, with the UK having one of the highest levels of wage disparity among developed nations.⁴

The strikes of the late 1970s'

The strikes of 2022-23 have similarities with two of the largest strike waves over the last 50 years, the so-called 'Winter of Discontent' in 1978-79, which has been the public reference for comparison of the recent wave of strikes, and the mainly public sector strikes of 2010-2011. Similar pressures over the three strike periods have been high inflation, high-energy costs, and a cost of living crisis.

In 1978-79 there were widespread strikes, with unions demanding larger pay rises following government attempts to cap pay in a bid to tackle inflation. To recall the historical context, the Labour Party came to power in the 1974 general election and suggested a 'social contract' with unions where they would curb wage demands in return

for nationalisation and increased spending on social welfare. The government failed to deliver upon this agreement, however, and trade unions began to demand substantial wage rises to ensure members' pay kept up with the high inflation of the late 1970s.

An effort by Ford factory workers to gain a 25 per cent weekly raise in August 1978, for example, triggered nine weeks of strikes and was settled with a 16.5 per cent wage increase. This kicked off a period now known as the 'Winter of Discontent'. The following January, 20,000 railway workers held four one-day strikes over the course of the month. About 1.3 million local government workers also called a one-day national strike for pay increases on 22 January 1979.

The strikes led to a landslide victory for Margaret Thatcher's Conservative Party, who promised legislation to restrict trade union power. As Colin Hay has argued, 1979 represented a transition point between the 'post-war consensus' and the neoliberal agenda brought in by Thatcher (Hay, 2009). In response to the unrest and perceived strength of union power, the government enacted a series of restrictive legislation on trade unions and strike action which made strike action in the UK subject to complex legislation.⁵

From 1979 to 1997, Conservative governments introduced seven pieces of legislation restricting trade union action.⁶

2. D. Clark, 'Proportion of employees whose pay and conditions were agreed in negotiations between the employer and a trade union in the United Kingdom from 1996 to 2021, by sector', June 9, 2022, <https://bit.ly/3IGLCZE>.

3. « Statistics on collective bargaining », ILO, <https://ilostat.ilo.org/topics/collective-bargaining/>.

4. « Income inequality », OECD Data 2021, <https://data.oecd.org/inequality/income-inequality.htm>.

5. <https://www.legislation.gov.uk/ukpga/1992/52/contents>.

6. S. Daniels, « How consecutive Conservative governments destroyed union rights - a timeline of the UK's anti-strike laws since the 1970s », *The Conversation*, January 23, 2023, <https://bit.ly/45wSsuA>.

The laws were introduced gradually with the first law being the Employment Act of 1980 requiring postal ballots to be sent out to trade union members in the case of industrial action. In 1982, legislation was enacted to define a ‘trade dispute’ – namely that a dispute has to be between workers and their own employer and it must be about employment related matters – outlawing secondary action and political and sympathy strikes. The 1984 Trade Union Act required unions to hold secret postal ballots for any strike to be legal, the 1988 Employment Act provided protection for non-strikers and the 1990 Employment Act allowed employers to dismiss workers taking part in unofficial strike action i.e. those taking part in a strike that does not meet the criteria of a lawful strike. The 1992 Trade Unions and Labour Relations (Consolidation) Act set out that union recognition by the employer was required for strike action to be legal and the 1993 Trade Unions Reform and Employment Rights Act set out terms for strike notices.

In the UK there is no legal right to strike and after the legislation of the 80s and 90s strike action was only legal if organised by a trade union according to conditions laid out in the Trade Union and Labour Relations (Consolidation) Act 1992. A union must first be recognised by the employer it is active in, and have raised a dispute on behalf of its members. It may then ask its members to vote by post – called a ballot to

strike – on whether they wish to strike or not. The restrictive approach contrasts with a continental European regime of positive (citizenship) rights to strike action.⁷ A comparative analysis conducted by Joelle Grogan and Catherine Barnard for the *UK in a Changing Europe* project shows that out of 35 European countries the UK is in a minority – 86 per cent of countries protect the ‘right to strike’, either explicitly as a constitutional right or as interpreted by courts as an aspect of the right to freedom of association and right to peaceful assembly. Only in Austria, Denmark, Ireland, Malta and the UK is there no specific right to strike.⁸

Trade union power and activism in the UK has steadily declined since the unrest of the late 1970s. From 1999-2018, pay disputes have been the most common cause of strikes, accounting for around 75 per cent of all working days lost. The number of days lost to strikes in recent years has been typically little more than one million, with the highest annual total of working days lost in one year since 2000 was 1.4 million in 2011.⁹

The strikes of 2010-11 in the public sector

The mainly public strikes of 2010-11 were another significant marker in the history of industrial conflict in the UK¹⁰. The strikes represented the ‘biggest outbreak of industrial unrest in three decades’¹¹ with 2

7. J. Grogan, C. Barnard, « Where does the Strikes Bill put the UK relative to other European countries? », Commentary, UK in a changing Europe, February 7, 2023, <https://bit.ly/3q296Sv>.

8. « Survey of minimum service levels in Europe », UK in a changing Europe, <https://ukandeu.ac.uk/survey-of-minimum-service-levels-in-europe/>.

9. *Labour disputes in the UK:2018*, Office for national statistics, May 17, 2019, <https://bit.ly/45zX6YC>.

10. « UK braced for biggest strike day since 2011 as minister resist pay rises », *Financial Times*, January 31, 2023.

11. D. Milmo, C. Davies, P. Curtis, H. Mulholland, « Strikes over public sector pensions hit services across UK as 2 million walk out », *The Guardian*, November 30, 2011.

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million public sector workers on strike, and over 60 per cent of schools closed. After thirteen years of a New Labour government, and in the context of the 2008 economic crisis, the Coalition government of Conservatives and Liberal Democrats elected in 2010 implemented a series of austerity policies, including pay freezes in the public sector and cuts to local government budgets. The industrial disputes in the public sector mainly concerned reforms to the pensions system, including raising the retirement age and increasing workers' pension contributions.

There were a series of strikes in transport in 2010 and increasing unrest in the public sector. Trade union leaders returned to centre stage after 'years in the political wilderness', and some, like Bob Crow, the leader of the Rail, Maritime and Transport (RMT) union, became household names (Milner, 2011).

The unrest culminated in March 2011 when the TUC organised the largest demonstrations since the protest against the Iraq war in 2002, and in June 2011, several hundred thousand public sector workers went on strike in the first nationally coordinated action against the government's pension reforms. Trade unions won very few concessions as a result of the strikes, and the government eventually implemented the pension reforms, which meant workers paying higher contributions and retiring later.

The government discussed tighter strike laws as an attempt to keep unions in line, influenced by the employer's association, the Confederation of British Industry (CBI) 2010 report entitled *Making Britain a Place to Work*, which argued that individual and collective rights introduced under New Labour had made the British economy uncompetitive in a changed global economy (Milner, 2011).

It was in 2016 in the Trade Union Act when new restrictions on strike action were enacted. As of 2017, industrial ballots must attract a 50 per cent turnout of trade union members in the recognised 'bargaining unit'¹² in order for their results to be legally valid. Workers whose role mostly concerns the delivery of 'essential' public services (including some workers outsourced to private companies) have to reach a 40 per cent support threshold among all workers eligible to vote, as well as the 50 per cent turnout threshold, in order to take action. The 2016 Act raised major concerns about freedom of association in particular and its compatibility with a number of treaty obligations, including notably, the European Convention on Human Rights, Article 11 (Ewing and Hendy, 2016). A number of organisations including the Trades Union Congress (TUC) and the International Labour Organisation (ILO) submitted complaints to the UK's Parliamentary Joint Committee on Human Rights (JCHR).¹³

12. The 'bargaining unit' is the group of employees that will be represented by the union. The employer need to agree who is in this unit with the union as part of union recognition negotiations. If there is no agreement, the Central Arbitration Committee (CAC) decides on the bargaining unit. <https://bit.ly/45KQwyX>.

13. The Joint Committee on Human Rights (JCHR) is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders. The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The government is not bound by the committee's recommendations.

While some concessions were made, the ballot thresholds remained, further weakening the power of trade unions and their ability to take industrial action.

Average working days lost due to strikes per 1,000 employees decreased from 30 days to 20 days between the 1990s and 2008-2018 in the UK. In comparison with other European countries, ETUI data shows that in relation to annual averages of days not worked due to strikes per 1,000 employees, the UK tends to be in the average cluster in terms of strike levels among European countries – an interesting finding given the level of restrictions placed on strike action. Between 2010 and 2019, Cyprus lost the most working days due to strikes at an annual average of 275 days. France followed in this time period with 128 lost days. All other countries for which data were available saw fewer than 100 days not worked due to strikes. More than 15 countries had fewer than 20 lost days in this period, with 18 days in the UK and 17 days in Germany. Overall, the UK and Germany had relatively fewer lost days compared to France and Spain in the last two decades.¹⁴

The 2022-23 strikes in the public and private sectors¹⁵

In 2022-23 industrial action has involved of both the public and private sector – similar to the widespread industrial disputes of 1978-79 – including education, health care, transport, logistics and the civil service. The

recent strikes have occurred in the wider context of the UK's rising cost of living, triggered by a number of global events, including the Covid-19 pandemic and the war in Ukraine, affecting energy supplies and supply chains of food and goods. Workers in the public sector have been subject to pay freezes since 2010 and wages have generally failed to keep up with inflation leading to real wages losses for many workers. After accounting for inflation, the real value of regular wages across all sectors fell by 2.3 per cent from December 2022 to February 2023.¹⁶ With the spiralling of energy costs, many workers have felt that collective action has been the only way to force employers and the governments to listen to their demands.

Pay increases to account for the rise in the cost of living have been the common demand from employees across all sectors. Working conditions have also been an important demand, arising from staff shortages, in health for example, and work intensification and reorganisation in education and transport respectively.

The number of working days lost due to labour disputes increased markedly from summer 2022.¹⁷ December 2022 saw the highest recorded monthly total since November 2011, though this is still much lower than the number of days lost in the 1970s and 1980s. In total, an estimated 2.472 million working days were lost between June and December 2022, a higher number

14. <https://www.etui.org/strikes-map>.

15. « The impact of strikes in the UK: June 2022 to February 2023 », Office for National Statistics, March 8, 2023, <https://bit.ly/428h3mr>.

16. « Average weekly earnings in Great Britain: April 2023 », Office for National Statistics, April 18, 2023, <https://bit.ly/3MVKq7l>.

17. <https://bit.ly/3MCYX6t>.

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than the 1.4 million in 2011. Of these, over three-quarters were in the privatised services sector in transport, storage and information and communication, which includes rail transport and postal services. Together, these sectors consistently had the highest number of days lost because of industrial action in the second half of 2022. The education sector saw the second highest number of days lost between June and December 2022.

For the first time in its 106-year history, the Royal College of Nursing (RCN), the UK's largest nursing union, voted to take strike action in 2022.¹⁸ Ambulance drivers and paramedics also took strike action. While the main demand was about pay, the grievances are wider, and linked to issues of staffing levels and working conditions. As mentioned in the introduction, the largest coordinated day of action was on 15 March to coincide with the government's Spring Budget announcement, with workers across public and private sectors going on strike.

Polling by Ipsos¹⁹ has shown that the strikes have had high levels of public support, with more than half of those polled supporting the strikes. Nurses and ambulance workers remain the most supported professions, while support remains more varied across other sectors. The public are more divided about the pay of civil servants and railway workers, for example, with 1 in 5 thinking that workers in those sectors

are paid too little, and an equal share saying they are paid too much.

The strikes of 2022-23 have been effective in some sectors in bringing employers to the negotiating table. The National Health Service (NHS) staff council representing more than 1 million NHS staff in England voted to accept a pay deal negotiated between the health secretary, Steve Barclay, and unions. The new agreement covers 1 million nurses, paramedics, midwives and other workers in England for two years through early April 2024. Several unions, including Unison, the GMB, and those representing midwives and physiotherapists, voted to accept the deal. But others, including the RCN and Unite, rejected it and plan to continue striking for more money.²⁰ Royal Mail has agreed to a 10 per cent pay deal with the postal workers' union to end a long-running dispute that led to the first national strikes since its privatisation a decade ago.

In other parts of the public sector industrial action is ongoing. In the education sector, more co-ordinated action is planned for 2023²¹ and Junior doctors have renewed their ballot for industrial action as the government has refused to negotiate on the 35 per cent pay demand.²² In the privatised services sector train operating companies have renewed their strike ballot and Amazon workers have continued to strike over their demand for a £15 an hour pay rise. The scope and scale of the strikes, mainly

18. A. Leary, « Nurses' strike is about more than pay - it's about ensuring good care », *The Conversation*, November 30, 2022, <https://bit.ly/3IHbDNf>.

19. K. Pedley, G. Skinner, L. King, J. Moser, « Over half of Britons support junior doctors taking strike action », Ipsos, April 2023, <https://bit.ly/429H4lp>.

20. D. Campbell, « NHS staff council votes to accept pay deal for health workers in England », *The Guardian*, May 2, 2023.

21. R. Adams, « All state schools in England may shut in 'unprecedented' coordinated strikes », *The Guardian*, April 28, 2023.

22. <https://bit.ly/45wRaQa>.

in the privatised services such as transport, but also in the health sector have led to a strong reaction by the government to put further restriction on the right to strike.

Government response to the 2022-23 strikes: the implementation of minimum service levels

In response to the 2022-23 strikes, the government has introduced a bill to implement minimum service levels in some sectors. A number of organisations, including unions and NGOs, have criticised the proposed legislation. For these organisations, this move by the government is an attack

on the freedom of association, in a country where strike laws are already highly restrictive.

The Strikes Bill 2023

The Strikes (Minimum Service Levels) Bill 2023 was introduced by the Secretary of State, Grant Shapps, in January 2023. It expanded the sector-specific Transport (Minimum Services Level) Bill, which aimed to implement minimum service levels in this sector, given its propensity for strike action (cf Box). Proposed in 2022, it was a commitment made in the Conservative Party's manifesto for the 2019 general election.

Box - The railway sector may be heavily impacted by the Strikes Bill 2023

Since privatisation, responsibility and accountability for the running of the railway has been split between different bodies, often operating with different incentives. For example, most rail infrastructure is owned, maintained and operated by Network Rail, a publicly-owned company (with some limited exceptions). Most passenger services have been run by privately-owned train operating companies (TOCs) under multi-year franchises let by the UK, Scottish and Welsh governments. Trains (or rolling stock) are owned by private rolling stock leasing companies (ROSCOs) and leased to the TOCs. Most railway stations, while owned by Network Rail, are leased to train operators, except for the main passenger terminals which Network Rail runs itself.

Successive governments have attempted to redress the fragmentation that exists within the rail industry by bringing responsibility for track and train (namely responsibility for managing the infrastructure and running services) closer together (Pickett *et al.*, 2022).

There are four main unions representing workers in the railway sector, ASLEF, RMT, TSSA and Unite. This section mainly discusses the RMT, with its 'brand image' as a striking union. The union was a fierce critic of the perceived 'neoliberalism' of New Labour in the late 1990s, notably its refusal to countenance renationalisation of the railways, its implementation of part-privatisation of the London Underground, retention of the Conservatives' 'anti-union' employment legislation, marketisation of public services and the Minimum Service Levels legislation proposed in the transport sector in 2022.



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The RMT has been at the forefront of calling for a militant response to government measures, calling for 'generalised' and coordinated strike action across the public and private sectors, combined with mass civil disobedience, in defence of public services, jobs and living standards. In contrast to the position adopted by most other unions in the UK, the RMT has prioritised the mobilisation of members through repeated threats and use of strike action, alongside a politically engaged form of left-wing trade unionism against employers and government: this strategy aims to advance workers' interests and revitalise union organisation (Connolly, Darlington, 2012). On occasions, RMT strike threats have led to full-blown strike action, sometimes with devastatingly high-profile public effect.

The strategic importance of the transport industry has placed the RMT and its members in an unusually strong bargaining position. Both the railway and underground systems are vulnerable to strike action, because their tightly integrated service networks which are not easy to substitute with other means of transport. This vulnerability means that any strike - or even the threat of a strike - can have a much greater and more immediate impact than in many other industrial sectors. The large, predominantly manual workforce of the railway sector means that there is a strong sense of occupational identity and relatively high union membership throughout the industry. These factors also help to create a favourable environment for RMT members to engage in strike activity.

During the winter of 2022, taking advantage of its members' distinct strategic bargaining position, the RMT organised a number of 24-hour strike threats over the peak-passenger Christmas and New Year period, as well as threatened strikes to coincide with politically symbolic events, like the announcement of the government budget in March 2023.

After a long-running dispute, including 23 days of strike action, the RMT suspended strike action in March 2023 after new proposals were made by the employer. The members of RMT in Network Rail voted to accept the new offer, but union members in the Train Operating Companies (TOCs) rejected it and decided to go on with the strike.¹ In June 2023, when this article was going to press, the union organising train drivers, ASLEF, is still in conflict with the employers and carries on with the strike.

1. « RMT members overwhelmingly back further strike action », RMT Press Release, May 4, 2023, <https://bit.ly/3BWhwgT>.

The aim of the expanded legislation was to enable the Government to regulate for minimum service levels in the following sectors: health, fire and rescue, education, transport, nuclear decommissioning and waste management and border security. In these sectors 'work notices' would be the

mechanism that puts minimum service levels into practice. The 'work notice' may be given by the employer to the trade union and will identify the people required to work to secure that the levels of service set out in the minimum service regulations are provided on a strike day.²³

23. Strikes (minimum service levels) Bills - Explanatory Notes, Bill 222-EN, <https://bit.ly/30Fg4ai>.

The proposed legislation has already passed through the Houses of Parliament and the House of Lords, with the final stage being the consideration of amendments and then being passed by Royal Assent.²⁴

Proposed legislation is an attack to freedom of association, according to a number of different groups

The proposed legislation has been contested by a number of different groups. The Joint Committee on Human Rights (JCHR) criticised the government's Strikes Bill 'for failing to meet human rights obligations'. The Joint Committee examined if the legislation would be compatible with the European Convention on Human Rights which provides for a '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'²⁵. The Joint Committee looked at the mechanisms for setting minimum service levels and whether the Bill provided a 'fair balance to be struck between the competing interests of the individual and of the community as a whole.'²⁶

In January 2023, civil liberties groups, including Liberty, Human Rights Watch,

Oxfam, warned the Bill would allow 'a further significant and unjustified intrusion by the state into the freedom of association and assembly'. The TUC, along with women's rights organisations and race equality groups, has also warned about the legislation disproportionately impacting women and Black and Minority Ethnic (BME) workers, because they are overrepresented in affected sectors. In March 2023, the Equality and Human Rights Commission (EHRC)²⁷ published a scathing report²⁸ on the Strikes (Minimum Service Levels) Bill, which warns that the legislation could see all striking workers in affected sectors losing their unfair dismissal protection. In April 2023, in a signed letter, leading employment law experts warned that the Bill would give Ministers 'unfettered power' to restrict the right to strike.²⁹

The law and practice on minimum service levels is a radical new departure in British labour law, prompted by the wave of strikes in transport, health, education and the civil service, which would all come under the new minimum service levels legislation.

Some of the most restrictive strike laws in Europe

In post-Brexit UK, a surprise in political rhetoric has been the turn to European

24. <https://bills.parliament.uk/bills/3396>.

25. « Strikes Bill fails to meet human rights obligations - JCHR », UK Parliament, Committees, March 6, 2023, <https://bit.ly/3WDH0ZW>.

26. *Ibid.*

27. The Equality and Human Rights Commission is Great Britain's national equality body. As a statutory non-departmental public body established by the Equality Act 2006, the Commission operates independently. <https://www.equalityhumanrights.com/en/about-us/who-we-are>.

28. « Strikes (Minimum Service Levels) Bill. House of Lords - Committee Stage », Equality and Human Rights Commission, March 9, 2023, <https://bit.ly/3MxQ1zn>.

29. « Leading employment lawyers warn that Strikes Bill will give Ministers "unfettered power" to restrict the right to strike », Institute of Employment Rights, April 3, 2023, <https://bit.ly/426cPvH>.

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values to justify the introduction of minimum service levels in certain strikes. In justifying the introduction of the Strikes (Minimum Service Levels) Bill 2023, the Minister Grant Shapps said ‘The legislation will bring us in line with other modern European countries such as France, Spain, Italy and Germany, all of which already have these types of rules in place.’³⁰

What the other country comparisons ignore is that the UK already has one of the most restrictive strike law regimes in Europe. Bogg (2023) provides a systematic comparison across four different dimensions of strike regulation. He finds the restrictive character of UK law is strongly supported by the comparative evidence. UK law prohibits political and secondary strike action and imposes one of the strictest ballot regimes in the world. This means that individual strikers are exposed to a much higher risk of dismissal than in other countries. This is because the individual dismissal protections depend upon the strike being lawful at the collective level. These cumulative effects magnify the overall restrictiveness of the legal regime.

The right to strike is more strongly protected in Spain, Italy and France. There are far fewer general restrictions on the right to strike in these countries compared to the UK. The fact that there is a much wider general freedom to strike in these three countries means that there is a potentially stronger justification for targeted minimum services regulation. There is far weaker justification in the UK given the existing

general restrictions which are far more stringent than in Spain, Italy, and France.

Bogg (2023) identifies serious difficulties with the Bill. First, the substantive level of ‘minimum service’. In many countries where minimum service levels are being specified, this is framed in constitutional terms as requiring proportionality between the workers’ constitutional right to strike and the constitutionally protected basic needs of service users. There is no such constitutional dimension in the UK Strike Bill. The Bill simply specifies that a ‘work notice’ must not ‘identify more persons than are reasonably necessary for the purpose of providing the levels of service under the minimum service regulations.’ Since there is no general requirement that the ‘levels of service under the minimum service regulations’ be set in a proportionate manner, this provides a weak constraint on the content of ‘work notices’. The House of Lords proposed an amendment to this part of the legislation, removing the ability of employers to dismiss employees who fail to comply with a ‘work notice’ order citing minimum service and requiring them to work.³¹

Second, the minimal role of collective agreements in specifying those services. There is no duty on the Secretary of State to consult with representative trade unions in setting general levels under the regulations. There is a weak consultation duty on employers in formulating ‘work notices’, which need not be ‘with a view to reaching agreement’ with the trade union. Yet it is a fundamental requirement of international

30. <https://bit.ly/3oqqL6d>.

31. J. Jaragher, « Strikes bill passes House of Lords after amendments », *Personnel Today*, May 10, 2023, <https://www.personneltoday.com/hr/strikes-bill-passes-house-of-lords/>.

labour law that minimum service levels should be negotiated and agreed between employers and trade unions.

The 2023 Strikes Bill breaches international labour standards developed by the ILO and the government's justification of the legislation gravely misuses comparative labour law. The Bill's general approach deviates in important ways from the laws of many European countries on minimum service levels.

Concluding comments: towards an authoritarian strike regime?

Given the legal restrictions on strikes in the UK, the level of participation and attempts at co-ordinated action across sectors in 2022-23 is impressive. To what extent are governments willing to push toward anti-liberal restrictions to quell strike movements? In the UK, the legislation to implement minimum service arguably moves the right to strike in the UK 'beyond neoliberalism' toward a more authoritarian state (Bogg, 2016). As we have seen in this article, in its justification for minimum service levels, the government relied heavily on the comparative position in Spain, Italy, and France. In each of these jurisdictions, however, the right to strike is protected constitutionally for individuals.

According to Bogg (2023), the arguments against a minimum service level

framework in the UK at the current time are formidable. First, the UK already has one of the most generally restrictive strike laws in Europe. By contrast, minimum service levels in European countries are usually targeted restrictive elements in a strongly protective framework of laws that recognise the right to strike. Secondly, minimum service levels in these European countries operates as a form of proportionate balancing of the constitutional rights of workers and service users. In the UK, there is no such constitutional dimension. Bogg suggests that it would be far more consistent with the British tradition of 'collective laissez-faire' to encourage voluntary negotiation of minimum service levels, based on collective bargaining, without the distorting effects of legal compulsion.

The reappearance of significant strike activity suggests that worker discontent is not just widespread but deep enough to overturn cultural and material reticence to participate in collective action (Milner, 2022). Trade unions in the UK, conscious of their declining position in society have engaged in a number of renewal strategies since the early 2000s, which has included organising drives in the workplace to increase membership levels. Arguably the strikes of 2022-23 demonstrate that trade unions have succeeded in maintaining and/or increasing membership in a number of sectors, and of convincing members of the efficacy of collective action as a way to improve their material and working conditions.

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