

Royal College of Nursing submission to Human Rights (Joint Committee) - legislative scrutiny: Strikes (Minimum Service Levels) Bill

With a membership of half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the United Kingdom and the largest professional union of nursing staff in the world.

1. Introduction

- 1.1. Over the last decade, there has been a sharp decline in nursing numbers across specific areas of care. On 1 December 2022, NHS Digital confirmed that there were 47,496 vacant registered nursing posts in the NHS in England. This is a vacancy rate of 11.9% and does not include the number of nurses needed to meet the needs of the population.
- 1.2. Tens of thousands of registered nurses are leaving the profession, following a decade-long real terms NHS pay decrease, sustained staff shortages¹, low morale and burnout due to increasing demand for services and unsafe staffing levels.² The prevalence and compounding nature of these conditions is severely affecting the health and wellbeing of nursing staff and insufficient action by government leaves them with no choice but to take industrial action.
- 1.3. The Royal College of Nursing (RCN) strongly opposes the Strikes (Minimum Service Levels) Bill. Curtailing workers' freedom to participate in lawful industrial action is always undemocratic. The RCN wishes to see safe staffing levels that are set in law at all times and not only in extreme circumstances. We have long-campaigned for governments to be accountable for safe and effective staffing levels in NHS and social care. This legislation exists in other parts of the UK but has been resisted in England. We therefore consider the Bill a distraction from the real issues of underinvestment across a range of sectors including health and social care, especially in relation to workforce supply and retention. Nursing staff should be at liberty to campaign for better pay and conditions, particularly in the context of an ongoing lack of accountability for workforce in the UK Government, without the fear of their fundamental human rights being infringed upon.

2. RCN commitment to safe strikes

- 2.1. In December 2022, the RCN organised industrial action for the first time in its 106-year history in Great Britain and in February 2023 our members took part in the largest strike in the history of the NHS. The College's 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.
- 2.2. This legislation is unnecessary. Health and care staff throughout the system are dedicated professionals who care deeply for those in their care and have already demonstrated their absolute commitment to safe industrial action.

¹ RCN (2022a), [Staffing for Safe and Effective Care: State of the nation's nursing labour market 2022, London](#)

² Royal College of Nursing (2022b), [RCN Submission to the NHS Pay Review Body 2022/23 Pay Round, London](#)

- 2.3. The RCN believes that this Bill will further restrict the right to strike and introduces the possibility of nursing staff being dismissed for taking otherwise lawful strike action. This could potentially undermine the Article 11 right, under the ECHR, to freedom of assembly and association, including the right to form and to join trade unions for the protection of one's interests.
- 2.4. During Business Questions on 26 January 2023, Penny Mordaunt MP said that the Strikes (Minimum Service Levels) Bill is not about “nurses”, and it is “wrong” to suggest it is. However, the text of the Bill makes no exception for nursing staff or for the profession. As workers in ‘health services,’ it is our view that nursing staff clearly fall within the scope of this Bill.
- 2.5. The United Kingdom already has some of the strictest anti-trade union law in Europe. The present UK Government has already passed the Lobbying and Trade Union Administration Act 2014, the Trade Union Act 2016 and introduced regulations allowing employers to employ agency workers to break strikes. The RCN believes that this is an attack on the basic civil right for working people to withdraw their labour.
- 2.6. Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 already makes it an offence to take industrial action in the knowledge or belief that human life will be endangered, or serious bodily injury caused. As such, this Bill is entirely unnecessary.

3. Use of secondary legislation

- 3.1. This Bill proposes to give the Secretary of State the power to lay regulations designed to require working people to break strikes sanctioned under the auspices of the Trade Union and Labour Relations Consolidation Act 1992.
- 3.2. Clause 3 of the Bill confers on the Secretary of State regulation-making power to make consequential amendments which could have a significant effect on the exercising of working people's right to strike, essentially by executive fiat, with insufficient parliamentary scrutiny.
- 3.3. Imposing minimum service levels by regulations could impinge on human rights as secondary legislation is not subject to parliamentary scrutiny. In addition, the wording of the Bill does not compel the Secretary of State and/ or employers to consult trade unions and professional bodies with expertise in clinical practice and standards, prior to setting minimum service levels. This will be wholly unfair to nursing staff, and disproportionate to what the Bill purports to achieve.

4. Inequalities issue

- 4.1. The Bill has not been subject to an Impact Assessment, which would include an Equality Impact Assessment, by the UK Government, so the impact the Bill would have on people with protected characteristics remains undetermined by Ministers.
- 4.2. There are clear inequalities impacts flowing from this Bill. Trade union members in the UK are disproportionately women³; this is especially true in nursing, as the

³ Trades Union Congress (2022), [Break the bias: the role of women in today's trade union movement](#)

workforce is disproportionately female⁴. 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.

- 4.3.** According to the UK Government’s equalities impact assessment of the Transport Strikes (Minimum Service Levels) Bill⁵, “In consideration of these limited evidence, the proposal may impact protected characteristics groups more than other groups. However, the extent to which protected characteristic groups are affected is uncertain, particularly as some job roles are likely to be more impacted than others.”
- 4.4.** The assessment noted the higher proportion of men working in the transportation and storage sector in the UK, however as this Bill would apply to healthcare staff – and considering that nursing is a predominately female workforce (89%)⁶– there would be a disproportionate impact on women. Consideration should also be given to the ethnic profile of the nursing workforce as 26.04% of NMC registrants are Asian (13.48%), Black (10.46%), mixed race (0.98%), and other (1.12%).⁷
- 4.5.** One in five (19%) of the UK’s nursing workforce are trained internationally⁸. This bill has the potential to have a disproportionate impact on migrant workers under the health and care visa, as their residency in the UK is conditional on their employment. There is the potential for employers to use the mandates in the Bill to dissuade migrant workers from participating in strike action due to the conditionality of their visas.
- 4.6.** It is an unacceptable abdication of responsibility for the UK Government to introduce a bill, potentially infringing on human rights, without a rigorous equalities impact assessment. Parliament should insist that this is provided as a matter of urgency.

⁴ Royal College of Nursing (2020), [Gender and Nursing as a Profession](#)

⁵ UK Government (2022), [The Transport Strikes \(Minimum Service Levels\) Bill impact assessment](#)

⁶ The Nursing and Midwifery Council (2022) [The NMC register mid-year update](#)

⁷ The Nursing and Midwifery Council (2022) [The NMC register mid-year update](#)

⁸ The Nursing and Midwifery Council (2022) [Registration data reports](#)