

## **Royal College of Nursing response to DHSC consultation on minimum service levels in event of strike action: ambulance services in England, Scotland and Wales**

*With a membership of over 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. The Royal College of Nursing (RCN) opposes the Strikes (Minimum Service Levels) Bill and thus oppose the laying of any regulations under the auspices of the bill. We stand in solidarity with ambulance workers who have been forced to take industrial action; they are fighting for the future of our NHS. We strongly oppose the laying of the proposed regulations that seek to curtail the freedom of NHS staff to lawfully withdraw their labour.
- 1.2. While the regulations contemplated in this consultation would predominantly apply to other NHS workers, nursing staff who work in ambulance services could fall within scope. If this is the case, it would be in direct contradiction with statements made by ministers in the chamber that the Strikes (Minimum Service Levels) Bill is ‘not about nurses’<sup>1</sup>.
- 1.3. The bill does not require the Department to propose regulations; it merely proposes to give it the right to do so. The imposition of regulations that would allow for the serving of work notices on NHS staff would mark an abuse of state power. The RCN therefore calls on the Department to desist in their attempt to seek regulations under the auspices of the Strikes (Minimum Service Levels) Bill. Furthermore, we do not believe that this consultation complies with all of the requirements set out in the bill that is currently before Parliament.

### **2. The Strikes (Minimum Service Levels) Bill**

- 2.1. The Strikes (Minimum Service Levels) Bill will curtail a workers’ freedom to participate in strike industrial action. There is a staffing crisis within our health service. In nursing this is particularly acute, the latest figure shows that there are 43,619 nursing vacancies in the NHS.<sup>2</sup> In a recent survey 83% of nursing staff surveyed by the RCN said that staffing levels on their last shift were not sufficient to meet all the needs of patients safely and effectively.<sup>3</sup> This crisis is reflected across the NHS and our members say that services often run with unsafe levels of staff on non-strike days.
- 2.2. Safe staffing levels should be set in law at all times and not only on strike days. Our members have long-campaigned for governments to be accountable for workforce planning in NHS and social care. All NHS staff should be at liberty to campaign for better pay and conditions, without the fear of their fundamental human rights being infringed upon. The RCN stands in full support of ambulance workers and their unions as they take industrial action.

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<sup>1</sup> Hansard (2023) [Business of the House Volume 726](#)

<sup>2</sup> NHS Digital (2023) [NHS Vacancy Statistics, England](#)

<sup>3</sup> Royal College of Nursing (2022) [Nursing Under Unsustainable Pressure: Staffing for Safe and Effective Care](#)

- 2.3. The Minimum Services Levels Bill is not yet law. We do not believe that this consultation is in compliance with the requirements set out in The Schedule of the bill, specifically following an amendment added by the House of Lords at report stage on 26 April 2023 on page 3, inserted after line 31 to ‘234B Power of Secretary of State to specify minimum service levels’ (amending the Trade Union and Labour Relations (Consolidation) Act 1992). Most notably in the new paragraph 6, additional requirements relating to the consultation process necessary to introduce regulations are now part of the bill. The consultation does not include for example, reference to respective service levels outside of strike action or to the crisis engulfing our ambulance services.
- 2.4. Furthermore, this consultation proposes regulations that would apply to England, Scotland and Wales, despite the bill before Parliament having been amended to be explicitly England-only in its territorial extent, as per Clause 4 of the bill. This consultation therefore does not adhere to the requirements set out in the bill that is currently before Parliament.
- 2.5. In addition, these regulations being imposed upon on Scotland and Wales would be additionally egregious, as it would be in explicit contradiction with the wishes of the elected devolved administrations. We also note that the Senedd voted to deny legislative consent on 25 April 2023.
- 2.6. The UK already has some of the strictest anti-trade union laws in Europe. The present UK Government has already passed the Lobbying and Trade Union Administration Act 2014, the Trade Union Act 2016 (which introduced ballot thresholds for industrial action) and introduced regulations allowing employers to recruit agency workers to break strikes. On 25 April 2023, a joint statement signed by 121 politicians from 18 countries condemning the UK Government’s attack on workers’ ability to strike noted that the UK ‘already has some of the most draconian restrictions on trade unions anywhere in the democratic world.’<sup>4</sup>
- 2.7. Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 already makes it an offence to take industrial action wilfully or maliciously in the knowledge or belief that human life will be endangered, or serious bodily injury caused. As such, the laying of the proposed regulations (and the legislation itself) is unnecessary.
- 2.8. The RCN notes Sir Julian Hartley’s (Chief Executive, NHS Providers) comments before the Health and Social Care Select Committee on 9 May 2023, where he said ‘additional legislation could make things more difficult, rather than improve the situation.’ We strongly concur with this statement.

### **3. Minimum service levels and nursing**

- 3.1. The RCN is concerned by the broad approach taken to the proposed range of workers in a potential work notice. The proposed approach within the consultation states that it would be the “...employer responsible for running an ambulance service to name the appropriate number and names of a range of workers in a work notice.” It is disappointing that the Department has sought to

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<sup>4</sup> Trades Union Congress (2023), [Statement on UK workers’ rights from international politicians](#)

include nursing staff, on the list of healthcare professionals that this might affect, without any consideration as to what this might mean specifically for nursing, the largest profession within the NHS.

- 3.2. Many of the roles named in the ‘proposed approach’ do not directly engage in emergency and life-threatening work. For example, 111 call handlers and the nursing staff that support them are unreasonably included in the scope the proposed regulations. Similarly, there are many other non-emergency roles such as clinical nurse educators that the government would to bring into scope by the inclusion of ‘other staff’ at the discretion of employers. Should such a regulation come into force there is potential for cohorts of staff to have their right to withdraw their labour in a lawful action arbitrarily curtailed.
- 3.3. During Business Questions on 26 January 2023, the Leader of the House of Commons, Penny Mordaunt MP said that ‘the Strikes (Minimum Service Levels) Bill is not about nurses’, and it is ‘wrong’ to suggest it is.<sup>5</sup> If the UK Government were to seek to impose minimum service regulations that apply to nursing staff, then this would directly contradict the words of the Minister.
- 3.4. The laying of these regulations would provide further incontrovertible proof that the suggestion that the bill is ‘not be about nurses’ is false.
- 3.5. In December 2022, the RCN organised industrial action for the first time in its 106-year history in England and Wales and in February 2023 our members took part in the largest strike in the history of the NHS.
- 3.6. The RCN is committed to lawful strikes and as such, the regulations contemplated in this consultation are unnecessary. During all phases of industrial action in the ongoing pay dispute, national derogations or emergency exemptions were agreed in addition to significant numbers of local derogations during the first three phases of industrial action. RCN derogations exempted thousands of our members from action and ensured that patient safety was maintained.

#### **4. The UK Government’s Human Rights obligations**

- 4.1. The RCN believes that the imposition of work notices would further restrict the freedom to strike. This could potentially undermine the Article 11 right, under the European Convention on Human Rights (ECHR), to freedom of assembly and association, including the right to form and to join trade unions for the protection of one’s interests.
- 4.2. The cross-party Joint Committee on Human Rights (JCHR) have said: ‘in our view, the Government has not adequately made the case that this bill meets the UK’s human rights obligations.’
- 4.3. We are also concerned that the laying of regulations, as contemplated in the consultation, could be discriminatory, in breach of Article 14 of the ECHR. Nursing is a predominately female workforce (89%)<sup>6</sup>– there would be a

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<sup>5</sup> Hansard (2023) [Business of the House Volume 726](#)

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

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%).<sup>7</sup>

- 4.4. The JCHR report agreed with our assertion that the placing of work notices on nursing staff risks infringing their Article 14 rights, stating: ‘We agree that there is potential for minimum service requirements to impact more severely on certain protected groups, most obviously women in respect of nursing.’
- 4.5. One in five (19%) of the UK’s nursing workforce are trained internationally<sup>8</sup>. 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. If the bill succeeds in acquiring Royal Assent and becomes an Act, the UK Government would still be obligated to act in accordance with international norms and agreements. On this basis, the Department proceeding to seek regulations under the auspices of the bill is unjustifiable.

## 5. The state of nursing

- 5.1. Over the last decade, there has been a sharp decline in nursing numbers across specific areas of care. On 2 March 2023, NHS Digital confirmed that there were 43,619 vacant registered nursing posts in the NHS in England.<sup>8</sup> This is a vacancy rate of 10.8% and does not include the number of nurses needed to meet the needs of the population.
- 5.2. Tens of thousands of registered nurses are leaving the profession, following a decade-long real terms NHS pay cut, sustained staff shortages<sup>9</sup>, low morale and burnout due to increasing demand for services and unsafe staffing levels.<sup>10</sup> 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.

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<sup>7</sup> Ibid

<sup>8</sup> NHS Digital (2023) [NHS Vacancy Statistics, England](#)

<sup>9</sup> RCN (2022a), [Staffing for Safe and Effective Care: State of the nation’s nursing labour market 2022, London](#)

<sup>10</sup> Royal College of Nursing (2022b), [RCN Submission to the NHS Pay Review Body 2022/23 Pay Round, London](#)