

D R A F T S T A T U T O R Y I N S T R U M E N T S

2023 No.

TRADE UNIONS

NATIONAL HEALTH SERVICE

**The Strikes (Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service) Regulations
2023**

Made - - - -

Coming into force in accordance with regulation 1(2)

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 234B(1) and (3) and 234F(2)(b) of the Trade Union and Labour Relations (Consolidation) Act 1992(a) (“the 1992 Act”).

In accordance with section 234F(1) of the 1992 Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

In accordance with section 234F(4) of the 1992 Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Strikes (Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service) Regulations 2023.

(2) These Regulations come into force on the later of the following—

- (a) the time immediately after the relevant Code of Practice comes into effect in accordance with an order under section 204(3) of the 1992 Act, and
- (b) the day after the day on which they are made.

(3) In paragraph (2) “the relevant Code of Practice” means the first Code of Practice issued by the Secretary of State under section 203 of the 1992 Act on reasonable steps to be taken by a Trade Union to ensure that all members of the union who are identified in a work notice under section 234C of the 1992 Act comply with the notice(b).

(a) 1992 c. 52. Sections 234B to 234G were inserted by paragraph 2 of the Schedule to the Strikes (Minimum Service Levels) Act 2023 (c. 39).

(b) The Secretary of State has consulted on a draft of this Code of Practice. This consultation closed at 9.30am on 6th October 2023. Copies of the draft Code of Practice as consulted on are available here: <https://www.gov.uk/government/consultations/minimum-service-levels-code-of-practice-on-reasonable-steps>.

(4) These Regulations extend to England and Wales and Scotland.

Interpretation

2.—(1) In these Regulations—

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992;

“healthcare facility” means a hospital or other facility providing health services;

“the NHS (England) ambulance services” means the services specified in regulation 3(2)(a).

(2) For the purposes of these Regulations, the ambulance services providers in England are—

- (a) the East of England Ambulance Service National Health Service Trust(**a**),
- (b) the East Midlands Ambulance Service National Health Service Trust(**b**),
- (c) the Isle of Wight National Health Service Trust(**c**),
- (d) the London Ambulance Service National Health Service Trust(**d**),
- (e) the North East Ambulance Service NHS Foundation Trust(**e**),
- (f) the North West Ambulance Service National Health Service Trust(**f**),
- (g) the South Central Ambulance Service NHS Foundation Trust(**g**),
- (h) the South East Coast Ambulance Service NHS Foundation Trust(**h**),
- (i) the South Western Ambulance Service NHS Foundation Trust(**i**),
- (j) the West Midlands Ambulance Service NHS Foundation Trust(**j**), and
- (k) the Yorkshire Ambulance Service National Health Service Trust(**k**),

and references to “an ambulance services provider in England” are to be read accordingly.

Relevant services for the purposes of section 234B of the 1992 Act: NHS ambulance services and the Patient Transport Service: England

3.—(1) The services specified in paragraph (2) are “relevant services” for the purposes of section 234B(3) of the 1992 Act (power of the Secretary of State to define “relevant services” for the purposes of Part 5 of that Act).

(2) The services mentioned in paragraph (1) are the following services other than any excluded services—

- (a) the ambulance services provided by the ambulance services providers in England;
- (b) the Non-emergency Patient Transport Service(**l**), in so far as it is provided by the ambulance services providers in England.

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- (a) The East of England Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1619.
 - (b) The East Midlands Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1620.
 - (c) The Isle of Wight National Health Service Trust was established by article 2 of S.I. 2012/786.
 - (d) The London Ambulance Service National Health Service Trust was established by article 2 of S.I. 1996/90.
 - (e) The North East Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1621. It was authorised as an NHS Foundation Trust on 1st November 2011.
 - (f) The North West Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1622.
 - (g) The South Central Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1624. It was authorised as an NHS Foundation Trust on 1st March 2012.
 - (h) The South East Coast Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1623. It was authorised as an NHS Foundation Trust on 1st March 2011.
 - (i) The South Western Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1625. It was authorised as an NHS Foundation Trust on 1st March 2011.
 - (j) The West Midlands Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1626. It was authorised as an NHS Foundation Trust on 1st January 2013.
 - (k) The Yorkshire Ambulance Service National Health Service Trust was established by article 2 of S.I. 2006/1627.
 - (l) The Non-emergency Patient Transport Service is provided as part of the health service in England to provide non-emergency transportation for patients to and from premises providing health services as part of that health service, or between persons providing such services. Further information on the eligibility criteria for accessing this service is available online at the following address: <https://www.england.nhs.uk/wp-content/uploads/2022/05/B1244-nepts-eligibility-criteria.pdf>, and hard copies may be obtained by writing to NHS England at Quarry House, Quarry Hill, Leeds LS2 7UE.

(3) For the purposes of this regulation, a service is an excluded service if it is provided by a person (other than an ambulance services provider in England) under arrangements made by, or on behalf of, an ambulance services provider in England.

Minimum level of service: emergency ambulance services: England

4.—(1) The level of service for the purposes of enabling work notices under section 234C of the 1992 Act to be given in relation to strikes as respects the NHS (England) ambulance services which are emergency ambulance services, is as follows.

(2) On each day of the strike—

- (a) emergency calls are answered and triaged as they would be if the strike were not taking place on that day;
- (b) a response is organised and provided for each of those calls which is triaged as, or escalated after initial triage to, being—
 - (i) a call about a person with a life-threatening condition or illness, or
 - (ii) a call about a person for whom there is no reasonable clinical alternative to clinical assistance being provided at the scene of an incident or by transporting the person to a healthcare facility (or both),

as it would be if the strike were not taking place on that day.

(3) In this regulation “emergency call” means a call—

- (a) made by telephone or other device using, or treated as using, the telephone number 112 or 999, and
- (b) received by an ambulance services provider in England.

Minimum level of service: HCP responses: England

5.—(1) The level of service for the purpose of enabling work notices under section 234C of the 1992 Act to be given in relation to strikes as respects the NHS (England) ambulance services which are HCP responses, is as follows.

(2) On each day of the strike—

- (a) HCP response requests are answered and triaged as they would be if the strike were not taking place on that day;
- (b) an HCP response is organised and provided for each of those requests which is triaged as, or escalated after initial triage to, being—
 - (i) a request about a patient with a life-threatening condition or illness, or
 - (ii) a request about a patient for whom there is no reasonable clinical alternative to an HCP response,

as it would be if the strike were not taking place on that day.

(3) In this regulation—

“HCP response request” means a request for an HCP response made by or on behalf of a relevant HCP in exercise of their functions as such;

“HCP response” means either or both of the following services—

- (a) clinical assistance with a patient in a community setting;
- (b) transportation of a patient from a community setting to a healthcare facility;

“relevant HCP” means a person who is a healthcare professional for the purposes of the National Framework for Healthcare Professional Ambulance Responses (version 2, 22 March 2021)(a) (see Part 1 (introduction) of the Framework).

Minimum level of service: Inter-Facility Transfer services: England

6.—(1) The level of service for the purpose of enabling work notices to be given under section 234C of the 1992 Act in relation to strikes as respects the NHS (England) ambulance services which are IFT services, is as follows.

(2) On each day of the strike—

- (a) IFT services requests are answered and triaged as they would be if the strike were not taking place on that day;
- (b) IFT services are organised and provided for each of those requests which is triaged as, or escalated after initial triage to, being—
 - (i) a request about a patient with a life-threatening condition or illness, or
 - (ii) a request about a patient for whom there is no reasonable clinical alternative to the provision of IFT services,as they would be if the strike were not taking place on that day.

(3) In this regulation—

“IFT services request” means a request for IFT services made by or on behalf of clinical staff at a relevant healthcare facility in respect of a patient whose medical or nursing care needs have increased;

“IFT services” means either or both of the following services—

- (a) clinical assistance with a patient;
- (b) the transfer of a patient from a relevant healthcare facility to another healthcare facility;

“relevant healthcare facility” means any healthcare facility which is a facility within the meaning given in Part 1 of the National Framework for inter-facility transfers (version 2, 22 March 2021)(b), or determined to be suitable to use the inter-facility transfer process as provided for in that Part.

Minimum level of service: the Non-emergency Patient Transport Service: England

7.—(1) The level of service for the purposes of enabling work notices to be given under section 234C of the 1992 Act in relation to strikes as respects the Service mentioned in regulation 3(2)(b) (“the NEPTS England”), is as follows.

(2) On each day of the strike—

- (a) any requests for transportation under the NEPTS England are answered and triaged as they would be if the strike were not taking place on that day (referred to in this regulation as “the strike day”);
- (b) transportation under the NEPTS England is provided on the strike day in response to each of the requests mentioned in sub-paragraph (a) which is made by, or on behalf of, a relevant patient, as it would be if the strike were not taking place on that day;

(a) The Framework has the publications approval reference C1172 and is published by the Association of Ambulance Chief Executives and NHS England and NHS Improvement. Copies of the document are available online at the following address: <https://www.england.nhs.uk/wp-content/uploads/2019/07/C1172-aace-national-framework-for-hcp-ambulance-responses.pdf>, and hard copies may be obtained by writing to NHS England at Quarry House, Quarry Hill, Leeds LS2 7UE.

(b) The Framework has the publication approval reference PAR 461 and is published by the Association of Ambulance Chief Executives and NHS England and NHS Improvement. Copies of the Framework are available at: <https://www.england.nhs.uk/wp-content/uploads/2019/07/B0461-aace-national-framework-for-inter-facility-transfers-v2.pdf> and hard copies may be obtained by writing to NHS England at Quarry House, Quarry Hill, Leeds LS2 7UE.

- (c) transportation under the NEPTS England is provided on the strike day to each relevant patient to whom it was agreed to provide transportation under the NEPTS England on the strike day in response to a request made before the strike day, as it would be if the strike were not taking place on that day.

(3) For the purposes of this regulation a patient is a “relevant patient” if there is no reasonable clinical alternative to the patient receiving health services on the strike day.

Date

Parliamentary Under Secretary of State
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 234B of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52). For the purposes of enabling work notices under section 234C of that Act to be given, these Regulations specify:

- (a) ambulance services and the Non-emergency Patient Transport Service, to the extent they are provided by the Ambulance Service NHS Trusts in England, the Ambulance Service NHS Foundation Trusts in England and the Isle of Wight NHS Trust, as “relevant services”, and
- (b) the levels of service in relation to strikes as respects those relevant services.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Department of Health and Social Care, 39 Victoria Street, London, SW1H 0EU, and is annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk.

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