

The City of Edinburgh Council

10am, Thursday, 29 August 2024

Prohibition of Council and ALEO use of Strikes (Minimum Service Levels) Act Work Notices

Executive/routine
Wards

1. Recommendations

1.1 To note the report.

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Prohibition of Council and ALEO use of Strikes (Minimum Service Levels) Act Work Notices

2. Executive Summary

- 2.1 This report outlines the risks if the Council tried to intervene in its Arm's Length External Organisations (ALEOs) decision making processes regarding whether to issue or not issue a work notice under the Strikes (Minimum Service Levels) Act 2023 and any regulations made under it.
- 2.2 This report also outlines the intention of the UK Government to repeal this legislation and that, in the meantime, employers are being encouraged not to issue work notices.

3. Background

- 3.1 On 9 May 2024 the Full Council considered a motion on the above. The following adjusted Motion by Councillor Heap was agreed:
- 1) To note the passage of the Strikes (Minimum Service Levels) Act 2023 ("the Act") and regulations made under it, including Strikes (Minimum Service Levels: Passenger Railway Services) Regulations 2023 The City of Edinburgh Council – 9 May 2024 Page 52 of 169
 - 2) To note this enabled employers including those in the public sector to issue work notices to trade unions naming workers required to work to maintain minimum service levels.
 - 3) To note that workers subject to such a notice who refused to work lost protection against dismissal for not working.
 - 4) To note Trades Unions whose members subject to such a notice who refused to work lost immunity from being sued in for damages to the employer for economic loss.
 - 5) To note that, in terms of the Council and Council ALEOs, this applied currently to Transport for Edinburgh as the employer of Edinburgh Trams staff under the light rail provisions of the above regulations.

- 6) To note that the Act allowed minimum service levels to be imposed during strike action in services within 6 broad sectors: health, education, fire and rescue, transport, border security and nuclear decommissioning and radioactive waste management services. Currently Parliament had approved regulations for ambulance service, passenger rail, border security and fire and rescue services. This meant in future other services provided by the Council or ALEOs would be subject to the legislation.
- 7) To believe that all workers had the right to strike and any attempt to force workers to work against their will and against a legally-called strike was an infringement of human rights.
- 8) To therefore acknowledge that the introduction of minimum service levels could lead to prolonged and more frequent disputes: (UK Department for Transport (22 October 2022). Transport Strikes (Minimum Service Levels) Bill Impact Assessment)”
- 9) To resolve that it would never issue work notices to any staff employed by the Council.
- 10) To request a report within two cycles laying out how it could ensure that no ALEO delivering services on behalf of the Council issues a work notice.

4. Main report

- 4.1 This report sets out a response to point 10 of the motion outlined above, specifically:
 - 4.1.1 “To request a report within two cycles laying out how it could ensure that no ALEO delivering services on behalf of the Council issues a work notice”.
- 4.2 **Issuing work notices** - ultimately it is for each Arm’s Length External Organisation (ALEO) to decide upon their approach as a stand-alone entity to ensure that they can meet the minimum service levels set out in the legislation. If the Council was to seek to ensure that no ALEO issues work notices, then this would be acting beyond the Council’s powers and would expose the Council to the risk of judicial review. This risk still applies if for example the Council sought to amend a shareholder agreement to make the instruction.
- 4.3 **Deciding to issue a work notice** - once a trade union has given the employer notice of strike action, the employer can decide whether to issue a work notice. There is no statutory duty on the employer to issue a work notice. However, the employer should consider any existing legal duties or obligations they may have when deciding whether to issue a work notice: for example, contractual or public law duties. The employer should consider a range of factors when deciding to issue a work notice, including, but not limited, to:

- 4.3.1 whether they can achieve the minimum service level without issuing a work notice
 - 4.3.2 levels of attendance during any previous strike action
 - 4.3.3 circumstances which may affect the delivery of the minimum service level, including expected level of demand for the service, and the location and timing of the strike
 - 4.3.4 the duration of the strike
 - 4.3.5 voluntary agreements they have with the trade unions to provide for minimum levels of staffing during strike days
- 4.4 If the employer intends to issue a work notice, there will be legal obligations for the employer to meet, including consulting with the trade union and meeting timelines for issuing the work notice.
- 4.5 On 6 August 2024, the UK Government announced their intention to repeal the Act through an “Employment Rights Bill”. This means that any minimum service regulations would also lapse once the Employment Rights Bill comes into effect. The UK Government have committed to introducing the Employment Rights Bill in Parliament within the first 100 days of this government.
- 4.6 The Deputy Prime Minister, and the Business Secretary has written to the First Minister of Scotland asking them to encourage employers to avoid imposing minimum service levels on their workforce, until the Act is repealed. Although the ability of employers to give work notices will legally continue until the Act has been formally repealed, in this interim period the UK Government has stated that it strongly encourages employers to seek alternative mechanisms for dispute resolution, including voluntary agreements, rather than imposing minimum service levels.

5. Next Steps

- 5.1 None.

6. Financial impact

- 6.1 There are no financial implications as a result of this report.

7. Equality and Poverty Impact

- 7.1 There are no equality or poverty impacts as a result of this report.

8. Climate and Nature Emergency Implications

8.1 There are no climate or nature emergency implications as a result of this report.

9. Risk, policy, compliance, governance and community impact

9.1 If the Council was to seek to ensure that no ALEO issues work notices, then this would be acting beyond the Council's powers and would expose the Council to the risk of judicial review.

10. Background reading/external references

10.1 None.

11. Appendices

None.