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Minimum Service Levels Consultation: Education services

TUC response

Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together more than 5.5 million working people who make up our 48 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

TUC is strongly opposed to the introduction of minimum service levels (MSLs) in education that arise from the Strikes (Minimum Service Levels) Act 2023. The Strikes Act is unfair, undemocratic, and likely in breach of our international legal commitments.

We note the recent comments of the International Labour Organisation's Committee on the Application of Standards cautioning the government to ensure its legislation is in line with ILO conventions. The TUC has submitted evidence to the ILO Committee of Experts laying out our criticism and concerns about the legislation, including its failure to adhere to ILO standards. It is therefore deeply disappointing that the government proposes proceeding with minimum service levels in education that could deny thousands of teachers the right to strike.

The TUC believes minimum service levels are unacceptable in the UK given the highly restrictive anti-strike laws already in place. The Joint Committee on Human Rights warned "(i)n our view, the Government has not adequately made the case that this Bill meets the UK's human rights obligations".¹

The introduction of minimum levels of service in education services would:

1. place severe and unacceptable restrictions on the fundamental right of a worker to take industrial action to defend their pay and conditions.
2. be draconian: it could lead to individual workers being sacked for taking part in industrial action that was supported in a democratic process. Trade unions could face large damages.
3. be counter-productive: the government's own analysis has warned that minimum service levels could lead to more strikes.
4. disproportionately affect women workers. Education workers are majority female and therefore more women than men are likely to be subjected to work notices and have their right to strike unfairly curtailed.

Minimum service levels in education services will do nothing to help resolve current or future industrial disputes. Being threatened with the sack for exercising a fundamental right

¹ [Legislative Scrutiny: Strikes \(Minimum Service Levels\) Bill 2022–2023 - Joint Committee on Human Rights \(parliament.uk\)](https://www.parliament.uk/journals/commons-debates/2022-23/legislative-scrutiny-strikes-minimum-service-levels-bill-2022-2023-joint-committee-on-human-rights)

to strike will only demoralise and disenfranchise more of the education workforce and poison industrial relations.

The government's impact assessment in education identifies that the financial and administrative impact on education employers is likely to be significant. The government estimates legal costs to education employers of £18.2m for seeking 'legal advice as part of the familiarisation process'.² In the government's own estimate, MSLs 'would require approximately 88,000 consultations to take place (on the basis of 22,000 schools and four unions per school)' in that part of the education sector alone, and up to 156,000 consultations across schools and colleges if both teaching and support staff unions were to strike in the same year. This will place an unacceptable strain on the budgets of trade unions and the budgets of schools and colleges at a time when money is already tight.

Misguided

We believe that the measures included in the Strikes Act are not only disproportionate but actively misguided. They propose a false division between the interests of the education service workforce and the students they work with. Education workers, from teachers to school support staff and leaders, have a detailed understanding of the needs of their students and, as demonstrated during the pandemic, put their interests at the heart of all they do.

Teachers have been on the frontline supporting students and protecting the quality of the education they receive, as schools, colleges and universities have faced thirteen years of deep and sustained funding cuts that have negatively impacted on student learning.

The government's failure to rectify the staffing crisis has exacerbated the negative impact of chronic underfunding. The recruitment and retention crisis in education has been driven by a toxic mix of government-imposed pay cuts, unsustainable workloads and long working hours. Teachers, school leaders and support staff have taken part in industrial action to defend their pay and working conditions, to prevent a worsening of the staffing shortage and to restore the quality of our education services.

The introduction of minimum levels of service will not resolve these issues but they will impact workers ability to do something about them. The Strikes Act will have a chilling effect on legitimate trade union activity in education. As the government's own impact assessment identified: *"There are a number of benefits of being part of a union. One of these benefits is that unions help counterbalance the monopoly power that employers have over their staff. Strike action may in some cases lead to improved terms and conditions, including increased pay deals. MSLs may reduce the utility that workers receive by being part of a union."*²³

² https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-in-education/supporting_documents/1.%20MSL%20Impact%20Assessment.pdf

³ Gov.UK (2022) [The Transport Strikes \(Minimum Service Levels\) Bill impact assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

What education services need are all parties – government, employers and unions – working together constructively to focus on the most pressing issues facing our education system; crumbling school, college and university buildings, the recovery of lost learning stemming from the Covid-19 pandemic and action to fix the recruitment and retention crisis.

We have answered the consultation questions, framed by our principled and practical opposition to the Act and our strong opposition to the introduction on minimum levels of service in education.

Consultation questions

Q1. Do you agree or disagree that an education MSL should apply consistently across England, Scotland and Wales?

Strongly disagree.

The TUC strongly opposes the introduction of minimum service levels (MSLs) in education services in England, Scotland and Wales.

Minimum service levels are unfair, undemocratic, and likely in breach of our international legal commitments.

The introduction of minimum service levels would place severe and unacceptable restrictions on the fundamental right of education workers to take industrial action to defend their pay and conditions.

The imposition of MSLs in education could lead to individual education workers being sacked for taking part in lawful industrial action that was supported in a democratic process if they do not comply with a work notice. Trade unions could face paying large damages.

It will also impose unworkable bureaucracy on employers, unions and their members, and puts them at risk of huge and unacceptable penalties. Unions falling foul of the unworkable demands of complying may be injuncted by an employer and/or face fines and other sanctions.

Political leaders across Great Britain have spoken out in opposition to minimum service levels. This includes First Minister of Scotland, Humza Yousaf, the First Minister of Wales, Mark Drakeford and regional city and mayors across England, Wales and Scotland. Seeking to impose such draconian restrictions risks riding roughshod over the views of communities across the country.

The proposal to apply these regulations across Great Britain rides roughshod over devolution. Education services are devolved to the Welsh and Scottish governments.

In Wales the management of public services is a matter for the Welsh government and Wales has its own social partnership system for industrial relations.

Likewise, in Scotland, public sector pay and “Fair Work” policies differ with respect to England.

Q2. Do you agree with the settings proposed to be in and out of scope?

Strongly disagree.

Further to our principled and practical objections to the introduction of minimum service levels in education services as set out above, we do not agree any education settings should be in scope of the Act.

Q3. Do you agree with the design principles for the MSL?

Strongly disagree.

Further to our principled and practical objections to the introduction of minimum service levels in education services as set out above, we do not agree with the proposal.

Remote education

Q4 – 6 Do you agree with the approach to remote education?

Strongly disagree.

Further to our principled and practical objections to the introduction of minimum service levels in education services as set out above, we do not agree remote education services, or any education settings or services should be subject to an MSL.

Proposal 1: priority cohorts in schools and colleges

Q7 – 8 Do you agree with the vulnerable children and young people groups identified?

Strongly disagree.

Further to our principled and practical objections to the introduction of minimum service levels in education services as set out above, we do not agree with the proposal.

Exam groups

Q9 -11 What impacts have strikes had on exam delivery and /or students' preparation for exams and assessments?

Strikes are a symptom not a cause. Strike action is only used as a last resort. Where they are left with no other choice, unions and their members undertake action responsibly and with due regard to safety. Instead of imposing malicious legislation attacking workers for exercising their fundamental right to strike, the government should work constructively with employers and trade unions to resolve the issues driving education workers to take industrial action in the first place.

Children of critical workers

Q12-15 Do you agree with the proposed list of critical workers?

Strongly disagree.

Further to our principled and practical objections to the introduction of minimum service levels in education services as set out above, we do not agree any workers should be subject to this Act.

General questions on proposal 1

Q16-17 Do you agree with the three priority cohorts proposed?

Strongly disagree.

Further to our principled and practical objections to the introduction of minimum service levels in education services as set out above, we do not agree any cohorts should be in scope for an MSL and oppose the introduction of MSLs in education.

Proposal 2: a hybrid approach (all pupils in primary and priority cohorts in secondary and FE settings)

Q18 - 20 What is your experience of the impacts of strikes on children aged 4-7 (KS1)? If not applicable, please specify 'not applicable' in the box

N/A

21. Do you prefer proposal 1 or proposal 2

Strongly oppose both proposals.

Use of rotas for extended periods of strike action in proposal 1 and proposal 2

Q22- 24 Do you agree with the use of rotas in schools and colleges during prolonged strike action?

Strongly disagree.

Further to our principled and practical objections to the introduction of minimum service levels in education services we do not agree with the proposal to introduce rotas or to introduce MSs in education.

Strike action

Q25-28 Which groups of staff went on strike in your university?

N/A

Students' experience

Q29-30 Did the strike action impact some students more than others? If so, which students and why was this?

N/A

Teaching and exams

Q31-40 Are there any exams and assessments which must take place on specific days and cannot be moved?

N/A

Mitigations

Q41- 43: What sort of minimum service level do you think would have the most impact in mitigating the most adverse effects of strike action in higher education?

For example should this focus on:

- exam year
- final year students
- students studying subjects which have minimum contact hours
- students which are studying subjects that lead to critical worker professions
- Other (please specify)

Further to our principled and practical objections to the introduction of minimum service levels in education services as set out above, we do not agree with any minimum service level in higher education settings or any other education settings.

Impact of policy

Q49 Are there groups of people, such as (but not limited to) those with particular protected characteristics, who would particularly benefit from the proposed minimum service levels for education services?

No.

Good industrial relations between employers and their workforce is in everyone's interest, most notably learners. Imposing MSLs in education would damage industrial relations and could lead to a deterioration in the quality of education students receive. As outlined in our introduction, the government's own impact assessment identified the benefit of union membership and bargaining power built upon the ability to withdraw one's labour: *"There are a number of benefits of being part of a union. One of these benefits is that unions help counterbalance the monopoly power that employers have over their staff. Strike action may in some cases lead to improved terms and conditions, including increased pay deals. MSLs may reduce the utility that workers receive by being part of a union."*⁴

The imposition of minimum service levels will have a chilling effect on workers taking strike action but as it will address the underlying root causes, it is likely to drive prolonged and protracted industrial disputes, and lead to more frequent industrial action. Without resolution or the option to take industrial action, the education workforce may vote with

⁴ Gov.UK (2022) [The Transport Strikes \(Minimum Service Levels\) Bill impact assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

their feet, exacerbating the existing staffing crisis in educational settings, and worsening student learning.

Q50 Are there particular groups of people, such as those with protected particular characteristics, who would be particularly negatively affected by the proposed minimum service levels for education services?

Yes.

Women would be particularly affected by these unwelcome, unnecessary and impractical proposals because they form the vast majority of the education workforce. More than three quarters of teachers (76% in 2022/23)⁵ are women and women make up the vast bulk of school support staff, some 93% of teaching assistants.

The government's own impact assessment accepts that education workforce is predominantly made of females – 76%. Despite noting the discriminatory impact on female teachers i.e. the disproportionality in the issuing of work notice to female staff members, the government pushes the justification defence on any potential claim against employers i.e. that the impact is justified due to the overarching policy intention to protect against further lost education for pupils and students, ensure the welfare of vulnerable children and young people etc. Suffice it to say that the justification defence would only apply if the female teacher were to institute proceedings for indirect sex discrimination, it does not apply in the case of direct discrimination against an employer.

Attempts to impose levels of minimum service in education services would therefore have a disproportionate and negative impact on the rights of women workers in schools and colleges settings to participate in lawful, industrial action.

Women's rights campaign groups have raised the alarm on the Strikes Act, saying it will have a silencing effect on women in the workplace. Jemima Olchawski, chief executive of the Fawcett Society, said: *"For many women who work in systemically undervalued sectors, strike action is critical to making their voices heard. What's more, we know that women, especially women of colour, are at the sharp end of the cost of living crisis – workplaces must work for women and the starting point for this must be decent pay and working conditions."*⁶

There are highly restrictive arrangements already in place that govern the taking of industrial action. These additional requirements contravene an individual's fundamental right to strike. As noted by the EHRC: *"it is difficult to compare police officers, who have specific duties to protect the state, with workers in other sectors such as teachers, university lecturers or truck drivers - all of whom could be within the remit of this Bill. We would*

⁵ <https://explore-education-statistics.service.gov.uk/find-statistics/school-workforce-in-england>

⁶ [Anti-strike bill discriminates against women, say campaigners | Industrial action | The Guardian](#)

welcome further analysis of how such differential treatment can be objectively justified for workers across the broad range of services covered by this Bill.”⁷

Since the government does not have a sound rationale for the differential treatment and subsequent impact on education workers with protected characteristics, if there were to be subsequent disproportionate, negative impact on women that are within scope of the Act, these are highly likely to fall foul of equality law.

Individual workers will be negatively impacted if they find themselves subject to dismissal having exerted their democratic and fundamental right to strike. And all workers in education services are liable to lose out economically due to the undermining of their ability to bargain for better terms and conditions. The government’s own impact assessment made this clear.

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⁷ EHRC (2023) [strike minimum service levels bill statement feb 23 002.docx \(live.com\)](#)