

Minimum Service Levels in Education

Response of the Association of School and College Leaders

A. Introduction

1. The Association of School and College Leaders (ASCL) is a trade union and professional association representing 25,000 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business leaders and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million children and young people across primary, secondary, post-16 and specialist education. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.
2. ASCL welcomes the opportunity to contribute to this consultation. Our response is based on the views of our members, obtained through discussions at ASCL Council, with relevant advisory groups, and prompted and unprompted emails and messages.
3. When considering the impact of any proposals on different groups, it is ASCL's policy to consider not only the nine protected characteristics included in the Equality Act 2010, but also other groups which might be disproportionately affected, particularly those who are socio-economically disadvantaged. We have answered any equality impact questions on this basis.

B. Key points

4. ASCL does not believe that the proposed regulations, which would introduce minimum service levels (MSLs) across education, will benefit children and young people. The imposition of work notices and minimum service levels will damage industrial relations at every level from individual schools to multi-academy trusts to local authorities, and at the national level with the English, Welsh and Scottish governments.
5. The best way to protect the education of children and young people in circumstances where strike action may happen is for constructive dialogue and negotiation to take place within the framework of an adequately funded education system.
6. It should be noted that over recent decades strikes in schools are rare. However, any short term absence through strikes has been mitigated by teachers and school leaders ensuring children make up for lost learning. Voluntary arrangements during periods of industrial action to ensure attendance at school for the most vulnerable has often been agreed between schools and trade unions.
7. Schools are complex ecosystems where trust and good will are a key part of their operation. This is even more the case in the current climate of acute recruitment and retention difficulties, with teachers, leaders and support staff all going far beyond their contractual obligations to ensure schools function effectively. The government must not

underestimate the damage that could be caused by the loss of this good will.

8. The introduction of these regulations is likely to add to the increasing unpopularity of teaching as a career for both graduate entrants and existing employees. Recruitment to Initial Teacher Training (ITT) is already catastrophically low, running at 50% of target for secondary teachers and as low as 17% for physics. ITT numbers are now lower than pre-pandemic levels (<https://explore-education-statistics.service.gov.uk/find-statistics/initial-teacher-training-census/2023-24#>). The pay, conditions and working life of teachers and leaders do not currently present an attractive option. Restricting the ability of the workforce to bargain collectively for improvements will not improve matters.
9. School leaders are already severely overworked, with an average full-time working week of 57.5 hours. 72% of leaders state that they have an unacceptable workload. Having to implement and manage minimum service levels will add significantly to that workload (https://assets.publishing.service.gov.uk/media/642b519efbe620000c17db94/Working_lives_of_teachers_and_leaders_-_wave_1_-_core_report.pdf). There is simply no slack in the system for additional work.
10. We are concerned that the regulations will place school leaders in the impossible position of seeking to maintain good employee relations across their team whilst being expected to enact legislation that will cause irreparable harm. It will be the headteacher who will be called upon to make these impossible decisions and live with the consequences.
11. The regulations disproportionately affect the ability of school leaders to take industrial action, potentially to the point where this will completely remove their right to strike. For a school to open there will always be a need for a school leader to be present, and in many situations the regulations would lead to the same individual (the headteacher) being instructed to work. This is incompatible with the Secretary of State's stated intention to "*balance the rights of workers to strike with a child's right to receive an education*" (<https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-in-education/consultation/subpage.2023-11-08.8512164202/>).
12. Similarly, the regulations stand to disproportionately affect those staff with very specific responsibilities. In particular, staff with responsibility for children with special educational needs and disabilities (SEND) will potentially find themselves being instructed to work every time industrial action is proposed. The regulations propose that SEND children are prioritised; it is hard to see how this would not lead to staff with the requisite SEND skills and experience being required to work. In many situations, it is simply not possible for non-SEND specialists to provide safe and appropriate cover. To do so risks an escalation of vulnerabilities that can often take a few moments to unravel but many days, weeks or even years of work to address.
13. The regulations may also lead, de facto, to the same situation for teachers of subjects in which there are acute shortages. Schools are struggling to place subject specialists in front of children (<https://www.nfer.ac.uk/publications/teacher-supply-and-shortages-the-implications-of-teacher-supply-challenges-for-schools-and-pupils/>) and this will mean teachers with those specialisms will be disproportionately affected by the MSL regulations.
14. For specialist staff (teachers, leaders and support staff) the regulations are incompatible, therefore, with the government's stated intention to balance the right to strike with the needs of children.

15. The international comparisons cited in the consultation document are selective and disingenuous. We refer the government to analysis undertaken by UK in a Changing Europe (UKICE), an academic body coordinated by King's College London and funded by the ESRC. This concludes that the Strikes (Minimum Service Level) Bill does not, as is alluded to in the consultation document, bring the UK into alignment with the rest of Europe.
16. The legislative framework around industrial action is totally different in the UK than is the case in most of the rest of Europe – there is no right to strike in the UK, unlike 86% of Europe. There is a balance elsewhere in Europe between the right to strike and minimum service levels – the proposed minimum service levels in the UK come on top of already restrictive legislation around industrial action. Furthermore, in 85% of European countries which have legislated for it, minimum service levels involve an agreement between trade unions and employers (<https://ukandeu.ac.uk/where-does-the-strikes-bill-put-the-uk-relative-to-other-european-countries/>). It should be noted that the Secretary of State chose to end the talks aimed at reaching such an agreement for the education sector in the UK.
17. As set out above, ASCL believes that these regulations will do more harm than good. We also object to the imposition of MSLs in principle, as they place unacceptable restrictions on the fundamental right to strike – as established in international law by the International Labour Organisation (ILO) and the European Convention on Human Rights (ECHR). We note that the UK Parliament's Joint Committee on Human Rights appears to share this view, expressing as it has a wide range of concerns about the legislation and the potential for it to fall outside of the government's human rights obligations (<https://publications.parliament.uk/pa/jt5803/jtselect/jtrights/1088/report.html>).
18. The government's impact assessment (https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-in-education/supporting_documents/1.%20MSL%20Impact%20Assessment.pdf) is both revealing and significantly flawed. It highlights staggeringly high costs to both schools and trade unions, and yet fails to calculate the administration costs to schools should they ever move to serve work notices on employees.
19. The impact assessment states that the likely familiarisation costs for schools will be £7m of staff time and £18.2m of legal advice – a total of £25.2m. This is based on 7,000 affected employers as quoted in the impact assessment, which should be considered in light of the Confederation of School Trusts stating that there are 10,000 employers across academy trusts and local authorities. Using 10,000 employers as the benchmark, familiarisation costs jump up to £36m.
20. The proposed regulations require consultation to take place between employers and trade unions over the serving of work notices, a process which is likely to lead to protracted discussion and potential legal challenge. The familiarisation costs provide a lower-end estimate of the likely administration costs associated with each period of country-wide industrial action – this allocates 16 hours of staff time and 8 hours of legal advice for each employer in order to meaningfully consult with four or more trade unions.
21. At a time when funding across the sector is stretched to breaking point, it is impossible to see the value in introducing tens of millions of pounds' worth of additional cost.

C. Answers to specific questions

Question 1: Do you agree or disagree that an education MSL should apply consistently across England, Scotland and Wales?

22. Disagree.

23. For the reasons listed above, ASCL believes that MSLs should not apply anywhere in the UK.

24. We note that both the Welsh and Scottish First Ministers have stated their opposition to the regulations. The imposition of MSLs in Wales and Scotland, given their opposition and the devolution of education, risks undermining the democratic rights and institutions of both countries.

Question 2: Do you agree with the settings proposed to be in and out of scope?

25. Disagree.

26. ASCL does not agree that any education settings should be considered in scope of the regulations.

Question 3: Do you agree with the design principles for the MSL?

27. Disagree.

28. ASCL does not believe that it is appropriate for school leaders to be imposed upon by the regulations to issue work notices.

29. Removing the right to strike goes against the fundamental principles and values of democracy and freedom of association.

Questions 4-5: Do you agree with the approach to remote education?

30. Disagree.

31. The inclusion of remote education in the regulations would provide an option to issue work notices without limit.

Question 6: We are responding with an interest in:

32. Early Years, Schools and Further Education.

Questions 7-8: Do you agree with the vulnerable children and young people groups identified?

33. Disagree.

34. This approach could result in our most vulnerable students being educated and cared for by staff who have not undergone appropriate training. It undervalues the expertise, care and consistency required to meet the needs of our most vulnerable students, and places them at unnecessary risk.

35. Parents may feel pressurised to send their children into a situation that would not be safe for their children; leaders might feel pressurised to bring people in who they would not normally have working with their most vulnerable students; and there is a real risk of escalation of vulnerabilities that can often take a few moments to unravel but many

days, weeks or even years of work to address. This is without even considering implications for children with complex medical needs.

36. These proposals appear to actively encourage leaders to make decisions which could have significant negative implications for pupils' health and safety. This is a wholly unacceptable action for a government to encourage or require a public servant to take.

Questions 9-11: What impacts have strikes had on exam delivery and /or students' preparation for exams and assessments?

37. For reasons stated previously, we are opposed in principle to any regulations that impose MSLs, including those related to exams.
38. We note that no evidence is presented in the consultation that demonstrates any disruption to exams arising from industrial action. If such evidence exists, we would suggest that it is the government's responsibility to identify it, and to seek a solution which does not involve undermining the fundamental rights of those working in our schools and colleges.

Questions 12-15: Do you agree with the proposed list of critical workers?

39. Disagree.
40. As above, ASCL does not believe that any MSLs should apply in any circumstance.
41. In addition, it is our view that the proposal to prioritise the children of critical workers for education in circumstances of industrial action calls into question the entire stated premise behind the introduction of this legislation, which is supposedly about protecting children's education. This proposal makes it hard not to conclude that the purpose of this legislation is less about education, and more about the economy.

Questions 16-17: Do you agree with the three priority cohorts proposed?

42. Disagree.
43. As above, ASCL does not believe that any MSLs should apply in any circumstance.

Questions 18-19: What is your experience of the impacts of strikes on children aged 4-7 (KS1) and 7-11 (KS2)?

44. Not applicable.

Questions 20: What would need to be in place to deliver this proposal? (Please consider the number of pupils that would be covered by this MSL proposal, how many members of staff you would need, and any other delivery considerations when answering this question)?

45. Not applicable.

Question 21: Do you prefer proposal 1 or proposal 2?

46. Neither.

47. As above, ASCL does not believe that any MSLs should apply in any circumstance.

Questions 22-23: Do you agree with the use of rotas in schools and colleges during prolonged strike action?

48. Disagree.

49. As above, ASCL does not believe that any MSLs should apply in any circumstance.

50. In addition, rotas have the potential to dilute SEND and other specialist provision with all the attendant consequences. Not introducing rotas, however, will remove the fundamental to strike from certain individual employees. This underlines the fundamental issues with this deeply flawed legislation.

Questions 43-45: We are responding to this consultation as a:

51. Trade union.

52. We do not prefer for this response to remain confidential.

Question 49: 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?

53. No.

Question 50: 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?

54. Yes.

55. A significant proportion of the education workforce are women, including 76% of teachers and 93% of teaching assistants (<https://explore-education-statistics.service.gov.uk/find-statistics/school-workforce-in-england>).

56. It is, therefore, inevitable that the regulations will impact, across the UK population, more on women than men. In a society where the work of women is still significantly undervalued (the UK gender pay gap is 14.3% (<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkin/ghours/bulletins/genderpaygapintheuk/2023>)) it is perverse to restrict the ability of a predominately female workforce to organise and bargain collectively.

D. Conclusion

57. The MSL regulations in education are unworkable. They will:

- a. create an impossible workload for school leaders
- b. irreparably damage industrial relations and potentially prolong disputes

- c. expose vulnerable children to greater risk
- d. lower teaching standards
- e. damage recruitment and retention
- f. unfairly restrict the ability of significant numbers of teachers, leaders and support staff to exercise their democratic right to withdraw their labour

58. For these reasons, ASCL is fundamentally opposed to their introduction.

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