



January 2024

**Unite submission to the Department of Education:  
Minimum Service Levels for Education**

**This submission is made by Unite, the UK’s leading trade union. Unite represents and organises over one million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government, education and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.**

Unite represents hundreds of thousands of workers in the sectors targeted in the Strikes (Minimum Service Levels) Bill. Unite has tens of thousands of members who work in education in primary and secondary schools, FE colleges and universities across the UK.

**Introduction**

Unite is firmly opposed to the introduction of minimum service level requirements during strikes in education and in the wider public and private sectors.

Thirteen years of chronic underfunding and government imposed pay freezes have led to a recruitment and retention crisis in schools, colleges and universities and damaged the quality of education for students.

Education staff face unsustainable workloads, long working hours and falling living standards. They have been forced to take industrial action to defend their pay and working conditions, to prevent a worsening of the staffing shortage. The government’s plans will do nothing to resolve the staffing crises in education and to improving the quality of education for students.

Rather than attacking workers’ rights, what education needs is for the government to work with education leaders and unions 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 investment to tackle the recruitment and retention crisis.

The UK already has the most draconian and restrictive strike laws in Europe and the industrialised world.<sup>1</sup> The imposition of minimum service levels will further violate workers’ human rights. Restricting the right to strike in schools, colleges and universities will do nothing to resolve the crises in education. It will only demoralise staff and poison industrial relations. Instead of seeking to restrict the right to strike, government

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<sup>1</sup> TUC (January 2023) Anti Strike Laws in the UK

Ministers should be working with unions and education leaders to address the pressing issues in our education system which are being made worse by a failure of government to appropriately fund the sector: crumbling school, college and university buildings, the recovery of lost learning from the Covid-19 pandemic and investment to fix the recruitment and retention crisis.

The Strikes (Minimum Services Levels) Act is a blatant and serious attack on workers. The imposition of minimum service levels will add severe and unacceptable restrictions on workers' right to strike to defend and improve their jobs, pay and conditions. Unite believes that the government's proposals for minimum service levels are undemocratic, unlawful and unworkable.

**The proposals are undemocratic.** In schools, colleges and universities across Britain, for industrial action to be lawful more than 50% of trade union members must vote in a ballot, and in schools in England and Scotland 40% of eligible members must also vote to support industrial action. These high thresholds will exceed any electoral requirements faced by MPs or other elected officials throughout the UK. Yet if minimum service levels are imposed, union members' democratic mandates for strike action would be completely disregarded and overridden by an order issued in Whitehall.

**The Act fails to comply with the UK's international obligations.** The right to strike is a hallmark of any democratic society, recognised and protected in UN treaties, ILO Conventions, the European Social Charter (1961), and the European Convention on Human Rights, all of which the UK has ratified. Yet the introduction of minimum service level requirements would mean that some workers will lose their right to strike entirely. Under the government's proposals, it is estimated that 75% of education services would be required to continue on strike days. This would mean a high proportion of education staff, including support staff in schools, and all staff in primary schools, would face an effective ban on the right to strike.

The UK has been repeatedly criticised by international agencies for violating international standards on industrial action law, including the lack of effective dismissal protections for striking workers.<sup>2</sup> Nevertheless, the government's proposals would flout these human rights standards further by removing automatic unfair dismissal protection for workers who are named in an employers' work notice but who fail to turn up at work. Also, if a court concludes that a trade union has failed to comply with the duty to take reasonable steps to ensure workers named in a work notice comply, then industrial action will no longer be protected, and all striking workers will face the risk of being sacked.

**Trade unions will be expected to undermine their own strikes.** The Strikes Act and accompanying Code of Practice imposes unprecedented and onerous duties on trade unions to take 'so-called' reasonable steps to ensure members named in an employers' work notice break the strike and go to work.

Unite is also deeply concerned and firmly opposed to rules that seek:

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- To require trade unions to take on the role of employers, in directing members as to the work they are 'required' to undertake on strike days.
- To regulate the form and content of trade union communications with our members.
- To require trade unions to encourage their members to reveal their special category trade union membership data.

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<sup>2</sup> The European Committee on Social Rights which supervises member states compliance with the European Social Charter has in multiple reporting cycles concluded that the ability of workers to defend their interests through lawful collective action was excessively circumscribed in the UK. The Committee has taken the view that the protection of workers against dismissal when taking industrial action is insufficient and not in conformity with Article 6§4 of the Charter.

- To impose costly, onerous and impracticable duties on unions, failure to comply with which can result in excessive sanctions for unions and our members.

These duties and expectations are inconsistent with the role and purpose of trade unions to represent and act in the interests of working people.

**The sanctions imposed by the Strikes Act are disproportionate and draconian.** As noted above, employees named in an employers' work notice will lose their automatic protection from unfair dismissal if they fail to go to work on strike days. In effect, they will be forced to break a strike they support for fear of being sacked. In addition, unions which fail to comply with the unprecedented duty to take reasonable steps to ensure members named in the work notice face the threat of legal challenge by employers, and the risk of injunctions preventing strike action, or excessive and punitive damages of up to £1 million.

It is therefore of no surprise that the Joint Committee on Human Rights concluded: *"The penalties imposed on trade unions and workers for failing to comply with the requirements of the Bill and of any work notice issued by an employer are severe"* and why the Committee has called on the government to reconsider the legislation.

**International comparisons:** The government has repeatedly tried to justify the Act and regulations by claiming that countries across Europe already use minimum service level requirements. As the consultation document illustrates the proposed minimum service levels for education far exceed the restriction applied in other countries in education. The government has also failed to acknowledge that other governments which may impose minimum service level requirements that are also failing to comply with international human rights standards. For example, the ILO found France had breached its international obligations in imposing minimum service levels in relation to industrial action at an oil refinery plant. The UK government's proposals, including the sanctions imposed on individuals and trade unions, well exceed any restrictions imposed in Spain, Italy or France. Ministers also refuse to recognise that minimum service levels elsewhere in Europe are achieved through social partnership arrangements, not through diktats from government Ministers in Whitehall.

**Damaging industrial relations:** The introduction of minimum service levels in education is likely to damage staff morale and poison industrial relations.

The government's impact assessment<sup>3</sup> also acknowledges that the proposals could weaken the bargaining power of trade unions: *"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.*

Restricting the right to strike will do nothing to resolve disputes in education. It can only cause more disaffection amongst staff and is likely to worsen the already dire recruitment and retention crisis in education. International experience also demonstrates that minimum service levels legislation is likely to aggravate, prolong and escalate disputes.

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<sup>3</sup> [https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-in-education/supporting\\_documents/1.%20MSL%20Impact%20Assessment.pdf](https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-in-education/supporting_documents/1.%20MSL%20Impact%20Assessment.pdf)

**The proposals for minimum service levels are counter-productive.** The government's impact assessment accompanying this consultation concludes 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'. The impact assessment also highlights that 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. These proposals will place an unacceptable strain on the budgets of trade unions and the budgets of schools, colleges and universities at a time when money is already tight. Additionally, this administrative burden will affect the ability of both employers and trade unions to negotiate possible settlements at a critical time i.e. the final days leading up to industrial action.

## **Conclusion**

Public services are on the brink of collapse after more than a decade of austerity. We remain in the midst of an unprecedented cost of living crisis. Working people are still seeing their incomes squeezed and their standards of living fall. At the same time company profits soar.

Yet, instead of getting on with their day job and solving the many crises of their own making, this government has chosen to play politics and attack a fundamental workers' right through the introduction of minimum service levels.

Unite supports our members 100% and we will not stand for this. We will use every means at our disposal to defend the right to strike.

Rather than adopting the worst practices from other countries, the government should commit to improving workers' rights, put an end to exploitative fire and rehire tactics and promote collective bargaining.

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## **Consultation Questions**

### **Question 1.**

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

Strongly disagree

Unite is firmly opposed the introduction of minimum service levels in education in England, Wales and Scotland. Responsibility for education service is devolved in Wales and Scotland and both the Welsh and Scottish governments are opposed to the measures, expressing concerns about the harmful and serious consequences of the legislation. Similarly, regional and city mayors across England, Wales and Scotland have opposed the legislation. Seeking to impose such draconian restrictions risks riding roughshod over devolution and disregarding the views and wishes of local communities.

The introduction of minimum service levels in education would be unnecessary, undemocratic and unworkable.

Staff working in education, including support staff, commit their working lives to prioritising the needs of pupils and students. They only consider industrial action as a matter of last resort. The imposition of minimum service levels would mean that their democratic wishes would be blatantly disregarded and overridden by a diktat issued in Whitehall.

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 TUC's complaint to the ILO exposed how the imposition of minimum service levels will breach the UK's international obligations<sup>4</sup>. Similarly the Joint Committee on Human Rights found that the legislation equates to "*a serious interference with Article 11 rights.*"<sup>5</sup>

The Strikes Act would also introduce punishing sanctions. Employees could lose their automatic protection from unfair dismissal. Trade unions will be expected to police and undermine their own strikes. Failure to comply would mean that legal protection for strikes is lost, meaning unions could face injunctions or be required to pay excessive penalties.

It would also damage industrial relations in education and do nothing to address the staffing crises or to improve the quality of education for students and pupils. Instead, it is likely to exacerbate the already dire recruitment and retention crisis in education, deterring potential new recruits and negatively impacting retention of workers who fear they may be sacked for taking industrial action in defence of their pay and conditions. International evidence also confirmed that the use of minimum services is likely to lead to aggravated and prolonged disputes.

It will also impose unworkable bureaucracy on employers, unions and their members, and puts them at risk of huge and unacceptable penalties.

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## Question 2

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

Strongly disagree.

As outlined above, Unite is firmly opposed the introduction of minimum service levels in any education services in schools, colleges or universities as well as in wider public and private sectors.

We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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<sup>4</sup> <https://www.tuc.org.uk/research-analysis/reports/tuc-submission-ceacr>

<sup>5</sup> JCHR (2023) [Legislative Scrutiny: Strikes \(Minimum Service Levels\) Bill 2022–2023 - Joint Committee on Human Rights \(parliament.uk\)](https://www.parliament.uk/publications/2023/10/legislative-scrutiny-strikes)

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

Strongly disagree.

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We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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**Remote education  
Questions 4 to 6****Do you agree with the approach to remote education?**

Strongly disagree.

As outlined above, Unite is firmly opposed the introduction of minimum service levels in any education services in schools, colleges or universities as well as in wider public and private sectors.

We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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**Proposal 1: priority cohorts in schools and colleges****Questions 7 to 8****Do you agree with the vulnerable children and young people groups identified?**

Strongly disagree.

As outlined above, Unite is firmly opposed the introduction of minimum service levels in any education services in schools, colleges or universities as well as in wider public and private sectors.

We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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## **Exam groups**

### **Questions 9 to 11**

#### **What impacts have strikes had on exam delivery and /or students' preparation for exams and assessments?**

Strikes are a symptom not a cause of problems within education services in the UK. Strike action is only used as a last resort. Where they are left with no other choice, union members undertake action responsibly and with due regard to staff and student safety. Rather than seeking to penalise education staff for exercising their fundamental right to strike, the government should seek to resolve the most pressing issues facing our education system resulting from the underfunding of the sector; crumbling school, college and university buildings, the recovery of lost learning stemming from the Covid-19 pandemic and improving pay and conditions for education staff to resolve the recruitment and retention crisis.

It is worth noting that, during the 2023 strikes in schools, appropriate local arrangements were agreed on an entirely voluntary basis between trade unions and employers, to provide cover for exam cohorts.

## **Children of critical workers**

### **Questions 12 to 15**

#### **Do you agree with the proposed list of critical workers?**

Strongly disagree.

As outlined above, Unite is firmly opposed the introduction of minimum service levels in any education services in schools, colleges or universities as well as in wider public and private sectors.

We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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## **General questions on proposal 1**

### **Questions 16 to 17**

#### **Do you agree with the three priority cohorts proposed?**

Strongly disagree.

As outlined above, Unite is firmly opposed the introduction of minimum service levels in any education services in schools, colleges or universities as well as in wider public and private sectors.

We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs

and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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

### **Questions 18 to 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

### **Question 21.**

**Do you prefer proposal 1 or proposal 2?**

Strongly oppose both proposals.

As outlined above, Unite is firmly opposed the introduction of minimum service levels in any education services in schools, colleges or universities as well as in wider public and private sectors.

We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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

### **Questions 22 to 24**

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

Strongly disagree.

As outlined above, Unite is firmly opposed the introduction of minimum service levels in any education services in schools, colleges or universities as well as in wider public and private sectors.

We oppose plans to impose minimum service levels on grounds of principle and practicality. The government's proposals are undemocratic, draconian and unworkable. They would create significant costs and administrative burdens for education employers and will do nothing to improve industrial relations or to address the crises in education in the UK.

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## **Strike action**

### **Questions 25 to 28**

**Which groups of staff went on strike in your university?**

N/A



## Students' experience

### Questions 29 to 30

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

N/A

## Teaching and exams

### Questions 31 to 40

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

N/A

## Mitigations

### Questions 41 to 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, Unite does not agree with any minimum service level in higher education settings or any other education settings.

## Impact of policy

### 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?**

**No.**

Good industrial relations between employers and their workforce benefits everyone, most notably pupils and students. Imposing minimum service levels in education would damage industrial relations, escalate and prolong disputes and could lead to a deterioration in the quality of education students receive.

As outlined above, 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."*<sup>4</sup>

The imposition of minimum service levels will have a chilling effect on workers taking strike action but as it will not address the underlying root causes, it is likely to drive prolonged and protracted industrial disputes, and lead

to more frequent industrial action. If ability to take industrial action is limited, the education workforce may vote with their feet, exacerbating the existing staffing crisis in educational settings, and worsening student learning.

Unite is concerned that the government is focused on restricting workers' rights whilst ignoring the main priorities in education, including recruitment and retention crises; crumbling buildings in schools, colleges and universities which adversely affect education; and the need to invest recovery of lost learning stemming from the Covid-19 pandemic.

#### **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?**

**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)<sup>5</sup> 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%.

Rather than seeking to eliminate the detrimental impact of the proposals, the government seeks to justify the expected discrimination by simply restating its own policy objectives. 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 expressed serious concerns about 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.*"<sup>6</sup> 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 welcome further analysis of how such differential treatment can be objectively justified for workers across the broad range of services covered by this Bill.*"<sup>7</sup>

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 breach equality law.

It is also possible that elected trade union representatives will be at increased risk of victimisation. Employers may be able to deliberately select representatives for work notices, to force representatives to undermine their own strikes and be unable to support their members on picket lines. Union representatives would also be negatively affected if they are sacked for exercising their democratic and fundamental right to strike and/or attempting to fulfil their union duties on picket lines.

Individual workers will also be negatively affected if they are sacked for exercising their democratic and fundamental right to strike.

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