



Congress House
Great Russell Street
London WC1B 3LS

Paul Nowak General Secretary
Kate Bell Assistant General Secretary

Addressee
(sent via email)

from: Julia Jones
direct line: 020 7467 1277
email: jjones@tuc.org.uk

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Dear colleague

Minimum Service Levels (MSLs) in education

We are writing to you following the announcement of the government's intention to introduce Minimum Service Levels in schools, colleges and universities.

The government is seeking views on the proposed legislation. We hope that you will join us in expressing your concerns and opposition.

There is widespread opposition to the Strikes Act and proposed Regulations, including from politicians, [employers](#) and the public. Employers and unions have been shut out of the drafting of this legislation. We are concerned that it will be as difficult for employers to implement as it is unworkable for unions, as noted by the [Confederation of School Trusts](#).

As an employer you know the importance of good industrial relations. You will be aware of the need to find agreement through negotiation and discussion, bringing employers and union members together to a mutually satisfactory solution.

Issuing work notices requiring union members to attend work in breach of the democratic decision of the union membership will poison industrial relations and inflame disputes. They will make it harder to reach a negotiated agreement.

The government [impact assessment for MSLs in education](#) was published on 21 December. The impact assessment appears to assume four unions operating in each setting. This is likely to underestimate the position.

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'. For example 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.

The government also expects that 'there will be additional administrative costs to employers from developing, consulting on and issuing work notices' and further financial costs which the government has not monetised at this stage as the final policy has not been decided.

Issuing a work notice would mean instructing employees to report for work on scheduled strike days. This carries huge risk for employers. The Strikes Act states that employers "must

not identify more persons than are reasonably necessary”, an incredibly difficult and sensitive task in a complex sector like education. Employers will be obliged to undertake consultation with trade unions in a very short timescale and respond to any views, creating a significant administrative burden at a difficult time for the sector.

The data protection implications of the legislation remain under-examined. Given the history of blacklisting and victimisation in the UK, you will understand that trade unions will be extremely vigilant in ensuring that such special category data such as trade union membership information is correctly handled.

The EHRC has warned that minimum service levels could interfere with Article 4 (Prohibition of Slavery and Forced Labour), Article 11 (Freedom of Assembly and Association) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ECHR). This is of particular concern in education which is staffed overwhelmingly by women. Therefore, issuing work notices has huge implications for workers with protected characteristics and thus to employers who issue them.

The Act has also faced a barrage of criticism from Acas, civil liberties organisations, the House of Lords Delegated Powers and Regulatory Reform Committee, race and gender equalities groups, employment rights lawyers, and politicians around the world, including the government’s own MPs. The Labour Party has committed to repealing this law if elected to Government. The Welsh Government told the Department for Business & Trade that the ‘Act is unnecessary and probably unworkable’. In Scotland, Neil Gray MSP stated the “Scottish Government would not assist in its [education MSL] development.”

We echo the expert criticism set out above and believe rather than navigate the legal and reputational minefield of minimum service levels, employers’ efforts would be better placed in seeking to resolve disputes and to work constructively with unions to resolve the recruitment and retention crisis affecting the education sector.

We hope that you join us in setting out your concerns and opposition in response to the government consultation and that you continue to work constructively with unions.

We would be happy to meet with you to discuss this further and look forward to hearing from you.

Yours



Daniel Kebede, General Secretary
NEU

Patrick Roach, General Secretary
NASUWT

Paul Whiteman, General Secretary
NAHT

Geoff Barton.

J Grady

R. Rickhuss

Geoff Barton, General Secretary
ASCL

Jo Grady, General Secretary
UCU

Roy Rickhuss, General Secretary
Community

J Richards

Gary Smith

Sharon Graham

Jon Richards, Ass. General Secretary
UNISON

Gary Smith, General Secretary
GMB

Sharon Graham, General
Secretary Unite

Michele Gregson

Andrea Bradley

Michele Gregson, General Secretary
NSEAD

Andrea Bradley
General Secretary
EIS

Paul Nowak

Paul Nowak, General Secretary, TUC