

Minimum Service Levels (MSLs): a briefing for branches and members

INTRODUCTION

The Strikes (Minimum Service Levels) Act 2023 is a direct attack on the rights of working people to withdraw their labour and an attack on the rights of trade unions to organise. UCU is opposed to this legislation. This briefing will explain the legislation, outline timelines for its implementation, discuss the ways in which the trade union movement will oppose it, and discuss potential next steps for individuals and branches.

How does the Strikes (Minimum Service Levels) Act 2023 work in practice?

The Act will allow the UK Government to issue regulations which will, in turn, allow employers to issue 'work notices'.

A work notice can identify individuals who are required to work and/or areas of work which are required to be carried out during strike action. Following a successful industrial action ballot, once a trade union issues a notice of strike action (or action short of strike action) an employer can issue a work notice up to seven days before the action commences. .

Although the Strikes (Minimum Service Levels) Act 2023 is now law, the provisions have not yet come into effect for workers in education. The Department for Education (DfE) is now consulting on how Minimum Service Levels (MSLs) will operate in education (see below). Once the consultation has been completed the DfE can issue statutory regulations which will then enable individual employers to issue work notices, if and when unions issue notice of industrial action. It is important to understand that the responsibility for issuing work notices lies with employers – the regulations will only enable employers to intervene; it does not require them to do so.

UCU is strongly opposed to the introduction of minimum service levels (MSLs) in education. UCU Congress 2023 condemned the legislation as another attack against working and civil





rights. We believe the Strikes Act is unfair, undemocratic, and likely in breach of our international legal commitments. UCU has collaborated with other sister unions to examine the legality of the legislation and will continue to work with them on approaches to challenging the legality of the imposition of work notices. Employers who impose work notices will be doing nothing to resolve the underlying issues which cause industrial disputes and will only prolong rather than resolve industrial action. Furthermore, the identification of individuals required to work is at odds with the obligations to protect personal data under GDPR.

Consultation

The Department for Education is currently consulting on how to operate Minimum Service Levels in education settings: https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-in-education/supporting_documents/Minimum%20service%20levels%20in%20education%20consultation%20document.pdf

Most of the consultation refers to schools (with colleges as an add-on) but there is specific reference to higher education, where it argues that recent industrial action puts at risk the education students 'deserve and have paid for'.

For FE colleges, the consultation describes Priority Cohorts whose access to face-to-face education during industrial action an MSL would ensure. In further education, these cohorts are: vulnerable children and young people; pupils and students due to take public examinations and formal assessments; and children of critical workers.

It is, obviously, unclear how an FE college could impose a work notice which would ensure the face-to-face education of such learners.

In higher education, the intentions of the DfE are far less clear. The consultation makes the following points:

- **Students and taxpayers invest significantly in the higher education system and deserve to see a return on this investment.** Students have a right to a full educational experience, which includes lectures delivered as scheduled, and access to all relevant facilities. Ongoing strike action within the higher education (HE) sector has caused unacceptable disruption to the provision of education in many universities.
- **The government's objective is to understand in more detail the impact of strike action on students, on our universities, and on society.** We are particularly interested in the impact of the marking and assessment boycott; understanding whether a minimum service level (MSL) for higher education would be effective in mitigating the impact of strike action; and gathering views on what an MSL should cover.
- **We are seeking views to form a better understanding of the impact of industrial action in the last academic year on universities, students, and the wider community.** For now, we are interested in views on what form an MSL could take in the higher education sector. If we





pursue plans to lay regulations for higher education, we will consider whether to undertake further consultation on detailed MSL proposals for HE.

The consultation closes on 30 January. UCU will make a formal submission to the consultation. Individuals and branches are welcome to make their own submissions. You may wish to note the following points if you or your branch make a submission:

- All trade unions faced with MSL proposals and responding to the various consultations have taken a very similar approach which is to repeatedly make the point that MSLs won't work, will simply damage industrial relations and would probably lead to more industrial action rather than less given the restrictions they place on it – workers will feel compelled to try to make their voices heard by taking more action when the action available to them has been curtailed. It damages the ability of workers to take industrial action and, given that is the way of trying to address the power imbalance between employers and employees, it is unfair and unreasonable.
- Responses that focus on the wider points are important. Entering into detailed responses to the questions that attempt to explain the specifics of why certain proposals won't work (e.g. to try to address the proposed student groups who should be taught during any strike action, or the activities or events that cannot be moved and therefore should be covered) will likely be ineffective. The fact is MSLs as an overall idea will just not work, no matter what might be done to change some of the specific details.
- Anyone responding to the consultation may want to consider responding to the questions on the consultation with answers such as 'Strongly disagree. I/We strongly oppose the introduction of MSLs in education services'. When asked about the impact of strikes to date, it is worth pointing out that the introduction of MSLs does nothing to address the causes of strike or other industrial action that has taken place, and therefore a focus on the impact should be addressing the cause of the action in the first place.

TUC

TUC passed a motion at Congress 2023 condemning MSLs. Their Special Congress in December 2023 agreed a statement outlining four approaches that affiliated unions would take:

- **Support** – for any unions facing MSLs and work orders and any individual workers facing work notices
- **Resist** – including instructing members not to cross picket lines
- **Mobilise** – organising a national demonstration on Saturday 27th January in Cheltenham
- **Repeal** – calling on a future Labour government to repeal the legislation.

For more information go to <https://www.tuc.org.uk/protectrighttostrike>





Next steps

We will keep members and branches fully involved and updated on Minimum Service Levels. It is important to remember:

- MSLs do not yet apply in education
- the UK Government are currently consulting on MSLs in education and will then publish statutory regulations which will enable employers to issue work notices
- the responsibility for imposing work orders lies with employers. The trade unions representing workers in education have written jointly to employer bodies (including the Association of Colleges (AoC) for FE and UCEA for HE) calling on them to commit to advise their members not to impose work notices: https://www.ucu.org.uk/media/14254/Minimum-Service-Levels-MSLs-in-education---joint-union-letter-Jan-24/pdf/Joint_education_letter_-_MSLs_-_January_2024.pdf

The consultation closes on 30 January and branches may wish to contribute. Once the statutory regulations have been issued, we will issue more detailed bargaining guidance for branches.

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