

**OFFICIAL RESPONSE TO THE
GOVERNMENT CONSULTATION**

Minimum Service Levels for Education

30 January 2024

About Community Union

Formerly PAT/PANN and latterly Voice, the Education and Early Years section of **Community Union** represent thousands of serving teachers and support staff, headteachers, lecturers, nursery and early years workers, nannies and other education professionals in schools and academies, nurseries and early years settings, colleges and universities across the whole of the UK.

We provide legal and casework support to our members and regularly engage with them in determining our response to policy proposals.

Community Union is affiliated to the Trades Union Congress (TUC), to the Irish TUC, Scottish TUC and Welsh TUC as well as the General Federation of Trades Union (GFTU).

This Official Response has been prepared on behalf of members of the Education and Early Years section of **Community Union** by:

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As such this is a public document which will be published on our website following the consultation close.

The information shared within this response may be used and quoted as appropriate for the purposes it was gathered, and Community Union should be acknowledged as a contributor. We would be happy to discuss the comments in this response with the DfE or a research body acting on its behalf using the contact details supplied.

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By Email

This response was submitted via email to:

Minimumservicelevels.consultation@education.gov.uk

Deadline

The consultation closes on 30 January 2024.

Background

1. This consultation sets out proposals for a minimum service level (MSL) in schools and colleges. It presents two options for protecting face-to-face education on strike days. The first option focuses on prioritising attendance for vulnerable children and young people, exam groups and children of critical workers. The second option focuses on all pupils in primary school, and priority cohorts in secondary and further education settings. The consultation also seeks to gather evidence on the impacts of strike action in higher education, and the case for an MSL covering this sector.
2. The MSL would be delivered through regulations. Any regulations made following this consultation must be approved by both Houses of Parliament.
3. If implemented, these regulations would mean an employer – in this case, a school, college, local authority, or university – could issue a work notice to require individuals to work during strike action in order to deliver a minimum level of provision. If introduced, the regulations would be brought forward under the powers provided to the Secretary of State in the Strikes (Minimum Service Levels) Act 2023.

Overview of the Act

4. The Strikes (Minimum Service Levels) Bill was introduced in Parliament in January 2023 and received Royal Assent on 20 July 2023. The Strikes (Minimum Service Levels) Act 2023 amends the Trade Union and Labour Relations (Consolidation) Act 1992 to:
 - establish powers for the government to make regulations to set an MSL within specified services, including education, healthcare, fire and rescue and transport services;
 - enable employers within those specified services to determine the workforce required, and issue work notices to deliver the MSL on a strike day, where MSL regulations have been made; and
 - add a new obligation for unions to take reasonable steps to ensure compliance with work notices.

How an MSL will work

5. The Strikes (Minimum Service Levels) Act 2023 aims to limit the impacts of strike action on the lives and livelihoods of the public. It aims to ensure a balance between the ability of unions and their members to strike and the rights of the wider public to be able to access key services.
6. Where an MSL is applied, there should be a more consistent level of service for the public during periods of industrial action, as well as a reduction in the circumstances in which there are no services at all. In the case of education, this will help safeguard the safety and education of children and minimise disruption to the public. This will

ensure a child's education can continue as far as possible, including through remote education where face-to-face education is not possible.

7. In practical terms, where an employer provides a service specified in MSL regulations, and where a trade union gives notice of strike action to the employer, the employer may decide to issue a work notice ahead of the strike day(s). It will be at the discretion of individual employers whether or not to issue work notices to deliver the MSL. This legislation is intended to provide new tools to reduce any disproportionate impacts during strikes, not to prevent unions or individuals from taking industrial action.
8. The work notice must specify the persons required to work, and the work they must carry out to deliver the MSL for that strike period. The work notice must be issued a minimum of seven days prior to the strike day but can be varied by the employer up to four days before (unless a later time is agreed with the union).

Geographical scope

9. Employment rights and duties and industrial relations are reserved matters in Great Britain. The Strikes (Minimum Service Levels) Act 2023 enables the government to apply an MSL to key sectors across Great Britain. The government recognises that in some cases this will affect employers in services that are devolved. The UK Government is engaging with the Scottish Government and Welsh Government on the geographical scope of the regulations and will continue to work with them on the detail of these proposals. As employment law is devolved for Northern Ireland, it is for the Northern Ireland Assembly to assess whether to introduce legislation that would allow an MSL to be set in the event of strikes.
10. Education systems vary across Great Britain. We are keen to understand, including through the responses to this consultation and engagement with the devolved governments, the implications of those differences for setting an MSL. This will help to inform a decision on whether MSL regulations are needed across Great Britain and, if so, whether different regulations for England, Scotland and Wales are appropriate.

Opening statement from **Community Union**

At Community, we will always prioritise negotiations and constructive dialogue with employers. We use industrial action as a last resort when all other routes have failed.

However, like our sister unions and the Trades Union Congress we do reserve the right to ballot our members and to take industrial action when all other options have failed.

We echo the expert criticism set out by ACAS, the EHRC and the House of Lords on this matter and agree that time and effort is better spent in seeking to resolve disputes and to work constructively with unions to resolve the recruitment and retention crisis affecting the education sector.

In addition to comments made by the TUC, with which we wholehearted agree, Community surveyed our education membership to understand the nuance and detail of how these proposals might affect the schools and colleges in England.

The vast majority of our membership are fully supportive of an individual's right to withdraw their labour and take industrial action and it is clear from these proposals that the Government is seeking to introduce legislation which would remove that democratic right from a group of workers.

Therefore, Community Union do not and cannot agree with minimum service levels in schools and other education settings.

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

- Agree
- **Disagree (please provide detail to support your response, should you wish)**
- No preference

It is wholly inappropriate to have a system of devolved education in Wales and Scotland, only for that system to be interfered with by England.

Already there has been publication from the Welsh Government which clearly states:
“Matters relating to the education sector in Wales have been devolved and Welsh Ministers are accountable and responsible for policies delivering standards across the sector. It is not appropriate for DfE to impose such matters on the workforce in Wales.”

Furthermore, they go on to note that:

“This Act and the subsequent regulations are not the right response to strikes... The right response is to work with employers and unions in social partnership to resolve disputes collaboratively.”

Community wholeheartedly agree with this reaction and urge the UK Government to think again about the issue of minimum service levels.

The case for an MSL in schools and colleges

11. Cumulatively, over 25 million school days were lost through 10 national and regional strike days in the last academic year, with any individual pupil being affected by up to eight strike days. In further education, industrial action by the University and College Union (UCU) and the National Education Union (NEU) saw strikes for 10 days and nine days respectively across colleges and sixth forms. On strike days attendance was approximately 50%¹ across all schools, but the impacts were felt unevenly across the country, with London seeing school closure rates as high as 24%². In addition, not all schools prioritised the cohorts set out in DfE's non-statutory guidance [Handling strike action in schools](#).
12. Missing days in education has a clear negative impact on children. Research shows that each day of absence reduces attainment levels.³ Pupils who perform better at the end of primary and secondary school miss fewer days than those who do not perform as well.⁴ Students with higher attendance gain the best GCSE and A-level results. These impacts are particularly pronounced for certain pupil groups, especially more vulnerable children and young people. These impacts have been compounded by the learning loss that many children experienced during the pandemic.
13. The DfE data also shows that primary school children in key stage 2 who did not achieve the expected standard in reading, writing and maths had missed on average four more days per school year than those whose performance exceeded the expected standard. Similarly, in secondary school, pupils who did not achieve grade 9 to 4 in English and maths had missed 10 more days on average over the key stage than those who achieved grade 9 to 5 in both English and maths.
14. Extended absences can also impact children's mental health. External research from the pandemic shows the impact of missing six weeks of school could be roughly equivalent to children newly exhibiting three to four serious negative behaviours or emotional difficulties.⁵
15. It is recognised that strike action in schools and colleges has the potential for far-reaching consequences for members of the public who are not in any way involved in the dispute. Due to the number of children and young people in education, and the number of children who need to be cared for when schools or colleges are closed, such consequences can have disruptive effects for parents and carers. Prior to the

¹ <https://explore-education-statistics.service.gov.uk/find-statistics/pupil-attendance-in-schools/2023-week-29>

² <https://www.gov.uk/government/publications/school-closures-during-the-2023-teacher-strike>

³ Sims, S. 2020. "School Absences and Pupil Achievement." CEPEO Briefing Note No. 1. London, UK: Centre for Education Policy and Equalising Opportunities, UCL Institute of Education

⁴ [Why is school attendance so important and what are the risks of missing a day? - The Education Hub \(blog.gov.uk\)](#)

⁵ [New evidence shows how school closures hit children's mental health hard | University of Surrey](#)

school strikes, working parents were surveyed on how education strikes would impact them. Around 60% said their work would be affected, with 31% reporting that they would have to work fewer hours and 28% reporting they would not be able to work.⁶

16. In implementing an MSL, the government is seeking to ensure the right balance between minimising the damage to pupils' and students' education and recognising the ability of individuals to strike.

International comparisons

17. Other countries already have MSLs in place to limit disruption to essential public services, including education. In some countries, teachers and other public servants are not permitted to strike. For example, in Germany, teachers are generally civil servants. Where they fall under this category, they are not allowed to strike.⁷
18. France has MSL legislation covering public nursery and primary schools (for pupils aged 3-10), ensuring that children have on-site supervision even if the school is not able to deliver normal lessons. This is provided by schools where less than 25% of teachers are on strike and by local authorities if 25% or more teachers are on strike. Nursery and primary school teachers must also give prior notice of their intention to strike.⁸
19. In Italy, essential services for strike purposes, including education, are defined by law. This balances the right to strike against other constitutional rights, including the right to education. The operation of an MSL is set out in collective agreements.⁹ In education, in the event of a strike, schools must continue with services considered essential including examinations, supervision of pupils, canteen services and management of facilities.^{10,11} The law and associated agreements also cover universities and other types of higher education.

⁶ Public opinions and social trends, Great Britain - Office for National Statistics

⁷ [Bundesverfassungsgericht - Press - Ban on strike action for civil servants is constitutional](#)

⁸ [Article L133-4 - Education Code - Légifrance \(legifrance.gouv.fr\)](#)

⁹ [House of Commons Research Briefing: Strikes \(Minimum Service Levels\) Bill 2022-23](#)

¹⁰ [Official Journal \(gazzettaufficiale.it\)](#)

¹¹ [Le modalità di attuazione del diritto di sciopero in ambito scolastico - Gli adempimenti del dirigente - Giustoscuola](#)

Proposals

Settings in scope of an MSL in schools and colleges

20. The government proposes that the following education settings should be in scope of an MSL. This includes special, boarding, and residential schools if they belong to any of the listed categories:

- education settings in the state-funded school sector:
 - Academy schools (including free schools, special academies, and special free schools) and alternative provision academies (including alternative provision free schools); and
 - Schools maintained by local authorities, including foundation schools, foundation special schools, pupil referral units, voluntary aided schools, voluntary controlled schools, community schools and community special schools.
- 16-19 academies, including 16-19 free schools and secure schools.
- education settings in the statutory FE sector¹²:
 - Institutions run by further education corporations;
 - Institutions run by sixth form college corporations; and
 - Institutions designated under section 28 of the Further and Higher Education Act 1992.

Settings out of scope of an MSL in schools and colleges

21. The government proposes that the following education settings should be out of scope. In these sectors union membership is generally lower, and we believe that the likelihood of these settings facing significant disruption from strike action is low:

- Early years (aside from reception year in the settings above);
- Independent schools;
- Independent training providers, non-maintained special schools, and specialist post-16 institutions; and
- Out-of-school settings, and wraparound childcare providers.

¹² As defined under s.91(3) of the Further and Higher Education Act 1992

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

- *Agree*
- ***Disagree (please provide detail to support your response, should you wish)***
- *No preference*

To be clear at the outset, Community Union do not and cannot agree with minimum service levels in schools and other education settings.

The vast majority of our membership are fully supportive of an individual's right to withdraw their labour and take industrial action and it is clear from these proposals that the Government is seeking to introduce legislation which would remove that democratic right from a group of workers.

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, we cannot accept any settings being in scope for these proposals.

Design principles and coverage for an MSL in schools and colleges

22. The government proposes that an MSL in schools and colleges should aim to:

- ensure a child's education can continue as far as possible during strike action, including through remote education where face-to-face teaching is not possible;
- mitigate against further lost education for pupils and students;
- ensure the safeguarding and welfare of vulnerable children and young people;
- allow children and young people to prepare, without disruption, for public exams and formal assessment; and
- maintain the running of specified services in the Strikes (Minimum Service Levels) Act 2023.

23. These objectives clearly need to be balanced with the ability of workforces to strike.

24. Headteachers and principals are best placed to understand the needs of their staff, children and young people. We believe that they should have the flexibility to determine the appropriate staffing levels which are reasonably necessary to deliver an MSL in their setting. We propose that employers should have the ability to decide which and how many workers are identified in a work notice to deliver the MSL, rather than government setting specific ratios or percentages.

25. We expect that those named in a work notice could include:

- headteachers or principals;
- teachers and lecturers, including special educational needs co-ordinators (SENCOs);
- teaching assistants;
- teaching and learning support staff;
- designated safeguarding leads;
- administration staff; and
- other non-teaching staff important to the running of the setting, such as caretakers, technicians, cleaners and kitchen staff.

Q: Do you agree with the design principles for the MSL?

- *Agree*
- *Disagree (please provide detail to support your response, should you wish)*
- *Not applicable*

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.

We understand the need to protect children's education and would argue that a properly resourced and funded education system be a critical part of this. The recent industrial dispute was driven by a failure from Government to enter into meaningful negotiations around pay and conditions and was only resolved following a series of protracted negotiations.

We also understand the Government's desire to mitigate the lost education caused by the Covid-19 pandemic. We note that sizeable proposals for how to do this were put forward by Sir Kevan Collins, but the cost was deemed too great. Again showing a lack of sufficient funding to address the problem.

Strikes cause disruption, that is their *raison d'être*. By seeking to minimise the impact of industrial action – and in primary schools, seeking to ban it altogether, these proposals undermine the delicate balance of industrial relations. They pitch manager against worker in a way which will not benefit children and their education and potentially cause worsening of the already precarious recruitment and retention crisis affecting our schools.

Remote education

26. For pupils who are not prioritised for attendance on strike days under proposal 1 or proposal 2 below, we would expect every effort to be made by schools to put in place appropriate arrangements for remote education. This aligns with DfE's non-statutory guidance [Handling strike action in schools](#), which stipulates that, where possible, schools should provide remote education in line with the DfE's [Providing remote education: guidance for schools](#).

27. We know from evidence that the provision of remote education is already something that parents expect schools to deliver. Evidence commissioned by the DfE via the Parent, Pupil and Learner Panel (PPLP) in June 2022 found that around two-thirds of parents (65%) said they would expect remote education to be provided by the school if their child was unable to attend school because it was closed.¹³

Q: Do you agree with the approach to remote education?

- Agree
- **Disagree (please provide detail to support your response, should you wish)**
- Not applicable

In a recent survey of our education members, 72% indicated that schools should not be required to provide remote education to pupils during industrial action, and a further 11% were unsure.

The 'Working lives of teachers and leaders' wave 1 report highlights that a large majority [of teachers] said that they experienced stress in their work (86%), around three-fifths felt their job did not give them sufficient time for their personal life (65%), and around half (56%) said their job negatively affected their mental health (45% said it negatively affected their physical health).

To be clear, a teacher should not be required to prepare work for any class or group to undertake on a day when they are taking industrial action. Any requirement to do so would fundamentally nullify the individual's right to remove their labour. Any requirement for colleagues to prepare, distribute, lead or otherwise provide work in the absence of striking colleagues is an unreasonable request and would add to the already unreasonable workload of any staff not involved in the action.

Q: What are the challenges around delivering remote education on strike days?

The overwhelming issue with remote education is ensuring fair and equal access. Too many schools, staff, pupils and homes do not have easy access to devices or to the internet and so are excluded from any online content or provision before the work has even been set.

Members commented:

Not all children will have the same level of access to online learning.

Some families do not have access to internet or larger families may not have enough devices for all children to access.

Children's ability to access it doesn't make it an equal or inclusive opportunity.

Remote education sounds good in theory but takes a lot of work putting together and even if it's provided not all families will engage.

Where children are at home, the expectation is that they will complete the work provided but experience from during the pandemic shows that this expectation is usually unmet. Members noted:

It is difficult to tailor activities to suit children's need (Early Years) and most parents don't bother engaging with the education we were offering.

During COVID many parents were unwilling to allow their children to participate in remote learning via Google classroom.

Those who benefit are those who can manage their own workload and adapt to adversity when presentation of learning is difficult. But that's the same students who would be perfectly able to do work independently during strike action. The children who struggle with independent work struggle with remote work. It follows that providing remote work is almost a complete waste of time.

Members outlined a number of wider challenges and difficulties around delivering remote education:

'education' is an embodied experience that is also about relationships and being there' to respond to the unique and individual need of each child. This cannot be accommodated remotely especially for primary and younger aged secondary school' pupils. It is wholly inappropriate for nursery aged children.

I teach a practical subject which requires equipment, so it is very hard to continue teaching the curriculum as a lot of the pupils need hands on help. As we saw during covid, the pupils would often not be able engage properly and the majority of pupils did not have the space and quiet to do their work.

Almost all of our members were critical of the suggestion that remote work would be provided during industrial action given the already excessive workload many are operating under. Fundamentally this is about covering teachers who are striking and the right to choose to work or not as a form of protest is, a fundamental right in the UK.

Q: Are you responding with an interest in:

- *Early Years, Schools, and/or Further Education*
- *Higher education*
- ***All sectors***

¹³ [Parent, Pupil and Learner Panel - June Wave](#)

Proposal 1: priority cohorts in schools and colleges

28. One option for setting an MSL is to prioritise attendance for specific groups of children and young people. This is the approach set out in DfE's non-statutory guidance [Handling strike action in schools](#), which has been followed by many schools to manage strikes to date. The three cohorts named in this guidance are:

- vulnerable children and young people;
- pupils and students due to take public examinations and formal assessments; and
- children of critical workers.

29. Proposal 1 sets out an MSL that would prioritise attendance for the same three cohorts.

Vulnerable Children and Young People

30. Ensuring that vulnerable children and young people remain protected is a top priority for the government. Schools and colleges play a vital role in safeguarding and identifying pupils and students who might need additional support.

31. During strikes in the last academic year, only approximately 50% of vulnerable children and young people attended school.¹⁴ We know that vulnerable children and young people already have lower educational attainment. For example:

- 8% of children with an Education, Health and Care Plan (EHCP) achieve the expected standard of reading, writing, and maths at the end of key stage 2 (KS2), compared to 59% of all pupils.¹⁵
- 28% of pupils with a Child Protection Plan, 31% of Looked After Children and 29% of those with Child in Need Plans achieve the expected standard of reading, writing and maths at the end of KS2.¹⁶
- 22.5% of pupils with special educational needs (SEN) support achieved grades 5 or above in English and mathematics GCSEs, compared to 55.8% of pupils with no identified SEN.¹⁷

¹⁴ Based on further analysis of attendance data published at <https://www.gov.uk/government/publications/school-closures-during-the-2023-teacher-strike> and [Pupil attendance in schools, Week 29 2023 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#) Attendance of EHCP children compared to attendance of all children.

¹⁵ [Key stage 2 attainment, Academic year 2022/23 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

¹⁶ [Outcomes for children in need, including children looked after by local authorities in England, Reporting year 2022 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

¹⁷ [Special educational needs and disability: an analysis and summary of data sources \(publishing.service.gov.uk\)](#)

32. An MSL prioritising these groups would help ensure that vulnerable children and young people are not disproportionately impacted by missing education due to strike action.

33. The government proposes using established definitions for this cohort:

- a) Children who have a child in need plan;
- b) Children on a child protection plan;
- c) Children who are looked after by the local authority;
- d) Children and young people who have an EHCP aged 0- 25; and
- e) Children or young people who receive SEN support.

Q: Do you agree with the vulnerable children and young people groups identified?

- *Agree*
- *Disagree (please provide detail to support your response, should you wish)*
- ***No preference***

Community members understand the definition of vulnerable children, as outlined in the consultation document. When surveyed, two thirds of respondents agreed with this definition, therefore it is *probably* the correct definition for now, but as members have noted, these definitions do change over time, therefore it may be appropriate to revisit the definition regularly to ensure it remains appropriate.

However, this does not mean that those working specifically or exclusively with “vulnerable” children should be prevented from expressing their views or taking industrial action if those views are not heard. As a support staff member commented:

TAs and HLTAs had to cover for teachers during Covid and previous strikes. But it is contrary to the importance and purpose of striking for better pay and working environment.

A further member noted:

It should be for safeguarding issues only. I think this is the only group that should be in school during a strike.

Q: What impacts on a) welfare and wellbeing and b) attainment does missing a day or more of school or college due to strike action have on vulnerable children and young people?

There is a deep-felt need to keep children safe from harm – be that physical, emotional, financial, food and warmth and that all children who may be at risk of harm should be protected. However, it does not automatically follow that schools should always be the places to provide this protection. Wider support services from the local authority, health and social care services all have a role to play but have been frustrated in their duty by the continued reduction in money and the failure of funding to keep up with demand.

Vulnerable children are any children, where being at school is their safe place - this can include all those for whom school is their food or warmth for the day or whose parents are unable to care for them.

This government knows about food poverty and uses us to not think about it.

They may be vulnerable, but these are the exact children suffering from lack of funding and resources due to insufficient support from the government.

Often, it's the inadequate funding of vulnerable children that leads to strike action. A child with an EHCP and/or SEN support needs extra adult support which in most cases is the first to go when budgets are announced.

Aren't all children vulnerable? Inadequate staffing – illness – staff retention, all daily things we are having to cope with. So vulnerable! Do we need a label!

Exam groups

34. Exams and assessments are critical points in a young person's education. In many cases, these are necessary to unlock opportunities for further study or entry into the labour market. Children and students due to take exams and formal or statutory assessments should be prioritised for attendance, to support them to achieve their full potential. Missing education can affect children's performance in exams and assessments they are taking that year. Missing school for even a day can mean a child is less likely to achieve good grades, which can have a damaging effect on their life chances. The more days missed, the greater the impact.
35. The government proposes that the MSL would focus on protecting students taking nationally timetabled assessments, as published by the Standards and Testing Agency (STA) or awarding organisations. These exams or formal assessments must take place on the date and at the time shown on the timetable (or during a specified period of time). In some instances, opportunities to reschedule or resit these exams or formal assessments in the event of disruption are limited.¹⁸
36. The MSL would apply for all individuals with the relevant exams or formal assessments due in the same academic year, regardless of when in the academic year the strike, or the exam, falls. For example, under this proposal, a year 11 student with GCSE exams in May would be prioritised to attend school on a strike day in October.
37. In primary education, the government proposes the following pupils are in scope:
- year 6 pupils undertaking end of KS2 national curriculum assessments; and
 - pupils participating in statutory KS2 trials, such as the anchor trial.
38. These assessments are vital in ensuring that a child is working at the age-related expectations in the National Curriculum, or in informing whether they need further support to secure key skills in English and maths to prepare them for secondary school.
39. The government proposes that pupils taking other primary assessments, such as the reception baseline assessment, end of key stage 1 (KS1) assessments, phonics screening check and multiplication tables check are out of scope. End of KS1 tests are no longer statutory and the other assessments listed do not have to be delivered on a given day, meaning that schools have the flexibility to arrange or rearrange them around strike days. Furthermore, these assessments are administered and marked by school staff rather than external assessors. We therefore consider it unlikely that these assessments will be significantly impacted by strike action.

¹⁸ In the case of KS2, there are some circumstances that allow rescheduling for a limited number of reasons, such as pupil absence, but still on day as approved by the STA

40. In secondary and further education, the government proposes the following students are in scope:

- Students taking GCSEs, AS and A levels and Vocational and Technical Qualifications (VTQs), including T Levels, and other national qualifications;
- Year 11 students participating in the National Reference Test.

41. These exams and formal assessments bring greater risks for students not being able to progress to further study, higher education, or the labour market if they are disrupted. The National Reference Test measures the performance of year 11 students in English language and maths and compares their performance against students in previous years. It provides a valuable additional source of evidence that exam boards use when setting grade boundaries in GCSE English and maths.

42. It is common for young people and adults to sit exams or undertake assessments simultaneously in the same setting. This is particularly the case in some general FE colleges. There is no age limit for students in scope of an MSL. Adult students may therefore be covered by an MSL, so long as they are studying one of the above qualifications in one of the eligible settings. Adults undertaking exams and assessments in adult education settings outside of the statutory FE sector are not in scope, as there is no evidence of a substantial risk of disruption due to strikes.

43. The government proposes that apprentices are out of scope. Again, we consider there is limited risk to the delivery of End Point Assessments (EPA) in the event of industrial action. The flexibility in this system to work around foreseen and unforeseen delays, for example rearranging EPAs, allows for any risks to be mitigated.

44. As part of an MSL, we would expect schools and college to support students' preparation for exams. This includes but is not limited to:

- assessment-related activity such as revision classes and mock exams;
- ensuring they have been taught the whole course for the exam or assessment.

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

There is a significant difference between National Assessments, which are tools for the government to hold schools accountable, but which have little bearing on individual pupils, and the formal assessments taken at the end of KS4 and KS5.

It is important to remember that children do not only study for KS2 assessments in year six, and it is unreasonable to place this pressure upon a single teacher or year. As members commented, *"KS2 sats are worked for through the whole of the child's primary education, not suddenly taught in year 6."*

60% respondents did not feel it was necessary to protect those taking KS2 standard assessment tests opining that *"These assessments do not help children, parents or staff"*. With others commenting:

"These are assessments that if not done only mean data not available to assess schools. They are not essential for pupils" and "serve no purpose for the child other than unnecessary pressure and stress".

"I disagree with Key Stage 2 SATs, so the point is moot. They should not be protected because they should not exist."

Where strike action did impact a school's ability to hold assessments members felt that *"teacher assessment is much more accurate and removes the pressure from primary pupils."*

Opinions for the formal assessments at the end of KS4 and KS5 were more nuanced, but it is worth highlighting that even during the recent industrial action, exam classes were prioritised and mitigations were put in place to protect learning, ensure progress and not to disrupt examinations.

Members commented:

"For children taking high level exams should be able to catch up with their own work or start their revision on the days the teachers are on strike. The teachers are well aware of what time of year it is when they go on strike. So far, they have never gone on strike during major exams they have always factored that into their decision of when to strike."

It is the opinion of Community that these mitigations are reasonable and would likely be implemented by staff and leadership in any education setting, therefore we do not feel it is necessary to legislate for it.

Members did have some mixed opinions around the importance of protecting exam classes with some noting that *“it compromises their preparation”* and *“dents confidence”* going on to note that *“Strike action inevitably impacts the education and exam prep of all such students negatively. But that is the point of it ... there is no point in striking if no effect is had on pupils' education. It is important that striking be effective should it take place.”* Members noted further that *“obviously it does have an impact but stressed teachers and not being able to retain staff generally has a greater impact”* with others stating that the impact is *“much less than Government underfunding, and illegal absence from school.”*

Other members did not feel that single instances of industrial action had any impact at all as *“Teachers should be planning lessons according to students' knowledge and allowing time to consolidate learning. The time lost for strikes can be carefully made up for elsewhere in the year.”*

Many respondents noted that they would expect students to undertake private study saying, *“It probably doesn't impact them at all, if they are preparing for GCSEs A Levels etc, they could do some revision on their own.”* They went on to point out that the widespread use of technology for revision further lessened the immediate impact.

Whilst there were some mixed views on the protections for formal examinations, members were clear that it is necessary for the Government to address the reasons behind industrial action rather than introducing legislation to seek to minimise its impact, saying, *“Government could protect them [pupils] more by investing better in education.”*

“The government do not want to be held accountable for the lack of resources and funding. The newspapers will make out that teachers are in the wrong and should be demonised for striking. Shame on the government.”

Q: Do you agree with the proposal for exam groups?

- *Agree*
- ***Disagree (Please provide further detail if you disagree)***
- *No preference*

As has been previously noted, Community Union is not able to accept any of these proposals.

Q: Which exam year students should be prioritised for attendance on strike days?

Please tick all that apply:

- *Those with exams or assessments within a month of strike action*
- *Those with exams or assessments within the same academic year as strike action*
- ***Other (please specify)***
- *Unsure*

As has been previously noted, Community Union is not able to accept any of these proposals.

Children of critical workers

45. On strike days currently, the government recommends that children of critical workers are prioritised for school attendance. An MSL for this group would seek to ensure that parents, carers, and guardians employed in certain sectors can continue to work. It would aim to protect and maintain the running of specified services in the Strikes (Minimum Service Levels) Act 2023 and minimise the impacts of industrial action on those who rely on these services.
46. Critical workers are currently defined in the government's emergency planning guidance for education settings.¹⁹ This list was designed during the pandemic to protect against sustained disruption to the economy. It was produced at a time when parents, carers, and guardians faced additional difficulties in making alternative childcare arrangements because of social distancing rules, which is no longer the case. For these reasons, we consider that the current critical worker list is too broad for the purposes of an MSL.
47. The government proposes redefining the list to focus on workers in the specified services listed in the Strikes (Minimum Service Levels) Act 2023, as well as people in workforces that are unable to strike. This covers:
- those in health services, fire and rescue services, education services, transport services, border security and the decommissioning of nuclear installations; and
 - those unable to strike, such as police officers, members of the armed forces and prison officers.
48. We propose that the MSL would only apply to pupils and students where both parents, carers or guardians are critical workers, or for critical workers in a single parent household.
49. We also propose that the MSL would only apply where children are not old enough to look after themselves. There is no legal age by which a child is considered old enough to be left alone. [Guidance](#) from the National Society for the Prevention of Cruelty to Children (NSPCC) states that 'children under 12 are rarely mature enough to be left alone for a long period of time'. We therefore suggest that children up to and including year 7 should be in scope.

¹⁹ <https://www.gov.uk/government/publications/emergency-planning-and-response-for-education-childcare-and-childrens-social-care-settings/vulnerable-children-and-young-people-and-critical-workers>

Q: Do you agree with the proposed list of critical workers?

- **Agree**
- *Disagree (please explain why)*
- *No preference*

Q: Do you agree that, in two-parent households, both parents should be critical workers in order for a child to be in scope?

- **Agree**
- *Disagree (please provide detail to support your response, should you wish)*
- *No preference*

Q: Do you agree that children of critical workers up to, and including, year 7 only should be in scope?

- *Agree*
- *Disagree (please provide detail to support your response, should you wish)*
- **No preference**

Q: [For critical worker respondents only] How easy is it to arrange alternative childcare on school strike days?

- *Very easy*
- *Easy*
- *Difficult*
- *Very difficult*
- **Not applicable**

General questions on proposal 1

Q: Do you agree with the three priority cohorts proposed?

- Agree
- Disagree (if you disagree, or believe other cohorts should be included, please state which ones and why)
- **No preference**

Q: What would need to be in place to deliver this proposal? Please consider the number of pupils and students 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.

A statistically significant minority of respondents (36%) did not feel that the children of critical workers should be protected from industrial action saying, *"There should be enough staff in these vital services to cover one day of strikes. If they cannot, then they are understaffed."*

This could be because members felt that the role of critical worker had been abused during the pandemic:

"As with COVID it will be abused."

"Everyone in the second lockdown was a critical, keyworker. It was ridiculous. More children in school than those at home. Too many parents put themselves in this category."

"Many parents will still try to send their children in to school."

"This list should only include emergency services."

The reasons behind a list of critical workers are widely understood, but it does call in to question the purpose of schooling, as one member noted:

"Allowing children of critical workers to go to school during strike action suggests that the main purpose of schools is childminding rather than education."

If the prevailing Government opinion is that child care is the main purpose of schooling, then there should be no barrier to teachers taking industrial action as long as the building can remain open. Another member suggested that children be:

"Given the opportunity to attend the school however they can not expect to receive 'education' on the day." Going on to suggest "This would allow midday supervisors etc. to supervise children without the need of teachers to teach."

To be clear, Community Union does not advocate such an approach. We believe that education is far more than simply occupying children and is about developing deep understanding of topics, connecting information, and questioning and analysing rather than simply accepting any given position. This requires motivated and highly-skilled teachers who are properly paid for the work they do. Teachers must be supported by properly funded support staff, both in and out of the classroom, and by a network of health and social care services to provide specialist support. This lack of provision and support is why staff are leaving schools and why others have chosen to take industrial action.

If the Government were to proceed with keeping schools open for the children of critical workers, there are huge, complicated issues that need to be addressed before offering any form of education or care, not least assessing who is actually working during any given industrial action.

Members noted that this would be a significant administrative task because:

"The critical workers list is a mass group of pupils and would need to be created and updated on a regular basis like vulnerable register!"

Others noted the additional workload that this would generate saying:

"Unfortunately it would take a lot of work to establish who fits the criteria or not. In the school / In work - this would not reduce the numbers by that much so classes would be full and staff:pupil ratios would be high."

And others were clear that it would have a detrimental impact on the home:school relationships:

"Schools would find this a challenge".

"As in during Covid it caused heated exchanges with parents and schools. An unfair upset where school staff are seen to be 'picking and choosing'."

With one respondent suggesting that maybe *"they should have to provide evidence of employment"*

Community and our members are clear that:

"Striking is meant to be an inconvenience. If a child is due to be off school for whatever reason, be it a holiday, an INSET, or a strike day, parents/carers should be making their own arrangements, regardless of their own circumstances."

The solution is obvious:

"We need to trust people as professionals - pay them fairly!"

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

50. Given the critical role that education plays for children's development, the government recognises there is a strong case to support a larger group of children, particularly younger pupils aged between 4 and 11, through an MSL. We are therefore seeking views on an approach which would allow all primary school pupils to attend school on strike days, as well as the priority cohorts outlined in proposal 1 in secondary schools and colleges.²⁰
51. This approach would focus on younger children who are more likely to be impacted by missing school when a school is closed because of strike action. Younger children are generally less able to study independently²¹ and are more likely to be impacted by disruption to their routine and absence from their normal educational environment. Proportionally, younger people are also more impacted by missed school days because they are losing a greater proportion of their education than older pupils.
52. Reports from Rising Star Assessments, and the Education Endowment Foundation have all shown that younger children were more affected by missing school as a result of the pandemic.²² For example, achievement in KS2 reading assessments returned to above pre-pandemic levels in 2021/22, whereas achievement for reading at KS1 remains well below these levels (68% met the standard this year, compared to 75% pre-pandemic).
53. We also know that the foundational skills learnt in primary education are key for future attainment. Children who are behind in language development at age five are six times less likely to reach the expected standard in English at age eleven, and about eleven times less likely to achieve the expected level in maths at that age.²³
54. This option would involve support for secondary schools and colleges to prioritise attendance for the three priority cohorts set out in proposal 1.

²⁰ This refers to pupils in primary school settings, rather than at primary school age.

²¹ [Coronavirus and homeschooling in Great Britain - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)

²² [RS Assessment from Hodder Education - Primary Assessments \(risingstars-uk.com\)](https://www.risingstars-uk.com/); [NEW: Pandemic adversely affected young children's development,... | EEF \(educationendowmentfoundation.org.uk\)](https://www.educationendowmentfoundation.org.uk/)

²³ [Early language development: time to change the story \(savethechildren.org.uk\)](https://www.savethechildren.org.uk/)

Q: 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.

As mentioned at the beginning of our response, Community members wholeheartedly agree with an individual's right to take industrial action and will oppose any plan to restrict this inalienable right to withhold one's labour.

We surveyed members to ask about their views on the impacts of strikes on children in KS1. The vast majority of respondents commented that industrial action has little to no impact on the education of children aged 4-7 years.

Some respondents noted that their school had taken action to protect children in KS2, but that little action had been taken to protect KS1 beyond those who were the children of key workers.

There were some concerns about the safeguarding of children in this age range, but most commented that there was minimal educational impact. They went on to explain that given the days of industrial action were single days and *"considering days children are off generally ill or when parents pull them out for events, holidays single days of strike action have no real impact."*

Further respondents noted, *"The impact on the pupils is low. Most enjoy a much-needed brain break and come back ready to carry on learning."*

Q: What is your experience of the impacts of strikes on children aged 7-11 (KS2)? If not applicable, please specify 'not applicable' in the box.

As mentioned previously, Community members believe in an individual's right to take industrial action and will oppose any plan to restrict this inalienable right to withhold one's labour.

However, members were clear that very few of their school completely closed to all pupils, during the most recent industrial dispute, with KS2 pupils prioritised during preparations for assessments.

Some questioned why schools prioritised assessments which have no value to the child themselves and are often the cause of stress and anxiety saying that it is likely that *"depending on the time of year, the additional impact might be that the strike action days take away the number of 'fun' and more practical activities that could have been held that term, in favour of SATs revision"*.

Some members pointed out that strike action provided a useful learning opportunity for children making them *“more aware of the situation/ reasons for strike action”* others went further stating, *“It was a positive experience for the children as we talked about industrial action, why it took place, free speech and democracy.”*

Members were clear that children did not suffer from any learning loss, as lessons were adjusted, *“it was an educational experience that allowed students to take part in action to improve their educational welfare. They did not miss course material as this was delayed and moved to the next day.”*

It is important to conclude that schools will always seek to protect their most vulnerable children, and that they may be children in need, may be children with SEND, may be children who are in poverty, or those with assessments due. What must be understood is that schools will take a broad look at what they need to do, making judgements and providing mitigations as they see best. Let schools continue to manage things as necessary. There do not need to be any national agreements or regulations put in place.

Q: 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)

As has been made clear in our previous communication with the Secretary of State through meetings and in writing, Community Union do not agree with the introduction of minimum service levels in education. Therefore, it is not our place to suggest considerations needed to deliver on these proposals.

Q: Do you prefer proposal 1 or proposal 2?

- *Proposal 1*
- *Proposal 2*
- ***Neither***

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

55. For extended periods of strike action (five consecutive school days or more), the government proposes that schools and colleges should use rotas to ensure that all children and young people receive some face-to-face and on-site education. This would be in addition to any remote education processes schools would have in place.
56. We think the use of rotas, whether in the context of proposal 1 or proposal 2 above, should be used by schools and colleges for strike action lasting five consecutive school days or more. This would help make sure that during extended periods of strike action all children receive some face-to-face education and that no child has a sustained period out of school in the event of extended periods of strike action. The use of rotas would be *in addition* to provision for the priority cohorts in proposal 1, and all those covered by proposal 2.

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

- Yes
- **No (please provide detail to support your response, should you wish)**
- Not applicable

As has been previously noted, schools will always seek to protect their most vulnerable children, be they children with SEND, children who are in poverty, or otherwise determined. What must be understood is that schools will always take a broad look at what they need to do, making judgements and providing mitigations as they see best. It is vital that we let schools continue to manage things as necessary and for them be the ones to determine if rotas work for them.

Q: In relation to the use of rotas, do you think that five consecutive days of strike action is the right period of time at which to implement rotas?

- Yes, it's the right period of time
- No, it should be shorter (please specify)
- No, it should be longer (please specify)
- Other (please specify)
- **Not applicable**



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