

Minimum service levels



UNISON Bargaining Support Group

Negotiating to achieve the best outcomes



Minimum Service Levels

It is essential for reps and branches to contact their **Regional Organiser** for guidance and support in relation to all statutory requirements including balloting and minimum service levels, as well as voluntary agreements with employers.

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The new law

Under the **Strikes (Minimum Service Levels) Act 2023**, the UK government has the power to pass regulations that permit **minimum service levels (MSLs)** in some public services during strikes in England, Wales and Scotland. (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.)

“This legislation has always been pointless and totally unnecessary. It’s a desperate attempt to prop up a failing government by demonising unions, rather than a serious effort to improve industrial relations and protect the public.

“The sooner this law is removed from the statute book, the better.”

Christina McAnea, general secretary

Regulations are now in force setting out the specific details of how minimum service levels will apply to **passenger rail, ambulance and border services**.

Further regulations may follow specifying how minimum service levels will apply to **key hospital, fire and rescue and education services** as well as **the decommissioning of nuclear installations and management of radioactive waste and spent fuel**.

“Minimum service levels (MSLs) are a direct attack on working people’s rights to fair pay and decent work. They are an ideological assault on workers’ and trade unions’ rights which are intended to further inhibit the fundamental right to strike... The new laws target the public sector where Black and women workers are disproportionately represented. So this new legislation will further entrench inequality.”

The TUC General Council

There is an accompanying [code of practice](#) from the UK government that is intended for use by trade unions. It includes a template ‘compliance notice’. As it is a statutory code, courts and tribunals must take it into account in relevant proceedings.

Additionally there is non-statutory [guidance](#) from the UK government that is intended for employers, trade unions and workers.

How will the new law affect strike action?

In order to carry out industrial action and be immune from liability for any losses incurred by an employer as a result of the action, UNISON already has to comply with a number of statutory requirements (such as balloting and notification requirements).

Workers taking lawful industrial action are protected from dismissal for at least 12 weeks. Even after the 12-week protected period, dismissal will be automatically unfair if the employer has not taken reasonable procedural steps to resolve the dispute.

But under the new law, workers in the specified public services could be further restricted from taking meaningful industrial action in order to resolve a workplace dispute.

It will empower bad employers to attack trade unions and individual workers and add extra burdens on those employers who are seeking to resolve industrial disputes.

How will it work in practice?

1. **Balloting** - UNISON complies with the existing statutory requirements such as balloting requirements (contact your [Regional Organiser](#) for guidance and support).
2. **Notice** - UNISON issues the employer with the notice of strike action.
3. **Consultation with the union** - Under the new law, the employer may then consider issuing a work notice requiring a minimum service level.

If they do, they must first consult with UNISON about the number of workers and specific work identified in the work notice, although they need not come to any agreement with the union.

Consultation should be carried out with sufficient time for UNISON to consider the proposed number of workers to be identified and work to be specified, and to express their views in response, as well as for the employer to consider the response and draft the work notice in light of this.

4. **Work notice** - The employer can then issue UNISON with the work notice requiring a minimum service level during the period of strike action, at least seven days before the strike day, unless a later day is agreed with UNISON.

The work notice must identify specific workers required to undertake specified work during the strike in order to provide the minimum level of service under the relevant regulations.

Work notices must not list more workers than are reasonably necessary in order to provide the minimum level of service.

The employer must not have regard to the individual's union membership or related union activities when selecting workers.

5. **Varying the notice** - The employer can change the details of the work notice at least four days before the strike day, unless a later day is agreed with UNISON. However, if an employer changes a work notice, it must again consult with UNISON.

6. **Notifying individuals** - The employer will also notify each individual named in the work notice. They must provide written notice before the day the individual is required to work (on a strike day) of the work they are required to carry out under the work notice, together with a statement that they are a worker who is required to work during a strike and that they must comply with the work notice.
7. **Reasonable steps** - Once the work notice is received, UNISON must take 'reasonable steps' to ensure that their members who are identified in the work notice comply with it.

Taking these steps will enable UNISON to maintain statutory protection from proceedings brought by the employer in relation to an act done by the union to induce a person to take part, or to continue to take part, in a strike. Such proceedings could include the employer seeking damages from the union or an injunction to prevent the strike action taking place.

In the [code of practice](#), 'reasonable steps' are defined as considering the following:

- a) being able to identify those workers who are its members in a work notice or any subsequent varied work notice, which means that contact details must be accurate and up to date
- b) encouraging each of those named members to comply with the work notice with a '[compliance notice](#)' preferably sent by email to each individual, before the start of the strike (the compliance notice is the individual communication to the member to advise them not to strike during the periods in which they are required by the work notice to work, as well as to encourage them to comply with the work notice)
- c) instructing the picket supervisor (if present) or another union official or member to use reasonable endeavours to ensure that picketers, if reasonably practicable, don't try to persuade members who are identified on the work notice not to cross the picket line
- d) not doing other things which undermine the steps taken to meet the reasonable steps requirement such as "communicating with members whom the union knows are identified in a work notice to induce them to strike".

However, under the code of practice, UNISON is not expected to force its members named in the work notice to work or to supervise their work, nor are they responsible for any staff members named in the work notice that are not members.

8. **Impact on workers** - A worker named in the work notice who still goes ahead with their participation in a strike, will lose their protection from automatic unfair dismissal and could be subject to disciplinary action by their employer.

Steps UNISON must follow if a work notice is issued:

Step 1: identification of members

A work notice given to the union by the employer will identify the workers, and the work required, to secure the minimum service level. UNISON should identify those workers who are its members in a work notice as soon as reasonably practical after receiving it, to allow for sufficient time to complete the remaining steps before the strike action.

If the work notice is varied, UNISON will need to inform members who have been removed from the work notice to disregard any earlier communications or other reasonable steps which we may have taken to encourage them to comply with the work notice.

Step 2: encouraging individual members to comply with a work notice

Once we have identified any UNISON members on a work notice, we must issue each of those members with an individual communication or notice (the 'compliance notice') to advise them not to strike during the periods in which they are required by the work notice to work, as well as to encourage them to comply with the work notice.

It is essential for reps and branches to contact their [Regional Organiser](#) for guidance and support, including the provision of a template compliance notice that must be used when emailing members.

The branch or region may also wish to engage with those identified members on an individual or group basis to reinforce the messages within the compliance notice, as well as to clarify any questions from members, especially in relation to their rights and protections. Any of these communications must be in addition to the statutory compliance notice.

Step 3: picketing

Ahead of any pickets the branch or region must appoint a picket supervisor and instruct the picket supervisor (if present) or another union official or member to try to persuade any members who are identified on the work notice not to cross the picket line at times when they are required by the work notice to work, as reasonably practicable.

UNISON is *not* required to notify the picket supervisor of the names of union members identified in the work notice and there is no requirement for the picket to ask workers whether they are identified in a work notice.

UNISON members identified in a work notice can simply state that they are required by a work notice to work or show the picket their compliance notice. There is no requirement on a UNISON member to identify their trade union membership to the picket.

Step 4: assurance

Once a work notice is received by the union, UNISON should not undermine the steps they take to meet the reasonable steps requirement such as

communicating with members whom UNISON knows are identified in a work notice, to induce them to strike.

Those members identified in a work notice *MUST* be excluded from any branch, region or Movement communications relating to the strike action.

If we become aware of an accidental failure, UNISON must take swift action to correct any actions of union officials or members which seek to undermine those steps the union has taken. Actions which undermine these steps may risk UNISON losing statutory protection from liability and our members losing their automatic protection from unfair dismissal.

If a work notice is in place we should also tailor any communications with members to include wording clearly stating that members who have been identified in the work notice should comply with that notice and should disregard any inducement to strike at any time when the work notice requires them to work.

It is essential for reps and branches to contact their [Regional Organiser](#) for guidance and support.

How will the new regulations affect members working in the ambulance services?

[The Strikes \(Minimum Service Levels: NHS Ambulance Services and the NHS Patient Transport Service\) Regulations](#) applies to members working for:

- the East of England Ambulance Service National Health Service Trust
- the East Midlands Ambulance Service National Health Service Trust
- the Isle of Wight National Health Service Trust
- the London Ambulance Service National Health Service Trust
- the North East Ambulance Service NHS Foundation Trust
- the North West Ambulance Service National Health Service Trust
- the South Central Ambulance Service NHS Foundation Trust
- the South East Coast Ambulance Service NHS Foundation Trust
- the South Western Ambulance Service NHS Foundation Trust
- the West Midlands Ambulance Service NHS Foundation Trust
- the Yorkshire Ambulance Service National Health Service Trust

and covers their non-emergency patient transport service (run by the NHS ambulance service), as well as ambulance services. Private ambulance services are excluded.

It specifies that the service level on strike days must ensure that **emergency calls are answered and triaged** as they would be if the strike were not taking place on that day.

In addition, **responses must be provided for those calls about a person with a life-threatening condition or illness**, or who need clinical assistance at the scene of an incident or need to be transported to a healthcare facility (or both), again as it would be if the strike were not taking place on that day.

The regulations also stipulate that **Inter-Facility Transfer (IFT) services** should be answered and triaged as if a strike were not taking place on that day and services are provided for patients who have a life-threatening condition or illness, or for patients where there is no reasonable clinical alternative to the provision of IFT services.

It is in the best interest for UNISON and striking members for employers to continue to use voluntary agreements to prevent work notices from being issued.

UNISON has a proven history of agreeing voluntary arrangements that have delivered effective and safe industrial action. During previous ambulance strikes, cover has routinely been provided from the picket lines which has

allowed for greater flexibility in terms of allowing members to respond to emergencies and then return to picket lines once cover has been provided.

Ensuring the appropriate level of cover is provided in cases where employers accept voluntary agreements

In order for employers to agree to voluntary arrangements, branches will need to consider ways to ensure that members attend picket lines so that they are on hand to provide cover should it be required.

Members should be made aware of the importance of attending picket lines in order to ensure that voluntary arrangements are kept in place. This should include an effective communications strategy which explains to members what is expected of them as early as possible, for example at the point of them being balloted for strike action and in the days leading up to and during strike action.

Any communications to members should also clearly explain the consequences of not attending picket lines, for example, the threat that employers might withdraw from voluntary arrangements and impose MSLs by issuing a work notice which will name certain individuals to ensure that minimum service levels are met.

What level of cover will be required under the regulations, and which staff groups will be most affected?

The level of cover required in order for Trusts to be able to ensure all emergency calls are answered and triaged and that responses are provided for those calls about a person with a life-threatening condition or illness, will vary across the different Trusts. However, it is likely to mean that a significant number of Emergency Operation Centre (EOC) staff working as call handlers and despatchers may be prohibited from taking strike action in order to be able to achieve the MSLs set out for the ambulance sector.

It is important to note, UNISON provided adequate cover for patients who presented with a life-threatening condition or illness during previous ambulance strikes including the most recent in the winter of 2022-23. This should be used as an argument with ambulance employers when making the case for voluntary agreements.

How do branches and employers determine cover levels?

This will vary by employer given that each will have to determine their own service needs. In preparation for previous strikes, branches have argued for percentage cover levels and when determining cover arrangements in EOC have used call stacking numbers to recall staff from picket lines.

Branches are encouraged to consider how to determine cover levels in a way that reassures employers that adequate cover will be provided and where possible, to refer to previous strike action in those Trusts where branches were successfully able to maintain levels of agreed cover.

Ensuring sufficient road crew including paramedics, technicians and Emergency Care Assistants are on hand to respond to calls from patients who have a life-threatening condition or illness will ensure that minimum service levels are met, and UNISON has always agreed to respond to SORT and HART incidents during strike action.

It is important for branches to work closely with employers to determine realistic levels of cover which will help to achieve minimum service levels as set out in the regulations for the ambulance sector whilst also maximising those able to strike. This might require some negotiation around how cover levels are determined as blanket percentage cover levels applied across all staff groups might have an impact on the effectiveness of any action.

It is therefore important for branches to understand what is realistically required to achieve minimum service levels by engaging with staff groups involved in the action, who will have a thorough understanding of what it takes to meet MSLs.

How will the new regulations affect members working in hospital-based health services?

[In their consultation](#), the UK government proposed that hospitals will treat people who require urgent or emergency treatment in hospital and people who are receiving hospital care and are not yet well enough or able to be discharged, during the period of industrial action as they would on a non-strike day. This would mean the following sets of patients could expect to be treated as they would on a non-strike day:

- in-patients already receiving hospital care
- existing patients requiring urgent elective treatment that would normally be delivered during the period of industrial action (for example, people on priority 1 or priority 2 elective surgery lists (surgery that is required within 72 hours for priority 1, or 4 weeks for priority 2), people requiring dialysis, transplant patients where a potential donor match is identified, elective caesarean or induction of labour)
- existing patients who could or will need emergency, critical or urgent assessment, diagnostics or treatment in hospital (for example, cancer or cardiac diagnostics and treatment, but not, for example, routine knee or hip replacement)
- new patients presenting to hospital that require unplanned assessment, diagnostics and/or treatment in hospital (for example, people presenting to emergency departments, people in active labour).

It is not yet known whether MSLs will affect those working in the private or voluntary sectors who provide outsourced hospital-based health services.

It is understood that many NHS employers are opposed to the use of MSLs. Many metro mayors and council leaders have spoken out against the use of MSLs, as have the Welsh and Scottish governments.

Details will be updated once the UK government publishes its response to the consultation.

How will the new regulations affect members working in education?

The [TUC General Council](#) reported in December 2023 that “Ministers at the Department for Education have suggested that an education minimum service level would apply to 74% of pupils – meaning that the vast majority of teachers and education staff would be prohibited from ever taking strike action.

The scope of coverage that has been set out by the government would disproportionately impact women working in primary schools and special educational needs settings.”

In [their consultation](#), the UK government has proposed that the education settings in scope of an MSL include:

- 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 sector:
 - 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.

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.

It is understood that many employers within the education sector have concerns about the use of minimum service levels and will be reluctant to issue work notices in the event of strike action.

Many metro mayors and council leaders have spoken out against the use of MSLs, as have the Welsh and Scottish governments.

Details will be updated once the UK government publishes its response to the consultation.

How will the new regulations affect members working in the fire service?

The UK government has published their [response to the public consultation](#) on specific services that an MSL for fire and rescue services should cover.

Their regulations, once in force, will apply to England only at this time, but the government will consider extending the ability to make use of MSLs to Scottish and Welsh fire and rescue services in future.

The regulations will broadly set out that fire and rescue services answer all emergency calls on strike days and provide a response to emergency incidents as if it were a non-strike day.

This means that the functions of a control room should be carried out as if it were a non-strike day. It will be up to fire and rescue services (FRSs) to determine how best to ensure these services continue to function, including other potential sources of cover, and how many employees will need to be included on work notices to help fulfil that.

There will be a national percentage based on FRS appliances, set at 73% of appliances for the provision of fire and rescue emergency response applied to services provided by English FRAs and English FRA contractors.

There will be a requirement for urgent fire prevention and protections issues to be dealt with on a strike day. This is to recognise that there will need to be a provision to deal with urgent issues that would normally require a same day response. This provision only covers urgent issues and not routine work.

Details will be updated when the UK government lays its regulations before Parliament, only expected if a union announces its intention to strike.

How will the new regulations affect members working in energy sector?

As reported by [Personnel Today on 19 February 2024](#), the Department for Energy Security & Net Zero has no current plans for minimum service levels regulations in the nuclear sector because a government spokesperson explained that “voluntary agreements have worked well so far...

The nuclear decommissioning sector already has a voluntary agreement with decommissioning workers. This ensures a minimum level of service during strike action and therefore doesn't require government to use powers in the Strikes Act. These agreements have worked well so far, but we will continue to monitor adherence to these.”

Details will be updated should the UK government conduct a consultation or lay regulations before Parliament.

Checklist for negotiators

- Are any of the service(s) our members provide in scope of any MSL regulations? If so, make sure you familiarise yourself with both the MSL regulations and the UK government guidance.
- Encourage your employer, as a matter of principle, never to issue a work notice before a strike. Instead, seek to agree a voluntary arrangement.
- Highlight how it will be more productive to discuss the concerns driving the dispute rather than any formally imposed minimum levels of service.
- Highlight how it will be more productive to discuss the actual needs of the service and its users, not relying on a minimum services level imposed by the UK government.
- Are you able to challenge the notion of a 'minimum services level' as listed in the regulations specific to your workplace, based on the actual needs of the service and experiences of staff day-to-day? Blanket percentage cover levels applied across all staff groups might have an impact on the effectiveness of any action, so a different approach may need to be negotiated with the employer.
- Highlight how consultation and agreement over emergency cover during strike action, will only help to improve relationships between workers and employer, and encourage mutual trust in future negotiations.
- How can the union best work with the employer to provide emergency cover during strike action? Most branches will already have systems in place with their employer to achieve emergency cover to support service users. How has adequate cover been provided during previous disputes? Consider in advance, how to determine cover levels in a way that reassures employers and where possible, refer to previous strike action where branches were successfully able to maintain levels of agreed cover.
- Make members aware of the importance of attending picket lines in order to ensure that voluntary arrangements are kept in place, explaining to members what is expected of them as early as possible. In order for employers to agree to voluntary arrangements, branches will need to consider ways to ensure that members attend picket lines so that they are on hand to provide cover should it be required.
- Make sure any employer considering issuing a work notice undertakes meaningful consultation with the union, providing sufficient time and resources to carry this out.
- Will the employer share any methodology used for calculating the minimum service levels and the selection of the particular workers and type of work?

- Branches must understand what is realistically required to achieve minimum service levels by engaging with staff groups involved in any potential action, as they will have a thorough understanding of what it takes to meet MSLs.
- Ensure you have up to date contact details for all your members within the workplace and branch.
- Be vigilant about the sharing of personal information about members with the employer. Is the employer complying with data protection requirements?
- Be on the lookout for biased selection of trade union members for work notices and any subsequent detrimental treatment.
- If issuing a work notice, does the employer take account of potential sickness absence, annual leave and other absences?

It is essential for reps and branches to contact their [Regional Organiser](#) for guidance and support.