

Minimum Service Levels in the event of strike action: education services – public sector equalities duty

Part 1: Introduction

The equality duty set out in the [Equality Act 2010](#) requires public authorities, in the exercise of their functions, to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

Part 2: Brief outline of policy or service

Summary of the proposal

The Department for Education (DfE) is seeking views regarding the introduction of regulations that would set a minimum service level (MSL) on days when strike action is taking place in education services. DfE is currently consulting on its MSL proposals detailed within the consultation [document](#).

These regulations would mean an employer – for example, a school, college, local authority, or university – could issue a work notice to require individuals to work during strike action, to deliver a minimum level of provision. If introduced, the regulations would be brought forward under the powers provided to the Secretary of State for Education in the [Strikes \(Minimum Service Levels\) Act 2023](#). The Act amends the legal framework around industrial action by giving the government the power to set MSLs in certain services, including education, across Great Britain. The UK Government has already consulted on the application of MSLs for other sectors.

The consultation sets out proposals for an MSL in schools and colleges. It presents two proposals for protecting face-to-face education on strike days. Proposal 1 focuses on prioritising attendance for vulnerable children and young people (VCYP); exam groups; and children of critical workers. Proposal 2 focuses on pupils in primary

school, as well as the cohorts set out in proposal 1 in secondary and further education (FE) settings. We are also consulting on implementing rotas during periods of prolonged strike action, and the use of remote learning where in-person attendance is not possible. Further information regarding our proposals for schools and colleges can be found in pages 12-26 of the consultation [document](#).

The consultation also seeks to gather evidence on the impacts of strike action in the higher education sector, and the form that MSLs for higher education could take. At this stage, no specific models have been presented in the consultation and, as such, higher education is not referenced within the following analysis.

Education is devolved and systems differ across Great Britain. We are seeking views and further evidence as part of our consultation on the applicability of our proposals in Scotland and Wales. Therefore, the equalities impact assessment at this stage focuses on England only.

Intended aim of MSLs

The Strikes Act aims to reduce 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 access key services.

Where an MSL is applied, there should be a more consistent level of service for the public during strikes, as well as a reduction in the circumstances in which there are no services at all. In the case of education, this will help protect 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 is not possible.

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). This legislation is intended to provide new tools to manage the impacts of strike action, not to prevent unions or individuals from taking industrial action.

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).

Evidence

Sources of data for evidence of impact on protected characteristics

This assessment has been carried out with the evidence available to the Department. We have limited data on certain protected characteristics of pupils and students in education settings. Similarly, we do not hold detailed information or breakdowns on certain protected characteristics of staff working in education. Available sources are summarised below and referenced, where relevant, throughout the following analysis.

Pupil and student figures used in this assessment are drawn from:

- High-level figures for England, Scotland and Wales, [Education and training statistics for the UK](#) (Published November 2023)
- Figures for school pupils in England, [Schools, pupils and their characteristics](#) (Published in June 2023)
- Figures for FE students, [Education and training statistics for the UK, Reporting year 2023](#) (2023 publication)
- Figures on special educational needs and Education Health and Care Plans in England, [Special educational needs in England 2022/23](#)

Education workforce figures used in this assessment are drawn from:

- High-level figures for England, Scotland and Wales, [Education and training statistics for the UK](#) (Published November 2023)
- Figures for the school workforce in England, [School workforce in England](#) (Published June 2023)
- Figures for the FE workforce in England, [Further education workforce, Academic year 2021/22](#)

Overall pupil and student numbers

In [January 2023](#) there were 4,650,000 pupils at state-funded primary schools and 3,630,000 pupils at state-funded secondary schools in England. In addition, 160,000 pupils attended state-funded Special and Alternative Provision schools and colleges. A special school provides education for children with special educational needs, where those needs cannot be met with the provision and support provided by mainstream schools. Based on data published in [October 2023](#), we also assess there are 640,000 students in statutory FE settings in England in scope of our proposals.

Overall education workforce figures

[School workforce in England](#) figures published in June 2023, show there are 468,000 FTE teachers and leaders in maintained schools in England. 47% (221,000) of teachers worked in nurseries and primary schools, 46% (216,000) in secondary schools and 6% (27,000) in special schools or Pupil Referral Units schools. As of June 2023, there are 281,000 teaching assistants; 88,000 administrative staff; 78,000 auxiliary staff; 19,000 technicians and 41,000 other school support staff in England. In England, there are an [estimated](#) 130,000 people working in the FE Workforce.

Part 3: Analysis of impacts

This analysis examines the two proposals within the consultation, referenced above, which relate to schools and colleges in England. It sets out our assessment of our MSL proposals on those pupils and students with protected characteristics in England only. Further details of settings in scope of an MSL in schools and colleges can be found on page 12 of the consultation [document](#).

The Department for Education will continue to develop its policy thinking and analysis, informed by consultation and engagement with stakeholders. In the consultation we ask specific questions about how people with protected characteristics could be impacted by MSLs.

Disability

Pupils and students

Protecting vulnerable children and young people's education from being impacted by strike action is a core element of each proposal. In each proposal we suggest prioritising attendance for the following groups, both of which contain pupils and students with disabilities:

- a) Children and young people who have an Education, health and care plan (EHCP) aged 0-25; and
- b) Children or young people who receive Special educational needs (SEN) support.

The Department does not collect data on 'disability' as a category however, according to [Special educational needs in England 2022/23](#), 356,000 pupils have an EHCP and 1,087,000 pupils received SEN support within schools that are in scope of MSLs. Data on FE students with an EHCP or receiving SEN support is limited.

Pupils and students with an EHCP, or in receipt of SEN support, in relevant settings are in scope of MSLs under proposals 1 and 2. We assess that prioritising access to school and college for vulnerable children and young people should have a positive impact for the protected characteristic of disability, as children in these groups will continue to receive face-to-face education during strike action. Under proposal 2, we anticipate a positive impact on the basis of disability primarily for secondary pupils. This is because those with an EHCP or in receipt of SEN support would be prioritised for attendance in secondary settings, whereas all primary pupils would continue to receive education, regardless of whether they have an EHCP or receive SEN support.

Workforce

In 2021, 9.8 million people (18%) in England were disabled, as shown in the [Disability, England and Wales Census](#) figures. There is limited data on the proportion of education staff with a disability in schools, however data for the FE workforce is more complete.

For schools, information on disability was not obtained for 56% of teachers in the latest [School Workforce Census](#). The information provided suggests that 2% of teachers in schools are disabled, however it is likely that this does not present a complete picture of disability in the teacher population. Figures for support staff in schools are similar. Disability information was not obtained for 54% of support staff and where information was provided, 2% were reported to be disabled. Due to missing data this is also not assumed to be a representative figure.

[FE Workforce](#) data shows that 7% of teaching staff and 8% of support staff in FE settings in scope of the MSL identified as disabled compared to 18% of the general population.

Without complete disability data for the school education workforce, it is difficult to assess how proposals 1 or 2 would impact disabled workers in these settings. Given there are proportionally fewer disabled individuals in the FE workforce compared to the general population, we do not anticipate a disproportionate impact on these individuals.

Age

Pupils and students

Our proposals broadly prioritise ensuring that children who are less capable of studying independently and who are not old enough to look after themselves, continue to receive face-to-face education. In proposals 1 and 2, we therefore recommend that children of critical workers up to and including year 7 are in scope. Proposal 2 also prioritises attendance for primary school pupils.

Under proposals 1 and 2, younger pupils may therefore see a positive impact as they are more likely to receive face-to-face education on strike days. This is particularly the case for proposal 2 which prioritises pupils in primary schools. There may be a neutral impact on older pupils who are not prioritised.

Workforce

The median age of the population in England in 2021 was 40.5 according to [Census 2021](#). The same [data](#) shows that 40 million people (71%) in England were over 25 years old. In England, 21% of teachers are under 30, 60% of teachers are aged 30-50 and a further 19% are over 50. There is no significant difference in the age profile of teachers between primary and secondary. Teachers tend to be younger than leaders, with 16% of teachers aged 35 or younger compared with only 9% of leaders.

In FE, teachers tend to be older, with 45% over the age of 50 and only 9% under 30. In general, FE leaders are also older, with 45% being over 50 and only 1% being under 30.

Given the wide distribution of teachers across age groups within schools, we assess there may be a neutral impact for these individuals based on their age. In FE settings, members of the workforce are disproportionately more likely to receive a work notice under both proposals, because they teach exam year cohorts. Teachers in colleges are generally older, therefore there might be a negative impact on the basis of age. However, we believe this is justified given the policy intention to allow children and young people to prepare without disruption for public exams and formal assessments.

Sex

Pupils and students

According to the [2021 Census](#), females made up 28.8 million (51%) of the population of England, and males made up 2.77 million (49%). The [Schools, pupils and their characteristics](#) report states the ratio of male and female children in schools is broadly comparable to the general population. Females make up 49% and males make up 51% of the school population in England.

In FE the student population shows a slightly increased proportion of males. Specifically, in [2021/2022](#) females made up 47% and males made up 53% of the FE student population.

Under proposals 1 and 2, the Department assesses there may broadly be a neutral impact on pupils in schools on the basis of sex, with the exception of males in some VCYP groups who may experience a marginal positive impact. This is because pupils with an EHCP or those in receipt of SEN support are more likely to be male (72% male and 28% female for EHCP; and 63% male and 37% female for SEN support). There may also be a similar positive impact for male FE students who make up a slightly

higher proportion of the FE student population within exam years and are covered under both proposals.

Workforce

The education workforce is predominantly made up of females. School workforce [data](#) shows that 76% of teachers are female. At nursery and primary school level, 86% of teachers are female; 65% of teachers in secondary schools are female and 75% of special schools and Pupil Referral Units teachers are female. School support staff are also predominantly female including 93% of teaching assistants, 90% of administrative and other support staff, 86% of auxiliary staff and 53% of technicians. In the [FE workforce](#) 58% of teachers are female, along with 71% of support staff.

As females are disproportionately represented in the education workforce, female employees may be more likely to receive a work notice if MSLs are introduced, limiting their ability to strike compared to employees in other sectors with no MSL. Given that a greater proportion of primary school teachers are female compared to secondary, proposal 2 may have a greater impact on the basis of sex.

We consider this impact to be justified given the overarching policy intention to protect against further lost education for pupils and students, ensure the welfare of vulnerable children and young people, and allow children and young people to prepare without disruption for public exams and formal assessments.

Race/ethnicity

Pupils and students

[Ethnic group, England and Wales: Census 2021](#) data shows that 74% of residents in England identified as white British and 26% identified as belonging to a minority ethnic group. However, at a school level [36% of pupils](#) come from minority ethnic backgrounds. Data also indicates that 31% of Children in Need, [29% of Looked After Children](#) and 31% of children and young people with SEN support are from a minority ethnic background. For pupils and students receiving an EHCP and SEN support there is a slight overrepresentation of white British pupils and students.

Considering more school pupils come from ethnic minority backgrounds compared to the general population, we assess that provisions under proposals 1 and 2 may produce a positive impact for pupils and students from ethnic minority backgrounds. This is because they are more likely to be covered by an MSL and receive face-to-face education during strike action.

Workforce

[School workforce](#) data shows that 16% of teachers identified as belonging to an ethnic minority group compared with 26% of the total population. In the 2021/22

academic year, of the total [FE workforce](#), 19% identified as belonging to an ethnic minority group.

Given there are proportionally fewer individuals in the education workforce from minority ethnic backgrounds compared to the general population, we do not anticipate a disproportionate impact on these individuals.

Sexual orientation

Pupils and students

Data is not available on the sexual orientation of students. We have not identified any evidence of a particular impact on the basis of sexual orientation.

Workforce

Data is not available on the sexual orientation of education workers. We have not identified any evidence of a particular impact on the basis of sexual orientation.

Gender reassignment

Pupils and students

Data is not available on gender reassignment of students. We have not identified any evidence of a particular impact on those with this protected characteristic.

Workforce

Data is not available on gender reassignment of the education workforce. We have not identified any evidence of a particular impact on those with this protected characteristic.

Pregnancy and maternity

We have no available direct evidence relating to levels of pregnancy and maternity in the education workforce. However, seeing as females are disproportionately represented, it is likely that a higher proportion of education workers experience pregnancy and maternity. Therefore, these groups could be more likely to receive a work notice compared to other sectors where MSLs are not in place.

Marriage and civil partnership

We have no evidence to suggest that the policy has a disproportionate impact on those with this protected characteristic.

Religion or belief

We have no evidence to suggest that the policy has a disproportionate impact on those with this protected characteristic.

Engagement and involvement

The Secretary of State for Education has launched a 9-week consultation closing on 30 January 2024, to gather views on introducing regulations that would set MSLs in education services. In this consultation we ask specific questions about how people with protected characteristics could be impacted by MSLs.

Summary of analysis

Pupils and students

For both proposals, we have identified that the policy may have impacts related to the age of pupils and students, their ethnicity and whether they have a disability.

By prioritising attendance for vulnerable children and young people, some pupils and students with disabilities will be more likely to receive education on strike days. Given that younger pupils have been to an extent prioritised in elements of both proposals, and considering there are a higher proportion of young people from ethnic minority backgrounds, we also anticipate positive impacts in relation to these protected characteristics.

We also assess that the introduction of a rota system to manage prolonged periods of strike action, and the continuation of remote learning for pupils who are not prioritised for attendance under our proposals, may reinforce positive impacts for individuals with protected characteristics. This is because these provisions would extend access to education to an increased proportion of pupils and students.

Workforce

Under both proposals, members of the FE workforce are disproportionately more likely to receive work notices because they teach exam year cohorts. Given that teachers in colleges are generally older, there may therefore be a negative impact on the basis of age. However, we believe this is justified given the policy intention to allow children and young people to prepare without disruption for public exams and formal assessments.

Under both proposals, female employees may be more likely to receive a work notice if MSLs are introduced. This is because females make up the majority of the education

workforce. We consider this impact to be justified given the overarching policy intention to protect against further lost education for pupils and students, ensure the welfare of vulnerable children and young people, and allow children and young people to prepare without disruption for public exams and formal assessments.

Part 4. Decision making

Any decisions taken around which members of staff would be issued with work notices for any period of strike action would need to take account of equalities considerations. The policy aims to maintain a reasonable balance between the ability of education professionals to strike with our obligation to ensure children and young people receive an education.

We will continue to gather further information and detail on the equalities impacts of our proposals through the consultation. As such, this analysis is based on our initial position and will be updated as the policy develops and as a result of the consultation.

Addressing the impact on equalities

We will analyse the responses we receive from the consultation to inform whether there are further impacts on equalities that we have not considered in this assessment.

Part 5. Monitoring evaluation and action plan

We will consider how we can monitor the policy and develop more detailed plans.