

Our ongoing campaign against minimum service levels (MSLs): a TUC General Council statement to special Congress, 9 December 2023

The UK already has some of the most restrictive trade union laws in Europe. But instead of a proper plan to boost jobs and raise living standards, the Conservative government is trying to make it even harder to win fair pay and conditions.

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. This attempt to silence workers' voices and reduce their power sits alongside wider attacks on all of our democratic rights.

The imposition of minimum service levels means that when workers lawfully vote to take strike action they could be told to attend work – and sacked if they don't comply. One in five workers in Britain – 5.5 million workers – are at risk of losing their 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.

This legislation follows wider Conservative anti-union activity including the ban on strike action in the prison service, actions to clamp down on protests and demonstrations, and efforts to add to anti-trade union legislation including attempts to end the prohibition of the use of agency workers during strikes. It will impact on several live trade disputes that unions are currently prosecuting and other trade disputes that may arise in the very near future.

Strike action is already only used as a last resort. But where they have no other choice, unions already undertake action responsibly and with due regard to public and worker safety. This includes applying voluntary derogations to deal with emergencies.

Our public services are crying out for investment to address the recruitment and retention crisis they face. But, instead, the Conservatives are seeking to poison industrial relations with the result that services deteriorate even more, all driven by an unelected and out-of-touch prime minister who has lost the confidence of the British people.

This malicious legislation imposes unworkable bureaucracy on unions and their members, and also puts them at risk of huge and unacceptable penalties. The legislation seeks to regulate the content of union communications with their members, requires unions to police their own strikes, and asks unions to take on the role of employers, by informing their members both that they must attend work, and what work they are expected to do. Workers could be sacked for falling foul of the rules and unions hit with huge damages claims. Unions deciding to not issue compliance notices to their members or unintentionally falling foul of the unworkable demands of complying may be enjoined by an employer and/or face fines and other sanctions. The government is even seeking to use the new rules as a Trojan horse for other anti-union measures, including an attempted clamp down on picketing. It is now clear that the increases in potential penalties on unions, sneaked through parliament last year, were intended to enforce union compliance.

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The right to strike is protected by the Human Rights Act 1998, Article 11 of the European Convention on Human Rights (ECHR), the International Labour Organisation's Convention 87 and Article 6(4) of the European Social Charter. It is therefore a core part of the UK's international commitments, and the government's approach means the UK is now likely in breach of international law. We have already reported the government to the International Labour Organisation (ILO) – the UN workers' rights watchdog – over the Strikes Act. And the EU has raised its concerns about the laws too. The UK has become an international outlier on workers' and trade union rights. There has been widespread opposition to these proposals, including from employer organisations such as NHS Providers, from the parliamentary Joint Committee on Human Rights, from the Equality and Human Rights Commission (EHRC), Acas, civil liberties organisations, race and gender equality groups, and from parliamentarians from around the world.

There is no case and no justification for applying minimum service levels. The government has failed to demonstrate that these proposals are necessary or proportionate, and is riding roughshod over workers' and trade unions' rights to take strike action to defend their pay and conditions. This is already apparent from those minimum service levels already in train.

Ministers at the Department for Education have suggested that an education minimum service level would apply to 74 per cent 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.

Regulations for passenger rail provide for train operating companies and light rail providers to operate 40 per cent of a timetable. But this will require far more than 40 per cent of staff. In rail infrastructure large numbers of staff on what are deemed priority rail routes, such as those operating signals, will be denied the right to strike because their presence is necessary for the route to run.

Likewise in border security, the government has provided for coverage akin to a non-strike day. Even its own estimates suggest that three in four workers will be prevented from taking strike action. It is likely that in smaller ports and airports this will amount to a ban on strike action.

The legislation also raises significant concerns about data protection which ministers have failed to treat seriously. This matters enormously because there is a long history of trade union members and activists being targeted unfairly or even blacklisted by employers. Minimum service levels will mean that the personal data of individuals will be shared and held by unions and employers during the creation and monitoring of work notices. The rules even allow for automated processes for picking individuals for work notices with limited protection against biased algorithms.

Although this draconian legislation has now passed through parliament, the trade union movement stands united in its continued opposition. We shall not rest until the malicious, unnecessary and unworkable Strikes Act is repealed.

The Labour party has committed to repeal this pernicious legislation, as part of their ambitious New Deal for Working People which will include the repeal of anti-trade legislation, freeing trade unions to win better terms and conditions. The trade union movement welcomes this commitment. The repeal of the Strikes Act must be part of an employment bill in the first 100 days of a Labour government.

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But until we have a Labour government, we will take all opportunities to challenge, frustrate and resist this legislation and its implementation.

Forty years ago, another Conservative government attacked trade union rights – at GCHQ, where union members were told to resign their membership or be sacked. After a long campaign marked by the fortitude of the workers and their families, and the solidarity of the whole movement, they were reinstated when an incoming Labour government repealed the ban.

The Conservative government has failed to build any employer support for minimum service levels and the Welsh and Scottish governments have rejected this approach. Minimum services levels will mean more red tape and the risk of running unsafe services. They will prolong disputes rather than resolving them. And they will likely have unintended consequences. Employers have already raised concerns that sickness absence levels may rise in response to the imposition of minimum service levels.

Unions call on employers across sectors not to impose work notices. While the government is seeking to sow division between workers and employers, unions are committed to engaging with employers who object to the government's agenda, to ensure good industrial relations without the need to impose work notices.

Only the worst employers would even consider imposing minimum service levels. But if they do, we will remind them of the legal risks they will face and that they will face concerted opposition from the entire trade union movement. We will not stand by while employers sanction unions or their members or while public and worker safety is compromised. In every workplace where employers attempt to deploy and impose these draconian rules they can expect the trade union movement to respond with a show of force and solidarity for any workers affected.

Be in no doubt: this is only the start. We should expect further attacks on the rights of workers and trade unions in other sectors so far unaffected. That is why, today, representing trade union members in sectors affected by these new restrictions and those in sectors not, the whole trade union movement reaffirms our opposition to minimum service levels.

At today's historic special Congress, we agree to continue our campaign of opposition and non-compliance - across workplaces and across the country.

We reassert in full the position taken at our annual Congress in September 2023, as set out in Composite 1 - in particular that "we have no choice but to build mass opposition to the MSLs laws, up to and including a strategy of non-compliance and non-cooperation to make them unworkable, including industrial action" and that "we must use all means necessary to defeat the unjust MSLs laws." We also recommit to "100 per cent solidarity with any trade unions attacked under these MSL laws".

The Conservative government's attack on working people may have finished its parliamentary stages, but the campaign against the Strikes Act continues. Working people will not accept this heinous attempt to drive down their living standards. We stand together to resist and overcome it.

Congress resolves that we will:

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Support

1. Equip every trade union member with the tools to resist this legislation in the workplace. Unions will continue to work together to adopt different tactical approaches to non-cooperation and non-compliance. We will support affiliates in deploying novel and effective forms of industrial action to maximise resistance to work notices. We will develop practical solidarity plans for unions actively engaged in strategies of non-compliance.
2. Support any worker subject to a work notice, including with support from across the trade union movement, if their employer disciplines them in any way.
3. Ensure that where employers fail to resolve disputes, workforces are still able to exercise their democratic right to withdraw their labour.
4. Ensure that where any affiliate is facing significant risk of sanctions because of this legislation, we convene an emergency meeting of the Executive Committee to consider options for providing practical, industrial, financial and/or political backing to that union.

Resist

5. Continue our wider legal challenge to these undemocratic laws – leaving no stone unturned internationally and in UK courts.
6. Call on all employers and public bodies with oversight to oppose this counterproductive legislation. Employers and public bodies from across the public sector and the country have already signalled their opposition to the Strikes Act. All employers and public bodies must reject it.
7. Ensure that any employer tempted to deploy and impose work notices understands that the union movement will unite to resist them - in the workplace and in the courts.
8. Campaign to name and shame as anti-union and anti-worker all employers and public bodies who deploy work notices.
9. Seek to challenge minimum service levels on the grounds of public safety, worker safety, data protection, employees' existing contractual agreements and equalities.
10. Seek to ensure that the data protection and privacy rights of trades union members are fully respected and protected at all times, as we resist the imposition of these undemocratic restrictions.
11. Refuse to tell our members to cross a picket line.

Mobilise

12. Mobilise the whole trade union movement to march with the sacked GCHQ workers through Cheltenham on 27 January, to commemorate their struggle, and to recommit ourselves to defiant opposition to Conservative minimum service levels, trade union restrictions and any threat to the right to strike.
13. Call an urgent demonstration in the event a work notice is deployed and a union or worker is sanctioned in relation to a work notice.
14. Coordinate communications and campaigning activity across the trade union movement.

Repeal

15. Hold Labour to their commitment to repeal this legislation within their first 100 days of office as a key part of promoting and fully implementing the wider New Deal for working people as a flagship policy in the forthcoming general election.

For more than 150 years, unions have fought for safer workplaces with decent pay and conditions. And we have won. We will respond to this shameful Conservative attack on our rights by redoubling our efforts to build a stronger more diverse movement that keeps winning for workers. We will stand together. Our message is clear, we will not rest until this legislation is repealed.