

# **National Association of Head Teachers shadow report to the 140<sup>th</sup> session of the United Nations Human Rights Committee**

## **with respect to consideration of the eighth periodic report of the United Kingdom of Great Britain and Northern Ireland**

**12<sup>th</sup>-13<sup>th</sup> March 2024**

### **About NAHT (National Association of Head Teachers)**

NAHT is the largest union for school leaders in the UK, representing members across Northern Ireland, England, Wales and the Crown Dependencies. We represent more than 37,000 head teachers, executive heads, CEOs, deputy and assistant heads, vice principals and school business leaders. Our members work across: the early years, primary, special and secondary schools; independent schools; sixth form and FE colleges; outdoor education centres; pupil referral units, social services establishments and other educational settings. In addition to the representation, advice, and training that we provide for existing senior leaders, we also support, develop, and represent the senior leaders of the future, through NAHT Edge, the middle leadership section of our union. We use our voice at the highest levels of government to influence policy for the benefit of leaders and learners everywhere.

### **Executive Summary**

1. This submission focuses primarily on Article 22 of the International Covenant on Civil and Political Rights (ICCPR). The UK government has failed to meet its obligations in respect to this Article because it has placed unjustified restrictions on the exercise of the right to strike and consequently the rights of workers to lawfully exercise their right to bargain for fair terms and conditions. The UK government's Strikes (Minimum Services Levels) Act 2023 and accompanying proposed regulations for the education sector effectively mean that school leaders will be unable to strike and obligations will be placed on their unions to encourage members to not take part in lawful industrial action. The proposals breach obligations under the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize, as recognised by Article 22 of the ICCPR.
2. Furthermore Article 8 of the ICCPR is also engaged as the Strikes Act provides for an employer to issue a notice for an employee to work during lawful strike action under threat of dismissal should they not comply, this amounts to forced and/or compulsory labour. Articles 2 and 3 are also engaged as women are disproportionately negatively impacted by the law and Article 17 is engaged as the legislation infringes on the right to privacy by weakening protection given to sensitive trade union data, as there is a history of union members being blacklisted in the UK this is significant.
3. NAHT is requesting that the Human Rights Committee urgently address these concerns during its 140<sup>th</sup> session in March 2024. NAHT would urge the Committee to recognise the aforementioned breaches of the Covenant and compel the UK government to retract the Strikes Act and accompanying regulations and proposed regulations as a matter of urgency and enter meaningful negotiations with unions together with the clear legal recognition of a positive right to strike. This will improve industrial relations and foster balanced cooperation in compliance with international legal obligations.

4. This submission deals with a matter that does not fall directly within the UK list of issues as it primarily deals with a law created in 2023, however given that this law breaches obligations within the ICCPR as shall be illustrated in detail below we would urge the Committee to consider this matter in it's 140<sup>th</sup> session.

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## Context

5. The Strikes Act along with accompanying secondary legislation, guidance and regulations are draconian, unnecessary and unworkable, they remove the rights of workers to participate in strikes thus undermining the ability of unions to bargain for fair terms and conditions.<sup>1</sup> Taking industrial action is a last resort for school leaders and workers in general seeking to bring an employer to the table for meaningful negotiation, workers' ability to withdraw their labour underpins the successful resolution of many disputes before strike action has taken place. Increasing infringements on worker rights such as falling rates of pay and excessive workloads have led to an increase in industrial action in recent years,<sup>2</sup> the government has sought to justify this legislation by stating that they want to ensure the public can continue to access services that they rely on during strikes.
6. This Strikes Act is the latest in a series of draconian anti trade union laws and initiatives by the UK government. The Act will create new powers which will allow the government to force union members to go into work on strike days under threat of dismissal, thus undermining strike action.<sup>3</sup> It will effectively make it legal to sack striking education workers and will enable hefty bankrupting fines to be placed on unions.
7. The Act became law in July 2023, the government failed to engage in meaningful consultation with social partners including unions and the education sector on the introduction of these proposals. In late 2023 they announced that minimum service level regulations for rail workers, border security staff and ambulance workers would be laid in parliament with a view to stopping any strike actions in these sectors over the Christmas period. On the 28<sup>th</sup> November they rolled back on commitments to negotiate with education unions and launched a consultation on compulsory MSL requirements in education that would require the majority of school staff to work on strike days.<sup>4</sup>
8. The consultation states that the Strikes Act '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.' The proposals are not reflective of any such balance and amount to a unilateral approach whereby the government dictates their wishes to workers under threat of dismissal. Employees are currently protected against unfair dismissal for the first 12 weeks of a lawful strike. The law removes that protection from individual education workers named in a work notice who do not comply.
9. The on going attack on the rights and freedoms of trade unions and their members has caused the UK to drop dramatically in the annual global rights index as collated by the International Trade Union Confederation. The index, rated the UK on a scale of one to five as a four, meaning that the government has engaged in "systematic violations of rights".<sup>5</sup>

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2023/39/enacted>

<sup>2</sup> <https://www.theguardian.com/uk-news/2023/aug/14/uk-working-days-industrial-action-strikes-resolution-foundation>.

<sup>3</sup> <https://www.naht.org.uk/Portals/0/PDF's/Policy/NAHT%20non%20statutory%20guidance%20response%20MSL%20September%202023.pdf?ver=2023-11-29-160215-817>

<sup>4</sup> <https://www.naht.org.uk/News/Latest-comments/News/ArtMID/556/ArticleID/2253/Minimum-service-levels-in-education-government-consultation>

<sup>5</sup> <https://www.globalrightsindex.org/en/2023>

10. The Act is one law in a suite of anti-trade union legislation introduced by the current government, it adds to an existing body of highly restrictive anti trade union laws, including;

- **The Trade Union Act 2016** which introduced restrictive new thresholds on industrial action ballots,
- **The Liability of Trade Unions in Proceedings in Tort (Increase of Limits on Damages) Order 2022** which quadrupled the liability costs faced by trade unions for unlawful industrial action (introduced without consultation and little Parliamentary scrutiny)
- **The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022** which removed the ban on the use of agency workers to replace striking workers – (a judicial review brought by UK trade unions to quash this legislation was upheld in August 2023)

The UK Strikes Act has received widespread international condemnation. In January 2023 the president of the ILO condemned the Bill,<sup>6</sup> and in April 2023 a collective of 121 high profile international politicians called on the UK government to drop the Bill.<sup>7</sup>

11. The UN Committee on Economic Social and Rights has previously put forth their concerns with regard to the UK anti trade union agenda. Notably at the last periodic review following the adoption of the Trade Union Act 2016; the Committee recommended that the State party undertake a thorough review of the new Trade Union Act 2016 and take all necessary measures to ensure that, in line with its obligations all workers enjoy their trade union rights without undue restrictions or interference.<sup>8</sup>

12. The International Labour Organisation Committee of Experts had previously requested the UK Government to review section 3 of the Trade Union Act 2016 so that the requirement of support of 40 per cent of all workers for a strike ballot does not apply to education and transport services. The Committee had noted that a restriction on education services in particular would touch upon the entire primary and secondary education sector, and the Committee considers 'that such restriction is likely to severely impede the right of these workers and their organizations to organize their activities in furtherance and defence of their occupational interests without interference'.<sup>9</sup> Unions in the UK have been campaigning collectively against the Strikes Act, in September the TUC escalated concerns with issuing a complaint to the ILO about the undemocratic nature of the law.<sup>10</sup>

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<sup>6</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_885425.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_885425.pdf)

<sup>7</sup> <https://www.tuc.org.uk/news/over-100-politicians-around-world-call-uk-government-drop-its-anti-strikes-bill>

<sup>8</sup> <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW3XRinAE8KCBFogOHNz%2FvuCC%2BTxEKAI18bzE0UfQhJkxxOSGuoMUxHGypYLjNFkwxnMR6GmqogLJF8BzscMe9zpGfTXBkZ4pEaigi44xqiL>

<sup>9</sup> ILO Committee of Experts, Observation on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (ILO Convention 87) (Adopted 2018, published 2019)

<sup>10</sup> <https://www.theguardian.com/politics/2023/sep/10/tuc-to-complain-to-un-watchdog-over-undemocratic-uk-anti-strike-law>

## **The impact of the Strikes Act on the education sector and school leaders**

13. In introducing proposals for Minimum Service Regulations in the Education sector,<sup>11</sup> the Secretary of State's foreword talks about the 'devastating impact on children of missing school' during industrial action.<sup>12</sup> It fails to address the significant and chronic disruption to education caused by years of underfunding of our schools and the sustained devaluing of the profession. This purposefully shifts blame away from government and into the education workplace, when it is the government's actions and underinvestment in the profession that has led to any disputes to date. By using this rhetoric the government is actively implementing a false division between the interests of the education service workforce and the children and young people they are dedicated to.

14. Moreover, throughout any strike action to date schools have maintained safeguarding commitments and have worked with local social care providers to ensure that the needs of vulnerable pupils are met. Our members are school leaders because it is their vocation, they are passionate about education and ensuring that every child has the opportunity to get the best start in life. The proposed government education regulations are deeply damaging to the education profession and consequently will be deeply damaging to lives of millions of children.

15. The government states that minimum service level arrangements 'will help safeguard the safety the education of children and minimise disruption to the public'.<sup>13</sup> This statement is an insult to the profession, strike action is an absolute last resort for education unions, it is not undertaken lightly. Such actions are only taken where the profession is under extreme threat. The underinvestment in social care and chronic rates of poverty perpetuated by the current government are having a far greater impact on pupil safety and education and consequently on society as a whole.

16. In the proposal on education regulations consultation document the government states that pupils who miss more days have lower attainment than those who do not. The consultation does not reference the circumstances that lead to some pupils missing more days than others. As front line education professionals our members are all too aware that government policy, rising poverty rates and chronic underinvestment in the education and health of our children and young people has directly contributed to greater pupil absences;

- Increasing pupil mental health disorders and underinvestment in the national health service and child mental health services has meant that the system is unable to cope with rising demands leading to more pupils taking time off.<sup>14</sup> In evidence to parliament investigating rising school absence, councils cited increased anxiety and lack of support was driving a steep rise in absence with many pupils struggling to leave home as they face lengthy weights to be assessed and receive treatment.<sup>15</sup>
- The cost of living crisis coupled with the upheaval of covid has resulted in my families struggling. Rates of absence for pupils eligible for free school meals are double that

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<sup>11</sup> <https://www.gov.uk/government/consultations/minimum-service-levels-msls-in-education>

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> <https://digital.nhs.uk/news/2021/rate-of-mental-disorders-among-children-remained-stable-in-2021-after-previous-rise-report-shows>

<sup>15</sup> <https://www.nesta.org.uk/report/school-attendance-analysing-causes-and-impact-in-pursuit-of-solutions/full/>

of those who are not eligible.<sup>16</sup> The reality is that many parents cannot afford to ensure their child has a clean uniform or a bus fare every day.<sup>17</sup>

- Insecure, poor quality housing is increasingly a barrier to children going to school, many of those fleeing domestic violence are placed in unsuitable accommodation far away from their child's school.<sup>18</sup> The government has failed to invest in social housing, the repercussions of this will have far reaching consequences for the current generation of young people.<sup>19</sup>

17. NAHT, in partnership with our sister unions have been urging the government to redress this neglect and underinvestment in the future of our children and young people, without such pleas being addressed, we will have no choice but to resort to industrial action. Teachers, school leaders and support staff have taken part in industrial action to defend their pay and working conditions, to prevent a worsening of the staffing shortages and to restore the quality of our education services. The introduction of minimum levels of service will not resolve these issues but they will impact workers ability to do something about them.

### **Breaches of the International Covenant on Civil and Political Rights**

18. The legal justification as set out by the government undermines internationally made commitments by the United Kingdom. Indeed the Joint Committee on Human Rights of the UK parliament warned "(i)n our view, the Government has not adequately made the case that this legislation meets the UK's human rights obligations",<sup>20</sup> further stating that 'the penalties proposed for workers and unions (in the Act) were unduly high and disproportionate'.<sup>21</sup>

#### **i) Article 22**

19. The strikes Act breaches Article 22 ICCPR, it infringes upon the ability to form and join a trade union for the protection of the interests of the workers as it removes the right of school leaders to strike. Removal of the right to strike weakens the ability of unions to collectively bargain. As the ILO have recognised '*Collective bargaining is a fundamental right that is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work . Collective bargaining is a key means through which employers and their organizations and trade unions can establish fair wages and working conditions, and ensure equal opportunities between women and men.*'<sup>22</sup>

<sup>16</sup> <https://cpag.org.uk/news-blogs/news-listings/how-school-costs-make-it-harder-go-school#:~:text=Children%20eligible%20for%20free%20school,finances%20are%20affecting%20children's%20attendance.>

<sup>17</sup> <https://www.theguardian.com/education/2023/jun/28/covid-poverty-pupil-absence-england-schools-social-economic-pandemic-families#:~:text=Deprivation%20and%20poverty%20have%20always,disadvantage%20%E2%80%93%20have%20higher%20absence%20rates.>

<sup>18</sup> <https://www.schoolhomesupport.org.uk/>

<sup>19</sup> <https://www.insidehousing.co.uk/comment/we-know-what-is-needed-to-reform-housing-we-need-a-government-bold-enough-to-commit-to-it-82908>

<sup>20</sup> <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/195605/widespread-human-rights-failings-must-be-addressed-in-illegal-migration-bill-human-rights-committee-finds/>

<sup>21</sup> <https://committees.parliament.uk/committee/93/human-rights-joint-committee/news/186524/strikes-bill-fails-to-meet-human-rights-obligations-jchr/>

<sup>22</sup> [ILO Declaration on Fundamental Principles and Rights at Work \(DECLARATION\)](#)

20. The right to bargain collectively has been held by the European Court of Human Rights to be an 'essential element' of European Convention on Human Rights (ECHR), Art 11.<sup>23</sup> These provisions were recently reiterated in Article 399(2) of the EU-UK Trade and Cooperation Agreement.<sup>24</sup> The ECHR has recognised the right to collective bargaining as an essential element of the right to freedom of association as 'the right to strike allows a trade union to make its voice heard and constitutes an important instrument for the trade union to protect the occupational interests of its members and in turn for the members of a trade union to defend their interests'<sup>25</sup> The UK is party to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize, the measures which they have taken directly breach obligations they have committed to their role as a party to the Convention.

21. The restrictions which the government have placed on this right cannot be justified under Article 22 (2) of the covenant as they are not 'necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The ILO Committee on the Freedom of Association (CFA) have stated minimum service levels are allowed in the following cases ;<sup>26</sup>

1. 'Essential public services' in the strict sense of the term where 'the interruption of which would endanger the life, personal safety or health of the whole or part of the population'<sup>27</sup>. The CFA has produced a list of examples of sectors and education is not one of these sectors.
2. Strikes whose 'extent and duration' might be such as to result in an acute national crisis 'endangering the normal living conditions of the population' or
3. In public services of 'fundamental importance'

Where the parties cannot agree, the view of the CFA is that 'any disagreement should be resolved by an independent body, such as the judiciary, rather than by the Government'.<sup>28</sup> Under the Act and the proposals at hand, in contrast, the minimum service levels are to be determined by the Secretary of State. The ILO requires that for any minimum service levels at all, unions "must be able to participate" in setting them. Only if that is not possible it should be settled by "an independent body having the confidence of the parties", not a minister of state or an employer.<sup>29</sup> In the Act it is the Secretary of State who sets the levels therefore in direct contravention of ILO standards

22. The UK Strikes Act provides no statutory provision for negotiation between employers and trade unions, minimum service levels are to be imposed unilaterally, thus silencing the voice of education trade unions and allowing them no part in setting appropriate minimum levels. The Act makes no references to the possibility of minimum services decided by collective negotiations and agreements. The legislation does not allow for any meaningful consultation with unions, there is no obligation to consult about the particular individuals identified in the work notice. It is stated that an employer must 'have regard to any views expressed by the union', they can effectively ignore them if they so choose, indeed the

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<sup>23</sup> Demir and Baykara v Turkey (2009) 48 EHRR 54; [2009] IRLR 766

<sup>24</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/982648/TS\\_8.2021\\_UK\\_EU\\_EAEC\\_Trade\\_and\\_Cooperation\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/982648/TS_8.2021_UK_EU_EAEC_Trade_and_Cooperation_Agreement.pdf)

<sup>25</sup> (see paragraph 104 of the judgment).

<sup>26</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_632659.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf) para 866

<sup>27</sup> Ibid. para 830

<sup>28</sup> Ibid.

<sup>29</sup> (ILO 2018, §§882-3).

accompanying legislative guidance emphasises several times that the employer may disregard the views of the trade union. Such a unilateral approach cannot be said to invoke balance, it is draconian and against democratic values.

### **International Labour Organisation Convention 98 and Convention 87**

23. The right to organise and collective bargaining is protected by ILO convention 98 and the right to strike is protected by ILO Convention 87 (on Freedom of Association and the Right to Organise) these are 2 fundamental conventions of the ILO which the UK ratified in 1949 and 1950 respectively. The UK is one of the 9 founding members of the ILO, the UK has ratified 87 ILO Conventions and is a member of the governing body. The ILO states that its mission is to 'promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.' Given's the UK's pivotal role in the advancement and development of the ILO it would appear to be a grave omission that they have failed to directly mention two of the most significant conventions pertaining to the proposed Education regulations in the 'legal context' section of the consultation document.<sup>30</sup>

24. We contend that the Act and proposals within the consultation are inconsistent with ILO Convention 87 as the Act effectively contradicts the principle of freedom of association by requiring trade unions actively to take steps to undermine the effectiveness of their own action in the interests of the employer, as the Act confers a duty on them to ensure that members in receipt of work notices do not take part in the strike.

25. The former United Nations' Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, has stated that states party to the ILO have a positive obligation to uphold the right to strike;

'The concentration of power in one sector – whether in the hands of government or business – inevitably leads to the erosion of democracy, and an increase in inequalities and marginalization with all their attendant consequences. The right to strike is a check on this concentration of power.'<sup>31</sup>

Indeed the government themselves have recognised this, As the government's own impact assessment identified: "There are a number of benefits of being part of a union. One of these benefits is that unions help counterbalance the monopoly power that employers have over their staff. Strike action may in some cases lead to improved terms and conditions, including increased pay deals. MSLs may reduce the utility that workers receive by being part of a union."<sup>32</sup>.

26. We note the recent comments of the ILO's Committee on the Application of Standards cautioning the government to ensure its legislation is in line with ILO conventions. The TUC, of which NAHT is a member, has submitted evidence to the ILO Committee of Experts laying out criticisms and concerns about the legislation, including its failure to adhere to ILO standards. It is therefore deeply disappointing that the government proposes proceeding with

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<sup>30</sup> [Minimum service levels in education - Department for Education - Citizen Space](#)

<sup>31</sup> <https://www.ier.org.uk/news/un-rights-expert-right-strike-essential-democracy/#:~:text=%E2%80%9CThe%20concentration%20of%20power%20in,of%20power%2C%E2%80%9D%20he%20explained.>

<sup>32</sup> 23 2 [1] [https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-ineducation/supporting\\_documents/1.%20MSL%20Impact%20Assessment.pdf](https://consult.education.gov.uk/industrial-action/minimum-service-levels-mls-ineducation/supporting_documents/1.%20MSL%20Impact%20Assessment.pdf) 3 Gov.UK (2022) The Transport Strikes (Minimum Service Levels) Bill impact assessment ([publishing.service.gov.uk](https://publishing.service.gov.uk)) 4



minimum service levels in education that could deny thousands of teachers the right to strike.<sup>33</sup>

## ii) Article 8

27. The legislation violates Article 8 of the ICCPR in respect of forced and compulsory labour; as the Act provides for an employer to issue a notice setting out the names of 'persons required to work during the strike', under threat of dismissal should they not comply. Article 8 permits any 'Service exacted in case of an emergency or calamity threatening the life or well-being of the community', the provision of education cannot be interpreted as such an emergency situation.<sup>34</sup>

28. Current government anti strike proposals put our members at risk of dismissal if they do not cooperate with measures, the most likely school staff members to be identified first for provision of minimum service levels will be the head teacher and the senior leadership team. The Strikes Act does not provide a right of appeal or any opportunity for meaningful negotiation between unions and the government, so in theory if as a union our members lawfully vote to strike they could be forced to work on a scheduled strike day or face the choice of losing their job without redress or entering an unsafe work environment. This is an impossible choice.

29. There is no provision for withdrawal of a work notice and the provisions for appealing a work notice are entirely inadequate. A worker can have a 'constructive conversation' with their employer if they feel there is a 'genuine reason' why they should not be named in the work notice; this not a fair or effective means of appeal, there is no definition for what may constitute a 'genuine reason' or a 'constructive conversation'.<sup>35</sup>

30. An inquest in late 2023 into the suicide of a school leader exposed many of the underlying issues that are causing undue stress and pressure on schools thereby threatening the mental health of education professionals.<sup>36</sup> As the coroner stated 'there is a risk of future death if only lip service is paid to learning from tragedies like these.'<sup>37</sup> As a union it is essential that we have the right to instruct our members to withdraw their labour if their workplace is unsafe.

## iii) Articles 2 & 3

31. Articles 2 & 3 are also engaged as the Strikes Act and proposed education regulations disproportionately affect women. In the UK the education profession has a significant disproportionate gender spread, 75.7% of teachers are women,<sup>38</sup> and therefore more women than men are likely to be subjected to work notices and consequently will have lesser rights and employment protections. Women's rights campaign groups have raised the alarm on the Strikes Act, saying it will have a specifically detrimental impact on women in the workplace. Jemima Olchawski, chief executive of the Fawcett Society, said: "For many women who work in systemically undervalued sectors, strike action is critical to making their voices heard. What's more, we know that women, especially women of colour, are at the

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<sup>33</sup> <https://www.theguardian.com/politics/2023/sep/10/tuc-to-complain-to-un-watchdog-over-undemocratic-uk-anti-strike-law>

<sup>34</sup> [https://www.echr.coe.int/documents/d/echr/guide\\_art\\_4\\_eng](https://www.echr.coe.int/documents/d/echr/guide_art_4_eng)

<sup>35</sup> <https://www.legislation.gov.uk/ukpga/2023/39/enacted>

<sup>36</sup> <https://publications.parliament.uk/pa/cm5804/cmselect/cmeduc/117/report.html>

<sup>37</sup> <https://schoolsweek.co.uk/ruth-perry-risk-of-future-deaths-if-lessons-not-learned-says-coroner/>

<sup>38</sup> <https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/school-teacher-workforce/latest/#by-ethnicity-and-gender>

sharp end of the cost of living crisis – workplaces must work for women and the starting point for this must be decent pay and working conditions.”<sup>39</sup>

32. School leaders are disproportionately older workers and as workers in positions of leadership and responsibility are disproportionately likely to be selected for work notices, thus there may be a disproportionate negative impact on older workers.

33. There will far reaching negative consequences of these proposals for pupils if enacted. Good industrial relations between employers and their workforce is in everyone's interest. The proposals undermine education workers ability to bargain for fairer terms and conditions and consequently they are likely to lose out on economic benefits, thereby further exasperating the recruitment and retention crisis. Significantly, imposing MSLs in education would damage industrial relations and could lead to a deterioration in the quality of education our children and young people receive.

34. The government does not have a justified rationale for the differential treatment caused by these proposals and their subsequent impact on education workers with protected characteristics, thereby these provisions are highly likely to fall foul of equality law.

#### **iv) Article 17**

35. Article 17 is engaged as the Strikes Act provides for unlawful interference with privacy. Accompanying guideline to the law fail to engage adequately with the legal protection given to trade union data. In particular, they do not address the risk of employers inferring trade union membership during the process of implementing a work notice. This matters enormously because there is a long history of trade union members and activists being targeted unfairly or blacklisted by employers.

36. The guidance in general fails to sufficiently convey that prejudice to workers based on union membership is a serious breach of ILO law. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) and Committee on Freedom of Association (CFA), have stated that “anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions” They further state that employers are forbidden to take into consideration union affiliation or participation in union activities when making decisions concerning management and assignment of work.

#### **International comparisons used by the UK to justify its approach.**

37. The UK has sought to justify the introduction of the Strikes Act by citing other jurisdictions who have minimum service levels in place for times of strike, however the government has failed to acknowledge fundamental differences between the UK and the jurisdictions it has referenced. Fundamentally no other European jurisdiction with minimum service levels gives employers the power to take away the livelihoods of workers in these circumstances through dismissal as the UK does.

#### **i) Germany**

38. The consultation government has referenced German teachers who are categorised as civil servants and are as such banned from striking. This has been condemned in international law; the UN Committee on Economic, Social and Cultural Rights has stated that the German government must take measures to revise the scope of the category of essential

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<sup>39</sup> [Anti-strike bill discriminates against women, say campaigners | Industrial action | The Guardian](#)

services with a view to ensuring that all those civil servants whose services cannot reasonably be deemed as essential are entitled to their right to strike.<sup>40</sup>

39. The recent ECHR judgement of *Humpert and others v Germany* (December 23) has upheld the German ban on striking teachers,<sup>41</sup> but there are a clear distinctions between the German system and the UK;

- Firstly teachers in the UK are not civil servants, indeed there is condemnation from legal experts that Germany has categorised teachers in this way.<sup>42</sup> Indeed the ICCPR HR Committee has indeed stated that they are 'concerned about the blanket ban on public sector workers striking within the State party, based upon the assessment that all such workers, including schoolteachers, are essential' in their concluding observations for Germany in 2021.
- Secondly, the judgement states that there are other means for trade unionists to protect their rights aside from strikes, in the UK there are no effective other means. The recommendations of the School Teachers Review Body (the government body tasked making recommendations on the pay, professional duties and working time of school teachers in England) are routinely ignored by government and the government regularly disregards opportunities to negotiate meaningfully with trade unions. A key example of the government disregarding trade unions concerns the manner in which the government pulled the plug unexpectedly on discussions with unions to reach a voluntary agreement on minimum service levels, the government chose to announce their plans by briefing the press first rather than talking to unions thereby denying the opportunity for constructive dialogue.<sup>43</sup>

## ii) France

40. The government consultation document on education regulation proposals references France and their minimum service levels for nursery and primary schools (for pupils aged 3-10) which serves to provide on site supervision when the school is not able to deliver normal lessons due to strike action.<sup>44</sup> 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.

41. There are a number of key differences between the UK and the French situation which makes this an unsuitable comparison to what the government is proposing;

- The right to strike is guaranteed by the French Constitution, Whether or not a public employee is a member of a union, he or she can strike as soon as a union has given notice.
- French teachers are required to give at least 5 days notice of their intention to strike, this is in contrast to the more restrictive requirement of 14 days in the UK.
- The French Constitutional Court has held that a minimum level of service may not be equivalent to a normal level of service, what the UK government is proposing in

<sup>40</sup> <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-229726%22%5D%7D>  
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuWx2r5QgrDoHhDa4HdzLZSD2zbo%2Fzew8fG%2F%2FJWzgalqrI%2FpQdKVEU%2BeWBy15OCs%2F%2BnkU3s6ayod026StGVH8b0gDad0d4wZZ5%2Fvp6F1W5k%2Bvv>

<sup>41</sup> <https://hudoc.echr.coe.int/#%7B%22itemid%22:%5B%22001-229726%22%5D%7D>

<sup>42</sup> See William A. Schabas, *The European Convention on Human Rights – A Commentary* (Oxford University Press, 2015), at p. 523, referring to *Council of Civil Service Unions and Others v. the United Kingdom*, no. 11603/85, Commission decision of 20 January 1987, DR 50, p. 228.

<sup>43</sup> <https://www.naht.org.uk/News/Latest-comments/Press-room/ArtMID/558/ArticleID/2206/Proposals-for-minimum-service-levels-for-schools-an-attack-on-democratic-freedoms-says-NAHT>

<sup>44</sup> <https://www.gov.uk/government/consultations/minimum-service-levels-msls-in-education>

schools is a normal level of service in the special sector and with regard to the first proposal in the primary sector too.

- The government has not suggested that local authorities could provide solely 'supervision' in place of education as they do in France. Non-striking teaching staff cannot be required to provide supervision in addition to their teaching responsibilities, this is simply unworkable.
- In France the constitutional status of the right to strike means that regulations remain under judicial review by administrative courts, no such protections are proposed or offered to workers in the UK.
- Furthermore the French Labour Code states that 'the exercise of the right to strike cannot justify the termination of the employment contract, except for gross misconduct attributable to the employee, any dismissal pronounced in the absence of gross misconduct is automatically null and void'.<sup>45</sup> This is contrast to the approach taken by the UK with the Strikes Act whereby employees lose such protections.

### **iii) Italy**

42. The UK government have stated that in Italy, essential services for strike purposes, including education, are defined by law therefore balancing the right to strike against other constitutional rights, including the right to education.<sup>46</sup> The Italian Constitution recognises the right of the workers to withdraw their labour in order to promote their own interests. In so far as the right to strike is considered an individual right of the worker (to be exercised collectively), both primary and secondary strikes can be called by any group of workers, as well as by trade unions or company works councils, this is a stark contrast to the UK where it is against the law to take part in secondary strikes or for groups of workers to call a strike without union status.

43. The UK Government has referenced that the operation of a minimum service level in Italy is set out in collective agreements. This is in stark contrast to the approach set out in the UK, the UK approach is unilateral and does not allow for a collective approach. Italy has a Commission of Guarantee, an independent body which assesses the appropriateness of the minimum services set out in these agreements and, if necessary, orders further measures, all 5 members are labour law professors, and their work is endorsed as being fully transparent. There is no independent mechanism in the UK law or proposals.

44. As with France, disciplinary sanctions for breaching a minimum service level agreement are only possible if they do not entail the termination or the permanent modification of the employment relationship, In Italy if a worker violates the minimum service requirements, they can be disciplined, but only by way of a fine up to four hours pay, or suspension from work for up to 10 days. This is in direct contrast to the UK approach which allows for dismissal.

### **iv) Ireland**

45. Ireland does not have specific legislation on industrial relations, but rather a code of practice which is not legally binding. This code does say minimum service levels should be based on a principle of cooperation, or through the Labour Relations Commission if an agreement can't be reached.

### **v) Spain**

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<sup>45</sup> <https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/france>

<sup>46</sup> <https://www.gov.uk/government/consultations/minimum-service-levels-msls-in-education>

46. The Spanish Constitution specifically guarantees the right to strike. The Spanish government can set minimum service levels, but the required level of service needs to be proportionate—balancing the needs of the community to access services with the fundamental right to strike. Again there is no such fundamental guarantee of this right in the UK.

47. The Human Rights memorandum to the Act states that the case law of the European Court of Human Rights supports member states in imposing more stringent conditions on certain public sectors by referring only to the single case of *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v Spain (45892/09)*<sup>47</sup>, in which a ban was upheld on Spanish members of the police force taking strike action. The Court found that the difference in treatment was objectively justified in light of the substantive difference between the nature of the duties of police officers and workers in other sectors. However, it is difficult to compare police officers, who have specific duties to protect the state, with education workers.

### **Concluding remarks**

48. The introduction of Minimum Service Levels in the education sector will not prevent or resolve industrial disputes. They will disenfranchise education workers, poison workplace relations and devalue the education profession further. Ultimately it will be our children and young people who will suffer from a devalued system.

49. Forcing unions to implement draconian government legislation is a direct violation of the freedom of assembly as proclaimed in the Universal Declaration of Human Rights 1948. This right enables effective participation of unions in economic and social policy, lying at the heart of democracy and the rule of law. Forcing unions and employers to engage with this law robs them both of autonomy and fundamentally erodes democracy, accountability and fundamental freedoms. It serves to make the UK an outlier in international human rights terms.

50. In June 2023 the ILO instructed the UK government to ensure that 'that existing and prospective legislation is in conformity with the (ILO) Conventions', it is clear that this guidance and the associated legislation fall far from such conformity and thus should be immediately revoked to prevent further breaches of fundamental rights and democratic freedoms.

### **Recommendations**

#### **The Human Rights Committee must compel the UK government;**

- to retract the Strikes (Minimum Service Levels ) Act 2023 with immediate effect.
- to enter constructive negotiations with employers and unions working together to focus on addressing the most pressing issues facing our education system.
- to provide clear legal recognition of the positive right to strike.
- to ensure that all obligations in line with ILO commitments are respected.

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<sup>47</sup> European Court of Human Rights, April 2015 [Junta Rectora Del Ertzainen Nazional Elkartasuna \(ER.N.E.\) v. Spain - 45892/09](#)