

Royal College of Nursing response to Department for Education consultation on minimum service levels in event of strike action: education settings

With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the United Kingdom and the largest professional union of nursing staff in the world.

1. Introduction

- 1.1. The Royal College of Nursing (RCN) opposes the Strikes (Minimum Service Levels) Act and thus opposes the laying of any regulations under its auspices. Notwithstanding our general opposition to the principles underpinning minimum service levels legislation, we have specific concerns about the Department for Education's proposals and their potential impact on nursing staff working in education settings.
- 1.2. On 1 December 2023, the RCN wrote to the Secretary of State for Education to seek clarification in relation to the statutory consultation that the Department has launched in relating to minimum service levels in schools. We noted that the proposals lack specificity in defining the staff groups that could be issued with work notices. We further pointed out that the inclusion of 'other non-teaching staff important to the running of the setting' appears to be especially imprecise. We explained our concern that school nurses might be within scope and asked for urgent clarification on this point.
- 1.3. On 19 December 2023 The Rt Hon. Damian Hinds MP, Minister for Schools, responded on behalf of the Secretary of State. The letter did not answer our key question as to whether the Department views school nurses as within the scope of the Department's own proposals. We are nonetheless somewhat reassured by promise that 'the policy has not been finalised yet'. For the avoidance of doubt, school nurses were not mentioned at all in the government's consultation document, nor in the accompanying impact assessment or equality impact assessment.
- 1.4. On this basis, we ask that the Department clarifies that school nurses are not within scope for the proposed regulations, pursuant to explicit promises made by Ministers of the Crown that minimum service levels legislation is 'not about nurses.'
- 1.5. A summary of our position can be found below:
 - The Secretary of State for Education has stated that relevant trade unions were invited to informal talks prior to the commencement of the statutory consultation process. Given that the RCN received no such invitation, we are hopeful that this means that the Department for Education will view nursing staff as out of scope for the proposed regulations.
 - Ministers told nurses, from the despatch box, that the Strikes (Minimum Service Levels) Bill was 'not about nurses.' As such, it is reasonable to expect that the Department does not violate this promise and clarifies that these proposed measures are, indeed, 'not about nurses.'

- The Equality Impact Assessment makes no mention of nursing whatsoever. Imposing regulations on nursing staff without any specific consideration given to the equalities impact of this is unjustified.

2. The government's promise to nurses

2.1. During Business Questions on 26 January 2023, the Leader of the House of Commons, The Rt Hon. Penny Mordaunt MP, said that 'the Strikes (Minimum Service Levels) Bill was 'not about nurses', and it is 'wrong' to suggest it is.¹ There has been no material change in circumstance since this promise was made; nursing staff in schools have not taken a single day of strike action.

2.2. On this basis, the Department for Education must honour the assurances that were made to nursing staff, and explicitly exclude them from the scope of any minimum service levels regulations that relate to schools.

3. Territoriality

3.1. This consultation proposes regulations that could apply across Great Britain. These regulations being imposed upon Scotland and Wales would be additionally problematic, as it explicitly contradicts the wishes of the elected devolved administrations. We also note that the Senedd voted to deny legislative consent on 25 April 2023.²

3.2. In the Department for Health and Social Care's published response to the consultation on minimum service levels in ambulance services, it says that the UK government 'recognises that responsibility for the operation of these services in Scotland and Wales lies with the devolved administrations' and agreed to exclude those countries from the scope of the regulations. Precisely the same logic can be applied to these proposals, relating to education settings.

3.3. Notwithstanding our view that such regulations should not be imposed on any part of the UK, we call on the Department for Education to exclude Scotland and Wales from scope. This would at least reflect a consistent position across UK Government departments.

4. Minimum service levels and nursing

4.1. In December 2022, the RCN organised industrial action for the first time in its 106-year history in England and Wales. In February 2023 our members took part in the largest strike in the history of the NHS. During all phases of industrial action in the ongoing pay dispute, national derogations or emergency exemptions were agreed in addition to significant numbers of local derogations during the first three phases of industrial action. RCN derogations exempted thousands of our members from action and ensured that patient safety was maintained.

¹ Hansard (2023) [Business of the House Volume 726](#)

² Welsh Government (2023) [Written Statement: UK Government's Strikes \(Minimum Service Levels\) Bill](#)

- 4.2. The former Secretary of State for Health and Social Care has praised the RCN's record of granting derogations, in public and in private, including to the national media. In terms, he has said that these amounted to a 'national minimal service level.'³
- 4.3. In this context, the Department for Education's decision to persist with a formal statutory process for introducing regulations, without having conducted any prior informal talks with the RCN, is perplexing, if nursing staff are indeed considered to be within scope. The RCN has a proven record of ensuring that our strike action is safe, without the need for minimum service levels regulations.
- 4.4. Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 already makes it an offence to take industrial action wilfully or maliciously in the knowledge or belief that human life will be endangered, or serious bodily injury caused. The Department for Education can be assured that the RCN is committed to ensuring this is not breached, and thus the imposition of further minimum service regulations is entirely unnecessary.

5. Equalities concerns

- 5.1. We are concerned that the laying of regulations, as contemplated in the consultation, could be discriminatory, in breach of Article 14 of the European Convention on Human Rights, if applied to nursing staff in education settings. Nursing is a predominately female workforce (89%) – so this would have a disproportionate impact on women.⁴ Consideration should also be given to the ethnic profile of the nursing workforce as 26.04% of NMC registrants are Asian (13.48%), Black (10.46%), mixed race (0.98%), and other (1.12%).⁵
- 5.2. The cross-party Joint Committee of Human Rights report on minimum service levels agreed with our assertion that the placing of work notices on nursing staff risks infringing their Article 14 rights, stating: 'we agree that there is potential for minimum service requirements to impact more severely on certain protected groups, most obviously women in respect of nursing.'⁶ The fact that the Department for Education has issued a statutory consultation, that may or may not have nursing staff within scope, without any reference to the JCHR's specific findings in relation minimum service levels and nursing, is concerning.
- 5.3. 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,
 - Advance equality of opportunity between people who share a protected characteristic and those who do not,

³ Yahoo News (2023) [Govt: It's appropriate people have right to strike](#)

⁴ The Nursing and Midwifery Council (2022) [The NMC register mid-year update](#)

⁵ Ibid

⁶ Joint Committee on Human Rights (2023) [Legislative Scrutiny: Strikes \(Minimum Service Levels\) Bill](#)

- Foster good relations between people who share a protected characteristic and those who do not.

5.4. The Department for Education's equality impact assessment for the proposed regulations does not mention nursing at all. It seems clear that the Department has given no specific thought as to what these regulations could mean for nursing specifically. Given the clear demographic realities associated with nursing, it is difficult to see how it can be said that the published equality impact assessment meaningfully satisfies the statutory requirements set out in the Equality Act 2010, if nurses are to be included within scope. As such, it is essential that the Department clarifies that these proposed regulations do not apply to nursing staff.

For further information please contact Dom Trendall, RCN Public Affairs Adviser at dominic.trendall@rcn.org.uk