

Minimum Service Levels and reasonable steps – consultation response

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In August 2023, we published an update on the Government consultation on a draft Code of Practice, setting out proposals for what steps will be considered “reasonable steps” for a trade union to take in order to comply with the Strikes (Minimum Service Levels) Act 2023 (the Act). The Government has now published its response to the consultation, confirming what proposals it intends to proceed with.

[The amended draft Code of Practice](#) →

In the main, the “reasonable steps” identified in the previous draft Code of Practice will remain. However, the original step 3 - notification to members who aren’t named in the notice through the use of an “information notice” – has been removed. Whilst unions are free to send this kind of notification, a failure to do so “would be unlikely” to constitute a failure to take reasonable steps, and it is no longer referenced in the draft Code.

Step 2 has been tweaked slightly to clarify that it is not obligatory to use the template form of the “compliance notice”, albeit that any amended form of the notice will still need to substantially comply with the template in substance and effect.

Step 4 – in relation to picketing – has been reframed from a positive duty to encourage those named in a works notice to attend, to a negative one. This means that those supervising pickets should use reasonable endeavours to ensure that picketers try to avoid encouraging anyone named in a works notice to strike. However, unions do not need to notify supervisors who has been named in a works notice, and there is no obligation on the supervisor (or any of the picketers) to ask anyone if they are so named.

The response highlights that concerns were raised about whether the Code itself breaches Article 11 of the European Convention on Human Rights, and whether the timescales included in it were workable in practice. There has previously been considerable criticism of the proposed Code and the associated legislation – the TUC has announced a “once in a generation” special congress to take place on 9 December 2023 to discuss the next steps in campaigning against the anti-strike laws. The last special congress was held over 40 years ago – giving an indication of the level of concern held by some over the direction of the legislation and the impact that it may have on industrial relations and rights.

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