



# Summary for Schools – Industrial Action by the NEU

## Outline of Industrial Action Announced

The National Education Union (NEU) has announced that its ballot of teacher members in England has met the thresholds required to commence industrial action. This action is for **teachers only**. The ballot of support staff members in England failed to achieve the 50% turnout required by law.

The NEU has announced national and regional action in England on the following dates. The dates in bold will impact on Buckinghamshire schools:

- **Wednesday 1 February 2023: all eligible members in England and Wales.**
- Tuesday 28 February 2023: all eligible members in the following English regions: Northern, North West, Yorkshire & The Humber.
- **Wednesday 1 March 2023: all eligible members in the following English regions: East Midlands, West Midlands, Eastern.**
- Thursday 2 March 2023: all eligible members in the following English regions: London, South East, South West.
- **Wednesday 15 March 2023: all eligible members in England and Wales.**
- **Thursday 16 March 2023: all eligible members in England and Wales.**

Should the NEU decide to proceed with industrial action, they must give employers at least 2 weeks' notice.

## Government Guidance

The DfE has updated the guidance – [handling strike action in schools](#).

## Key Points in Guidance (Please see guidance for full details)

### Responsibility

- The decision to open, restrict attendance, or close a maintained school is for the headteacher.
- The decision for academies rests with the academy trust but is usually delegated to the principal.
- Headteachers should consult governors, parents and the Local Authority, academy trust or diocesan representative (where appropriate) before deciding whether to close.
- In the event of a strike, the Department for Education expects the headteacher to take all reasonable steps to keep the school open for as many pupils as possible.

### Health & Safety

- Under the Health and Safety at Work etc Act 1974, the employer in a school must take reasonable steps to ensure that staff and pupils are not exposed to risks to their health and safety.
- This applies to activities on or off school premises and schools will need to be mindful that responsibilities could be impacted on as a result of industrial action.
- Further advice on health and safety is available on the [Health and Safety Executive's website](#).

### Staff Deployment

- Guidance on staff deployment in the event of emergencies can be found in the [Emergency Planning and Response Guidance](#).
- While employees are not required to tell their employers whether they intend to take strike action, employers are able to ask staff in advance if they intend to strike to enable them to plan how to manage the strike.
- Headteachers may ask other teachers to cover the classes of those taking industrial action.
- Where teachers are employed under the School Teachers' Pay and Conditions Document, however, they cannot be compelled to provide cover for other teachers during industrial action.
- Cover supervisors, or teachers who are employed wholly or mainly to provide cover and are not taking industrial action themselves, can be directed to provide cover during industrial action by teachers or non-teaching staff
- The Specified Work Regulations 2012, requires classes to be taught by qualified teachers in maintained schools and some academies. See regulations for more details

- Schools may choose to bring together groups and classes with teachers and support staff working together, as long as pupils' health and safety is ensured. For pupils older than seven there are no set ratios for the number of staff required to supervise pupils on site.
- A headteacher on strike should delegate their duties to another member of the leadership team. If the whole leadership team is on strike, the governing body or academy trust can approach another staff member to carry out the headteacher's duties, for example a senior teacher or a retired headteacher employed by the school.

#### **Staff for nursery and infant classes**

- Please see the [Statutory Framework for Early Years Foundation Stage](#) for details on what schools need to do to ensure children are safe, adequately supervised and have their needs met.
- Schools are free to provide activities flexibly on strike days as long as there are sufficient members of suitable qualified staff present.

#### **Engaging with supply agencies**

- Following the repeal of [Regulation 7 in July 2022](#), it is now possible for employers to engage with agency staff to replace the work of those taking official strike action.

#### **Directly employing individuals**

- An employer can directly employ individuals to cover those on strike. Schools or groups of schools may wish to consider building up a bank of cover supervisors. When employing someone for a day, a school or local authority would need to consider:
  - Employment contracts
  - Pay
  - Insurance
  - Pensions
  - Safeguarding
- For more details, please see the [full guidance](#)

#### **Using volunteers**

- In the event of a strike by teaching staff or members of the wider school workforce, arrangements in [KCSIE](#) and [statutory guidance](#) allow schools to:
  - use existing members of the school volunteer workforce with relevant Disclosure and Barring Service (DBS) checks to provide supervision; and/or
  - identify other new volunteers who could support existing staff or volunteers for whom relevant checks have been carried out. These volunteers would need to be supervised by another member of staff or volunteer with a DBS check.

### Delivering the curriculum

- There is no legal requirement to teach the curriculum on strike days.
- **Maintained schools** must ensure that they cover the programme of study for each national curriculum subject by the end of the relevant key stage. Maintained schools and non-maintained special schools are required to meet for at least 380 half day sessions per year but there is no statutory definition of 'meet' and no requirement to teach the national curriculum on each day of the school year.
- **Academies/Free Schools** - There is no legal requirement to teach the national curriculum, although they are required to teach a broad and balanced curriculum during the course of the year.

### Remote Education

- Where schools must restrict attendance, they should consider, where possible, providing remote education in line with the [Providing remote education: guidance for schools](#) guidance.
- In the event that the school delivers remote education, and where pupils are eligible for benefits related free school meals, schools should work with their school catering team or food provider to ensure that a good quality lunch parcel is made available.
- Please see the [Free School Meals](#) guidance for more information

### National Tutoring Programme

- Tutoring remains key in helping pupils catch up on lost learning during the pandemic, and schools should take all reasonable steps to ensure scheduled tutoring sessions can go ahead during strike days.

### School meals and out of hours care

- If a school is unable to provide a normal lunch service due to strike action, there is no requirement to close the school.
- If the school anticipates being open and potentially not having enough staff available to prepare and serve meals for pupils entitled to free school meals, it is for the school to put suitable alternative arrangements in place. This could mean arranging temporary cover to prepare meals on-site, preparing packed lunches in place of hot meals, or arranging for meals to be delivered-in.
- Providing there are enough suitably qualified members of staff present to meet [ratios](#) (see guidance), there is no need to suspend out-of-hours care during strike action.

### Recording pupil's attendance

- If a school has to restrict attendance by telling some pupils not to attend school on a strike day, **the Y code** should be used for pupils who told not to attend.

- Pupils who are required to attend should be marked in the normal way. If a pupil is required to attend school on a strike day but does not, then they must be recorded as absent.
- The Y code does not count towards the pupil or school's absence record.

#### **Prioritising places**

- Continued attendance is important for all pupils. However, if the numbers of staff on strike mean you need to temporarily prioritise places in your setting you should, where possible, apply the principles set out in the [emergency planning and response guidance](#) by giving priority to vulnerable children and young people and children of critical workers.

#### **Public examinations**

- Please see guidance [how to deal with major disruptions that may affect examination candidates](#).

#### **Inspection**

- On a strike day Ofsted inspectors will take a view as to whether there is sufficient activity taking place to enable it to conduct an inspection of the school.
  - **Where there is not**, the inspection is likely to be deferred.
  - **Where there is**, inspectors will assess the education that is taking place at the point of inspection, along with all other evidence about the school and its performance, to arrive at a balanced judgement about the performance of the school

#### **Insurance**

- Any school or academy trust that has purchased commercial 'teacher absence' insurance will need to confirm with their insurer whether teachers on strike would have a bearing on their insurance policy.

Please see the [guidance](#) for:

- Additional advice on issues raised by employers, teachers, support staff and parents,
- Case studies – the use of flexibilities
- Industrial relations law
- Links to further sources of information

### **DfE Request for Information**

Shortly before a planned strike day, the DfE intend to ask schools whether they are likely to be open, closed or restricting attendance, as a result of NEU's action. They will send a link to a secure online form which schools can access through their usual DfE login.