

NATIONAL ACTION SHORT OF STRIKE ACTION

Supplementary Guidance (1)



This guidance applies to the following schools:

- all maintained schools, including community, foundation, voluntary aided, aided and controlled;
- schools which converted to academy status after 1 September 2010;
- schools which converted to academy status before 1 September 2010 and work in accordance with the School Teachers' Pay and Conditions Document;
- trust schools;
- members employed by a local authority on the teacher's contract and in the Teachers' Pension Scheme.

For more information:

Website: www.nasuwat.org.uk/IndustrialAction

Action Advice Line: 0121 457 6292 E-mail: action@mail.nasuwat.org.uk

1. INTRODUCTION

- 1.1 The NASUWT national action short of strike action instructions took effect on 1 December 2011.
- 1.2 Since that date, members across the country have been *Standing up for Standards*. The action has attracted widespread support, with many teachers not in the NASUWT requesting to join the action.
- 1.3 Feedback from members has indicated that the instructions are having a significant impact on ensuring that teachers and school leaders are receiving their contractual entitlements and supporting teachers in being able to work effectively to focus on teaching and learning.
- 1.4 This supplementary guidance provides additional information to support the implementation of the action short of strike action instructions and is based on issues raised by members and NASUWT Representatives. It focuses on the most frequent issues that have been raised and, therefore, does not provide additional information and guidance on all of the national action short of strike action instructions issued previously.
- 1.5 **The supplementary guidance must be read in conjunction with the national action short of strike action initial guidance on the implementation of the NASUWT instructions, which was issued to members at their home address at the beginning of December and which can also be found on the NASUWT website at www.nasuwt.org.uk/IndustrialAction.**
- 1.6 Also on the website are numerous Frequently Asked Questions, which are updated regularly. Members are encouraged to check the website on a frequent basis to ensure that they are fully aware of all information and developments.
- 1.7 NASUWT National Executive Members, Local Association Secretaries and your Regional Centre staff are also available to provide advice and support. Contact details can be found on the NASUWT website at www.nasuwt.org.uk/contactus or by contacting 0121 453 6150.
- 1.8 In addition, the NASUWT Action Advice Line operates every weekday between 8.30am and 5.30pm to provide additional support and advice for members.

Representation of members

- 1.9 On reading the NASUWT national action short of strike action instructions and initial implementation guidance, members will have seen that it is important for them to act collectively.
- 1.10 In many schools there is an NASUWT Representative or contact who will act on behalf of the members. In some schools, however, no representative or contact has been identified. It is very important at this critical time to have a person from among the members who is prepared, at the very least, to communicate information to the headteacher on behalf of members and to receive information from the school management to pass back to members and to the NASUWT to ensure that appropriate advice and support can be given.
- 1.11 If there is no representative in the school, members should, as a matter of urgency, get together to identify someone who would be willing to act in this capacity.
- 1.12 It is important, particularly in times of action, that members act collectively and support each other.
- 1.13 If there is no one willing to act as a representative or you are in a school with only one or two NASUWT members, it is very important that you contact the NASUWT immediately for advice and support.

Discussions with the headteacher

- 1.14 Employers have received details of the NASUWT national action short of strike action instructions. It is the responsibility of the employer (the local authority for some schools, the governing body or academy sponsor for others) to have notified the headteacher of the instructions.
- 1.15 Members received from the NASUWT at their home address, at the beginning of December, a letter to give to their headteacher explaining the nature and purpose of the NASUWT action. This

letter accompanied the initial action short of strike action implementation guidance. The letter is on the NASUWT website.

- 1.16 NASUWT Representatives should have already approached the headteacher to seek to ensure that s/he understands the instructions and that the NASUWT action is essentially seeking to secure the contractual entitlements of teachers and school leaders that they should already be receiving.
- 1.17 If this dialogue/contact with the headteacher has not taken place, then it must be done immediately.
- 1.18 If advice and support is needed to support this process, then contact should be made with the NASUWT.
- 1.19 In many schools, headteachers have responded positively and have carried out a joint review with NASUWT members to ensure that the school is fully compliant with contractual provisions.

2. PLANNING, PREPARATION AND ASSESSMENT (PPA) TIME

Failure to provide PPA time

- 2.1 In the initial implementation guidance, the NASUWT provided a statement that could be handed to the headteacher if the school was failing to provide the minimum contractual entitlement of PPA time.
- 2.2 The statement gives the school 15 working days to meet its statutory requirements with regard to the provision of this time.
- 2.3 If a member reaches the point where the statement has to be issued, they should check with other members in the school to ascertain whether they are in the same position. If they are, then the statement should be handed in by the NASUWT Representative (see section 1.9 to 1.13 above) to the headteacher on behalf of all the members affected. If other members are not affected, then the NASUWT Representative should act on the member's behalf. If there is no representative, the NASUWT should be contacted.
- 2.4 Once the statement has been handed to the headteacher, it will be important to contact the NASUWT immediately so that members can be supported in the process and to enable the Union to make representations to the school to ensure that it complies with its statutory responsibilities.
- 2.5 Should the school fail to respond in the required timescale, members, with the support of the NASUWT, should ensure that they report to work as usual but instead of teaching their timetabled lessons, members should work in an appropriate place on-site, undertaking activities they determine are appropriate to support teaching and learning. Members should also undertake any other activities they would normally do that are not covered by the national action instructions.

Monitoring of activities undertaken in PPA time

- 2.6 Some schools have reacted to the NASUWT instruction that members should not accept the direction of the headteacher to undertake any other activity, including cover, in PPA time, by stating that the headteacher and members of the leadership team will, therefore, be monitoring what teachers do in that time.
- 2.7 This is an unnecessary and unprofessional response. The reason that PPA time is under the teacher's own direction is that teachers are professionals and they should be trusted to allocate their time appropriately. It is for teachers to determine how best to plan their activities around and in PPA time.
- 2.8 If a school seeks to implement any monitoring of the way in which members are using their PPA time or already has in place any such monitoring system, this must be reported immediately to the NASUWT and additional advice and support will be provided to members.

3. LEADERSHIP AND MANAGEMENT TIME

Failure to provide leadership and management time

- 3.1 In the initial implementation guidance, the NASUWT provided a statement that could be handed to the headteacher if the school was failing to provide the contractual entitlement to a reasonable allocation of time within school sessions to support the discharge of leadership and management responsibilities.
- 3.2 The statement gives the school 15 working days to meet its statutory requirements with regard to the provision of this time.
- 3.3 If the school has failed to provide this time, members should follow the same process as described above in relation to the failure to provide PPA time.
- 3.4 Should the school fail to respond in the required timescale, then members should ensure that they report to work as usual, discharge any timetabled teaching commitments and other activities they would normally do, which are not covered by the NASUWT national action instructions, but refuse to undertake any of the activities related to their leadership and management role.

Leadership and management responsibilities – payment

- 3.5 In the initial implementation guidance the NASUWT provided a statement that could be handed to the headteacher to make an appropriate payment of either a Teaching and Learning Responsibility (TLR) or payment on the leadership spine for leadership and management responsibilities.
- 3.6 The statement gives the school 15 working days to meet its statutory requirements with regard to the provision of this payment.
- 3.7 If the school has failed to respond appropriately in the timescale, members should follow the same process as described above in relation to the failure to provide PPA time.
- 3.8 The NASUWT should also be contacted immediately to provide advice and support and to make representations to the school on behalf of the member(s).
- 3.9 In seeking to secure their entitlements with regard to leadership and management time and payments, some members have been told by their headteacher that if they receive payment, they are not entitled to have an allocation of leadership and management time within school sessions. This is incorrect. No provision exists within the statutory contractual provisions to support such a statement by the school. Members undertaking leadership and management responsibilities are entitled to both payment and to time.

4. DEDICATED HEADSHIP TIME

- 4.1 In the initial implementation guidance the NASUWT provided a statement that could be handed to the chair of governors to secure an allocation of dedicated headship time.
- 4.2 The statement gives the governing body 15 working days to meet its statutory responsibilities.
- 4.3 If the point is reached where the headteacher needs to hand the statement to the chair of governors, they are entitled, like any other member, to ask the NASUWT Representative in the school to do this on their behalf.
- 4.4 They should also contact the NASUWT for further advice and support and to provide representation for them, if necessary.
- 4.5 If the time is not provided, then headteacher members should attend work as usual and carry out all their usual responsibilities and activities not covered by the NASUWT action instructions, save their timetabled teaching commitments.

Provision for pupils where members are refusing to teach their timetabled teaching commitments

- 4.6 As it is the school, not NASUWT members, in breach of contract if PPA and dedicated headship time are not being provided, it is likely to be unusual for the point to be reached where members have to withdraw from teaching their timetabled lessons.
- 4.7 If that point is reached, then it will be the responsibility of the school if lessons are disrupted in this way.
- 4.8 As members withdrawing from their timetabled teaching commitments are taking industrial action, members of other unions should not agree to cover, and supply teachers should not be engaged.

5. WORK/LIFE BALANCE

- 5.1 All existing and new policies introduced by the school should have been assessed since 1 December 2011 to identify their impact on workload and working hours.
- 5.2 For policies already implemented, members should ask the headteacher, via the NASUWT Representative (see section 1.9 to 1.13 above), for the impact assessment to be carried out. If this is refused, then the statement provided by the NASUWT should be handed to the headteacher, which gives notice that members will refuse to continue to implement the policy after 15 days, unless the impact assessment is undertaken and workload concerns addressed.
- 5.3 The same process should be applied to any new policies the school proposes to introduce.
- 5.4 Members should contact the NASUWT immediately for advice and support when the statements are issued.
- 5.5 Impact assessments of school policies should be carried out in the context of the allocation of directed time.

Directed time

- 5.6 Teachers, other than those paid on the leadership spine, have 1,265 hours of directed time spread over 195 days. This directed time includes all the time for school session times. Lunchbreaks are excluded.
- 5.7 Averaged out over the 195 days, directed time amounts to approximately 32.5 hours per week. Members should use this number of hours as a benchmark to assess the number of hours they are working over and above directed time.
- 5.8 Anything that teachers are 'directed' by the headteacher to do must attract an allocation of directed time. Teachers cannot be directed to undertake activities in their own time.
- 5.9 There is no requirement for all of the 1,265 hours to be used.
- 5.10 Headteachers have a duty to allocate directed time reasonably. It is not reasonable, for example, for a headteacher to require every teacher to remain on the school premises at the end of school sessions simply to 'make up' directed time.
- 5.11 Teachers paid on the leadership spine, even though they do not have reference to directed time in their contracts, still have a contractual entitlement to a satisfactory work/life balance. They should monitor their working hours against the benchmark of 32.5 hours per week for other teachers.

6. COVER FOR ABSENCE

- 6.1 The implementation on 1 December 2011 of this instruction has revealed that in many schools, rather than being used 'rarely' for cover for absence, teachers were being used regularly and routinely.
- 6.2 A range of poor practice has been exposed, such as schools routinely issuing cover rotas, building 'cover periods' into non-contact time provision and requiring teachers who had less contact time than the majority of teachers in the school to cover. These and other similar practices are all in breach of the statutory, contractual provisions on cover.

- 6.3 Covering once a week, or three or four times a term or year, is not 'rarely'. It is regularly and routinely.
- 6.4 'Rarely cover' means that an exceptional circumstance has arisen that could not reasonably have been foreseen. For example: someone phoning in sick first thing in the morning is not exceptional or unforeseen; increased absence due to colds and flu in the winter months is not exceptional or unforeseen; adverse weather conditions or major traffic delays affecting schools situated near motorways are not exceptional or unforeseen.
- 6.5 Schools have had years to plan for the introduction of rarely cover, which took place in 2005, to get their strategies in place. They have had over five years since its introduction to respond appropriately to the contractual provision. At the time the provision was introduced, schools were provided with detailed advice and guidance on how rarely cover could be managed. Some schools have simply ignored this provision and advice and continued to misuse and exploit teachers.
- 6.6 In some schools, teachers have been threatened that if they implement the rarely cover provision, jobs will be lost. In a handful of schools, teachers have been offered payment to undertake cover. Whatever the rationale given for failing to implement the statutory provisions, these, and any other similar excuses and arrangements, are illegal. Schools cannot legally make arrangements that change nationally determined statutory provisions. Teachers cannot legally agree them.

7. SCHOOL CALENDAR AND TIMETABLE

- 7.1 Members should not be attending meetings that are not on the school calendar and are not within directed time.
- 7.2 As a result of the implementation of the NASUWT instructions, schools that do not have calendars in place or have been in the habit of organising meetings not in the calendar should now be in the process of reviewing or have reviewed, in consultation with staff and NASUWT representatives, the number of meetings and sought to formulate an agreed calendar of meetings.
- 7.3 Not only does the number of meetings impact on workload and working hours, there are equality issues that also need to be addressed. Without a proper calendar of meetings, those with carer responsibilities for example can be particularly disadvantaged and all staff have their entitlement to a satisfactory work/life balance undermined.

8. LUNCHTIME SUPERVISION

- 8.1 All teachers, including those paid on the leadership spine, have a contractual entitlement to a reasonable break in the middle of the day.
- 8.2 Headteachers have a responsibility to ensure that appropriate arrangements for supervision of pupils during the lunchbreak are in place. This does not mean that they have to carry out the supervision themselves or deploy teachers to do this.
- 8.3 Some schools have been in the habit of offering a school meal free of charge to teaching staff who are prepared to undertake lunchtime supervision. This is unacceptable for the following reasons:
 - accepting a meal in return for undertaking an activity could be deemed to be payment for contractual arrangement – this is not allowed under the provisions of the teacher's contract;
 - the payment of a meal means that teachers are selling their valuable time for a paltry amount, undermining their professional status;
 - changes to the benefit system mean that fewer children are qualifying for free school meals. Therefore, to provide meals free to staff could be deemed to be an inappropriate use of public money.

Members should not therefore enter into such arrangements.

9. INVIGILATION OF PUBLIC EXAMINATIONS

- 9.1 The NASUWT instructions make clear the contractual provisions in relation to invigilation.
- 9.2 Issues have been raised, following the implementation of the instructions, around the arrangements that some schools are seeking to make for 'mock' or 'trial' examinations.
- 9.3 If the mock or trial is being conducted during a teacher's timetabled lesson with the class they are timetabled to teach and there are no other pupils or teachers in the room, then this does not fall under the contractual provision relating to invigilation.
- 9.4 If, however, the school seeks to group classes together to take a 'mock' or 'trial' examination, even if this is during the normal timetabled lesson period and with the teachers who would normally be teaching the classes, this is invigilation and teachers should not do this.

10. PERFORMANCE MANAGEMENT

Classroom Observation

- 10.1 NASUWT representatives should have made clear to the headteacher the nature of the NASUWT instruction on classroom observation.
- 10.2 If the school has a performance management policy in place which they have sought to agree with staff and unions and which follows the 2006 Performance Management Regulations and the guidance issued at the time the Regulations were introduced, classroom observation should not be excessive or cause a problem for teachers.
- 10.3 Teachers should only be agreeing to the classroom observation recorded in their performance management planning statement produced at the beginning of the performance management cycle or resulting from a revision meeting held in accordance with the Regulations. They should not agree to any additional observation, even if that recorded in their planning statement does not amount to the regulatory limit of up to three hours. The amount in the planning statement was clearly regarded as the appropriate and necessary amount for that individual teacher and should therefore be adhered to.
- 10.4 Issues have been raised about school processes such as learning walks, pupil tracking and departmental review observations. If these were included in the performance management planning statement as part of the agreed classroom observation, and do not exceed the total of up to three hours per cycle of observation, then these are acceptable.
- 10.5 However, if these activities were not specified as part of the observation recorded in the planning statement, then members should refuse to be observed as part of these activities.

Drop-ins

- 10.6 Questions have been raised about the use and abuse of drop-ins. If a 'drop-in' focuses on the performance of the teacher, results in a report or notes being written about the teacher, and lasts for more than a few minutes, then this is an observation not a drop-in and is, therefore, covered by the NASUWT action instruction on classroom observation and should not take place.

NASUWT statements

- 10.7 In its initial guidance, the NASUWT provided statements to be issued in the event of members either being observed by someone who is not a qualified teacher or observed in excess of the three hours.
- 10.8 Below is a statement which can be issued where the member is being faced with observation in excess of the amount of observation stated in the performance management planning statement:
'The Education (School Teacher Performance Management) (England) Regulations 2006 require that the amount of observation a teacher will receive during their performance management cycle, the focus of the observation and when the observation will take place, are to be recorded in the performance management planning statement.'

I have already been observed in accordance with the provisions in my performance management planning statement.

I would, therefore, appreciate it if you would withdraw from my classroom and allow me to continue teaching. If you do not, I will report the breach of the regulations to my union, the NASUWT.'

Pressure placed on teachers to be observed

10.9 In some schools, headteachers have refused to accept the limit on observations and have threatened and sought to pressurise teachers into being observed beyond their performance management statement provisions and the three-hour limit. Where this occurs, immediate contact must be made with the NASUWT for advice and support.

11. OTHER ISSUES

BREACH OF CONTRACT

11.1 Some members have reported being threatened by their headteacher that following the NASUWT instructions is a breach of contract. Some headteachers have added that the teacher could suffer a loss of pay.

11.2 Headteachers are not the employer and have no basis for making such statements.

11.3 The NASUWT action short of strike action is seeking to implement contractual entitlements for teachers and school leaders that are enshrined in law. If there is any breach of contract, then it is on the part of the employer failing to comply with its statutory responsibilities.

11.4 Employers failing to implement the provisions of the teacher's contract potentially are vulnerable to legal challenge, including the following:

(i) **Breach of contract**

Failure to implement contractual provisions could lead to claims for breach of contract by individual teachers, leading to court declarations and/or awards or damages.

(ii) **Judicial review**

The failure to implement contractual provisions may leave the employer open to judicial review proceedings to require the implementation, with adverse cost consequences.

(iii) **Raising standards**

As the contractual provisions are premised on raising standards, where the performance of the school becomes subject to concern, any continuing failure to implement the relevant changes may be a factor in determining whether intervention by the Secretary of State or the replacement of the Governing Body is appropriate.

(iv) **Working Time Regulations**

The contractual provisions are part of the national commitment to secure downward pressure on excessive hours worked by teachers.

The Working Time Regulations 1998 apply to teachers and provide, amongst other things, that:

- the average weekly working time should not exceed 48 hours;
- for new starters the reference period over which the average is calculated is the period since the worker commenced work;
- for others the reference period is 17 weeks though no account should be taken of annual leave in accordance with the workers entitlement under the Working Time Regulation;
- employers are required to keep records adequate to show compliance with these provisions.

It is a criminal offence if the employer does not take all reasonable steps to ensure compliance with the maximum weekly time limits. It is also a criminal offence if adequate records are not maintained.

Failure to implement the contractual changes could lead to breaches of the Regulations.

(v) Teachers' welfare – injury claims

Breaches of the Working Time Regulations and excessive hours may also comprise evidence of negligence in civil proceedings claiming damages for occupational stress.

- 11.5 The NASUWT has written to every chair of governors in the country setting out the information above and emphasising the vulnerability to legal challenge should governing bodies seek to threaten, or allow one of their agents such as a headteacher to seek to threaten, employees with punitive action.
- 11.6 However, even if the NASUWT was not using its lawful industrial action ballot to enforce existing contractual provisions, the purpose of the ballot is to enable teachers collectively to vary their contract in pursuance of the objectives of the trade dispute.
- 11.7 Where members receive verbal or written threats of breach of contract or deduction of salary for carrying out the NASUWT action short of strike action instructions, they should immediately refer this to their National Executive member for a response to be made to the employer on their behalf by the NASUWT.

CONVEYING THE PURPOSE OF THE NASUWT INDUSTRIAL ACTION TO PARENTS

- 11.8 The NASUWT has produced an A5 flyer for parents setting out the reasons for the NASUWT Standing up for Standards campaign of action.
- 11.9 The flyer can be ordered by members from NASUWT Despatch at despatch@mail.nasuwt.org.uk. The flyer is also on the NASUWT website at www.nasuwt.org.uk/StandingUp.

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The largest teachers' union in the UK