

Coronavirus Act 2020

Educational Continuity (No.10) Direction, 12 March 2021: Guidance note

Background

This tenth Educational Continuity Direction (the “Direction”) is given under powers conferred by Schedule 17 of the (UK-wide) Coronavirus Act 2020¹ and applies to education authorities.

This Direction only covers local authority provision (i.e. not out of school care (OOSC) or schools provided by the private or third sector).

This Direction is the tenth direction and replaces the ninth Educational Continuity Direction which was given on 17 February 2021. The Direction, and the Coronavirus (COVID-19): Guidance on Schools Re-opening issued by Scottish Ministers on 6 January 2021 most recently updated on 8th March,² alongside other guidance that has been issued and is overseen by the Covid-19 Education Recovery Group, support Ministers’ policies including the continued phased re-opening of schools from 15 March 2021.

This Direction has effect until the earlier of 23:59 on 2nd April 2021, or its revocation by a further direction given by the Scottish Ministers. Its provisions will be reviewed no later than 21 days from the date on which this Direction is given.

Content of the Direction

The Direction is intended to provide important clarity on the expectations of education authorities during this stage of the current public health emergency. In carrying out the requirements in the Direction, authorities must take into account the objective of preventing the transmission of coronavirus, the welfare of children, young people and staff, the importance of continuity of learning, and have regard to relevant guidance issued by the Scottish Ministers.

As stated in the guidance on *Reducing Risks in Schools*³, nothing in that guidance or the directions which support this policy affect the legal obligations of local authorities with regard to health and safety, public health and their responsibilities under the Equality Act 2010.

The Direction therefore:

- **Requires** education authorities, to reopen to all pupils of primary school age.
- **Requires** education authorities to provide school education for pupils of secondary school age, ensuring continuing provision for children of keyworker and vulnerable children, and with prioritisation for secondary 4 to 6 who are

¹ <http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted/data.htm>

² [Coronavirus \(COVID-19\): guidance on schools reopening - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-on-schools-reopening/pages/1-introduction.aspx)

³ [Coronavirus \(COVID-19\): guidance on reducing the risks in schools - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/coronavirus-guidance-on-reducing-the-risks-in-schools/pages/1-introduction.aspx)

studying for a national qualifications. Provision for other secondary year groups in school should be as much as is reasonably practical based on local circumstances and needs and the mitigations as set out in the most recent re-opening schools guidance.

- **Requires** education authorities to provide remote learning for all secondary school pupils during locally determined term time unless they are provided with a school education through attending school.
- Further guidance was published by Education Scotland to support remote learning on 8 January 2021⁴, and in regard to the return to in person learning on 3rd March.⁵
- **Requires** education authorities to continue to plan for the resumption of the provision of full time in person learning for all pupils at the earliest time it is safe to do so, having regard to any guidance issued by the Scottish Ministers. It is expected that a full time return to school for all pupils will be possible after the Easter break, subject to continued suppression of the virus and the requirement for 2m physical distancing between young people being removed.
- **Requires** education authorities to continue to provide free school lunches for those attending school and where they are unable to secure that for example because children and young people are learning at home, reasonable alternatives (listed as other food or drink, vouchers or cash) to eligible children.
- **Requires** all education authorities to continue to restrict access to schools and educational settings except for a number of specified exceptions.
- **Allows** continued access (subject to relevant advice and guidance relating to public health and workplace safety) to buildings and facilities, for, or in connection with: school education for pupils, early learning and childcare, and out of school care; the planning for or provision of remote learning, and for the planning for the resumption of in-person learning; the facilitation of a COVID-19 testing programme; the maintenance of buildings and facilities as considered appropriate by the education authority; for or in relation to other aspects of the local authority's response to coronavirus; elections, if reasonable alternative arrangements cannot be made; and permitted outdoor facilities in line with wider guidance on the resumption of sports activities for children, subject to local arrangements and assessments.

Disregard of failures to comply with statutory duties

The Direction also makes provision in relation to a number of statutory duties on education authorities, recognising that in the current situation authorities cannot fully

⁴ <https://education.gov.scot/media/hblh4yy0/cerg-remote-learning-080121.pdf>

⁵ <https://education.gov.scot/media/ozad4plo/guidance-for-in-school-and-remote-learning-03-03-2021.pdf>

comply with a number of these duties. Authorities will also wish to take their own legal advice in relation to their duties in light of the Direction.

The Direction ensures that failures by local authorities to comply with the statutory duties specified in the Direction are disregarded, to the extent that these can be attributed to the Direction being in place. That means that any failures which cannot be attributed to a Direction would continue to be treated as a failure to comply with that duty.

Any disregard of a failure to comply with a duty therefore only applies in so far as it is due to the restrictions imposed by the Continuity Direction, for example, the physical closure of the setting. It is therefore the continued expectation that authorities deliver against these duties, to the extent they are not prevented from doing this because of the Direction. As more children return to schools full time as outlined above the effect of these disregards will therefore be differentiated.

The relevant statutory duties are set out below:

- section 53(2) of the Education (Scotland) Act 1980 (c.44) (“the 1980 Act”) – (provision of free school lunches (although the requirement to provide reasonable alternatives as set out above applies));
- section 4(1) (provision for additional support needs) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”); and
- any time limit prescribed in or under the 2004 Act, except any time limit set out in the Additional Support for Learning (Placing Requests and Deemed Decisions) (Scotland) Regulations 2005 (S.S.I. 2005/515).

The Direction further provides that a parent’s failure to comply with the duty under section 30(1) of the 1980 Act to provide education for their children is to be disregarded, if the child is a pupil at an education authority school but is, as a result of the Direction, unable to be in regular attendance at the school. This too only applies so far as any failure is attributable to the Direction. This disregard will therefore not apply in relation to those pupils who will be attending school under the arrangements for return to school on 15 March and apply only to the extent that pupils continue to receive remote learning.

Similarly, the education authorities duties under the Additional Support for Learning Act remain in force, but that any failure is to be disregarded, if the child is a pupil at an education authority school but , as a result of the Direction, the education authority is unable to fulfil their duties. This too only applies so far as any failure is attributable to the Direction.

Further information about the UK-wide Coronavirus Act 2020

The UK-wide Coronavirus Act 2020 gained Royal Assent on 25 March 2020 and became law. The Act can be found here:

<http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted/data.htm>.

This Act included an immediate requirement on all relevant authorities to have regard to the advice of the Chief Medical Officer for Scotland. It further conferred powers on Scottish Ministers to give 'Educational Closure Directions' or 'Educational Continuity Directions' if necessary and proportionate, and having regard to the advice of the Chief Medical Officer for Scotland.

Scottish Government
March 2021