

Coronavirus Act 2020

Educational Continuity (No.2) Direction, 11 June 2020: Guidance note

Background

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

For the provision of early learning and childcare (ELC) and out of school care (OOSC) this Educational Continuity Direction only covers local authority provision (i.e. not services provided by the private or third sector). Further education institutions managed by education authorities are also excluded.

This Direction is the second direction and replaces that given on the 21 May. It continues to support and provide a legal basis for key aspects of the Strategic Framework published by the Covid-19 Education Recovery Group on the 21 May. We can anticipate that further Educational Continuity Directions will be required over the coming months.

This Direction is in place for 21 days from today, until 1 July 2020. It will be reviewed by 1 July and it is expected that a further Direction will be made by 1 July to modify, replace or supplement it as appropriate.

Content of the Direction

The Direction is intended to provide important clarity on the expectations of education authorities during 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 and young people and staff, and the importance of continuity of learning.

The Direction therefore:

- Requires all education authorities to plan for and prepare for children to resume attendance at schools and childcare settings at the earliest time it is safe to do so. This is set out further in the Strategic Framework, and local authorities are asked to prepare Local Phasing Delivery Plans which will provide a level of operational detail. For the purposes of managing Covid-19, and providing there is evidence of transmission being controlled, the start date of the new school year across Education Authorities is standardised to 11 August 2020. **For the avoidance of doubt no such re-opening may however take place unless and until this is permitted by a further Educational Continuity Direction.**
- Allows access (subject to relevant advice and guidance relating to public health and workplace safety) to teachers and staff (and others who are authorised by the education authority, such as contractors) to buildings. Education authorities

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

were advised on the 29 May that they can plan for access to buildings by staff to support planning and preparation from 1 June where that is necessary and appropriate. However, this must only be on the basis that all the required protections are in place, including risk assessments and appropriate physical distancing.

- Requires all education authorities to support remote learning and teaching by their pupils during term time in accordance with local arrangements, supported by teachers and other staff who are well and able to continue working. Guidance for this is set out in *Supporting Pupils, Parents And Teachers - Learning During Term 4*.²
- Requires education authorities to provide education and childcare for children of keyworkers and vulnerable children, pursuant to local arrangements. Expectations for this were set in the letter to authorities of 19 March 2020 and additional guidance³ was published on support for key workers and vulnerable children. In line with the strategic framework, authorities should also now work with partners to increase the numbers of children attending critical childcare provision including hubs over the remainder of this term. This will include both children of keyworkers and children whom teachers, ELC professionals and other partners, in consultation with the local authority, think would benefit most from early direct contact with education and care staff.
- Allows access to schools only for staff and pupils for the purposes of supporting transition, for example school visits, from 15 June, prioritising those starting P1 and S1 in August. In providing this support, authorities should follow the guidance on physical distancing⁴ published on 28 May. This does not include access to childcare settings.
- Enables the re-opening of local authority-run fully outdoor ELC settings with immediate effect, in line with the published guidance on the reopening of fully outdoor childcare provision⁵ which took effect from 3 June 2020.
- Requires education authorities to continue to provide free school lunches or, where they are unable to secure that, reasonable alternatives (listed as other food or drink, vouchers or cash) to eligible children.
- As an ancillary provision, **restricts access to schools, ELC settings and out of school care settings that are managed by the education authority** apart from for the purposes referred to above and for essential maintenance and access to pupil achievement records/grades/estimates to provide to the SQA. It is vitally important that any such access takes due regard to the health and safety of staff, and that appropriate physical distancing and hygiene measures are adopted in all such cases.

²<https://www.gov.scot/publications/supporting-pupils-parents-teachers-learning-during-term-4/>

³<https://www.gov.scot/publications/coronavirus-guide-schools-early-learning-closures/pages/vulnerable-children/>

⁴<https://www.gov.scot/publications/coronavirus-covid-19-re-opening-schools-guide/pages/physical-distancing/>

⁵<https://www.gov.scot/publications/coronavirus-covid-19-fully-outdoor-childcare-providers-guidance/>

Disregard of failures to comply with statutory duties and time limits

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 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 or time limits 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 or time limit.

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 continued physical closure of the setting for the majority of children. 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.

A practical example of this is that a failure to carry out the duty to provide free school lunches to eligible children (including to those children who are eligible for a free meal during statutory ELC sessions due to their parents' circumstances meeting the statutory eligibility criteria) would be disregarded to the extent it is attributable to the Direction. This would apply, for example, where an education authority is unable to secure the provision of a lunch, but in line with the requirements of the Direction makes other reasonable provision (e.g. cash payments) in exercise of other functions of the authority. The authority's failure to provide a free school lunch would be disregarded.

The relevant statutory duties are set out below:

- section 53(2) of the 1980 Act - provision of free school lunches (although the requirement to provide reasonable alternatives as set out above applies);
- section 4(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 - provision for additional support needs. Where an education authority considers in an individual case that a temporary interruption of a placement at a non-education authority school due to Covid-19 may place them at risk of breaching their duties, a failure to make alternative provision in its own schools might be disregarded to the extent it is attributable to the Direction;
- Any time limit provided in, or under, the Education (Additional Support for Learning) (Scotland) Act 2004. There are several, including for example, statutory review of co-ordinated support plans, periods of appeal, duties on other agencies to support identification and provision of support, which it is recognised will not realistically be able to be achieved in the current circumstances. This would apply immediately and for the duration of the Direction to processes which were currently underway. Ongoing discussions will take place between Scottish Government and Local Government about the

practical effect of this and whether further steps can be taken to address any challenges when any Direction is lifted;

- section 47(1) of the Children and Young People (Scotland) Act 2014 (duty to secure provision of early learning and childcare); and
- section 30(1) of the 1980 Act – the duty of parents to provide education for their children, 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.

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
June 2020