

Coronavirus Act 2020

Educational Continuity (No.3) Direction, 02 July 2020: Guidance note

Background

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

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

This Direction is the third direction and replaces that given on 11 June. 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 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 22 July 2020. It will be reviewed by 22 July and it is expected that a further Direction will be given following review to modify, replace or supplement it as appropriate.

This Direction covers the timescale for the outcome of the next review for moving between phases in the '*route map through and out of the crisis*'² ("the route map") on 9 July. This review will confirm whether we are able to move to 'phase 3' and therefore allow ELC and OOSC providers to re-open, subject to all relevant guidance.

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 at the earliest time it is safe to do so, and childcare settings (providing both ELC and OOSC) **from the agreed date of when safe to do so**. Local authorities are already preparing Local Phasing Delivery Plans which provide a level of operational detail.

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

² <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/pages/4/>

- For the purposes of managing Covid-19, and providing there is evidence of transmission being controlled, the intended start date of the new school year across Education Authorities is standardised to 11 August 2020. **For the avoidance of doubt no re-opening of schools may however take place unless and until this is permitted by a further Educational Continuity Direction.**
- For the purposes of managing Covid-19, and providing there is evidence of transmission being controlled, the intended first date for ELC and OOSC services re-opening is in phase 3 of the route map and anticipated to be from 15 July. **For the avoidance of doubt no such re-opening may however take place unless a move to phase 3 is announced.**
- Allows continued access (subject to relevant advice and guidance relating to public health and workplace safety) for teachers and staff (and others who are authorised by the education authority, such as contractors) to buildings. 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*.³
- Requires education authorities to provide ongoing critical 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 guidance⁴ was published on support for key workers and vulnerable children and young people. Provision for vulnerable children and young people should be made in line with the updated definition. As noted in the 'strategic framework for reopening schools, early learning and childcare provision'⁵ there is an expectation that, recognising the impact of lockdown on vulnerable children, local authorities will work with partners to increase the numbers of children attending critical childcare provision including hubs. This will include both children of keyworkers and children and young people 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, prioritising those starting P1 and S1 in August. It is recognised that this year, the support for transition may go on for a much longer period, including into August, and as part of the return of pupils to school. In providing

³<https://www.gov.scot/publications/supporting-pupils-parents-teachers-learning-during-term-4/>

⁴<https://www.gov.scot/publications/coronavirus-guide-schools-early-learning-closures/pages/vulnerable-children/>

⁵<https://www.gov.scot/publications/excellent-equity-during-covid-19-pandemic-strategic-framework-reopening-schools-early-learning-childcare-provision-scotland/>

this support, authorities should follow the guidance on physical distancing⁶ published on 28 May. This does not include access to childcare settings.

- Continues to enable local authority-run fully outdoor ELC settings to be open, in line with the published guidance on the reopening of fully outdoor childcare provision⁷ which took effect from 3 June 2020. In addition, subject to this being supported by public health guidance, the Direction enables the re-opening of remaining local authority-run ELC and out of school care settings from 15 July, in line with the published guidance on the reopening on ELC services⁸ and out of school care guidance (due to be published 3 July). This will allow local authority-run ELC and out of school care settings which normally operate year-round to re-open from 15 July should they wish to.
- Requires education authorities to continue to provide free school lunches during term time or, where they are unable to secure that, reasonable alternatives (listed as other food or drink, vouchers or cash) to eligible children. It has been agreed that free school meals will continue to be provided to those who are eligible during the summer holidays. Information on eligibility during the summer holidays has been set out at <https://www.mygov.scot/school-meals/> for ease of reference, and clarifies that the universal entitlement in P1-P3 does not apply. Authorities will be aware that their powers under the Social Work (Scotland) Act 1968 and the Children (Scotland) Act 1995 would enable the use of direct payment to families in lieu of free school meals at this time.
- 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.

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.

⁶<https://www.gov.scot/publications/coronavirus-covid-19-re-opening-schools-guide/pages/physical-distancing/>

⁷<https://www.gov.scot/publications/coronavirus-covid-19-fully-outdoor-childcare-providers-guidance/>

⁸<https://www.gov.scot/publications/coronavirus-covid-19-phase-3-guidance-on-reopening-early-learning-and-childcare-services/>

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 Education (Scotland) Act 1980 ("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 ("the 2004 Act") - 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 ("the 2014 Act") (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.

The disregard of any failures in relation to the 2004 Act provisions has been continued. This is in recognition that for some authorities school term has not yet concluded, but that there will continue to work ongoing during the summer holidays in relation to support for individual children and young people, whilst the coronavirus pandemic is being responded to. There is a need to continue these provisions, recognising that authorities will continue this work wherever possible, but may not be able to fully perform these duties at the current time.

Although this Direction enables local authority-run ELC settings to re-open from 15 July should the public health advice allow, we recognise that for some settings, opening on 15 July will not be part of their normal operating model, and for settings which would normally operate outside term-time, some may want to take some time to adjust their service for operation, as per the published guidance on the reopening of ELC services. Although the disregard in relation to section 47(1) of the 2014 Act remains for the duration of this Direction, Scottish Government and Local Government continue to work together to understand the earliest date education authorities can secure 600 hours of ELC, for each eligible child in their area.

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
July 2020