Coronavirus Act 2020

Educational Continuity (No.8) Direction, 28 January 2021: Guidance note

Background

This eighth Educational Continuity Direction (the "Direction") is given under powers conferred by Schedule 17 of the (UK-wide) Coronavirus Act 2020[1] and applies to education authorities.

This 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 eighth direction and replaces and revokes the seventh Educational Continuity Direction which was given on 8 January 2021. It continues to support and provide a legal basis for key aspects of the supplementary guidance issued by Scottish Ministers on 6 January 2021 and updated on 21st January[2], and the other guidance that has been issued and is overseen by the Covid-19 Education Recovery Group.

This Direction has effect until the earlier of 23:59 on 17 February 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 and it is anticipated that it will be followed by a further direction.

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, and the importance of continuity of learning.

The Direction therefore:

- **Requires** all education authorities to continue to restrict access to their 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, for, or in connection with: the provision of early learning and childcare, school age education, or childcare to children of keyworkers and vulnerable children and young people; the planning for or provision of remote learning, and for the planning for resumption of face to face learning; the maintenance of buildings and facilities as considered appropriate by the education authority or for or in relation to other aspects of

[1] http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted/data.htm
[2] Coronavirus (COVID-19): school re-opening arrangements for January 2021 - gov.scot (www.gov.scot)

the local authority's response to coronavirus; elections, if reasonable alternative arrangements cannot be made.

- **Requires** education authorities to provide early learning and childcare for children of keyworkers and vulnerable children during locally determined term time.

- **Requires** education authorities to provide school age education for children of keyworkers and vulnerable children during locally determined term time.

- **Requires** education authorities to provide remote learning for school pupils during locally determined term time. Further guidance to support this provision was published by Education Scotland on 8 January 2021.

- **Requires** education authorities to continue to plan for the resumption of the provision of 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.

- **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.

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 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 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.

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 47(1) of the Children and Young People (Scotland) Act 2014 (duty to secure provision of early learning and childcare);
- 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.

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
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