

Coronavirus Act 2020

Educational Continuity (No.4) Direction, 22 July 2020: Guidance note

Background

This fourth 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 fourth direction and replaces that given on 2 July. 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.

This Direction is in place until 10 August 2020. It will be reviewed by 10 August and it is expected that a further Direction will be given following review 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 at the earliest time it is safe to do so.
- 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.**
- 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.

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

- **Requires** education authorities to provide ongoing critical childcare for children of keyworkers and vulnerable children until Friday 31 July (inclusive of that date) and **allows** them to provide this service after this date. Critical childcare will therefore wind down during the week commencing 3 August with a specific end date decided at a local level, before the return to school.

On the assumption that schools re-open as currently planned, the provision of critical childcare as part of the emergency response to COVID-19 will no longer be covered by national policy after the end date of this Direction. Local authorities (acting where relevant as education authorities) may provide discretionary childcare to any child under existing powers under the Education (Scotland) Act 1980 (for ELC) and the Children (Scotland) Act 1995 (for school age children and pre-school age).

- 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. This does not include access to childcare settings.
- As an ancillary provision, **restricts access to schools that are managed by the education authority** apart from for the purposes referred to above (e.g. for the provision of ELC and OOSC) 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.

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.

The relevant statutory duties are set out below:

- 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 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 some authorities will continue to work 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. There are ongoing discussions in relation to the removal of these provisions from future continuity directions, to ensure that authorities have the appropriate time to meet statutory timescales disregarded as a result of the direction. Education authorities may wish to consider in advance the arrangements needed in light of these potential changes.

The disregard of duties in relation to the provision of free school meals have been removed, as these duties only apply during term-time. Authorities will be aware of the joint agreement in place and the associated grant agreements to enable this provision during the school holiday period.

Mindful of the need to attribute any ‘disregard’ to restrictions imposed by the Continuity Direction, the disregard in relation to section 47(1) of the 2014 Act (relating to the duty to provide access to 600 hours of ELC) has been removed from this Direction. The previous Direction allowed the reopening of local authority managed ELC settings alongside the wider opening of childcare services announced from 15 July, removing a key restriction to the fulfilment of this duty. Scottish Government and Local Government have agreed local authorities will be in a position to secure at least 600 hours of ELC, for each eligible child in their area from August.

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