

Educational Continuity (No. 9) Direction given under paragraph 11(1) of schedule 17 (Temporary Continuity Directions etc: Education, Training and Childcare: Scotland) of the Coronavirus Act 2020

1. The Scottish Ministers in exercise of their powers conferred by section 38(2) and paragraph 11(1) of schedule 17 of the Coronavirus Act 2020 (c.7) (“the 2020 Act”) give the following **Educational Continuity Direction**.
2. Before giving this direction, the Scottish Ministers had regard to the advice relating to coronavirus from the Chief Medical Officer of the Scottish Administration.
3. The Scottish Ministers are satisfied that giving the direction is a necessary and proportionate action for or in connection with the continued provision of education.

The Scottish Ministers direct as follows:

4. This Direction applies to every education authority in Scotland.

Closure of schools, and exceptions

5. Each education authority is required to restrict access to all schools under its management (except any nursery school or nursery class), except in so far as access is required for or in connection with any of the following:
 - a. planning and preparation for the provision mentioned in sub-paragraph (b) and (c), and for the resumption of attendance by pupils in terms of paragraph 7;
 - b. the provision of school education in terms of paragraph 9 or out of school care for those pupils for whom education is being provided pursuant to paragraph 9(a) or (b);
 - c. the provision of school education by way of remote learning in terms of paragraph 10;
 - d. the facilitation of a COVID-19 testing programme;
 - e. maintenance of buildings and facilities as considered appropriate by the education authority;
 - f. any use of buildings and facilities for, or in relation to, other aspects of the local authority’s response to coronavirus;
 - g. a Scottish Parliamentary, local government or United Kingdom Parliament election, if reasonable alternative arrangements cannot be made.

Closure of nursery schools and nursery classes, and exceptions

6. Until 21 February 2021, each education authority is required to restrict access to all nursery schools and nursery classes (being schools and classes which provide early learning and childcare) under its management, except in so far as access is required for or in connection with any of the following:
 - a. planning and preparation for the provision mentioned in sub-paragraph (b), and for the resumption of attendance by children in terms of paragraph 7;
 - b. the provision of early learning and childcare in terms of paragraph 8(a) and (b);

- c. the facilitation of a COVID-19 testing programme;
- d. maintenance of buildings and facilities as considered appropriate by the education authority;
- e. any use of buildings and facilities for, or in relation to, other aspects of the local authority's response to coronavirus;
- f. a Scottish Parliamentary, local government or United Kingdom Parliament election, if reasonable alternative arrangements cannot be made.

Continuing provision of education and childcare and related matters

7. Each education authority is required to plan and prepare for pupils to resume attendance at schools (including any nursery school or nursery class) under its management at the earliest time it is safe to do so, having regard to any guidance issued by the Scottish Ministers. In particular, each education authority is required to plan and prepare for the provision mentioned in paragraphs 8, and 9(c) and (d).
8. Each education authority is required to provide early learning and childcare, pursuant to appropriate local arrangements and having regard to the guidance issued by the Scottish Ministers, for—
 - a. children of key workers,
 - b. vulnerable children and young people,

and from 22 February 2021, all nursery schools and nursery classes are to reopen for the provision of early learning and childcare to all children who would normally attend there. But an education authority is not required to open outwith term time or on any in-service day any establishment which would not normally be open during such a period or on such a day.

9. Each education authority is required to provide school education during term time (excluding any in-service day), pursuant to appropriate local arrangements and having regard to the guidance issued by the Scottish Ministers to the following pupils of school age—
 - a. children of key workers;
 - b. vulnerable children and young people;
 - c. from 22 February 2021, all pupils in Primary year groups 1-3; and
 - d. from 22 February 2021, pupils in Secondary year groups 4-6, but only to the extent that it is in the opinion of the education authority necessary for those pupils to attend school in order to complete any practical work required for a national qualification.

For the purposes of sub-paragraph (c) above, an education authority may in exceptional circumstances provide school education to other pupils, but only where those pupils normally attend a composite class with pupils in any or all of Primary year groups 1-3 and no other reasonable arrangement can be made.

10. Each education authority is required to provide school education by way of remote learning to pupils who normally attend schools (except nursery schools or nursery classes) under its management during term time (excluding any in-service day). Where a

pupil is provided with school education under paragraph 9, this requirement applies only to the extent the education authority considers necessary to ensure the provision of adequate and efficient school education for the pupil.

11. Where an education authority is unable to provide or secure the provision of a free school lunch to eligible pupils in terms of section 53(2) of the Education (Scotland) Act 1980 (c.44) (“the 1980 Act”), the authority is required to provide or secure the provision of such reasonable alternatives (for example, other food and drink, or vouchers or cash) as it may determine.

Effect of Direction on other provisions of law

12. The Scottish Ministers in exercise of their power under paragraph 11(3) of schedule 17 of the 2020 Act direct that any failure to comply with a duty or time limit imposed under the following provisions is to be disregarded to the extent the failure would be attributable to this Direction:
 - a. section 53(2) of the 1980 Act (provision of free school lunches) (but see paragraph 11 above);
 - b. section 30(1) (duty of parents to provide education for their children) of the 1980 Act only insofar as that duty is discharged by causing the child to attend a public school regularly;
 - c. section 4(1) (provision for additional support needs) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (“the 2004 Act”);
 - d. 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);
 - e. section 47(1) (duty to secure provision of early learning and childcare) of the Children and Young People (Scotland) Act 2014 (asp 8), but only until 21 February 2021.

Requirement to have regard to certain matters, and to guidance

13. In making the provision or carrying on the activities set out in this Direction, an education authority must have regard to the objective of preventing the transmission of coronavirus, to the welfare of children and young people and staff and to the importance of continuity of education.
14. In making the provision or carrying on the activities set out in this Direction, an education authority must have regard to relevant guidance issued by the Scottish Ministers.

Duration and publication

15. This Direction takes effect from 00:01 on 18 February 2021.
16. This Direction has effect until the earlier of 23:59 on 12 March 2021 or its revocation by a further Direction given by the Scottish Ministers.
17. In terms of paragraph 13(4) of schedule 17 of the 2020 Act, this Direction will be reviewed within 21 days beginning with the date on which the Direction is given.

18. This Direction is published in accordance with paragraph 13(1) of schedule 17 of the 2020 Act.

Signed by

A handwritten signature in blue ink, appearing to read 'John Swinney', with a long horizontal flourish extending to the right.

John Swinney MSP

**Deputy First Minister and
Cabinet Secretary for
Education and Skills**

17 February 2021