

The Coronavirus Act 2020

Education Provisions

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Education

- The Bill includes three powers relating to education:
- **a power to require or direct the temporary closure of an educational institution or registered childcare provider.**
- Clause 37 and Schedule 16 gives the English SoS and also Welsh Ministers powers to direct the temporary closure of all (or any particular type of) education institutions

- Before directing the closure of settings ,they:
- (a) must have regard to any advice from the Chief Medical Officer or one of the Deputy Chief Medical Officers relating to the incidence or transmission of coronavirus; and
- (b) must be satisfied that giving the direction is a necessary and proportionate action in response to the incidence or transmission of coronavirus.

Delegation

- Sch 16 (3) (2) England and (4) (2) gives the Welsh Ministers power to delegate these functions to Local Authorities or the Higher Education Funding Council for Wales.

Temporary Continuity Directions

- **A power to make specified types of directions in connection with the running of the education and registered childcare systems.**
- AKA Temporary Continuity Directions
- Clause 38 and Schedule 17 (Part 1) gives powers to direct providers to continue to stay open and make certain types of provision.

Temporary Continuity Directions

- This provision may include: education, training or childcare, services relating to education, training or childcare, or ancillary services or facilities. Such a direction is referred to in the Bill as a ‘temporary continuity direction’

Temporary Continuity Directions

- Examples of different ways in which settings may be directed to operate, cited in Schedule 17, include:
- requiring a relevant institution to open, to stay open, to re-open, or to open at times when it would not usually be open; requiring the alteration of term dates and arrange for transport to people accessing their provision; etc.

- Sch 17 (3) (1) England (3)(2) Wales - Gives the Welsh Ministers power to delegate these functions to Local Authorities or the Higher Education Funding Council for Wales.
- Sch 17 (1) (3) England (2) (3) Wales - When exercising this power the Government
- *must have regard to any advice from the Chief Medical Officer and*
- *must be satisfied that giving the direction is a necessary and proportionate action in response to the incidence or transmission of coronavirus.*

Dis-apply/Modify

- **a power to dis-apply or modify specified existing legislative requirements contained in or arising out of education and childcare.**
- The Bill would give the SoS in England and Welsh Ministers power to disapply or modify certain rules and requirements. These are intended to enable schools and other institutions to operate effectively and without undue burden in an emergency period when efforts are focused on dealing with coronavirus.

Dis-apply/Modify

- In summary, the Bill aims to provide the Secretary of State and devolved Ministers with powers to require educational institutions or childcare providers to stay open or relax some requirements around educational legislation in order to help these institutions run effectively during the event of an emergency. This could include reducing teacher ratios, adapting school meal standards and relaxing provisions for those with special educational needs

Dis-apply/Modify

- Disapply means that the obligation is wholly removed. Modified means that the provision impacted is subject now to a 'reasonable endeavours' duty.

Dis-apply/Modify

- Sch 17 5 (5) in England 7(5) for Wales, sets out the disapplied areas (attendance, curriculum, SEN EA s 328 (5) reviews of SEN etc),
- Sch 17 5 (6) England and 7 (6) Wales sets out the modified (collective worship, EA s 324(5) SEN provision, school meals, attendance numbers etc).

Dis-apply/Modify

- This is an area of concern particularly in respect special educational needs/additional learning needs. The Bill provides the Secretary of State / the Welsh Ministers with powers effectively downgrade local authority education law duties (including those relating to the provision of SEN/ALN) to obligations 'to use reasonable endeavours to discharge' the duty.

Dis-apply/Modify

- Thus the Local Authority will merely have to show their views of reasonable endeavours to discharge the duty, which clearly creates a much lesser entitlement.
- This is a significant, profound, shift, especially in SEN/ALN where what are (in some cases) absolute duties are downgraded.

Dis-apply/Modify

- These Education powers in the Bill are in force now, but in respect of the education law duties (eg SEN/ALN) the disapplication is triggered by (Sch17, para 5(4) for England, para 7(4) for Wales) a notice;
- The notice *“must state why the (SoS/Welsh Minsiters) considers that the issuing of the notice is an **appropriate & proportionate** action in the circumstances”*

Dis-apply/Modify

- A critical question is what is the threshold for notice; nothing in Act other than “*appropriate & proportionate*”.
- In England, the minister for children, Vicky Ford in a letter 24.3.20, stated that: “*powers will only be exercised where **necessary**...*”

Dis-apply/Modify

- In terms of length of the Notice, para 5(7) England 7(7) Wales: The notice must not exceed one month. Until Notices have been issued these rights are not disapplied/modified.

Admissions

- These powers should not affect the admission processes. At the present time the normal admissions process must be being followed.
- Indeed, the Act at s 78 (7) (j) England, (8)(J) Wales, expressly includes an appeal panel as a Local Government meeting which can be conducted virtually.

THANK YOU

- Michael heads the Public/Administrative law department at Watkins and Gunn and has undertaken a number of high profile claimant judicial review challenges. These have been mainly in respect of service closures and downgrades such as hospital, schools, libraries facing for communities challenging local and national government. He has been involved in a number of legal challenges testing the devolved settlement in Wales. He has experience in acting for children with special educational needs and in admission, exclusion, transport and school closure cases. Michael is also recognised as a leader in the field in claimant personal injury work. He is the principle solicitor acting for the Trade Union, Community, in Wales and the West Country. Michael is a former president of the Cardiff & District Law Society, a Vice Chair of the Legal Aid Agency Special Controls review Panel. He is a longstanding school governor, a trustee of several charities and long suffering supporter of Newport County FC.

THANK YOU

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