

CORONAVIRUS (RECOVERY AND REFORM) (SCOTLAND) ACT 2022

EXPLANATORY NOTES

THE ACT: OVERVIEW

Part 2: Education

Chapter 1: Educational establishments etc.

37. **Chapter 1** of Part 2 of this Act enables the Scottish Ministers to make regulations to ensure the continuity of educational provision in a manner which is consistent with the protection of public health. It also requires educational establishments to have regard to public health advice and guidance. Similar provision was made in respect of coronavirus alone by schedules 16 and 17 of the Coronavirus Act 2020.

Section 5: Interpretation of Chapter

38. This section defines the key terms used in Chapter 1 of Part 2 of this Act, including “educational establishment”, “protecting public health”, and the meaning of “relevant operator” in relation to educational establishments.

Section 6: Duty to have regard to public health advice

39. This section requires relevant operators of educational establishments (including early learning and childcare settings, schools, colleges, and further and higher education institutions), as well as relevant managers of school boarding accommodation and student accommodation, to have regard to guidance on protecting public health from the CMO.
40. In this Chapter of this Act, as set out in section 5, “protecting public health” has the meaning given by section 1(5) of the Public Health etc. Scotland Act 2008 – that is the protection of the community from infectious diseases, contamination or other such hazards which constitute a danger to human health, including through prevention, control and other public health responses.

Section 7: Guidance on public health measures

41. This section gives a power for the Scottish Ministers to issue statutory guidance to the relevant operators of educational establishments, as well as managers of school boarding accommodation and student accommodation, on protecting public health and ensuring the continuity of education, which those operators and managers must have regard to. Subsection (2) requires Ministers to publish any guidance issued under this section.

Section 8: Regulations on continuing operation of educational establishments

42. This section confers a power on the Scottish Ministers to make regulations applying to educational establishments on their continued operation during the subsistence of

threats to public health in Scotland. This follows the use of a direction-making power with a similar scope under schedule 17 of the Coronavirus Act 2020, which was used during the coronavirus pandemic in 2020 and 2021 to secure the continuing provision of education.

43. Subsection (3) places a limit on the scope of regulations under this section: where they apply to further education institutions or higher education institutions, the regulations may not relate to the non-educational functions of the institution, as defined in subsection (4): for instance, functions relating solely to research and not to teaching are excluded.
44. Subsection (5) sets out the preconditions for making regulations under this section: Ministers must have regard to any advice from the CMO about protecting public health, and, in that context, must also be satisfied that making the regulations is a necessary and proportionate action for or in connection with the continued provision of education.
45. Subsection (6) states that regulations under this section may provide that any failure of compliance by an educational establishment with statutory or common law rules relating to education is to be disregarded where it is attributable to the regulations: the effect of this is that, where regulations under this section contain such provision, they effectively override other legal requirements on educational establishments while in force to the extent required by the regulations.
46. Subsection (7) sets out the substantive content of what regulations under this section may provide for, including: the conferral of additional functions on an educational establishment relating to the provision of education or (only where an education authority or a further or higher education institution is concerned) the use of an educational establishment's premises for the purpose of protecting public health, for example for testing or vaccination; the alteration of term dates and of opening times; the direction of service provision; the restriction or prohibition of access to an educational establishment's premises (or part of such premises). The restriction or prohibition of access may be framed in terms of specified activities. Furthermore, the regulations may require actions to be taken by educational establishments in general terms, or may require particular actions to be taken.

Section 9: Regulations on school boarding accommodation

47. This section confers a power on the Scottish Ministers to make regulations applying to boarding schools during the subsistence of threats to public health in Scotland.
48. Regulations under this section may require the restriction or prohibition of access to boarding accommodation premises (or part of such premises). The restriction or prohibition of access may be framed in terms of specified activities (for example, access could be permitted only for urgent pupil welfare reasons or the carrying on of activities which are necessary for the continuing provision of education). Furthermore, the regulations may require actions to be taken by school boarding establishments in general terms, or may require particular actions to be taken.
49. Regulations under this section may also, alternatively or additionally to making provision on the restriction of access, require the managers of school boarding establishments to provide support for pupils in order to assist them to comply with any legal requirement relating to public health: an example would be a requirement to quarantine under Part 4 of the Public Health etc. (Scotland) Act 2008. Support may also be required for pupils to assist them to follow public health guidance or advice from a public authority, for instance from the CMO; or to assist them to respond to specific requests or recommendations relating to public health from a public authority, for instance a recommendation from a health board for an individual pupil or group of pupils to self-isolate. The detail of what support should be provided will be set out in guidance.

50. Subsection (3) of this section sets out the preconditions for making regulations under this section: Ministers must have regard to any advice from the CMO about protecting public health, and in that context, must also be satisfied that making the regulations is a necessary and proportionate action to protect public health.
51. Subsection (4) states that regulations under this section may provide that any failure of compliance by a school with statutory or common law rules relating to education is to be disregarded where it is attributable to the regulations: the effect of this is that, where regulations under this section contain such provision, they effectively override other legal requirements while in force to the extent required by the regulations.

Section 10: Regulations on student accommodation

52. This section confers a power on the Scottish Ministers to make regulations applying to the managers of student accommodation during the subsistence of threats to public health in Scotland.
53. Regulations under this section may require the restriction or prohibition of access to student accommodation premises (or part of such premises). The restriction or prohibition of access may be framed in terms of specified activities (for example, access could be permitted only for urgent student welfare reasons or for the carrying on of activities which are necessary for the continuing provision of education). Furthermore, the regulations may require actions to be taken by the managers of student accommodation in general terms, or may require particular actions to be taken by them.
54. Regulations under this section may also, alternatively or additionally to making provision on the restriction of access, require the managers of student accommodation to provide support for students in order to assist them to comply with any legal requirement relating to public health: an example would be a requirement to quarantine under Part 4 of the Public Health etc. (Scotland) Act 2008. Support may also be required for students to assist them to follow public health guidance or advice from a public authority, for instance from the CMO; or to assist them to respond to specific requests or recommendations relating to public health from a public authority, for instance a recommendation from a health board for a student or group of students to self-isolate. The detail of what support should be provided will be set out in guidance.
55. Subsection (3) of this section sets out the preconditions for making regulations under this section: Ministers must have regard to any advice from the CMO about protecting public health, and, in that context, must also be satisfied that making the regulations is a necessary and proportionate action for or in connection with protecting public health.
56. Subsection (4) states that regulations under this section may provide that any failure of compliance by the managers of student accommodation with statutory or common law rules relating to education is to be disregarded where it is attributable to the regulations: the effect of this is that, where regulations under this section contain such provision, they effectively override other legal requirements while in force to the extent required by the regulations.

Section 11: Compliance and enforcement

57. This section concerns the enforcement of regulations that are made by the Scottish Ministers using any of the powers in this Chapter of this Act. Subsection (1) provides that the regulations may make provision for the carrying out and enforcement of restrictions and requirements contained in them.
58. Subsection (2) provides that relevant authorities must have regard to any guidance issued by Ministers about how to comply with the regulations. Subsection (3) requires Ministers to publish this guidance.

Section 12: Procedure for regulations

59. This section provides that regulations made by the Scottish Ministers under section 8, 9 or 10 are subject to the affirmative procedure. However, where the Scottish Ministers make a declaration that the regulations need to be made urgently, the made-affirmative procedure will apply: this means that the regulations can come into effect immediately, but will cease to have effect after 28 days of being made unless they have been approved by a resolution of the Scottish Parliament before the end of that period. In such cases, Ministers must explain why they are of the opinion that urgency requires the regulations to be made without their being subject to the affirmative procedure; and the regulations must include an expiry date – a “sunset” provision (unless they amend previous regulations which already contain a “sunset” provision).
60. In addition, subsection (9) of this section provides that where regulations merely revoke previous regulations made under section 8, 9 or 10 – or merely revoke such regulations and make related transitional, transitory or saving provision – then the regulations are not subject to the affirmative procedure but must be laid before the Scottish Parliament as soon as practicable after being made (sometimes known as the laid only procedure).

Section 13: Regulations: public health declarations

61. The powers to make regulations under this Chapter of this Act cannot be used to respond to a particular infection or contamination unless a public health declaration under section 13 is in force. A public health declaration is a declaration that the Scottish Ministers think that an infectious disease or contaminant poses a danger to human health and that the using of the power to make regulations under this Chapter may be a way of protecting against that danger. Before making a public health declaration, the Scottish Ministers must consult the CMO or another person that Ministers designate to give advice. For example, if the danger is caused by a contamination rather than an infectious disease, advice from the Chief Scientific Adviser may be more relevant.
62. A public health declaration can come into force in two ways. The normal way is set out in section 13(2) to (8). After making a declaration, the Scottish Ministers will lay the declaration before the Scottish Parliament. A member of the Scottish Government will then lodge a motion that the declaration be approved and, if it is approved, the declaration can come into force and regulations under section 86A can be made. The Scottish Ministers must publish the declaration and also a notice of the approval of the declaration and when it comes into force.
63. If, while a public health declaration is in force, the Scottish Ministers decide that the tests for making a declaration no longer apply, they must revoke the declaration, tell the Parliament and publish a notice that the declaration has been revoked. The declaration stops applying as soon as it is revoked.

Section 14: Regulations: further provision about public health declarations

64. This section makes further provision about public health declarations. If the Scottish Ministers think that it is not practicable to get prior Parliamentary approval for a declaration before it comes into force (for example, because the Parliament has been dissolved for an election), the Scottish Ministers may instead follow the process set out in this section.
65. Under this section, the public health declaration comes into force as soon as it is made by the Scottish Ministers. The Scottish Ministers must lay the declaration before the Parliament and a member of the Scottish Government will lodge a motion that the declaration be approved. If the declaration is not approved by the end of the period of 28 days after the day it is made, it stops applying. It may stop applying earlier if the Parliament comes to an earlier decision not to approve the declaration.

Section 15: Review of regulations

66. This section places a duty on Ministers to review any regulations made under section 8, 9 or 10 every 21 days.

Section 16: Duty to seek views about regulations

67. This section places a duty on the Scottish Ministers to seek views about any educational continuity regulations made under section 8 – and about any regulations made under sections 9 or 10 that are in force at the same time – at least every 28 days while the section 8 regulations are in force.
68. Subsection (2) lists the persons whom Ministers must seek views from: representatives of educational establishments, users of those establishments – including representatives of children and young people – along with staff and any other stakeholders that are considered appropriate.

Section 17: Report on public schools' readiness for remote learning

69. This section places a duty on the Scottish Ministers to report on education authorities' readiness for the provision of remote learning in public schools, including on specific actions that education authorities (as the managers of public schools) and Ministers themselves have taken to improve readiness for remote learning. Early learning and childcare provision is not included for the purposes of this section.
70. The first report under this section must be published as soon as practicable after 31 July 2023. Subsequent reports may be published as and when Ministers consider appropriate.

Chapter 2: School consultations

71. [Chapter 2](#) of Part 2 of this Act amends the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”), which makes provision about the consultation process that is to apply as respects various proposals made by education authorities for schools.

Section 18: School consultations: meetings and documents

72. This section inserts a new section 11ZA into the 2010 Act that provides that an education authority may make an application to the Scottish Ministers for a direction to do certain things in law, as listed in subsection (2):
- to disregard, that is to excuse their non-compliance in law with, the duties in section 4 and 9 of the 2010 Act to publish proposal papers and consultation reports on proposed changes to education provision in printed form;
 - to treat the duties in those sections to make proposal papers and consultation reports available for public inspection as duties to make the documents available in a manner they consider appropriate instead;
 - to meet the duty under section 7 of the 2010 Act to hold a public meeting on proposed changes to education provision by holding the meeting using remote facilities (including by telephone or by video conferencing software).
73. Subsection (3) sets out the precondition for the Scottish Ministers giving a direction of this nature: Ministers must be satisfied that doing so is a necessary and proportionate action for or in connection with the protection of public health. The term “protection of public health” has the meaning given by section 1(5) of the Public Health etc. (Scotland) Act 2008 – that is the protection of the community from infectious diseases, contamination or other such hazards which constitute a danger to human health, including through prevention, control and other public health responses.
74. Subsection (4) provides that a direction given under this section by the Scottish Ministers may vary or revoke an earlier direction.

*These notes relate to the Coronavirus (Recovery and Reform) (Scotland)
Act 2022 (asp 8) which received Royal Assent on 10 August 2022*

75. Subsection (5) makes further provision about directions under this section, including that they may be varied or revoked, may relate to more than one proposal, and may be subject to conditions set out in the direction.
76. Subsection (6) requires Ministers to publish any direction given under this section.