

SCHEDULES

SCHEDULE 16

TEMPORARY CLOSURE OF EDUCATIONAL INSTITUTIONS AND CHILDCARE PREMISES

PART 1

ENGLAND AND WALES

Schools, 16 to 19 Academies, further and higher education providers

- 1 (1) The Secretary of State may give a temporary closure direction that applies to—
- (a) one or more named educational institutions in England;
 - (b) all educational institutions in England (or any part of England);
 - (c) educational institutions in England (or any part of England) of a particular description.
- (2) The Welsh Ministers may give a temporary closure direction that applies to—
- (a) one or more named educational institutions in Wales;
 - (b) all educational institutions in Wales (or any part of Wales);
 - (c) educational institutions in Wales (or any part of Wales) of a particular description.
- (3) A temporary closure direction under this paragraph is a direction that requires the responsible body of an educational institution to which it applies to take reasonable steps to secure that persons do not, for a specified period, attend premises of the institution.
- (4) Before giving a direction under this paragraph, the Secretary of State—
- (a) must have regard to any advice from the Chief Medical Officer or one of the Deputy Chief Medical Officers of the Department of Health and Social Care 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.
- (5) Before giving a direction under this paragraph, the Welsh Ministers—
- (a) must have regard to any advice from the Chief Medical Officer for Wales or one of the Deputy Chief Medical Officers for Wales 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.
- (6) A temporary closure direction under this paragraph may—
- (a) require the taking of reasonable steps in general terms, or require the taking of particular steps that the appropriate authority considers reasonable, in relation to any of the matters mentioned in the following paragraphs;

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- (b) relate to attendance of persons generally, or to attendance by specified persons;
 - (c) relate to premises generally, or to specified premises or parts of premises;
 - (d) relate to attendance generally, or to attendance for specified purposes;
 - (e) otherwise make different provision for different purposes, or be framed by reference to whatever matters the appropriate authority considers appropriate;
 - (f) make transitional, transitory or saving provision;
 - (g) make such other provision as the appropriate authority considers appropriate in connection with the giving of the direction.
- (7) Where a temporary closure direction under this paragraph applies to an educational institution in England—
- (a) any FE funding agreement in respect of that institution has effect, or
 - (b) any Academy arrangements in respect of that institution or its responsible body have effect,
- subject to any modifications necessary to enable the direction to be complied with.
- (8) The duty of a responsible body to which a temporary closure direction is given under this paragraph to comply with the direction is enforceable against that body by the appropriate authority making an application to the High Court or the county court for an injunction.
- (9) An application made under sub-paragraph (8) may be made without notice being given to the responsible body.
- (10) In this paragraph—
- “appropriate authority” means the Secretary of State (in relation to a temporary closure direction given under sub-paragraph (1)) or the Welsh Ministers (in relation to a temporary closure direction given under sub-paragraph (2));
 - “premises”, in relation to an educational institution, means—
 - (a) any premises which persons normally attend in order to receive services provided by the institution, and
 - (b) any other premises to the extent that those premises are being used by the institution for examinations or assessments of—
 - (i) regulated qualifications within the meaning of section 130 of the Apprenticeships, Skills and Learning Act 2009, in relation to England, or
 - (ii) qualifications regulated by Qualifications Wales, in relation to Wales.
 - “school” has the same meaning as in the Education Act 1996 (see section 4 of that Act);
 - “specified” means specified, or falling within a description specified, in a temporary closure direction under this paragraph.
- (11) In this paragraph, in relation to England—
- “Academy arrangements” has the meaning given by section 1(2) of the Academies Act 2010;
 - “educational institution” means—
 - (a) a school;

- (b) a 16 to 19 Academy, within the meaning of section 1B of the Academies Act 2010;
- (c) an institution within the further education sector, within the meaning of section 91(3) of the Further and Higher Education Act 1992;
- (d) a provider of post-16 education or training—
 - (i) to which Chapter 3 of Part 8 of the Education and Inspections Act 2006 applies, and
 - (ii) in respect of which funding is provided by, or under, arrangements made by the Secretary of State, a local authority or a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009,

but does not include an employer who is a provider by reason only of the employer providing such education or training to its employees;

- (e) a higher education provider within the meaning of section 83(1) of the Higher Education and Research Act 2017;
- (f) a provider of higher education within the meaning of section 83(1) of the Higher Education and Research Act 2017 which is not an institution (within the meaning of that section) whether or not it is designated under section 84 of that Act;

“FE funding agreement” means an agreement, in respect of education or training to which Chapter 3 of Part 8 of the Education and Inspections Act 2006 applies, that is entered into between—

- (a) the Secretary of State, a local authority or a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009, and
- (b) an educational institution,

but does not include an agreement that is Academy arrangements;

“local authority” has the same meaning as in section 579(1) of the Education Act 1996;

“responsible body” means—

- (a) in relation to a school or a 16 to 19 Academy, the proprietor, within the meaning of section 579(1) of the Education Act 1996;
- (b) in relation to an institution within the further education sector, the governing body within the meaning of section 90(1) of the Further and Higher Education Act 1992;
- (c) in relation to a provider of post-16 education or training, the person with legal responsibility and accountability for the provider;
- (d) in relation to a higher education provider within the meaning of section 83(1) of the Higher Education and Research Act 2017 or a provider of higher education designated under section 84 of that Act, the governing body within the meaning of section 85(1) of that Act;
- (e) in relation to any other provider of higher education not mentioned in paragraph (d), any person responsible for the management of the provider.

(12) In this paragraph, in relation to Wales—

“educational institution” means—

- (a) a school;

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- (b) an institution within the further education sector, within the meaning of section 91(3) of the Further and Higher Education Act 1992;
- (c) an institution within the higher education sector within the meaning of section 91(5) of that Act;
- (d) a provider of education or training within the meaning of section 31(1) (a) or (b) or 32(1)(a) or (b) of the Learning and Skills Act 2000 that—
 - (i) is not an institution within the meaning of paragraph (b) or (c), and
 - (ii) is in receipt of funding for provision of that education or training from the Welsh Ministers or a local authority,
 but does not include an employer who is a provider by reason only of the employer providing such education or training to its employees;
- (e) a provider of a course of education within the meaning of Schedule 6 to the Education Reform Act 1988 that is not an institution within the meaning of paragraph (b) or (c).

“local authority” means a county council in Wales or a county borough council;

“responsible body” means—

- (a) in relation to a school, the proprietor, within the meaning of section 579(1) of the Education Act 1996;
- (b) in relation to an institution within the meaning of paragraph (b) or (c) of the definition of “educational institution”, the governing body within the meaning of section 90(1) of the Further and Higher Education Act 1992;
- (c) in relation to a provider within paragraph (d) or (e) of that definition, the person with legal responsibility and accountability for the provider.

Registered childcare providers

- 2 (1) The Secretary of State may give a temporary closure direction that applies to—
 - (a) one or more named registered childcare providers in England;
 - (b) all registered childcare providers in England (or any part of England);
 - (c) registered childcare providers in England (or any part of England) of a particular description.
- (2) The Welsh Ministers may give a temporary closure direction that applies to—
 - (a) one or more named registered childcare providers in Wales;
 - (b) all registered childcare providers in Wales (or any part of Wales);
 - (c) registered childcare providers in Wales (or any part of Wales) of a particular description.
- (3) A temporary closure direction under this paragraph is a direction that requires a registered childcare provider to which it applies to take reasonable steps to secure that persons do not, for a specified period, attend premises of the provider for purposes connected with the provision of childcare.
- (4) Before giving a direction under this paragraph, the Secretary of State—
 - (a) must have regard to any advice from the Chief Medical Officer or one of the Deputy Chief Medical Officers of the Department of Health and Social Care 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.
- (5) Before giving a direction under this paragraph, the Welsh Ministers—
- (a) must have regard to any advice from the Chief Medical Officer for Wales or one of the Deputy Chief Medical Officers for Wales 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.
- (6) A temporary closure direction under this paragraph may—
- (a) require the taking of reasonable steps in general terms, or require the taking of particular steps that the appropriate authority considers reasonable, in relation to any of the matters mentioned in the following paragraphs;
 - (b) relate to attendance of persons generally, or to attendance by specified persons;
 - (c) relate to premises generally, or to specified premises or parts of premises;
 - (d) relate to attendance for purposes connected with the provision of childcare generally, or to attendance for specified purposes;
 - (e) otherwise make different provision for different purposes, or be framed by reference to whatever matters the appropriate authority considers appropriate;
 - (f) make transitional, transitory or saving provision;
 - (g) make such other provision as the appropriate authority considers appropriate in connection with the giving of the direction.
- (7) The duty of a registered childcare provider to which a temporary closure direction has been given under this paragraph to comply with the direction is enforceable against that provider by the appropriate authority making an application to the High Court or the county court for an injunction.
- (8) An application made under sub-paragraph (7) may be made without notice being given to the registered childcare provider.
- (9) In this paragraph—
- “appropriate authority” means the Secretary of State (in relation to a temporary closure direction given under sub-paragraph (1)) or the Welsh Ministers (in relation to a temporary closure direction given under sub-paragraph (2));
 - “childcare”—
 - (a) in relation to England, has the same meaning as in section 18 of the Childcare Act 2006;
 - (b) in relation to Wales, means anything which amounts to child minding or day care for children for the purposes of Part 2 of the [Children and Families \(Wales\) Measure 2010 \(nawm 1\)](#) (see section 19(2) to (4) of that Measure);
 - “premises”—
 - (a) in relation to a registered childcare provider in England, means premises in respect of which that provider is registered under Part 3 of the Childcare Act 2006;
 - (b) in relation to a registered childcare provider in Wales—

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- (i) if the provider is registered under Part 2 of the Children and Families (Wales) Measure 2010 as a child minder, means premises on which child minding is provided by the provider (and “child minding” is for this purpose to be read in accordance with paragraph (b) of the definition of “childcare” above);
- (ii) if the provider is registered under Part 2 of that Measure as a provider of day care for children, means premises on which day care is provided by the provider (and “day care” is for this purpose to be read in accordance with paragraph (b) of the definition of “childcare” above);

“registered childcare provider” means—

- (a) in relation to England, a person who provides childcare and is registered under Part 3 of the Childcare Act 2006;
- (b) in relation to Wales, a person who provides childcare and is registered under Part 2 of the Children and Families (Wales) Measure 2010;

“specified” means specified, or falling within a description specified, in a temporary closure direction under this paragraph.

Effect of temporary closure directions on other provisions

- 3 (1) In relation to a period during which a temporary closure direction under paragraph 1 has effect in relation to a school—
- (a) the duty under section 19(1) of the Education Act 1996 (duty of local authorities to arrange for exceptional provision of education) does not apply to the extent that the potential failure of any child to receive suitable education is attributable to the direction;
 - (b) the duties of parents and local authorities in respect of school attendance orders under sections 437 to 443 of the Education Act 1996 do not apply to the extent that any failure to comply with those duties is attributable to the direction;
 - (c) any failure of a child to attend the school is to be disregarded for the purposes of section 444 of the Education Act 1996 (offence of failing to secure regular attendance at school of a registered pupil) to the extent that the failure is attributable to the direction.
- (2) In relation to a period during which a temporary closure direction has effect in relation to a registered childcare provider—
- (a) there is no breach of either of the following duties to the extent that a failure to satisfy the terms of the duty is attributable to the direction—
 - (i) the duty of a local authority in England under section 7 of the Childcare Act 2006 (duty to secure early years provision free of charge in accordance with regulations);
 - (ii) the duty of the Secretary of State under section 1 of the Childcare Act 2016 (duty to secure 30 hours free childcare for working parents of children in England);
 - (b) the Chief Inspector must, in exercising functions under Part 3 of the Childcare Act 2006, take account of the direction in dealing with any allegation that a registered childcare provider to which the direction applies has failed to meet any of the requirements specified under section 39(1)(a) or (b) of that Act (learning, development and welfare requirements).

- (3) In relation to a period during which a temporary closure direction has effect under paragraph 2(2)—
- (a) there is no breach of either of the following duties to the extent that a failure to satisfy the terms of the duty is attributable to the direction—
 - (i) the duty of a local authority in Wales under section 118 of the School Standards and Framework Act 1998 (duty to secure sufficient provision of nursery education);
 - (ii) the duty of the Welsh Ministers under section 1(1) of the [Childcare Funding \(Wales\) Act 2019 \(anaw 1\)](#) (duty of Welsh Ministers to provide funding for childcare of working parents);
 - (b) the Welsh Ministers must, in exercising functions under Part 2 of the Children and Families (Wales) Measure 2010, take account of the direction in dealing with any allegation—
 - (i) which relates to a registered childcare provider to which the direction applies, and
 - (ii) to which regulations under section 30(3) of that Measure (allegations of failure to meet prescribed childcare standards) apply.
- (4) In this paragraph—
- “the Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;
 - “school” has the same meaning as in paragraph 1;
 - “registered childcare provider” has the same meaning as in paragraph 2.

Authorisations

- 4 (1) The Secretary of State may—
- (a) authorise a local authority to exercise any of the Secretary of State’s functions under paragraph 1 or 2 in relation to one or more of the following—
 - (i) a registered childcare provider in the local authority’s area;
 - (ii) a school in its area;
 - (iii) a 16 to 19 Academy, within the meaning of section 1B of the Academies Act 2010, in its area;
 - (b) authorise the Office for Students to exercise any of the Secretary of State’s functions under paragraph 1 in relation to one or more registered higher education providers within the meaning of section 3(10)(a) of the Higher Education and Research Act 2017.
- (2) The Welsh Ministers may—
- (a) authorise a local authority to exercise any of the Welsh Ministers’ functions under paragraph 1 or 2 in relation to one or more of the following—
 - (i) a registered childcare provider in the local authority’s area;
 - (ii) a school in its area;
 - (b) authorise the Higher Education Funding Council for Wales to exercise any of the Welsh Ministers’ functions under paragraph 1 in relation to one or more of the following—
 - (i) an institution within the higher education sector, within the meaning of section 91(5) of the Further and Higher Education Act 1992;

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- (ii) a provider of a course of education within the meaning of Schedule 6 to the Education Reform Act 1988 that is not an institution within the meaning of sub-paragraph (i).
- (3) An authorisation granted under this paragraph may be subject to the fulfilment of such terms and conditions as are specified in the authorisation.
- (4) In this paragraph—
 - (a) in relation to England, “local authority” has the same meaning as in section 579(1) of the Education Act 1996, and
 - (b) in relation to Wales, “local authority” means a county council in Wales or a county borough council.

Publication, duration and guidance

- 5 (1) Subject to sub-paragraph (2), the appropriate authority must publish a temporary closure direction under paragraph 1 or 2.
- (2) Where a direction relates to a person specified by name—
 - (a) the appropriate authority must give a copy of the direction to that person, and
 - (b) the published version of the direction must not identify any individual without their consent.
- (3) A temporary closure direction under paragraph 1 or 2 has effect until the earlier of—
 - (a) the end of the period specified under paragraph 1(3) or 2(3), or
 - (b) the revocation of the direction by a further direction given by the appropriate authority under the same paragraph.
- (4) A person to whom a temporary closure direction under paragraph 1 or 2 is given must have regard to any guidance given by the appropriate authority about how to comply with a direction given by that authority under that paragraph.
- (5) In this paragraph, subject to sub-paragraph (6), “appropriate authority” means—
 - (a) the Secretary of State (in relation to a direction given under paragraph 1(1), or 2(1)),
 - (b) the Welsh Ministers (in relation to a direction given under paragraph 1(2) or 2(2)).
- (6) Where a person gives a direction by virtue of an authorisation under paragraph 4, “the appropriate authority”—
 - (a) in sub-paragraphs (1), (2) and (4) means that person, and
 - (b) in sub-paragraph (3)(b), includes that person.