

Status: Point in time view as at 25/03/2020.

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SCHEDULES

SCHEDULE 16

TEMPORARY CLOSURE OF EDUCATIONAL INSTITUTIONS AND CHILDCARE PREMISES

PART 2

SCOTLAND

Interpretation

- 6 In this Part of this Schedule—
- “the 1980 Act” means the Education (Scotland) Act 1980;
 - “the 2005 Act” means the Further and Higher Education (Scotland) Act 2005 (asp 5);
 - “early learning and childcare” has the meaning given by section 46 of the Children and Young People (Scotland) Act 2014 (asp 8);
 - “education” includes early learning and childcare, school education, further education and higher education;
 - “education authority”, “grant-aided school”, “independent school”, “public school”, “school” and “school education” have the meanings given by section 135(1) of the 1980 Act;
 - “educational establishment” means—
 - (a) a school;
 - (b) an education and training establishment approved by the Scottish Qualifications Authority under section 2 of the Education (Scotland) Act 1996 as suitable for presenting persons for SQA qualifications;
 - (c) a further education institution;
 - (d) a higher education institution,and is also to be construed in accordance with paragraph 8(6) to (8);
 - “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;
 - “further education” has the meaning given by section 6 of the Further and Higher Education (Scotland) Act 1992;
 - “further education institution” means—
 - (a) a body listed under the heading “Institutions formerly eligible for funding by the Scottish Further Education Funding Council” or under the heading “Other institutions” in Schedule 2 to the 2005 Act;
 - (b) a college of further education which is assigned to a regional strategic body by an order made under section 7C(1) of the 2005 Act;
 - “higher education” has the meaning given by section 38 of the Further and Higher Education (Scotland) Act 1992;

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“higher education institution” means—

- (a) a body listed under the heading “Institutions formerly eligible for funding by the Scottish Higher Education Funding Council” or under the heading “Other institutions” in Schedule 2 to the 2005 Act;
- (b) a person who provides a course of higher education designated by the Scottish Ministers under regulation 4(9) of the Education (Student Loans) (Scotland) Regulations 2007 (S.S.I. 2007/154) for the purposes of regulation 3(2) of those Regulations;

“managers”, in relation to a grant-aided school, has the meaning given by section 135(1) of the 1980 Act;

“out of school care” means any form of care provided—

- (a) outside school hours;
- (b) during school holidays;

to children who are in attendance at a school;

“proprietor”, in relation to an independent school, has the meaning given by section 135(1) of the 1980 Act.

Duty to have regard to public health advice

- 7 (1) A relevant authority must have regard to any advice relating to the incidence or transmission of coronavirus from the Chief Medical Officer of the Scottish Administration or such other person as may be designated for the purposes of this paragraph by the Scottish Ministers.
- (2) Before giving a direction under paragraph 8, 10 or 11, the Scottish Ministers—
- (a) must have regard to any such advice, and
 - (b) must be satisfied that giving the direction is a necessary and proportionate action in response to the incidence or transmission of coronavirus.
- (3) In this paragraph—
- “relevant authority” means—
- (a) a relevant operator of an educational establishment;
 - (b) a relevant manager of school boarding accommodation (within the meaning given by paragraph 10(5));
 - (c) a relevant manager of student accommodation (within the meaning given by paragraph 11(5));
- “relevant operator”, in relation to an educational establishment, is to be construed in accordance with paragraph 8(6) to (8).

Closure of schools etc and further and higher education institutions

- 8 (1) The Scottish Ministers may give a direction under this paragraph (an “educational closure direction”) that applies to—
- (a) the relevant operator of one or more named educational establishments in Scotland;
 - (b) the relevant operators of all educational establishments in Scotland (or any part of Scotland);
 - (c) the relevant operators of a particular description of educational establishment in Scotland (or any part of Scotland).

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- (2) An educational closure direction is a direction that requires a relevant operator of an educational establishment to take reasonable steps to restrict access to the establishment for a specified period.
- (3) An educational closure direction may provide that any failure to comply with a duty or time limit imposed under any enactment or rule of law relating to education is to be disregarded to the extent that it would be attributable to the direction.
- (4) An educational closure direction may—
- (a) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider reasonable;
 - (b) make different provision for different purposes (for example, for different descriptions of people attending an educational establishment);
 - (c) prohibit access in respect of the whole or a specified part of an educational establishment or of relevant premises;
 - (d) prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities;
 - (e) be framed by reference to whatever matters the Scottish Ministers consider appropriate;
 - (f) make transitional, transitory or saving provision;
 - (g) make such other provision as the Scottish Ministers consider appropriate in connection with the giving of the direction.
- (5) In this paragraph—
- “relevant premises”, means any premises (other than residential accommodation) which people attend in order to receive services provided by or on behalf of the relevant operator of an educational establishment there (but see also sub-paragraphs (8) and (9));
- “specified” means specified, or falling within a description specified, in a direction under this paragraph.
- (6) In this paragraph, “relevant operator”—
- (a) in relation to a school, means—
 - (i) where the school is a public school, the education authority by which it is managed;
 - (ii) where the school is an independent school, the proprietor;
 - (iii) where the school is a grant-aided school, the managers,(but see also sub-paragraphs (7) and (8));
 - (b) in relation to a further education institution or a higher education institution, means the governing body of the institution (within the meaning of section 35(2) of the 2005 Act).
- (7) Where out of school care is provided by a person in a school, “relevant operator” also includes such a person.
- (8) Where school education, early learning and childcare or out of school care is provided by a person in premises other than a school—
- (a) “relevant operator” also includes such a person, and
 - (b) references to “educational establishment” in this paragraph are to be read as if they were references to such premises.

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- (9) Where early learning and childcare or out of school care is provided by a person acting as a child minder (within the meaning of paragraph 12 of schedule 12 of the Public Services Reform (Scotland) Act 2010) (asp 8) in premises used mainly as a private dwelling, an educational closure direction may only apply to the part of the premises in which such care is provided.

Effect of educational closure direction on other provisions

- 9 (1) Where an educational closure direction has effect in relation to a school—
- (a) any failure by an education authority to discharge any of the duties under the following sections of the 1980 Act is to be disregarded to the extent that the failure is attributable to the direction—
 - (i) section 1(1) (provision of education);
 - (ii) section 14 (education for children unable to attend school etc);
 - (iii) section 53(2) (provision of free school lunches);
 - (b) the duty under section 30(1) of the 1980 Act (duty of parents to provide education for their children) does not apply in respect of a child who is a pupil at the school but who is, as a result of the direction, unable to be in regular attendance at the school;
 - (c) any failure of a child to attend the school is to be disregarded for the purposes of section 35 of the 1980 Act (failure of parents to secure regular attendance of child at school) to the extent that the failure is attributable to the direction.
- (2) Any failure by an education authority to discharge the duty under section 4(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (asp 4) (provision for additional support needs) is to be disregarded to the extent that the failure is attributable to an educational closure direction.
- (3) Any failure by an education authority to discharge the duty under section 47(1) of the Children and Young People (Scotland) Act 2014 (duty to secure provision of early learning and childcare) is to be disregarded to the extent that the failure is attributable to an educational closure direction.
- (4) Where early learning and childcare is provided by a person in premises other than a school, references to “school” in sub-paragraph (1) are to be read as if they were references to premises in which such early learning and childcare is provided.

School boarding accommodation

- 10 (1) The Scottish Ministers may give a direction under this paragraph (a “boarding accommodation closure direction”) that applies to—
- (a) the relevant manager of one or more named school boarding establishments in Scotland;
 - (b) the relevant managers of all school boarding establishments in Scotland (or any part of Scotland);
 - (c) the relevant managers of a particular description of school boarding establishment in Scotland (or any part of Scotland).
- (2) A boarding accommodation closure direction is a direction that—
- (a) requires a relevant manager of a school boarding establishment to take reasonable steps to restrict access to the establishment for a specified period,
- or

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- (b) provides for pupils for whom school boarding accommodation is provided to be confined in their school boarding accommodation for a specified period.
- (3) A boarding accommodation closure direction may provide that any failure to comply with a duty or time limit imposed under any enactment or rule of law relating to education is to be disregarded to the extent that it would be attributable to the direction.
- (4) A boarding accommodation closure direction may—
- (a) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider reasonable;
 - (b) make different provision for different purposes (for example, for different descriptions of people for whom school boarding accommodation is provided);
 - (c) prohibit access in respect of the whole or a specified part of premises in which school boarding accommodation is provided;
 - (d) prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities;
 - (e) be framed by reference to whatever matters the Scottish Ministers consider appropriate;
 - (f) make transitional, transitory or saving provision;
 - (g) make such other provision as the Scottish Ministers consider appropriate in connection with the giving of the direction.
- (5) In this paragraph—
- “pupil” has the meaning given by section 135(1) of the 1980 Act;
- “relevant manager”, in relation to school boarding accommodation, means a person having responsibility for the management of the accommodation;
- “school boarding accommodation”, in relation to a pupil, means residential accommodation provided to the pupil by a school care accommodation service (within the meaning of paragraph 3 of schedule 12 of the Public Services Reform (Scotland) Act 2010 (asp 8));
- “school boarding establishment” means a place where school boarding accommodation is provided;
- “specified” means specified, or falling within a description specified, in a direction under this paragraph.

Student accommodation

- 11 (1) The Scottish Ministers may give a direction under this paragraph (a “student accommodation closure direction”) that applies to—
- (a) the relevant manager of one or more named student accommodation premises in Scotland;
 - (b) the relevant managers of all student accommodation premises in Scotland (or any part of Scotland);
 - (c) the relevant managers of a particular description of student accommodation premises in Scotland (or any part of Scotland).
- (2) A student accommodation closure direction is a direction that—

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- (a) requires a relevant manager of student accommodation premises to take reasonable steps to restrict access to the premises for a specified period, or
 - (b) provides for persons for whom student accommodation is provided to be confined in their student accommodation for a specified period.
- (3) A student accommodation closure direction may provide that any failure to comply with a duty or time limit imposed under any enactment or rule of law relating to education is to be disregarded to the extent that it would be attributable to the direction.
- (4) A student accommodation closure direction may—
- (a) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider reasonable;
 - (b) make different provision for different purposes (for example, for different descriptions of people for whom student accommodation is provided);
 - (c) prohibit access in respect of the whole or a specified part of student accommodation premises;
 - (d) prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities;
 - (e) be framed by reference to whatever matters the Scottish Ministers consider appropriate;
 - (f) make transitional, transitory or saving provision;
 - (g) make such other provision as the Scottish Ministers consider appropriate in connection with the giving of the direction.
- (5) In this paragraph—
- “relevant manager”, in relation to student accommodation, means a person having responsibility for the management of the accommodation;
 - “specified” means specified, or falling within a description specified, in a direction under this paragraph;
 - “student” means a person who is matriculated at a further education institution or a higher education institution;
 - “student accommodation” means residential accommodation which has been built or converted solely for the purpose of being provided to students;
 - “student accommodation premises” means a place where student accommodation is provided.

Compliance and enforcement

- 12 (1) A relevant authority must comply with a direction under this Part of this Schedule.
- (2) A relevant authority must have regard to any guidance given by the Scottish Ministers about how to comply with a direction under this Part of this Schedule.
- (3) The duty imposed on a relevant authority to comply with a direction under this Part of this Schedule is enforceable, on an application made by the Scottish Ministers, by interdict or (as the case may be) by specific implement.
- (4) An application made under sub-paragraph (3) may be made without notice being given to the relevant authority.
- (5) In this paragraph, “relevant authority” has the meaning given by paragraph 7(3).

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Publication and duration of directions

- ^{X1}13 (1) Subject to sub-paragraph (2), the Scottish Ministers must publish a direction under this Part of this Schedule.
- (2) Where a direction relates to a person specified by name—
- (a) the Scottish Ministers 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 direction under this Part of this Schedule has effect until the earlier of—
- (a) the end of the period specified in the direction, or
 - (b) the revocation of the direction by a further direction given by the Scottish Ministers.
- (4) Where a direction under this Part of this Schedule makes provision mentioned in paragraph 8(3), 10(3) or 11(3), the Scottish Ministers must, so long as it remains in effect, review the direction—
- (a) before the end of the period of 21 days beginning with the date on which the direction was given; and
 - (b) before the end of each subsequent period of 21 days.

Editorial Information

- X1** The power conferred under this provision to make or revoke a direction may be exercised by means of a notice published in [The Gazette](#)

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