



The Additional Support Needs Update

Children's Rights | Equality | Inclusion



Issue 7 Spring 2020

Welcome

What a difference three months makes – since my last newsletter the world has become a very different place, with no aspect of life unaffected. The Covid-19 pandemic has left countries grappling with the enormity of the challenge

of protecting lives and safeguarding those who are the most vulnerable in our society. Overwhelmingly, this means that people are at home, with schooling being carried out by parents. But some more vulnerable children remain in school along with the children of our wonderful keyworkers.

This update offers a review of the extraordinary measures that have been introduced to date in the field of education and discuss how best to ensure your child receives the support they need. I also offer some advice about placing requests, and how to navigate the delays that will inevitably occur in the processing of applications and appeals. This will undoubtedly have an impact on transition planning for all children, particularly those with additional support needs. The quick turn around on these regulations means that guidance on transition best practice is limited and no doubt still being assessed by schools – although for those that are leaving secondary education in June this guide from Scottish Transitions is worth a look:

<https://scottishtransitions.org.uk/blank/wp-content/uploads/2020/04/Transitions-planning-webpage-FINAL.pdf>

Support for families with children and young people with additional support needs is also at hand from the many fantastic local organisations across the country. Our Support Spotlight highlights some of these groups that are working tirelessly to convert in-person support to the virtual realm.



The human instinct to lift others up and support each other at this most difficult time is evident across Scotland and the rest of the UK. A shining positive in an uncertain time. And as our thoughts turn to how and when the lockdown might be eased, I will do my best to keep you informed of all the changes that may impact your child's education over the coming months.

Meantime stay home, stay safe and stay well.

Iain Nisbet

Education Law Consultant

Early Years Update

The Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Revocation Order 2020, which came into force on 1 May 2020, revokes the Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Order 2019 – which was to have extended the mandatory annual amount of early learning and childcare from 600 hours to 1140 hours as of August 2020.

The Scottish Government still intend to deliver this increase when it is possible to do so, but there is currently no target date for this.

Check the website / facebook page for further developments.

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The Covid-19 pandemic and the response to it has led to some legal changes, which have been rushed through both the Holyrood and Westminster Parliaments (often with little time for detailed scrutiny). Some of these changes are relevant to education and additional support needs, and I will do my best to summarise these here.

Coronavirus Act 2020

This Scottish Social Services Council (SSSC) have been permitted to temporarily register retired social workers, those on a career break and final year social work students. Newly employed workers in social care services in Scotland will have a longer period to complete their registration (12 months instead of 6).

The requirement to carry out certain types of social work assessment by a local authority has been removed, if it would be impractical to do so, or would cause unnecessary delay in providing support. This is intended to allow the local authority to provide support without having undertaken the usual assessments first. Young carer statements, young carer outcomes and needs assessments, children affected by disability assessments, and assessments of the needs of a person who was looked after by the authority are all specifically mentioned

The Scottish Ministers have been given powers to relax the disclosure (PVG) requirements for new staff, which would allow people to be recruited quickly into positions working with children or vulnerable adults (presumably with the intention that the checks are done retrospectively).

Educational Closure Directions

Education authorities (and independent and grant-aided schools) in Scotland must have regard to any advice relating to the incidence or transmission of coronavirus from Scotland's Chief Medical Officer. Scottish Ministers must have regard to that advice before issuing an "educational closure direction", and must be satisfied that it is a necessary and proportionate step.

An educational closure direction has the effect of closing or restricting access to one, some or all educational establishments in Scotland (or within any part of Scotland). Directions may make different provision for different descriptions of pupil, it may prohibit certain types of activity only, and may restrict access to certain parts of an establishment only. They may also be subject to one or more educational continuity directions.

Where a direction is in place, any failure to comply with the following duties is to be disregarded (to the extent that the failure is attributable to the direction):

Section 1(1) of the Education (Scotland) Act 1980 (provision of education)

Section 14 of the 1980 Act (education for children unable to attend school)

Section 53(2) of the 1980 Act (free school meals)

Section 30 of the 1980 Act (duty on parents to educate their school-age children)

Section 35 of the 1980 Act (duty to enforce school attendance)

Directions issued under these powers must be reviewed by the Scottish Ministers every 21 days.

The Coronavirus Act 2020 will expire after two years. Still, this period can be reduced or lengthened (and different expiry dates can be set for different provisions), and is subject to Parliamentary review every six months. Scottish Ministers can provide for the expiry of parts within their legislative competence.

Although schools have been closed to most pupils since the end of March, the Scottish Ministers have not issued an educational closure direction. This means that the legal duties on parents and education authorities remain in place (albeit in a very different context to the one that we are used to).



The Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020

This statutory instrument, made by Scottish Ministers under the Coronavirus Act 2020, is Scotland's "lockdown" regulation, containing all of the rules we're now so familiar with – don't leave the house except for specific purposes (shopping for essentials, exercise, caring for the vulnerable etc.); no gatherings of more than two people; stay two metres apart.

The regulations have a six-month duration and will be reviewed at least every 21 days.

The only education-specific point is that one of the reasons you are allowed to leave the place you live is "to access critical public services, including – (i) childcare or educational facilities (where these are still available to the child in relation to whom that person is the parent of, or has parental responsibility for or care of, the child)"

This allows the parents of children who can access schools or childcare hubs to leave the house for the purposes of dropping off and collecting their children.

Coronavirus (Scotland) Act 2020

Covers a variety of topics, but little of relevance for our purposes. There is a schedule on children's hearings (reducing the numbers who need to sit on a panel, and extending various deadlines and so on), but no mention of school or education at all.

Scottish Government Guidance

"Coronavirus (COVID-19): school and early learning closures – guidance about key workers and vulnerable children."

This guidance sets out Scottish Government "expectations" in terms of the critical childcare and learning provision to be made available to the children of key workers and vulnerable children during the period of closures.

Closures

The Scottish Government have decided that:

- » all schools; and
- » all local authority early learning and childcare settings

should close to children and young people with effect from 20 March 2020, except for any critical provision to protect some key groups or activities.

Critical provision criteria

Provision can be made for (some) children of key workers and (some) vulnerable children – but the overriding principle remains that children should be at home if at all possible.

Local authorities are given the role of identifying the children and young people who fall into each category and what provision should be made.

"For the vast majority of children and young people, learning and teaching should continue remotely."

Key workers

The guidance sets out three categories of key worker:

Category 1 – Health and Care workers directly supporting COVID response, and associated staff; Health and Care workers supporting life-threatening emergency work, as well as critical primary and community care provision; Energy suppliers (small numbers identified as top priority already); staff providing childcare/learning for other category 1 staff.

Category 2 – All other Health and Care workers, and wider public sector workers providing emergency/critical welfare services (for example fire, police, prisons, social workers), as well as those supporting our Critical National Infrastructure, without whom serious damage to the welfare of the people of Scotland could be caused.

Category 3 – All workers (private, public or third sector) without whom there could be a significant impact on Scotland (but where the response to COVID-19, or the ability to perform essential tasks to keep the country running, would not be severely compromised).

However, the provision to be made (if any) is left to individual education authorities to determine.

Some provision is likely to be made available if:

- » you are a key worker;
- » it is absolutely necessary for you to attend your place of work to perform your critical functions; and
- » you have no access to appropriate alternative childcare.

Vulnerable children and young people

Again, the starting point is that, if pupils can learn safely at home, they should.

However, there is a recognition that some children rely upon the care and protection provided by schools and other agencies for a variety of reasons. The guidance acknowledges that “where appropriate, local authorities will need to ensure and prioritise continued care and support for these pupils during the period of school closure.”

Vulnerable children and young people – definition

The guidance states that children may be vulnerable for a range of reasons, including:

- » being on the child protection register;
- » looked after children;
- » children on the edge of care;
- » children who are eligible for Free School Meals;
- » children with complex additional support needs;
- » children affected by poverty and deprivation.

This is not an exhaustive list.

Complex additional support needs

The guidance specifically lists, under this subheading:

- » children who require a range of interventions and support to meet their needs;
- » children who have complex health needs that require medical support which cannot be provided at home;
- » children who have a disability where support required cannot be provided at home;
- » children who attend a grant-aided special school or independent special school and would be considered as having complex additional support needs.

As before, education authorities are considered to be best placed to identify those who may be vulnerable if the provision to meet their needs was not able to be continued while schools are closed. However, the starting point is: “Wherever possible, children and young people with complex additional support needs should learn at home.”

Residential special schools

Independent and grant-aided special schools have been asked, where possible, to continue residential provision to continue to secure the wellbeing and safety of their residential pupils.

Free school meals

Although the legislation allows for free school meals to be suspended, the Scottish Government has been clear that they expect education authorities to continue to provide lunch for those eligible.

This may be done using a range of options, including: cash payments to families of eligible children; supermarket vouchers; free school meal ingredients parcels that include cooking, preparation and storage instructions; and use of school premises to act as food preparation and delivery hubs.

Any such arrangements should continue to ensure that pupils with special diets or allergies are catered for. Care needs to be taken to check whether pupils have allergies or special diets before food is issued to them.

What next?

The legal position is changing rapidly, so this is my best attempt at summarising the law as it stands at the end of April. It is likely that further changes will be made. In particular, it may well be that educational closure directions are issued at some point (which may have some kind of retrospective effect).

Discussion in recent days has also turned to schools re-opening in due course. As and when this happens, it may well be with further restrictions in place. The law may require to be further amended to allow for a different form of schooling to the one we are used to.

However, in doing so, those making law and policy must not lose sight of the needs of pupils with additional support needs and disabilities. Reasonable adjustments must be made to new structures and policies to avoid disadvantaging disabled pupils – and provision (including non-educational provision) which is over and above or different to the provision made for other pupils must be made for those with additional support needs.

To find out more please visit my [facebook page](#), [website](#) or send me a [tweet](#).

How To: Placing requests

The end of April usually brings with it decisions on placing requests made for the next academic year. Many thousands of such decisions are made each year, the great majority for places in Primary 1 or the First Year of Secondary Schools.



However, with schools currently closed and with education authorities with their attention on other pressing matters, what is to happen with these requests this year and what should parents do about it?

- » Regulations have been passed by the Scottish Ministers which give the education authority more time to decide on placing requests, and education appeal committees more time to hear appeals.
- » If you made your placing request by the deadline of 15 March this year, the Council now have until 31 May to give you a decision. If you don't receive a decision by then, this is called a "deemed refusal", and your placing request has effectively been refused.
- » If you didn't get the placing request in by then, or if you are only making a placing request now, then the Council has three months from your request to make a decision. Again, if no decision is made, it will be a "deemed refusal".
- » If you are unhappy with the outcome of your placing request, you still have a right of appeal. If your request was for a special school (or special unit) or your child has a CSP, then the appeal will be to the Tribunal (Health and Education Chamber). Otherwise, the appeal will be to the local education appeal committee. (There are some exceptions to this general rule, so do check, but it's good for 95% or more of cases.)
- » The deadline for appeals remains the same, i.e. 28 days for an appeal to the education appeal committee, and two months for an appeal to the Tribunal. Unless there is a good reason not to, it would be best to lodge your appeal as soon as possible.
- » Appeals to the education appeal committee should now be heard within three months, and if a decision has not been reached in four, then the appeal committee are deemed to have refused your appeal. This would allow a further appeal to the Sheriff (again within 28 days).

» The regulations allow for appeals to be heard by telephone or video link, or decided on the paperwork alone. This should minimise the delays which are anticipated.

» Appeals to the Tribunal are currently subject to the Guidance to Tribunal Members No 01/2020 "Hearings and the Covid-19 Outbreak" – which means that only time-critical cases can proceed to a hearing at present (with a fairly strict definition of "time-critical"). The Tribunal is also able to accommodate hearings by telephone or video link, and decisions on the papers alone.

Although primarily focussed on placing request appeals, the changes to education appeal committee procedures will impact on exclusion cases as well. The implication of these changes is, of course, that if placing request decisions are not being taken until 31 May, and the appeal committee has up to four months to hear an appeal, we may well have significant numbers of appeals on placing requests not being heard until well into the next academic year. Further appeals to the Sheriff are also likely to be significantly delayed, as a backlog in the courts is already building up. Apart from anything else, this makes transition planning for children with additional support needs challenging, to say the least.

Note that these regulations are not made under the new powers conferred by the Coronavirus Act 2020 or the Coronavirus (Scotland) Act 2020. They are made using existing regulation making powers. As such, there is no statutory expiry date on these changes, and no scheduled review date. These changes will remain in force until further regulations are passed to amend them. The Scottish Ministers have indicated that they intend to reverse these changes in February 2021.

To find out more please visit my [facebook page](#), [website](#) or send me a [tweet](#).

Instead of shining a spotlight on one organisation, this edition's support spotlight features groups around Scotland that are offering support and advice during lockdown.



Borders Additional Needs Group

Covid-19 Response

Borders Additional Needs Group is a registered charity supporting ASN families living in the Scottish Borders, with a strong membership of over 70 families. Having established by way of questionnaire what resources our families could access during lockdown we have managed to secure funding to provide necessary equipment and toys to those in need. If you need our help our fast track funding forms can be found on our website www.bordersadditionalneeds.org/.

Our existing support projects continue too. Through modification of our big National Lottery funded Youth Transition project we are delivering tablets to BANG youths. This will enable them to access online peer support, 1-1 support to access social media and start youth creative online activities.



Dekko Comics

A past Support Spotlight alumni has stepped up to offer help during these challenging times. Dekko comics has made all issues of their educational comic available to read free online from their website.

dekkocomics.com/issue-list-home?fbclid=IwAR1nG5D0YLXCI R3apIRHq_3t95EHNp_C9u7nw_RMMWSE7MpM1KBXJDQAL8I

CHIP+ support for families during lockdown

Chip+ provide information, advice and support to families in the Highlands with children with additional support needs, and professionals working with them. The team are currently all working from home, getting into the swing of new ways of working and embracing technology!

Our key message is that we are still here for you so please do get in touch. We may not have all the answers just now, but we are good listeners and will do whatever we can to help and support you in these unprecedented times. We have introduced virtual meet ups for parents and carers and other exciting initiatives that can be accessed remotely. Please contact us if you need any advice or support at this time.

We can be contacted by phone on Tuesdays, Wednesdays and Thursdays between 9:30-12:30 and 13:00-16:00 on 07514 120288 to arrange a telephone appointment. You can also contact us via the contact form on our website (www.chipplus.org.uk/contact-us) or by emailing info@chipplus.org.uk. We are updating our website (www.chipplus.org.uk) regularly with useful links and resources, including a COVID-19 section. We're trying to keep our Facebook page a more positive and uplifting space (<https://www.facebook.com/supportingparentcarers/>)



Children in the Highlands Information Point



Achievement Bute

Achievement Bute normally provides direct support to enable children and young people with disabilities to participate in a range of leisure, arts and sports activities alongside their non-disabled peers. With the coronavirus lockdown all of these activities have come to an abrupt end. Through the use of technologies such as Zoom and WhatsApp we have been able to create online activities to support our young people at this time. A full list of our lockdown timetable can be found on our website www.achievementbute.org.uk/lockdown/.

For those families who normally receive 1:1 support via our Registered Care Service we are currently offering 1:1 online contact with the child's support worker. We are also currently trialling a number of interactive Mini Zoom Clubs – in which small groups of children can participate in activities led by one of our staff. So far we have been having a go at animation, quizzes, drama, and next week we're hoping to start singing!

As well as direct support and a range of inclusive children's activities, Achievement Bute has always offered families a confidential counselling service, provided by a local clinical psychologist. Due to the coronavirus this support is now being offered to families over the phone or by WhatsApp.



To find out more please visit my [facebook page](#), [website](#) or send me a [tweet](#).

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