

Coronavirus Act – new education powers

This week Parliament is debating a new bill aimed at giving the Government new powers to help tackle the Coronavirus outbreak.

03 April 2020

Please note: the information contained in our legal updates is correct as of the original date of publication.

Last week Parliament approved the new Coronavirus Act aimed at giving the Government new powers to help tackle the Coronavirus outbreak. At 300+ pages, the Act is large and covers a huge range of areas from health and social care to employment and education.

For schools and other education providers the Act gives the Secretary of State three new powers:

1. to issue temporary directions to close educational institutions;
2. to issue temporary directions to open (or re-open) educational institutions, including in periods they would not usually open (i.e. during school holidays); and
3. allows the Secretary of State to issue notices to amend or remove some existing statutory requirements.

We have covered each of these in more detail below.

Temporary Closure Directions

The power to issue a temporary direction to close educational institutions applies to all educational institutions including maintained schools, academies, 16-19 academies, independent schools, FE provision and HE institutions. There is a similar separate power relating to early-years providers.

Before issuing a direction, the Secretary of State has to get advice from the Chief Medical Officer and be satisfied that issuing a direction is necessary to stop the spread of the Coronavirus.

Whilst the government announced the closure of schools, they have not yet sought to formally issue a temporary closure direction to schools.

Directions can be issued to all institutions, either named individually or those of a particular type. When a direction is issued, the institution covered will have to take reasonable steps to ensure that people do not attend. If the direction is not complied with, it can be enforced in the High Court or County Court.

Temporary Continuity Direction

The opposite to the closure directions, Temporary Continuity Directions allow the Secretary of State to issue directions forcing educational institutions to open or re-open for a period, open for a specific group or open in a period in which they would not usually open (for example, the Easter holidays). They can also be used to require alteration of term dates or require an institution to provide education, training or childcare. Much like the closure direction, the Secretary of State has to take advice from the Chief Medical Officer and be of the opinion that a direction is necessary and proportionate for the continued provision of education, training or childcare.

The Act includes the ability for these powers to be delegated to local authorities and we expect that local authorities will in practice lead the arrangements on a local level. [Guidance from the DfE](#) states that LAs should be working with schools to maintain lists of pupils who are vulnerable and those of key workers to ensure there is enough provision in the local area. The idea is not that the LA will operate schools, but instead will act to organise provision.

Notices to Amend Existing Requirements

This broad power allows the Secretary of State, by notice, to disapply or alter specific existing education requirements. While the Act lists lots of statutory provisions which can be subject to a notice, regulations mean that these can be added to and further provisions could be included. The period for any stated provisions to not apply cannot exceed one month, but the Secretary of State could issue new notices each month.

The statutory provisions which can be amended or disapplied are numerous and include the definition of pupils, Ofsted inspections, school meals, collective worship, removing selection by ability, attendance at school and the school duty to admit children with EHCPs. Most of the statutory provisions relate to maintained schools but the Act specifically provides for the power to make similar arrangements in relation to academies.

When we have more detail on how these powers are to be used or when directions/notices are issued, we will publish more articles to assist our education clients. If you would like to discuss any of the above, please contact [Philip Wood](mailto:philip.wood@brownejacobson.com).

Contact

Philip Wood
Principal Associate

philip.wood@brownejacobson.com

+44 (0)330 045 2274

Related expertise

Services

Governance of schools and
colleges