

Can we limit the number of vulnerable and/or critical-worker children we have in school during lockdown?

On Friday 8 January, the Department for Education's (DfE) updated its guidance slightly to explain that where a child can remain at home rather than attend school, they should.

13 January 2021

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

The [Department for Education's \(DfE\) guidance](#) is clear that places should be offered to children who fall within the vulnerable category or where one parent is a critical worker. The guidance has, however, not placed any limit on the number of places that a school can offer or a group size limit. The categories of critical worker whose children should be provided with a place have been expanded when compared to the first lockdown. On Friday 8 January, the DfE updated its guidance slightly to explain that where a child can remain at home rather than attend school, they should.

There have been a number of reports of some schools over 50% full based on the criteria, and where schools are concerned about the number of pupils in school, either from a health and safety perspective or in terms of the need to provide staffing cover for this, a risk assessment should be undertaken. Where the risk assessment indicates that not all those pupils who fall within the DfE advice can be provided with a place, then consideration should be given to the priority of offer of a place. Importantly, this should be a last resort where there is no other reasonable option to mitigate these risks.

Where places are going to be limited, our advice would be that consideration needs to be given to the priority offer of places and that this is not done on a random basis. For a number of reasons, our advice would be that places are first offered to pupils considered vulnerable before places are then offered to critical-worker children. This is partly because of the potential risk to those children remaining in the family home (where there is social care involvement) but also due to the wider impact on these pupils, as well as the potential litigation risk of denying them a place. The critical-worker category now contains a wider number of occupations, and so within this it would be important to prioritise those children of workers who are on the front line of the Covid health response, being workers in primary and secondary care and those involved in the vaccination programme, followed then by other healthcare workers. Places could then be offered to the children of workers in social care settings and teachers, with subsequent places offered to those of other critical workers in a sensible order.

If a school seeks to go down the route of limiting places, it would be important to communicate openly and clearly to parents about the decision and the reasons for it, as well as the order in which you will be providing places to children. As above, the limiting of places should be a last resort in terms of mitigation of the risks. If you need specific advice on this please do get in touch.

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