



Coronavirus (Recovery and Reform) (Scotland) Act 2022

2022 asp 8

PART 2

EDUCATION

CHAPTER 1

EDUCATIONAL ESTABLISHMENTS ETC.

5 Interpretation of Chapter

(1) In this Chapter—

“the 1980 Act” means the Education (Scotland) Act 1980,

“the 2005 Act” means the Further and Higher Education (Scotland) Act 2005,

“child minder” has the meaning given by paragraph 12 of schedule 12 of the Public Services Reform (Scotland) Act 2010,

“early learning and childcare” has the meaning given by section 46 of the Children and Young People (Scotland) Act 2014,

“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”—

(a) means—

(i) a school,

(ii) 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,

(iii) a further education institution,

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(iv) a higher education institution, and

(b) is also to be construed in accordance with [subsections \(3\) and \(4\)](#) of this section,

“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 of 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,

“governing body” has the meaning given by section 35(2) of the 2005 Act,

“higher education” has the meaning given by section 38 of the Further and Higher Education (Scotland) Act 1992,

“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 of 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 care which is provided—

(a) to children who are in attendance at a school,

(b) outside school hours or during school holidays, and

(c) by a child minder or a service for the day care of children within the meaning given by paragraph 13 of schedule 12 of the Public Services Reform (Scotland) Act 2010,

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

“protecting public health” has the meaning given by section 1(5) of the Public Health etc. Scotland Act 2008.

(2) In this Chapter, “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,

(b) in relation to 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, means the person who has responsibility for the management of the establishment,

(c) in relation to a further education institution or a higher education institution, means the governing body of the institution.

- (3) Where out of school care is provided by a person in a school, “relevant operator” also includes such a person.
- (4) 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 Chapter are to be read as if they were references to such premises.

6 Duty to have regard to public health advice

- (1) A relevant authority must have regard to any advice from the Chief Medical Officer of the Scottish Administration, or from another person designated for the purposes of this section by the Scottish Ministers, about protecting public health.
- (2) In [subsection \(1\)](#), “relevant authority” means—
 - (a) a relevant operator of an educational establishment,
 - (b) a relevant manager of a school boarding establishment (within the meaning given by [section 9\(6\)](#)),
 - (c) a relevant manager of student accommodation premises (within the meaning given by [section 10\(6\)](#)).

7 Guidance on public health measures

- (1) A relevant authority must have regard to any guidance issued by the Scottish Ministers about protecting public health and ensuring the continuity of education.
- (2) The Scottish Ministers must publish any guidance issued under [subsection \(1\)](#).
- (3) In [subsection \(1\)](#), “relevant authority” has the meaning given by [section 6\(2\)](#).

8 Regulations on continuing operation of educational establishments

- (1) The Scottish Ministers may by regulations make provision relating to the continuing operation of an educational establishment for a specified period.
- (2) Regulations under [subsection \(1\)](#) may make provision applying to—
 - (a) the relevant operator of one or more named educational establishments,
 - (b) the relevant operators of all educational establishments,
 - (c) the relevant operators of a particular description of educational establishment.
- (3) Where regulations under [subsection \(1\)](#) apply to the relevant operator of a further education institution or higher education institution, they may not make provision relating to any non-educational functions of the operator.
- (4) For the purposes of [subsection \(3\)](#), “non-educational functions”—
 - (a) are functions of the operator which do not relate solely to the teaching and delivery of further education or higher education, but
 - (b) exclude any additional functions conferred on the operator by virtue of [subsection \(7\)\(a\)\(iii\)](#) relating to the use of the operator’s premises for the purpose of protecting public health.
- (5) Before making regulations under [subsection \(1\)](#), the Scottish Ministers—

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- (a) must have regard to any advice from the Chief Medical Officer of the Scottish Administration about protecting public health (or, as the case may be, from another person designated for the purposes of this section by the Scottish Ministers), and
 - (b) must be satisfied, in view of that advice, that making the regulations is a necessary and proportionate action for or in connection with the continued provision of education.
- (6) Regulations under [subsection \(1\)](#) 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 the failure would be attributable to the regulations.
- (7) Regulations under [subsection \(1\)](#) may—
- (a) confer additional functions on a relevant operator relating to—
 - (i) the provision of early learning and childcare, school education, further education or higher education,
 - (ii) the provision of related services,
 - (iii) where the relevant operator is an education authority or a further education institution or higher education institution, the use of the operator’s premises for the purpose of protecting public health,
 - (b) require an educational establishment to open, to stay open, to re-open, or to open at times when it would not usually be open,
 - (c) require a relevant operator to allow specified people or people of a specified description to attend an educational establishment or relevant premises for which the operator is responsible,
 - (d) provide for or require specified people or people of a specified description to attend a specified educational establishment or specified premises for the purposes of receiving early learning and childcare, school education, further education or higher education there,
 - (e) restrict or prohibit access in respect of the whole or a specified part of an educational establishment or of relevant premises,
 - (f) restrict or prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities,
 - (g) require measures to ensure safe standards of hygiene, and other measures to protect public health, to be put in place,
 - (h) require the alteration of term dates, holiday dates or examination dates,
 - (i) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider appropriate,
 - (j) make different provision for different purposes (for example, for different descriptions of people attending an educational establishment),
 - (k) make transitional, transitory or saving provision.
- (8) Where early learning and childcare or out of school care is provided by a person acting as a child minder in premises used mainly as a private dwelling, regulations under [subsection \(1\)](#) may only make provision applying to the part of the premises in which such care is provided.
- (9) In this section—
- “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,

“specified” means specified, or falling within a description specified, in regulations under [subsection \(1\)](#).

9 Regulations on school boarding accommodation

- (1) The Scottish Ministers may by regulations—
 - (a) require a relevant manager of a school boarding establishment to take reasonable steps to restrict or prohibit access to the establishment for a specified period,
 - (b) require a relevant manager of a school boarding establishment to provide support for pupils for a specified period in order to assist—
 - (i) their compliance with any restriction or requirement relating to the protection of public health imposed by virtue of an enactment or rule of law,
 - (ii) their following of any guidance or advice from a public authority relating to the protection of public health,
 - (iii) their response to a particular request or recommendation from a public authority relating to the protection of public health (for example, a recommendation for a pupil or group of pupils to self-isolate).
- (2) Regulations under [subsection \(1\)](#) may make provision applying to—
 - (a) the relevant manager of one or more named school boarding establishments,
 - (b) the relevant manager of all school boarding establishments,
 - (c) the relevant managers of a particular description of school boarding establishment.
- (3) Before making regulations under [subsection \(1\)](#), the Scottish Ministers—
 - (a) must have regard to any advice from the Chief Medical Officer of the Scottish Administration about protecting public health (or, as the case may be, from another person designated for the purposes of this section by the Scottish Ministers), and
 - (b) must be satisfied, in view of that advice, that making the regulations is a necessary and proportionate action for or in connection with protecting public health.
- (4) Regulations under [subsection \(1\)](#) 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 the failure would be attributable to the regulations.
- (5) Regulations under [subsection \(1\)](#) may—
 - (a) restrict or prohibit access in respect of the whole or a specified part of premises in which school boarding accommodation is provided,
 - (b) restrict or prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities,
 - (c) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider appropriate,
 - (d) make different provision for different purposes (for example, for different descriptions of people for whom school boarding accommodation is provided),
 - (e) make transitional, transitory or saving provision.
- (6) In this section—

“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)),
 “school boarding establishment” means a place where school boarding accommodation is provided,
 “specified” means specified, or falling within a description specified, in regulations under [subsection \(1\)](#).

10 Regulations on student accommodation

- (1) The Scottish Ministers may by regulations—
 - (a) require a relevant manager of student accommodation premises to take reasonable steps to restrict or prohibit access to the premises for a specified period,
 - (b) require a relevant manager of student accommodation premises to provide support for students for a specified period in order to assist—
 - (i) their compliance with any restriction or requirement relating to the protection of public health imposed by virtue of an enactment or rule of law,
 - (ii) their following of any guidance or advice from a public authority relating to the protection of public health,
 - (iii) their response to a particular request or recommendation from a public authority relating to the protection of public health (for example, a recommendation for a student or group of students to self-isolate).
- (2) Regulations under [subsection \(1\)](#) may make provision applying to—
 - (a) the relevant manager of one or more named student accommodation premises,
 - (b) the relevant managers of all student accommodation premises,
 - (c) the relevant managers of a particular description of student accommodation premises.
- (3) Before making regulations under [subsection \(1\)](#), the Scottish Ministers—
 - (a) must have regard to any advice from the Chief Medical Officer of the Scottish Administration about protecting public health (or, as the case may be, from another person designated for the purposes of this section by the Scottish Ministers), and
 - (b) must be satisfied, in view of that advice, that making the regulations is a necessary and proportionate action for or in connection with protecting public health.
- (4) Regulations under [subsection \(1\)](#) 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 the failure would be attributable to the regulations.
- (5) Regulations under [subsection \(1\)](#) may—
 - (a) restrict or prohibit access in respect of the whole or a specified part of student accommodation premises,

- (b) restrict or prohibit access in respect of the carrying on of all activities or in respect of the carrying on of specified activities,
 - (c) require the taking of actions in general terms, or require the taking of particular actions, that the Scottish Ministers consider appropriate,
 - (d) make different provision for different purposes (for example, for different descriptions of people for whom student accommodation is provided),
 - (e) make transitional, transitory or saving provision.
- (6) In this section—
- “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 regulations under [subsection \(1\)](#),
 - “student” means a person who is or is about to be matriculated at a further education institution or a higher education institution,
 - “student accommodation” means residential accommodation which has been built or converted for the purpose of being provided to students,
 - “student accommodation premises” means a place where student accommodation is provided.

11 Compliance and enforcement

- (1) Regulations under this Chapter may provide for the carrying out and enforcement of restrictions and requirements imposed by virtue of the regulations.
- (2) A relevant authority must have regard to any guidance issued by the Scottish Ministers about how to comply with regulations under this Chapter.
- (3) The Scottish Ministers must publish any guidance issued under [subsection \(2\)](#).
- (4) In [subsection \(2\)](#), “relevant authority” has the meaning given by [section 6\(2\)](#).

12 Procedure for regulations

- (1) Regulations made by the Scottish Ministers under this Chapter are subject to the affirmative procedure, unless [subsection \(2\)](#) applies to them.
- (2) This subsection applies to regulations if the Scottish statutory instrument containing the regulations includes a declaration that the Scottish Ministers are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure.
- (3) Where [subsection \(2\)](#) applies—
 - (a) section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010 does not apply to the regulations,
 - (b) the Scottish statutory instrument containing the regulations must be laid before the Scottish Parliament as soon as practicable after they are made, and
 - (c) the regulations cease to have effect at the end of the period of 28 days beginning with the day on which they are made unless, during that period, the Scottish statutory instrument containing them is approved by a resolution of the Parliament.

- (4) In calculating the period of 28 days mentioned in [subsection \(3\)\(c\)](#), no account is to be taken of any time during which the Scottish Parliament is—
- (a) in recess for more than 4 days, or
 - (b) dissolved.
- (5) Regulations ceasing to have effect by virtue of [subsection \(3\)\(c\)](#) neither—
- (a) affects anything previously done under the regulations before they ceased to have effect, nor
 - (b) prevents new regulations being made.
- (6) Where subsection (2) applies to regulations made under this Chapter, the Scottish Ministers must explain why they are of the opinion that, by reason of urgency, it is necessary to make the regulations without their being subject to the affirmative procedure.
- (7) Where subsection (2) applies to regulations made under this Chapter, the regulations must include provision for them to expire on a day specified in the regulations.
- (8) Subsection (7) does not apply where the regulations amend regulations in which the provision mentioned in subsection (7) has already been included.
- (9) Where subsection (2) applies but the regulations—
- (a) revoke (in whole or in part) previous regulations made under this Chapter, and
 - (b) do—
 - (i) nothing else, or
 - (ii) nothing else except make transitional, transitory or saving provision related to the revocation,
 the Scottish statutory instrument containing the regulations must be laid before the Scottish Parliament as soon as practicable after they are made (and subsection (3)(b) and (c) do not apply to the regulations).

13 Regulations: public health declarations

- (1) Regulations under this Chapter which are responding to a particular infection or contamination may be made only when a public health declaration under this section has effect.
- (2) A public health declaration means a declaration by the Scottish Ministers that they consider that—
- (a) an infectious disease or contaminant constitutes or may constitute a danger to human health, and
 - (b) the making of regulations under this Chapter may be a way of protecting against that danger.
- (3) Before making a public health declaration, the Scottish Ministers must consult the Chief Medical Officer of the Scottish Administration or another person designated for the purposes of this section by the Scottish Ministers.
- (4) A public health declaration has effect if—
- (a) it is made by the Scottish Ministers,
 - (b) either—
 - (i) it is approved in accordance with subsection (6), or

- (ii) a statement under section 14(1) is made, and
 - (c) it has not ceased to have effect in accordance with subsection (10).
- (5) The Scottish Ministers must publish a public health declaration in such manner as they consider appropriate.
- (6) A public health declaration is approved if—
 - (a) the Scottish Ministers lay a copy of the declaration before the Scottish Parliament,
 - (b) a member of the Scottish Government lodges a motion that the declaration be approved, and
 - (c) the Parliament agrees to the motion.
- (7) A motion under subsection (6)(b) may not be amended.
- (8) The Scottish Ministers must publish notice of the approval of a public health declaration and the time at which the declaration has effect, in such manner as they consider appropriate.
- (9) If, during the period that a public health declaration has effect, the Scottish Ministers consider that paragraphs (a) and (b) of subsection (2) no longer apply, they must—
 - (a) revoke the declaration,
 - (b) lay notice of revocation before the Scottish Parliament, and
 - (c) publish notice of revocation in such manner as the Scottish Ministers consider appropriate.
- (10) A public health declaration ceases to have effect immediately after it is revoked.
- (11) A public health declaration’s ceasing to have effect neither—
 - (a) affects anything done before the declaration ceased to have effect, nor
 - (b) prevents the making of regulations revoking regulations made during the period that the declaration had effect.

14 Regulations: further provision about public health declarations

- (1) If the Scottish Ministers consider that it is not practicable for a public health declaration to be approved in accordance with section 13(6), they may make a statement explaining why.
- (2) An example of when it may not be practicable for a public health declaration to be approved in accordance with section 13(6) is if the Scottish Parliament is dissolved.
- (3) When a statement under subsection (1) is made, the Scottish Ministers must—
 - (a) lay a copy of the public health declaration and the statement before the Scottish Parliament, and
 - (b) publish the statement in such manner as they consider appropriate.
- (4) If a statement under subsection (1) is made—
 - (a) the public health declaration has effect immediately after the declaration is made, and
 - (b) the declaration ceases to have effect at the end of the period of 28 days beginning with the day on which it is made unless before the end of that period it is approved by the Scottish Parliament on a motion by a member

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of the Scottish Government (if it has not already ceased to have effect under subsection (5)).

- (5) If, on any day during that period of 28 days, the Parliament comes to a decision not to approve the public health declaration, the declaration ceases to have effect immediately after the decision is made.
- (6) In calculating the period of 28 days mentioned in subsections (4) and (5), no account is to be taken of any time during which the Scottish Parliament is—
 - (a) in recess for more than 4 days, or
 - (b) dissolved.
- (7) A motion under subsection (4)(b) may not be amended.

15 Review of regulations

So long as regulations under this Chapter remain in effect, the Scottish Ministers must review the regulations—

- (a) before the end of the period of 21 days beginning with the day on which the regulations came into force, and
- (b) before the end of each subsequent period of 21 days.

16 Duty to seek views about regulations

- (1) So long as regulations under section 8(1) remain in effect, the Scottish Ministers must seek views from the persons listed in subsection (2) about those regulations, and about any regulations under section 9(1) and 10(1) which are also in effect—

- (a) before the end of the period of 28 days beginning with the day on which the regulations under section 8(1) came into force, and
- (b) before the end of each subsequent period of 28 days.

- (2) The persons are—

- (a) such persons as the Scottish Ministers consider representative of—
 - (i) relevant operators of educational establishments to which the regulations apply,
 - (ii) relevant managers of school boarding accommodation and student accommodation to which the regulations apply,
 - (iii) users of such establishments and accommodation (including children and young people),
 - (iv) staff of such establishments and accommodation (including any trade union which appears representative of such staff), and
- (b) such other persons as the Scottish Ministers consider appropriate.

- (3) In subsection (2)(a)(ii)—

“relevant manager”, in relation to school boarding accommodation or student accommodation, means a person having responsibility for the management of the accommodation,

“school boarding accommodation” has the meaning given by section 9(6),

“student accommodation” has the meaning given by section 10(6).

17 Report on public schools' readiness for remote learning

- (1) The Scottish Ministers must report on—
 - (a) how ready education authorities are for the provision of education in public schools by remote learning, and
 - (b) any specific steps that have been taken by education authorities and the Scottish Ministers to improve readiness for the provision of education in public schools by remote learning.
- (2) The Scottish Ministers must publish the report —
 - (a) in the case of the first report, as soon as practicable after 31 July 2023,
 - (b) in each other case, from time to time as the Scottish Ministers consider appropriate.
- (3) For the purposes of subsection (1), the provision of education does not include the provision of early learning and childcare.