

Briefing on the “Direction” and “Guidance” Issued by the Scottish Government on the Reopening of Schools with regards to Staff Deployment in June 2020

On May 21, the Scottish Government published three important documents:

1. Coronavirus (COVID-19): framework for decision making - [Scotland's route map through and out of the crisis](#)
2. Excellent and Equity During the COVID-19 Pandemic – [A Strategic Framework for Reopening Schools, Early Learning and Childcare Provision in Scotland](#)
3. [Education Continuity Direction](#)

On May 28, the Scottish Government also published:

1. [Non-statutory Scottish Government guidance to support implementation of a phased return to schools under Scotland’s Coronavirus](#) (COVID-19): strategic framework for reopening schools and early learning and childcare provision
2. Plans to ease some lockdown restrictions¹ by moving to Phase 1.

The Education Continuity Direction (the Direction) provides education authorities with the legal basis for the implementation of some of the key measures in the Strategic Framework for Reopening Schools, Early Learning and Childcare Provision in Scotland (the Framework). It is legally binding.

The non-statutory Scottish Government guidance (the Guidance) adds further detail and guidance to the Framework. Aspects of the Framework and the Guidance that are not lifted from the Direction are not legally binding but as both the Framework and the Guidance have been agreed by the Government, COSLA and other stakeholders, adherence to both is expected by all parties.

The Guidance uses the following definitions, which may also be applied to the Framework:

Where this guidance states that education authorities and schools:

“should” do something, there is a clear expectation, agreed by all key partners, that it should be done.

“may” or “may wish” to do something, the relevant sections have been included as examples of relevant practice that can be considered if appropriate. Local variations are likely.

Under emergency Covid-19 legislation, the Education Continuity Direction published on May 21 has legal effect for 21 days. Whilst it will be superseded by further directions, the Framework and Guidance documents are likely to remain in place until after the August reopening of schools to pupils and staff.

This briefing focusses on issues around staff accessing schools in June.

¹ <https://www.gov.scot/news/lockdown-begins-to-ease-in-phase-1/>

1. Staff Returning to Schools in June

Currently, teachers may only access school buildings if they are staffing a Hub or collecting evidence for SQA estimates if there is a risk assessment in place.

The Direction changes this position and allows teachers (and other staff) to access schools from 1st June 2020 to plan and prepare for teaching pupils from August 2020 onwards. It does not state that they must access school buildings, simply that they “may”. The Framework hardens the language of the Direction by stating staff “should” return to schools at some point in June, rather than “may”. The First Minister’s announcement on 28 May states that staff “can” return to schools:

From Monday (1 June), staff can return to schools subject to risk assessments and appropriate physical distancing and hygiene measures being in place to support this.

The Framework states the reason for staff returning to schools as:

The overall main message is that we aim to restart school education for almost all children and young people in Scotland in August. Subject to public health guidance, teachers and other school staff should be returning to schools at some point during June, to plan and prepare for the new blended model of learning to be implemented from August.

The Framework sets out the following conditions before staff can access schools from June:

Health and safety guidance, including risk assessments, will be in place prior to staff returning to school in June.

The Framework sets out overarching key principles for a safe, phased return to schools, and these are amplified in the Guidance. The Framework’s key principles are set out below:

Everything within the [Framework] paper is predicated on two crucial factors:

I. Implementation is conditional upon scientific and medical advice confirming that it can be done so in a manner that is consistent with wider efforts to control the reproduction rate and protects the health of staff and pupils alike.

II. Comprehensive implementation of complementary public health measures, including adherence to ‘test, trace, isolate and support’ (TTIS) practices, the use of personal protective equipment (PPE) where appropriate for all staff, and a range of other hygiene measures such as:

- Increased hand-washing facilities/hand sanitisers and use thereof.*
- Regular and enhanced cleaning of surfaces (e.g. sinks, toilet seats and door handles).*
- Protocols for what to do if a child/members of staff has suspected/confirmed COVID-19.*
- Ongoing risk assessments on the operational parameters of re-opened centres.*

2. Risk Assessments Needed before Teachers Access School Buildings

The Framework, Guidance and the First Minister’s announcement set out the following conditions before staff can access school buildings in June:

- Risk assessments
- Appropriate physical distancing and
- Reasonable hygiene measures

The Guidance states:

“In accordance with relevant legislation and guidance, local trade unions should be consulted on and involved in the development of risk assessments. Risk assessments should be shared with staff and trade unions.”

“The professional associations will also advise of good practice, particularly in the context of legal health and safety requirements, which must be adhered to as always.”

Where a Branch or School Rep believes that a risk assessment is not acceptable then it should lodge a grievance and seek advice from the Local Association Secretary.

The Risk Assessment process and planning appropriate physical distancing and hygiene measures in every school will be part of the “individual School Recovery Plans” as set out in the Guidance. The Guidance also states that risk assessments “should be developed and implemented on an establishment-by-establishment basis.”

The Guidance states:

Physical distancing should be considered in all relevant areas of schools, including classrooms, indoor and outdoor spaces, and those not used for learning and teaching, e.g. pupils’ cloakrooms, entrance halls, staff rooms, kitchens and janitorial areas. Specific risk assessments should be completed regarding the use of kitchens, some of which vary considerably in size. Catering and FM Management teams and trade unions should be appropriately involved in the development of risk assessments.

The Guidance sets out that all Minority Ethnic (BAME) staff with underlying health conditions and disabilities, who are over 70, or who are pregnant should be “individually risk assessed”, and appropriate workplace adjustments should be made following a risk assessment. The same applies to staff who have underlying health conditions or who are “shielding”.

With regards to Personal Protection Equipment (PPE) in schools, the Guidance states:

Schools and education authorities already have set risk assessment processes for the use of PPE. Following any risk assessment (individual or organisational), where the need for PPE has been identified it should be readily available and provided and staff should be trained on its use.

3. Planning & Controlling the Re-Opening Schools – Local Authority EIS Input

The Framework and Guidance make it clear that whilst there is to be national consistency around school re-openings, Local Authorities will use “Local Phasing Delivery Plans” to plan the re-opening of schools that will result in local variation. Whilst we would expect “Local Phasing Delivery Plans” to focus their activities on re-opening schools to pupils and staff in August, these plans should also plan for the re-opening of school buildings to staff in June.

The Framework states:

In addition to this framework, local authorities will prepare Local Phasing Delivery Plans to provide a level of operational detail. The plans should translate the principles and expectations in this framework, and supporting guidance, and set out what this looks like across different localities....In developing the plans local authorities should also engage with other partners where appropriate, including trade unions and parent representatives.

The Framework states that Trade Unions have a role to play in the development and implementation of Local Phasing Delivery Plans.

The Framework also states that the return to school will be managed at a local level by the LNCT, which will receive advice from the SNCT:

“The start date of the new term will be standardised to 11 August 2020 only for the purposes of managing Covid-19, which will mean an earlier than planned start for some schools. The Scottish Negotiating Committee for Teachers will give advice to Local Negotiating Committees for Teachers on how to manage this locally and how to reach agreement on when lost holiday time should be taken back.”

The Guidance states:

Education authorities should develop Local Delivery Phasing Plans that incorporate the principles and expectations set out in this framework and meet the needs of local communities. Thereafter, individual School Recovery Plans and risk assessments should be developed and implemented on an establishment-by-establishment basis.

In developing these education authority and school-level plans, there should be close engagement and partnership working wherever appropriate between:

- *education authorities (including in their role as an employer)*
- *school management teams, teaching and non-teaching staff, and trade unions (including through LNCTs) etc*

EIS engagement with Education Authorities is therefore required at all stages of the Authorities' development and implementation of their Local Phasing Delivery Plans, and Education Authorities should promote trade union engagement at school-level planning in line with the Framework and Guidance.

4. School Level EIS Input

As previously stated, the planning - including risk assessments – done at the school level requires engagement with school reps. (The EIS will provide H&S training to reps, and support will be available from Local Associations and EIS staff.)

The Direction, Framework and Guidance set out that planning for the pupils' return in August is to be done in June 2020, including "any alterations to premises²". Decisions on the factors set out below in the Framework will be done on a school by school basis:

For the first phase of re-opening, schools should assess the maximum number of pupils they can safely accommodate at any one time while maintaining a quality learning environment, having regard to supporting guidance that will cover factors such as:

- *Teaching in smaller groups, with a degree of rotation / alternation.*
- *Where practicable, minimising the mixing of such groups.*
- *Seating positions being reorganised so that pupils are a safe distance apart (for example, 2m when seated at desks).*
- *Increased use of outdoor spaces.*
- *Staggered arrival and departure times and clear guidance to parents to avoid congregating in playground areas.*
- *Breaks being staggered by class, to avoid pupils from different classes coming into contact where possible (particularly when indoors and some more enclosed outdoor spaces).*
- *Considering whether teachers, rather than pupils, should move round classes where practicable.*
- *How pupils and staff will get to and from school in a safe manner.*
- *Dining provision.*
- *Enhanced hygiene practices.*

It is therefore likely that EIS School Reps will need to engage with each headteacher to ensure that the practical steps above (and other issues) meet the future Scottish Guidance and the EIS red lines.

The Framework goes on to state that specific changes need to be made for specific pupils' needs, especially in Special Schools:

Appropriate arrangements should be made to cater for individual needs on a case by case basis and particularly for children with severe and complex needs where handling and personal care is required, in line with legislative requirements.

For these case by case issues, the School Rep may need to contact the individual teacher that deals with the specific pupils. The Guidance states that risk assessments for pupils with complex needs should be updated "as a matter of priority in light of changes to provision such as environment and staffing."

5. Can Schools Re-Open to Pupils in June?

The Direction and Framework make it clear that pupils are expected to return to schools no sooner than 11 August 2020. Furthermore, both the Direction and Framework make it clear that staff would only be expected to return to school buildings to prepare for the August return of pupils.

² Section 6 of the Direction

The Direction states that education authorities should prioritise the planning and preparation to support pupils at key transition points (eg P1 and S1). The Framework, however, goes further, as it references the fact that there should be a particular focus on supporting children at key transition points (e.g. due to start P1 or S1) which “*may include some in-school experience in late June*”, so that they are fully supported to make the next steps in their education.

Hubs may also continue in some school settings, although this will mean separate risk assessments and lead to capacity issues.

Whilst schools cannot be opened to pupils in general until August 11th, some Local Phasing Delivery Plans may develop and implement plans to give future P1 or S1 pupils limited in-school experience in late June. We would expect this to be done with staff agreement and with trade union agreement on risk assessments.

6. Can Staff Choose to Work from Home in June?

Neither the Direction nor the Framework directly refers to the Scottish Government’s ‘Stay at Home’ Policy³. The Guidance does refer to the ‘Stay at Home Policy’ with regards to staff that have Covid-19 symptoms or contact with Covid-19 sufferers, although this section seems to be aimed at the August period onwards.

The First Minister’s announcement⁴ regarding moving to Phase 1 on 28 May stated that teachers “can” access schools from June 1st.

In Phase 1, the Scottish Government’s Route Map (Framework for Decision Making - Scotland’s route map through and out of the crisis⁵) encourages working from home where possible, and a return to workplaces “where home working is not possible”. Teachers are not exempted from the Scottish Government’s work from home if you can policy. This was confirmed by the DFM to Parliament on 26 May 2020.

The EIS is clear that teachers should, in general, continue to work from home in June. If there is a requirement to attend school (for example to plan a classroom) then it should be done following the development and implementation of Scottish Government advice and guidelines – including an acceptable risk assessment. (The EIS will be providing training on risk assessments to reps). There should be no need to attend schools routinely or for meetings which can be facilitated remotely.

Assuming the WfH message continues to apply, staff concerned about being asked to attend a school building can legitimately ask as to the purpose of attending and whether said purpose can be overtaken by working from home.

Exemptions around UHC (underlying health conditions) and shielding etc all remain in place.

³ The Framework recognises that not all teaching staff will be available to teach when schools re-open to pupils, and references reducing staff shielding by successful use of TTIS.

⁴ <https://www.gov.scot/news/lockdown-begins-to-ease-in-phase-1/>

⁵ <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making-scotlands-route-map-through-out-crisis/>

The Guidance – in dealing with school re-openings to pupils in August - specifically refers to teachers who are “clinically vulnerable”, staff who live with people who are “clinically vulnerable” and staff who are shielding (i.e. living with extremely clinically vulnerable individuals). The Guidance sets out the expectation that such staff may work from home if possible or be redeployed within schools for their safety.

7. Workforce Planning

The Guidance acknowledges that “the blended model of education” may lead to requirements for “workforce flexibility and increased staffing”. The Guidance states that:

“A proportion of staff may also be shielding or absent due to Covid-19 symptoms, which may affect their ability to attend physical settings. Staff may require access to [childcare](#) to allow them to attend school under the blended model of education.”

The Guidance is clear that *“Education authorities, working in close partnership with unions and staff, are best placed to make judgements about how to make best use of available workforce capacity safely and effectively. Many of these decisions will be based on agreements reached within Local Negotiation Committees for Teachers (LNCTs).”*

8. Nursery & ELC Settings

Section 5 of the Framework deals with nursery and ELC establishments, and it states that a timetable of re-opening will be issued in due course by the Scottish Government.

9. Other Documents Referred to in the Framework

The Framework refers to other documents that will inform safety guidance and standards within educational establishments from June onwards. These are published by the NHS and will need to be cross-referenced with any plans/risk assessments at the school level.

<https://www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/coronavirus-covid-19/test-trace-and-isolate/coronavirus-covid-19-contact-tracing>

<https://www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/coronavirus-covid-19/coronavirus-covid-19-shielding>

10. Overview of the Planning Process

The Guidance shows an indicative outline of a process that may be followed is set out in the diagram overleaf. The stages detailed are not intended to be viewed as a linear process and may be tailored for education authorities’ individual contexts. There is a clear and explicit role for trade unions.



EIS

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