

The Coronavirus Bill and the impact on the independent education sector

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Introduction

1. The Coronavirus Bill 2020 (“the Bill”) was introduced to Parliament for its first reading on 19 March 2020, with the second reading due on 23 March 2020.
2. At the time of writing the Bill is not law and is subject to further amendments as it passes through Parliament. That said, if passed as presently drafted, the Bill will have a significant impact on the independent education sector.

What will the obligations on independent schools be?

3. The obligations on independent schools will be largely the same as for all schools, noting that the Bill defines reference to “educational institutions” as references to “schools” as defined at section 4 of the Education Act 1996 i.e. to include independent schools.
4. The Secretary of State will be able to require independent schools to temporarily close, or limit attendance to only specified persons (more on this below).
5. There is also, it seems, the wholesale obligation to amend how an independent school conducts its business in a way, or for a purpose, required by the Secretary of State for Education (“the Secretary of State”).

6. As those advising the independent sector will be aware, balancing the competing interests of turning a profit and ensuring the highest academic standards is difficult enough for schools however, a direction from the Secretary of State to change the purpose for which it was established temporarily with a view to stop independent schools making a profit, may put the organisations or vehicles that operate such institutions at financial risk.

7. Schedule 16 of the Bill provides that the Secretary of State may make a 'temporary continuity order' requiring an independent school to take steps to provide education training or childcare, or services in connection with the same, including but not limited to:
 - a. Remaining open
 - b. Change its opening times
 - c. Require it to provide education, training or childcare
 - d. Require it to admit a class of people as defined by the Secretary of State to receive education, training or childcare
 - e. Require the alteration of term dates
 - f. Require it to provide transport provision

Who will be admitted?

8. The Government has previously stated that the children of 'keyworkers' will still be required to attend school and has, today, published information about who the 'keyworkers' referred to are. They are those working:
 - a. In social care including doctors, nurses, midwives, paramedics, social workers and other frontline staff;
 - b. In education and childcare including teachers;
 - c. In local and national government whose role is essential to the effective delivery of the Covid-19 response;
 - d. Within the food industry;
 - e. In public and national safety including police and armed forces personnel;
 - f. In key public services including the administration of justice, religious workers and some frontline charity workers.

9. Also required to attend are vulnerable children including those:
 - a. Supported by social care;
 - b. With Education, Health and Care Plans;
 - c. With safeguarding and welfare needs;
 - d. Looked after children; and
 - e. Child carers.

What this means for the independent sector

10. Firstly, as discussed above, it may mean a different focus on operations, with a view on assisting educate children more generally, rather than just those who have paid for attendance. In turn, this may mean a hit to profits and, depending on the length of time that such measures are in place, financial difficulties.
11. This should, it is hoped, be alleviated by the financial support purportedly being provided by the Government to assist those helping tackle the crisis however, what this looks like in practise remains to be seen.
12. It would be wise for bursars and those with governance obligations for the independent sector to ensure that they have business contingency plans in place and to check what support, if any, can be obtained through their business interruption insurance policies.
13. Additionally, if they have been properly drafted with calm heads, the school's foreseeable crisis policies should offer some guidance on how to deal with the pandemic from a procedural perspective. These should be followed insofar as schools are able to do so.
14. Secondly, for those on the ground, it may mean educating an entirely different cohort to that which they would normally accommodate. Of course, this depends on whether a 'temporary continuity order' is made and who, it requires the relevant school to admit. However, it may mean a sudden rise in attendance of children who have EHC

Plans, or who are more vulnerable than the school staff are used to educating. It would be wise to ensure that teaching staff re up to date on best practice for differentiating the curriculum and generally ensuring the efficient education and safety of such pupils.

15. Thirdly, depending on whether the building within which the institution is based is owned or rented, steps may need to be taken in relation to securing a rent freeze.
16. Fourthly, staff. Teaching staff will amount to keyworkers and so should continue to attend school unless they have compelling reasons not to do so. Employers should however, ensure that they are taking all reasonable steps to ensure that they are keeping their staff as safe as possible. Obviously, if staff members have a high temperature and/or a persistent dry cough they should not go into work and should self isolate for 14 days, similarly if they have had contact with someone with the illness.

What about current pupils and contractual obligations?

17. Schools should, in the first instance, give deference to the Government Guidance produced in respect of the ongoing pandemic in relation to keeping their staff and pupils safe and maintain compliant with Government guidance on preventing the spread of the illness. No doubt schools will have already taken advice as appropriate and drawn up Covid-19 risk assessments.
18. Where pupils or staff present with symptoms of the illness they should be sent home and those in contact with them also. Where this is not possible due to having boarding international students, schools will need to consider setting up quarantine areas in boarding houses.
19. In terms of education, where staffing levels allow, teaching should carry on as normal for keyworkers children however, if this is not possible, then remote teaching should be considered. There is a variety of software available to assist facilitate the same.

20. Taking advice on force majeure clauses in school contracts may be sensible however, at the present time, it is unlikely that schools will be able to rely on them to frustrate the contract with parents unless or until they are forced to close. If, having reviewed such clauses, schools are minded to serve notice, they would be wise to take independent legal advice before doing so.

This article reflects the position as at 20 March 2020 and should not be relied on as legal advice. Anyone affected by the ongoing pandemic should seek independent legal advice on their specific circumstances.

20 March 2020



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