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Your ref: COVID-19

23 March 2020

Dear Clare

Thank you for your letter of 21 March about the forthcoming consideration of the Legislative Consent Motion on the provisions of the UK Coronavirus Bill. I recognise that the Committee has sought this information to support its Members' consideration of the Legislative Consent Motion. I am grateful to the Committee for their consideration, and its focus on matters related to key Bill provisions.

I also note from your letter that the Committee intends to focus its scrutiny solely on Covid 19 and its impact on areas within the Committee's remit, and that the Committee wishes to see any publications which are issued and which are relevant. My officials will liaise with the Clerk to the Committee to ensure this.

In my statement to Parliament last week I set out the unprecedented nature of the circumstances in which we find ourselves, and the need to respond to those circumstances quickly. That response needs to include continued support to vulnerable children, as much educational continuity as practicable, and provision for the children of key workers to allow their parents or carers to participate in the national response to Covid-19.

My priorities continue to be ensuring the health and wellbeing of our children, young people and staff, and to maintain teaching and learning wherever this is possible, guided by the advice of the Chief Medical Officer and public health experts.

I will now turn to each of the points that you have raised in turn.

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The Committee has sought clarification on the use of the power and what safeguards will be in place to ensure that children, young people and vulnerable adults continue to be protected.

Under clause 32 of the Bill as introduced, the Scottish Ministers have power to issue a direction that disapplies or modifies the offence provisions which would otherwise apply if an organisational employer or personnel supplier were to use or supply a barred individual for regulated work. Such a direction could be of general application or specify particular people to whom it applies, and it may be framed by reference to particular kinds of regulated work with children or protected adults.

However, the offence under section 34 of the PVG Act in relation to barred individuals attempting to do regulated work while barred will still apply. For the avoidance of doubt, Disclosure Scotland will report to Police Scotland any barred individual exploiting the pandemic by seeking to do, agreeing to do, or doing regulated work of the type(s) from which they are barred. If Ministers disapplied the offence provisions for employers and personnel suppliers, then only the individual would be guilty of an offence. This is justified on the basis of not wanting to criminalise health and care providers during a time of substantial recruitment during the coronavirus pandemic. It is primarily intended to assist NHS Boards to quickly recruit and deploy temporarily registered healthcare staff into frontline roles. It could also be used in the social care sector to provide emergency cover in the event of staff absences in care homes and other key services. It is intended to support other measures to get health and care workers into vital roles quickly during a peak emergency period, by reducing the regulatory burden for employers, as organisations recruiting staff ahead of a PVG check can do so without the risk of committing an offence. It is not intended to reduce safeguarding and the Scottish Government does not think it would have that effect.

In terms of safeguards which will be in place to ensure that vulnerable groups are still protected. It is intended that the power under clause 32 of the Bill would be exercised in practice along with clause 33 of the Bill to allow Ministers to issue a list check to employers in place of a full disclosure certificate, to allow faster processing of applications. This would be an important safeguarding measure, as it would permit employers to verify whether or not an individual was barred from regulated work (although they would not see any conviction information that would be included in a full disclosure).

At present, the PVG Scheme is not mandatory for those doing regulated work, so people can do such work now in Scotland without being a member of the PVG Scheme. Disclosure Scotland considers that the number of people doing regulated work without being in the Scheme is small, as most organisations use scheme membership in their recruitment. Some professional bodies also require it. The removal of the provision of vetting information should not reduce safeguarding as this proposal does not affect the common law position, as modified by the Rehabilitation of Offenders Act 1974, that a person should answer honestly any question by a prospective employer about whether they have previous convictions. The duty to self-disclose unspent prior convictions is an important aspect of safeguarding at the moment and will not be affected by the Bill.

PVG checks are just one part of good recruitment practice, as such they should not be the sole factor that an organisation relies on before recruiting an individual to do regulated work. The provisions in the Bill will not change Ministers' powers to place a person under consideration for listing, which could ultimately lead to them being barred from working with vulnerable groups across the UK.

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You have also sought, in relation to provision for children and young people with additional support needs, clarification as to whether there are any plans to further define a complex additional support need, and further whether there are any plans to provide additional information to parents and carers who need support at this time.

It is not intended that there will be a further definition of what is meant by complex additional support needs. As the Committee rightly recognises the term additional support needs encompasses a wide range of barriers to learning. As I indicated in my statement last week, this work requires to be led by our schools and local authorities who know our children and families well and are best placed to identify which children need care, protection and support the most during the period that lies ahead. The decisions on whether a child with complex additional support needs should remain at home in order to protect their health and wellbeing, or whether they should attend school in order to continue to benefit from the care and support which is provided to them, cannot be made nationally. The many and varied circumstances related to individual pupils' needs simply cannot be drawn together into a list to be applied. I have asked that further guidance on the support of vulnerable pupils is developed and provided to local authorities, independent and grant-aided schools, in order to support thinking in relation to these matters, during the course of the preparation of plans and new approaches to secure learning and care for these vulnerable pupils.

Under the Education (Additional Support for Learning) Scotland Act we have a range of advice and information services to support children, young people and parents and carers to receive the support that they need. We have been able to secure assurance, as far as possible, that these services will continue, but I must recognise that those working in these services, may not be able to provide those services in certain circumstances. In terms of Enquire specifically my officials are continuing to work very closely with Enquire and will ensure that, where needed, information that is available for parents and carers of children and young people with additional support needs is up to date and reflects the provision of education and childcare at this time. However, the Committee should recognise that the provision of education and childcare provided at this time is very much based on an individual local authority response.

In terms of free school meal provision, the committee has sought that any information on the level of update of free school meals and the effectiveness of efforts to continue to provide them is shared with the Committee.

Free school meals are a vital measure for families, children and young people across the country. We are working with our local authority partners to ensure that this provision is continued in a way that meets local needs and circumstances, as well as the latest health protection advice.

On Friday 13 March my officials and colleagues in COSLA wrote to all local authority Chief Executives and Directors of Education and Children Services asking them to confirm that they had plans in place to ensure the ongoing provision of free school meals. My officials have confirmed that responses were received from all local authorities on Wednesday 18 March. The returns have shown a breadth of potential solutions to ensure continued provision to our most vulnerable families. However, as you will be aware the planning undertaken by local authorities was taken in advance of the First Minister's announcement regarding school closures on Wednesday 18 March and my statement to parliament on Thursday 14 March, so a number of these plans have necessarily been reviewed by local authorities to ensure that they meet the latest health protection advice.

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As I also indicated in my statement our approach to the provision of free school meals has been to ensure that education authorities have maximum flexibility in the ways in which they provide free schools meals. Our approach has identified that authorities are proposing to use a range of methods, including the collection of meals, the provision of cash payments and vouchers to use in local and national providers. Authorities are also able to provide free school meals by delivery. We have ensured that all of these methods can be used by authorities in light of their local circumstances.

I would also like to highlight the announcement of a £350m package of support for vulnerable families on Wednesday 18 March by the Cabinet Secretary for Communities and Local Government, which included a £70m Welfare Food fund to support households worried about accessing food. In her statement, the Cabinet Secretary said that Local authorities will be able to use the funds, in addition to existing Scottish Government funding, to continue to support those who receive free school meals. My officials are working with our colleagues in COSLA to identify local authority funding requirements, that will be in addition to existing funding, that ensures vulnerable families can continue to receive free school meals.

I welcome the offer from the Committee to act as a 'think tank' to look at the data we are receiving from local authority partners. As I outlined in my statement, individual local authorities are best placed to develop and design solutions to meet local needs and circumstances. However, I would be happy to keep the Committee updated as more information is gathered, during the ongoing collaborative working between the Scottish Government and COSLA to ensure continued provision of free school meals to vulnerable children.

Regarding the definition of key workers, the Committee has sought details as to why the Scottish Government has produced a less extensive list than the UK Government, and whether the Scottish Government has considered adding into its existing list, for ease of reference and clarity, details as to which industries or roles are covered by the term 'Critical National Infrastructure'.

The three priority categories set out in the Scottish advice on key workers are particular to Scotland. They have been designed to provide flexibility for local partners and recognise local circumstances, and to focus on the specific role individuals carry out.

However, in practice, there is broad alignment across the UK, with all governments focusing on workers who are critical to the Covid-19 response and the running of essential services in the weeks ahead.

I appreciate that some employers have sought further detail on what constitutes a key worker, and my officials are working closely with local government to provide as much clarity as possible. We will work closely with local authorities and employers to manage this process over the coming days and weeks and have established a dedicated Scottish Government resource to do so at pace.

You have also sought clarification on the circumstances in which powers in relation to overnight accommodation could be used in relation to school education, further education and higher education. The Committee also sought assurances that should such powers be used that measures will be in place to ensure that children, young people and vulnerable adults continue to be supported and protected.

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We do not have current plans to use these powers. However, where schools include residential accommodation, there are specific circumstances that need to be considered around closure, and in some instances, full closure of boarding accommodation may take time to achieve.

We expect schools to take decisions on how best to manage this based on local circumstances and the best interests of pupils and parents, including consideration of children and young people with complex additional support needs. Consideration should be given to children and young people's individual needs, which will include care provision for residential pupils, as well as educational provision. We recognise that some children and young people with complex additional support needs learning and living in residential special schools will need to continue to receive care and support in their schools whilst they are closed. The Coronavirus Bill has the flexibility within it to ensure that where needed residential functions can continue.

Where this happens due consideration must be given to the latest Health Protection Scotland guidance and schools must have in place clear contingency plans which consider issues such as staffing needs.

With regards to closure of student accommodation, let me be clear that this will only happen if absolutely necessary to help tackle the spread of coronavirus in these institutions or in the community. We remain fully committed to working in partnership with our universities and colleges and other establishments, to deal with any impacts on the education system arising from the developing coronavirus situation. Close and continuing engagement will ensure informed judgements on the scope of any action.

In terms of remote learning, the Committee sought further detail of work undertaken to ensure the impact of online learning does not exacerbate the problem of digital exclusion, including for those with additional support needs that may not find some formats of online learning accessible.

As I have indicated previously, it is my intent that we seek to provide educational continuity wherever possible, whilst also recognising the need to provide education at home. As I outlined in my statement, education authorities will support children and young people's learning at home, in a variety of ways, through the provision of learning packs and resources and also taking advantage of the technology which is available to us. The materials provided to children and young people with complex additional support needs should take account of their needs, as they usually would, including the use of adapted technologies that children and young people regularly use.

In preparation for these changes my officials have been preparing for a large increase in users accessing the national Glow services and have been working closely with our major suppliers to ensure additional server and cloud capacity is enabled to cope with increased demand.

The Glow Connect website includes advice and guidance on how to ensure learners and teachers can access the service as well as a range of 'how to' guides that help teachers to understand how the range of services can be used to communicate and collaborate with learners.

In order to ensure continued service provision, we are closely engaged with local authority Glow key contacts through regular calls and online groups so they can raise live issues directly with the Glow team.

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Education Scotland are currently working on the collation of a wide range of curriculum materials, in discussion with local authorities. Teachers will be able to access these materials through a single online source to help them find the resources they need to support continuity of education for learners.

Local authorities are developing their own approaches, advice and guidance to support those learners who are unable to access online services, whilst taking cognisance of the national advice on social distancing, etc.

The Committee has also sought confirmation that Education Scotland is redeploying its staff from other priorities wherever possible to play a tangible role in supporting education authorities and schools, and asks whether consideration has been given to Education Scotland staff being deployed within new arrangements to support vulnerable pupils.

Education Scotland has prioritised the provision of support to local authorities and schools, working with education authorities as they establish and prepare their plans to ensure the continuity of education, support for vulnerable pupils and the children of key workers. I have enclosed a copy of relevant correspondence alongside this letter. We have ensured that alternative learning arrangements, through GLOW are available and are in regular contact with authorities as these plans emerge and develop. Today, as provision begins, Education Scotland staff have been deployed across local authorities and at the specific request of Directors. We have Attainment Advisors supporting on the front line with hubs as well as assisting local authorities on the strategic arrangements of hub provision. All calls for additional resource are being responded to and we expect these to increase over the next few days. The Senior Regional Advisors are in constant communication across the country with central staff to aid communication, identify areas of interest and informing Scottish Government colleagues of issues and general intelligence.

I trust that this information is helpful to the Committee in their consideration of these very important matters.

Yours Sincerely

JOHN SWINNEY

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Directors of Education

via Email

20 March 2020

Dear Colleague,

I am acutely aware that you are all in the midst of preparations for provision to children and young people over the coming weeks.

I would like to offer any practical support Education Scotland can provide to you at this time. At the moment you may not be able to be specific about what is needed but I hope that you will contact us when required, as many of you have this week.

While a major part of our focus is working with Scottish Government, COSLA and other partners to contribute to efforts at a local level through intelligence gathering and policy development, we are mobilising our workforce to respond to the emerging challenges.

We are:

- making available staff to be deployed in hubs, early years or educational establishments. Where we have staff in your locality we will respond to specific requests from you. This offer will commence immediately, until the Easter holidays. Thereafter we will have a better understanding of your needs, and the situation nationally and locally, to allow us to address specific requests from you in the longer term or from Scottish Government, national and local partners.
- undertaking early discussions to look at national broadcasting and other digital streams which can support learning and teaching across the country on both an immediate and longer term basis.
- working with the SQA to add system capacity to the qualifications context.
- Continuing to deliver and manage the Glow service, ensuring our digital teams have local authority contacts so they can support and advise on Glow related queries.
- working with national partners to support CLD, Family Learning and Youth work support for parents and families.

- where required, releasing staff who are seconded to us from local authorities back to their locality,

Meanwhile, as we deal with the crisis, we would also want to be able to support specific requests for tasks/ professional support from yourselves at LA level or directly with schools/establishments. Please channel these through your Senior Regional Advisor who will co-ordinate these requests. At all times we will seek to maximise our response through the flexible deployment of our staff.

We are aware of the ongoing discussion of the development of learning materials referred to above. This needs to be available on a national scale but also needs to be useful and support local and regional efforts. We know you and your schools have already made significant efforts in supporting learners with online materials/ courses and offers. We will be seeking your views on this matter next week as the situation across the country becomes clearer.

I wrote to you on the 13th March regarding pausing Education Scotland work on inspection and professional learning activity until the 3rd of April. Given the changed context we are now extending this approach until further notice. We want to ensure there is clarity around this going forward.

A number of schools have already been inspected and are awaiting publication or sharing of the inspection report. We intend to take the following pragmatic approach:

Reports due to be published w/c 23rd March will go ahead as planned and will be published on our website.

Reports due to be published w/c 30th March will go ahead as planned and will be published on our website. Schools will receive the advanced copy next week. You will already have a copy of these reports and may wish to share a copy with the school before it closes today.

Draft inspection reports: our Heads of Scrutiny will liaise with you in due course regarding draft inspection reports currently with you and schools for comment and those that have not yet been issued for comment.

We hope this clarity will allow schools to focus on the important national role they now play in supporting their communities in the coming months.

Education Scotland staff want to be part of the collective national network to support our children, young people and fellow professionals. We look forward to working with you and thank you for all your efforts in ensuring Scotland's learners are supported during this challenging time.

Yours sincerely

Gayle Gorman
HM Chief Inspector of Education