

## LGA Workforce round-up re schools - 8 January 2021

The Prime Minister announced on Monday 4 January 2021:

- Colleges, primary and secondary schools will remain open only for vulnerable children and the children of critical workers
- All other children will learn remotely until at least February half term
- Higher Education provision will remain online until mid-February for all except future critical worker courses
- Early Years settings remain open
- Special Schools remain open.

We know that keeping schools open for the wellbeing and education of children and young people is hugely important for those children's life chances and for working parents. However, it's clear the Government feels this action is necessary given the growing transmission rates of COVID-19 in the community.

The safety of staff, parents and families has always been absolutely paramount and councils have been working hard with schools throughout the COVID-19 pandemic to ensure they can remain open as safely as possible – this will continue now with reduced provision, as per the government announcement.

New guidance for all schools in England was issued by the DfE on Thursday 7 January 2021, [Restricting attendance during the national lockdown: schools](#) which brings together and clarifies the government position following the Prime Ministers announcement earlier this week. This update attempts to flag the key workforce issues in relation to that guidance where things have changed or to provide helpful reminders. As you will appreciate, this has been a very fast-moving situation.

In addition you might want to have a look at the [speech to parliament](#) by the Secretary of State from 6 January 2021, DfE have published an initial [Q&A](#).

The guidance defining critical workers and vulnerable children while still broad, has changed slightly, the latest version is [available here](#), this is also included within the ERU section of the LGA Workforce webpages as part of our [COVID-19 FAQ](#) (FAQ number 3 may be helpful in this regard). The criteria for vulnerable children attending has also expanded to include “those who may have difficulty engaging with remote education at home (for example due to a lack of devices or quiet space to study)”.

The [new guidance](#) issued on 7 Jan captures this on page 25: “*Parents whose work is critical to the coronavirus (COVID-19) and EU transition response include those who work in health and social care and in other key sectors.*”

Early feedback is that demand for places is very high this time and while we are aware that a number of schools are identifying capacity challenges, the guidance now states: “*We know that every school will have a different number of children of critical workers who need to attend. It is important that on-site provision is provided for these pupils, and there is no limit to numbers of these pupils who may attend, and schools should not limit attendance of these groups. This is because we are*

*reducing overall social contact across areas and the country rather than individually by each institution.”*

You will have seen that this part of the guidance has caused some media attention.

DfE has also published an update to school leaders on Thursday 7 January to set out its rationale for reduced education provision (reducing contacts with the aim of reducing community transmission rates) and provides a rebuttal to the position of NEU and UNISON about whether individual education settings are safe workplaces. This update states DfE’s ‘understanding’ that both unions have withdrawn their earlier guidance to members around ‘Section 44 notices’. NEU says it has updated its advice following the Prime Minister’s announcement on Monday, with its latest advice to members being [available here](#).

Page 7 onwards within the new guidance sets out the measures and controls necessary as part of public health advice, to minimise COVID-19 risks: *“The system of controls set out in this section provides a set of principles for infection control and if schools follow this advice and maximise the use of these control measures, they will effectively minimise risks of viral transmission.”*

#### **Government guidance to schools, when fully open:**

The DfE previously provided details on actions schools should take in relation to health and safety during [the Coronavirus outbreak](#). This may still provide useful information about the measures schools should take. The annex on risk assessments provides for:

- Additional guidance in risk assessment management
- A reminder of the legal requirement to consult
- An encouragement for Employers and staff to come together to resolve issues, and to look to the HSE for further guidance if necessary
- Sets out an approach to risk management which says:

*“It is critical to remember that it will only rarely be feasible to eliminate individual risks completely. The combination of controls introduced should aim to reduce the risk to as low as reasonably practicable and prioritise structural, environmental interventions over individual level ones. This does not just mean considering risks of transmission, but also balancing these against risks to wider health and well-being and to education.”*

The LGA has previously provided advice on **Sections 44 and 100 issues**, please see LGS NJC [Circular 12 June which said:](#)

*If everything has reasonably been done to address an employee’s concerns, and action taken accordingly, but they still refuse to attend work, this may constitute unauthorised absence or partial performance (i.e. where they are only prepared to carry out certain tasks rather than their full range of duties). The manager should explain the individual’s contractual obligations and the potential consequences of refusing to work, including, in extremis, the risk of withdrawal of pay. If there is still no change in the individual’s position, the manager should seek immediate advice from HR who should ensure an appropriate and consistent approach is taken across*

*the organisation. The employee should also be reminded of their right to seek advice from their trade union representative.*

*However, if an employee has expressed concerns that have not been addressed and they reasonably believe their health and safety is at serious and imminent danger then they have rights under Sections 44 and 100 of the Employment Rights Act 1996 not to face a detriment (or dismissal) for failing to attend an unsafe workplace.*

The LGA reminds local authorities that the question of whether the conditions in Sections 44 and 100 apply will be a matter for local circumstances and assessment, due to the number of varying factors that would inform on the issue. That starts with advice from local public health teams, and a review of existing risk assessments and control measures, which we know is taking place.

The underlying conditions though for sections 44 or 100 to apply are that the employee must reasonably believe there is a serious and imminent danger. Relevant to whether the employee's belief is reasonable will be the steps the employer has taken to minimise risks, and what the employee has been told about those steps, as well as the employee's own health and personal circumstances.

However, as is often the case, dealing with staff concerns by relying on a legalistic approach is only likely to be appropriate once other options are exhausted. While there is local, and even school to school variation within this situation, we know that all trade unions accept that face to face provision for critical workers and vulnerable children is necessary (see the NEU [January advice here](#)) although there may be some local debate about whether all measures that can be taken, have been taken.

It is worth bearing in mind that unlike the March 2020 lockdown, remote education is an absolute requirement this time and schools are going to be juggling the demands of providing that, as well as face to face provision for critical worker and vulnerable children. This underlines the logistical challenge facing Heads and Governing bodies as they look to organise their resources accordingly.

### **Testing in schools**

The DfE remains committed to mass testing in schools and this is clearly an important part of the plan for when the time comes to return all children to school settings, with [published DfE guidance](#) and resources on the [schools and colleges document sharing platform](#). The latest DfE guidance expects secondary schools to participate in this mass asymptomatic testing during this lockdown as planned, as set out in the already published [Q&A](#) as follows:

- Weekly testing for secondary, college, special and AP staff where they are working on site
- Two tests, three to five days apart, for students in year 7 and above who will be in attendance on site (critical worker children and vulnerable children)
- Daily testing for staff and students in the groups above if they are, or have been, in close contact with a person who has received a positive test result and where they will be working on site

- Exploring the rollout of testing for primary staff in the second half of January as planned.

Schools also have of a limited number of “polymerase chain reaction” (PCR) tests which can *“be used in the exceptional circumstance that an individual becomes symptomatic and schools believe they may have barriers to accessing testing elsewhere”* and have the flexibility as to how they are used, including for staff.

### **Staff who are extremely clinically vulnerable**

Just a reminder that during the national lockdown, shielding has been re-introduced which means that clinically extremely vulnerable staff are not advised to attend the workplace: *“Staff should talk to their employers about how they will be supported, including to work from home. Schools should continue to pay clinically extremely vulnerable staff on their usual terms.”* See page 30 of the [updated guidance](#).

### **Pregnancy guidance updated**

The guidance in relation to pregnancy changed at the end of December and is amended again in this document – [see page 32](#). It confirms that pregnant women are in the clinically vulnerable category. But goes on to say: *“Employers should be aware that pregnant women from 28 weeks’ gestation, or with underlying health conditions at any gestation, may be at greater risk of severe illness from coronavirus (COVID-19). This is because, although pregnant women of any gestation are at no more risk of contracting the virus than any other non-pregnant person who is in similar health, for those women who are 28 weeks pregnant and beyond there is an increased risk of becoming severely ill, and of pre-term birth, should they contract coronavirus (COVID-19). This is also the case for pregnant women with underlying health conditions that place them at greater risk of severe illness from coronavirus (COVID-19).”*

### **Performance Management and appraisal**

A reminder comes on page 37 that maintained schools must continue to adhere to the School Teachers’ Pay and Conditions Document (STPCD), which includes the requirement to ensure that all pay progression for teachers is linked to performance management. *“We would expect schools to use their discretion and take pragmatic steps to adapt performance management and appraisal arrangements to take account of the current circumstances”*.

### **Disapplication notice on school attendance**

The Secretary of State has now issued a [fifth notice](#) to disapply offences for non-attendance in schools during the coronavirus (COVID-19) outbreak.

### **NEOST well-being guide**

Working through the COVID-19 pandemic continues to be an immensely challenging time. Please do refer to our [well-being guide](#) designed for schools and trusts, which provides some ideas and reminders for managing the well-being of all staff working in education throughout the pandemic.