

29 September 2009

## SNCT 09/15

### SWINE FLU PANDEMIC: MAINTAINING CONTINUITY OF EDUCATION

Prior to summer 2009 the Scottish Government, following medical advice, issued guidance to Scottish Councils on the swine flu pandemic. At that time the Government's intention was to contain the spread of the virus. To achieve that end, a number of schools or stages within schools were closed.

During the summer, medical advice indicated that containment was no longer the preferred option and the Government has now emphasised an approach designed to maintain business continuity, wherever possible.

The SNCT accepts this approach but will seek to ensure that the steps taken to achieve educational continuity for pupils are proportionate to the actual circumstance. The SNCT recognises that school closures may still occur where the health, safety and supervision of remaining pupils would be at risk if the school were to open. The presumption is to keep schools open where it is reasonably practicable to do so.

The SNCT has agreed a number of key principles which aim to assist in maintaining educational continuity. Some of the principles effect temporary variations from the conditions of service contained within the SNCT Handbook.

#### Key Principles

##### (1) The Duties of Teachers and Associated Professionals

The SNCT recognises that teachers and associated professionals will not be required to undertake duties not defined in contracts of employment unless under the amendments permitted in this circular.

In emergency situations, teachers and associated professionals may volunteer to take on board other roles to provide short term assistance. Such service should only occur until arrangements for appropriate staff are in place.

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(2) Communication

- a) The incidence of absence due to swine flu will be monitored on a school by school basis for Scottish Government. Councils will share this information within LNCTs and with other trade unions, as appropriate.
- b) Councils should make arrangements to discuss within LNCTs and with appropriate trade unions situations which will lead to decisions to trigger contractual relaxations set out in this circular and decisions to close schools.

(3) Class Arrangements

Depending on local circumstances, normal class arrangements and timetables may be subject to temporary alteration. This may mean combining certain classes or stages. Where such measures require temporary relaxations of class size maxima, no class arrangement including composite classes should exceed 33 pupils or 20 in practical classes where practical lessons take place. In extremis, a teacher may volunteer to cover over these numbers for a short period of time. There will be no relaxation of class sizes for special schools and units as set out in the SNCT Handbook, Part 2, Appendix 2.9.

(4) Working Hours

The normal contractual hours of teachers may be subject to temporary alteration. In such situations the first approach should be to require teaching staff to be class committed up to the contractual maximum of 22.5 hours. If there is a need to require teachers to be class committed over the contractual 22.5 hours, where practicable, a payback arrangement may be provided by the Council to reduce class contact following the return to normal arrangements.

Where normal working time arrangements are suspended due to staff shortages, the right of a teacher to undertake duties at a time and place of their choosing will be conditional on them not being required in school to assist directly in maintaining continuity of education.

(5) External Supply Cover

The SNCT expects councils to take every opportunity, within agreed absence cover arrangements and absence cover budgets, to maximise the use of supply teachers to cover for absent teachers.

(6) Relocation

Relocation may occur in the following circumstances:

- a) In the event of the closure of a school, staff may, where practicable, be reassigned to another school until the school re-opens. Consideration will be given to issues of travel and location taking account of individual circumstances.

- b) Where the whole school is not closed, teachers may nevertheless be asked to agree temporary relocation to another school with more pressing staffing circumstances to achieve educational continuity. The SNCT urges Councils to address this type of relocation on the voluntary principle. If no volunteers are forthcoming, LNCTs should determine how best to arrange temporary relocation.

Excess travel costs will be met and where a teacher takes up the duties of a promoted member of staff, acting up arrangements will apply, SNCT Handbook, Part 2, paragraphs 1.58 and 1.59.

(7) Vulnerable Staff

The NHS website (<http://www.scot.nhs.uk/>) provides details of conditions which would render employees with these conditions vulnerable to swine flu. Where there are confirmed cases of swine flu in a workplace, Councils should seek medical advice on the management of risk. Thereafter the Council should in the first instance consider transferring vulnerable staff to another work location or, if that is not practicable, assigning them duties for home working. It is noted that employees who are vulnerable are likely to be in the first tranche of the vaccination process. Further advice on vaccination and immunity will be available from the NHS.

(8) Pregnant Staff

Councils are required, under The Management of Health and Safety at Work Regulations 1999, to conduct risk assessments for pregnant employees. Where there are confirmed cases of swine flu in a workplace, Councils should seek medical advice on the management of risk. Thereafter relocation to another work location should be considered in the first instance. Again, it is noted that pregnant women are included in the priority groups for vaccination.

(9) Care Arrangements

It is likely that there will be a significant reduction of workforce due to care demands of young people, vulnerable persons and the elderly. In such circumstances Councils are required to be sympathetic to the pressures on staff. Councils will already have arrangements for granting leave with pay but could consider reviewing and enhancing those to reflect the exceptional circumstances.

Under Section 57A of the Employment Rights 1996 employees have the right to a reasonable amount of unpaid time off work to care for or make arrangements for dependants. A dependant is defined in the Act.

The Maternity and Parental Leave etc Regulations 1999 allows a parent with responsibility for a child to take up to 4 weeks unpaid leave in one week blocks in any one year. The SNCT Handbook, Part 2, paragraphs 7.63 to 7.69 provides the requirements for Parental Leave.

(10) Communication with Staff

Where temporary contractual relaxations are put in place in any school, all staff should be advised in writing of the changes and the likely duration. In the first instance, no relaxation should extend beyond 10 working days, although it is recognised that a further relaxation may be required. LNCT Joint Secretaries should be kept informed of schools entering and leaving periods of temporary relaxation in advance of such changes.

(11) Issues for LNCTs

The decision to apply the terms of this circular at local level is a matter for the LNCT having regard to absence arising directly from the virus or indirectly through care requirements or adjustments to protect vulnerable staff. Councils should recognise particular demands on LNCT Joint Secretaries who have a teaching commitment.

LNCTs should also consider the impact of swine flu on absence triggers within absence management procedures during a pandemic but should, wherever practicable, retain return to work interviews.

The SNCT considers it would be inappropriate to suspend discipline or grievance procedures but LNCTs may consider relaxation of timescale to take account of staffing pressures.

(12) Medical Certification

The SNCT is aware that UK Government is considering temporarily extending the period for self-certification for sickness absences to 10 working days. In circumstances when such a change applies this will amend the SNCT Handbook requirements set out in Part 2, paragraphs 6.27 to 6.29 for the duration of the extension.

Yours sincerely

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Stephanie Walsh (Scottish Executive)

**Joint Secretaries**