

FELA Position on COVID-19

The EIS at national level has advocated three critical 'red lines' in relation to members returning physically to workplaces. Whilst this has been fed in directly to the Scottish Government's Education Recovery Group which covers the school system primarily, the red lines apply equally to colleges. Consequently, we will only consider a physical return to campus for staff and students when there is evidence that test, trace and isolate capacity is in place; colleges are able to implement all public health guidance e.g. social distancing; and there is clear and demonstrable evidence that the spread of the virus was under control e.g. R figure and level of new cases.

In the interim, we would expect EIS representatives to be involved in discussions about planning for 2020/21 session and measures for a return to work at both local and national level. This paper has been written to inform those discussions.

Planning for Academic Year 2020/21

Further education will play an extremely important role during the pandemic and afterwards as there is very likely to be considerable need for retraining and education in general for adults.

This paper has been written on the assumption that colleges will remain closed until the summer holidays and that lockdown will be at least partially lifted by August 2020 (with the potential for reopening of physical campuses) but that some COVID-related restrictions will remain in place with regards to social distancing and shielding of vulnerable groups, with the potential for further lockdown(s) to be imposed should further 'waves' of the pandemic affect Scotland.

It is important that the key strengths of colleges are not lost as the result of the difficult situation created by the pandemic. As a trade union we seek to defend the pivotal role and high-quality educational experience delivered by colleges as well as the jobs, safety and T&C of our members. We recognise also that colleges have a distinct educational and demographic profile from that of schools or universities.

Planning should reflect the specific demographic profile of the FE teaching workforce (around 2% of the workforce are aged 70+ with a similar proportion under 30; more than half are over 50 and a significant minority have underlying health conditions or disabilities).

It is also important to reflect the diverse range of learners that colleges support, including part time and community or prison-based learners. College learners are more likely to come from SIMD 1 and 2 backgrounds; many have caring responsibilities or work in 'frontline' roles. College learners are less likely to have (exclusive) access to ICT equipment and are often less confident in using technology, particularly those at non-advanced level.

Lastly, planning must reflect the huge range of vocational and academic programmes delivered in colleges. Planning for the 2020/21 session will involve awarding bodies and industry partners (including those supporting learners on placement) but lecturers'

expertise and knowledge both of the curriculum and their learners' needs must be central to this, particularly in courses which cannot be delivered without "hands on" experiential learning either in a college or work placement.

In devising plans for college operations during the pandemic and ensuing period attention must be paid to:

- a. the health and safety of students and staff
- b. the quality of the student experience
- c. the breadth of provision so that the needs of learners are met

To ensure that all of the above points are taken into account, discussions on the future of Scottish colleges must include EIS-FELA which represents the educational professionals within the sector. Such discussions seek to generate clear national guidelines for college activity from August 2020 to ensure consistency across the sector, reflecting national bargaining and national awarding body arrangements, with full and meaningful engagement at local level to ensure proper implementation.

To support reps engaging with management at local level in such discussions, we have included two appendices – Appendix 1 has general questions to be raised at LJNC meetings and Appendix 2 covers specific Health and Safety issues and legislation.

Employment Rights

An agreement that there will be no compulsory redundancies and that Circular 01/20 will be extended at least for the duration of the 2020/21 session in order to protect teaching staff should lockdown be extended or reintroduced and to offer security for teaching staff who may not be able to return to work due to COVID-related illness or whose availability may be impacted by caring responsibilities, shielding or other COVID-related issues.

Where colleges are pursuing voluntary severance schemes, these should not be affected by COVID-19 and should be subject to the normal trade union consultation processes. Staff should not be placed under pressure to take VS as a result of COVID-19 and colleges should take particular care to ensure that equality legislation is not breached, for example, undue pressure placed on older staff members to consider retirement if they are shielding as a result of underlying health conditions could be a breach under both age and disability protections.

In order to avoid redundancy situations, consideration should be given to the redeployment of staff, including opportunities for retraining via online programmes. Redeployment opportunities should be considered in full consultation both with directly affected staff and their representatives.

The use of furlough or similar schemes should be subject to a national agreement given that all teaching staff are currently covered by Circular 01/20 and that any such arrangement is a variation on this national agreement.

Home Working

College staff moved to home working in March 2020 under stressful and difficult conditions and at very short notice. We recognise that this was unavoidable but given that elements of home working will continue through the 2020/21 session we should now give consideration to the health, safety and wellbeing of staff working from home.

Staff should be supported to conduct a risk assessment of their home working space and supported to obtain the necessary equipment to work safely and appropriately from home. This may include:

- Retrieval and delivery (with cleaning) of desk, chair and computer equipment from colleges where it is safe to do so and the individual has adequate space to set these up at home
- Provision of/reimbursement for alternative equipment e.g. laptop
- Guidance on HMRC tax rebate for home working and consideration of subsidy for homeworking costs (electricity, broadband etc)

Where staff are expected to access/provide online resources and support to learners, they should be offered appropriate college equipment to do so. There is no contractual requirement to use your own personal computers, laptops, phones etc. or your own broadband subscription to conduct college business of any kind. Many members are doing so. However, you are reminded that this being done as a matter of goodwill. If you feel that managers are putting you under pressure to engage in activities that you are uncomfortable with then that goodwill can be withdrawn at any time. Members are also reminded that they should only contact students via official college channels e.g. email, Microsoft Teams, college social media accounts. Where there is an identified need for phone contact with students (e.g. promoted staff, ASN or other vulnerable learners) a college phone should be provided.

Online Teaching

Online teaching activity, whether for exclusive delivery or as part of a programme of 'blended' learning, will be challenging for both staff and students in colleges. Experiences since lockdown in March 2020 have shown that some college programmes are difficult or impossible to deliver remotely and that learners face a wide range of barriers to engagement online (the FELA survey published in May 2020 has further detail on this

<https://www.eis.org.uk/Content/images/corona/FE%20Survey.pdf>).

The asynchronous nature of online delivery (students are able to message lecturers 24/7) creates additional workload. The increased cognitive demand of video conferencing (<https://www.sbs.com.au/news/insight/experts-explain-why-zoom-meetings-are-so-exhausting>) means that it is difficult for students and lecturers alike to sustain this over a typical 2-3 hour class duration. While contractual class contact maxima are unchanged, we propose that class contact here should include other forms of engagement with learners and that typically online "face to face" delivery

should take up no more than 50% of the allocated class time. This also minimises the loss of delivery for learners unable to access online learning at a set time. The remaining class time could include worksheets, asynchronous discussions on a VLE or video conferencing software, short video demonstrations (e.g. using Explain Everything to demonstrate a maths problem) or learner-led tasks. A lecturer with 22 hours timetabled class teaching being entirely delivered online would have a maximum of 11 hours' "face to face" via video call, with a further 11 hours of other teaching activities and their normal preparation time.

Further discussion needs to take place with the Scottish Government to reflect the digital poverty faced by many FE learners, particularly those on non-advanced courses, parents with school aged children and those in deprived and/or rural communities who may have poor internet connectivity or no provision at all. Colleges play an essential role in tackling Scotland's attainment gap and further funding is likely to be required to ensure that the poorest learners are not left behind as a result of the COVID-19 crisis.

Face to Face Teaching

Face to face teaching will depend on Scottish Government guidance. We would seek to ensure before such provisions resumed that:

- A 'deep clean' of college and outreach premises had taken place with additional cleaning provisions in place.
- Arrangements were in place for social distancing and where necessary PPE for staff and learners.
- Full risk assessments had been conducted for all class activities, including any vocationally specific activities and equipment.

We recognise that with nearly 50% of FE teaching staff over 50 and around 2% over 70, there will be a significant minority of teaching staff who are in the 'shielding' category either due to age or underlying health conditions. Others may live with family members who are 'shielding' or be experiencing mental health issues related to COVID which require reasonable adjustments. Requirements for staff to physically attend campus should take into account both Scottish Government guidance and where appropriate advice from the member's own GP. Reasonable adjustments should be discussed on an individual basis and where necessary, duties allocated to allow staff to continue working remotely. Colleges should be reminded of their duties under the 2010 Equality Act as well as their broader duty of care to staff to ensure that staff do not face discrimination – either immediately or in future – as a result of age, disability or caring responsibilities.

It is likely that in order to fulfil requirements around social distancing, both the overall numbers of staff and students on campus and the numbers of students attending any one class will require to be restricted. Further comments on how this might be achieved

are given below and we would seek full consultation with elected staff representatives and student representatives before any measures were introduced.

Qualifications

It seems unlikely, if not impossible, that full NC and HNC/D qualifications can be delivered next year, given the ongoing impact of COVID-19.

We believe there are several options to be considered here and believe a successful path forward requires the full involvement of elected teaching staff representatives as well as colleges, student representatives and awarding bodies:

- Delivery of full curriculum through a mixture of face to face and online learning. This is likely to require significantly more time than the typical delivery model due to the demands of online learning and the difficulties associated with social distancing. This may require additional staffing – with the associated costs – or significant changes to T&C.
- A 'slimmed down' curriculum. This might, for example, involve removing units from NC programmes to allow learners to study fewer units over a longer period of time, reflecting a reduction in face-to-face class contact. This might also involve the removal of specific units which would prove impossible to deliver as a result of restrictions e.g. units which involve a work placement or direct contact with others. However, such units are central to a number of vocational qualifications and are a professional requirement for others (including a number of Health and Social Care qualifications).
- Extended delivery. This may involve an increased number of part-time students studying, for example, an HNC qualification over a two-year period. This would have funding implications for both learners and colleges and would require further exploration but may be attractive to mature students looking to return to college as a result of economic downturn. It may also be of interest to school students in senior phase who had intended to start college in August 2020 but have not completed school-based qualifications.
- Some form of shift system may be required even with a slimmed down curriculum or extended delivery. We believe this can be achieved within the existing T&C, for example, asking for volunteers for a 'backshift' with an afternoon and evening class rather than 9am – 5pm model. A rota system should be deployed to ensure social distancing of staff but a shift system may also help staff who are reliant on public transport.
- Postponement of some qualifications and redeployment and/or retraining of staff. Separate advice on furlough has been issued to branch secretaries and Area Officers but we would anticipate this applying to a very small number of teaching staff in colleges.

Appendix 1

Employment Rights

1. Will circular 01/20 and specifically the provision to be paid “as if at work” extend into 2020/21 session if elements of lockdown are still in place?
2. What provision will be made for staff who are unable to physically return to campus, specifically those who have been advised to shield as they are over 70, have underlying health conditions etc?
3. What arrangements can be made for lecturers if they are unable to return to college but have difficulty in working from home?
4. Do the college intend to use the furlough scheme for any member of teaching staff (if yes, see separate advice on this and contact your Area Officer).

Health and Safety (see also Appendix 2)

1. What measures will be taken to deep clean colleges both before reopening and during periods of opening?
2. How will social distancing be applied for staff and students?
 - a. Will this have implications for staff and student attendance patterns, working day etc? How will staff be consulted on this, staff availability/preferences considered?
3. What measures can be put in place for vocational subjects with “hands on”, practical activities? Can PPE be provided to meet staff and learner needs in these contexts? What alternatives can be put in place and what are the implications for programmes if no safe alternative exists?
4. What measures will be put in place for learners on placement, particularly “high risk” placements such as Health and Social Care settings? What about staff who require to visit/observe learners in such placements?
5. What reasonable adjustments can be made for learners unable to attend college for face to face learning due to disability/high risk groups? What provision will be made for ASN groups, many of whom will include learners with underlying health conditions?
6. How will colleges ensure that these measures are applied throughout the college campus and in outreach settings?

Home Working

1. Do we expect lecturers to continue with some (all) aspects of home working in 2020/21 session and how can this best be supported?
2. What will “remote teaching” look like; what are the expectations on lecturers and how does this fit with existing T&C re class contact?
3. What equipment will lecturers need in order to do this (recognising that some have made “ad hoc” arrangements in the short term)?
4. What other support will lecturers require to continue home working?

Educational Provision

1. If learners require some or all of their course to be delivered remotely, how will this be supported e.g. access to technology, training in use of technology, Wi-Fi access?
2. How will widening access requirements be reflected in this, specifically issues around affordability of technology/internet access, caring responsibilities, disabilities?
3. How will course teams decide what can and should be delivered on campus (if anything at all) and what will be delivered remotely? Will the awarding bodies make adjustments to courses to facilitate this?
4. What provision will be made if there are areas of the curriculum where little or no teaching can take place due to health and safety requirements - will staff be redeployed?
5. Will learners be eligible for normal bursary and childcare support (assuming that nurseries reopen)? How will 'engagement' be monitored and where do responsibilities lie?

Appendix 2 – Health and Safety Legislation and Employment Rights Act

The Health and Safety Act (1974) and deriving from this the Safety Representatives and Safety Committees Regulations (1996), impose on the employers the duty to consult with the unions over matters concerning health and safety of employees.

Extracts from the relevant sections of the SRSC Regs include Reg 4A, Guidance 37-41 and Reg 7 and Safety Committees (75-76) are provided below. There is a clear organisational conclusion that arises from the legislation, which is that employees must be consulted in good time over 'any measure in the workplace that may substantially affect the health and safety of employees.

In addition, the Employment Rights Act (1996) states:

An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or

(e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

Regulation 4A of the SRSC Regs

1) Without prejudice to the generality of section 2(6) of the Health and Safety at Work etc Act 1974, every employer shall consult safety representatives in good time with regard to –

(a) the introduction of any measure at the workplace which may substantially affect the health and safety of the employees the safety representatives concerned represent;

(b) his arrangements for appointing or, as the case may be, nominating persons in accordance with regulations 6(1) and 7(1)(b) of the Management of Health and Safety at Work Regulations 1992;(b)

(c) any health and safety information he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions;

(d) the planning and organisation of any health and safety training he is required to provide to the employees the safety representatives concerned represent by or under the relevant statutory provisions; and

(e) the health and safety consequences for the employees the safety representatives concerned represent of the introduction (including the planning thereof) of new technologies into the workplace.

GUIDANCE TO EMPLOYERS (SRSC REGS)

What must you consult health and safety representatives about?

37 Regulation 4A specifically requires employers to consult health and safety representatives on:

(a) introducing any measure in the workplace that may substantially affect the health and safety of those employees that the health and safety representatives concerned represent;

(b) arrangements for getting a competent person or persons to help them comply with health and safety requirements. The Management of Health and Safety at Work Regulations 1999 ('the Management Regulations') require employers to make such an appointment unless they are self-employed and not in partnership with any other person, and have sufficient training experience, knowledge or other qualities to deal with these matters themselves. The Management Regulations also require the nomination of competent people to implement procedures for dealing with serious and imminent danger, i.e. evacuating people at work from the premises. There are also provisions in the Regulatory Reform (Fire Safety) Order 2005 requiring employers to take measures regarding firefighting and nominating employees to implement those measures. Regulation 4A requires employers to consult health and safety representatives on how they plan to go about this;

(c) information they must give their employees on risks to health and safety, and preventive measures, including information they are already required by other regulations to give their employees. Appendix 1 sets out some relevant details. For example, under the Management Regulations, employers must tell their employees about risks identified by the risk assessment they have to carry out, and their preventive and protective measures. They must also tell their employees about the emergency procedures, and who will carry out evacuation procedures. Regulation 4A requires employers to consult health and safety representatives about these matters before telling them what has been decided and before they make changes;

Consulting Health and Safety Representatives on Risk Assessments

38 Under the Management Regulations, you have a duty to assess the health and safety risks your employees are exposed to while they are at work. The risk assessment process needs to be practical. Seeking the views of employees and their health and safety representatives, who will have practical knowledge to contribute, will

help to ensure you take account of all relevant information. Appendix 3 provides further information on requirements for employers to consult health and safety representatives and/or employees.

39 Consulting employees or their representatives about matters to do with their health and safety is good management, as well as being a requirement under health and safety law. Employees are a valuable source of information and can provide feedback about the effectiveness of health and safety management arrangements and control measures. Where safety representatives exist, they can act as an effective channel for employees' views.

40 Safety representatives' experience of workplace conditions and their commitment to health and safety means they often identify potential problems, allowing the employer to take prompt action. They can also have an important part to play in explaining safety measures to the workforce and gaining commitment.

When Must you Consult Health and Safety Representatives?

41 Regulation 4A requires that employers consult health and safety representatives 'in good time'. Good time is not defined. However, it means that before making decisions involving work equipment, processes or organisation which could have health and safety consequences for employees, you should allow time to:

- (a) provide health and safety representatives with information about what you propose to do;
- (b) give the health and safety representatives an opportunity to express their views about the matter in the light of that information; and then
- (c) take account of any response.

Information should include:

- (a) information about the plans and performance of their business and any changes proposed where they affect the health and safety at work of their employees;
- (b) technical information about health and safety hazards and precautions needed to eliminate or minimise them, regarding machinery, plant, equipment, processes, systems of work and substances in use at work, including any relevant information provided by consultants or designers or by the manufacturer, importer or supplier of any article or substance used, or proposed to be used, at work by their employees;
- (c) information the employer keeps relating to the occurrence of any accident, dangerous occurrence or notifiable industrial disease and any statistical records relating to such accidents, dangerous occurrences or cases of notifiable industrial disease;
- (d) any other information specifically related to matters affecting the health and safety at work of their employees, including the results of any measurements taken by the

employer or people acting on their behalf in the course of checking the effectiveness of their health and safety arrangements;

(e) information on articles or substances which an employer issues to homeworkers.

Regulation 7 Code of Practice Guidance 7

Your Duty to Provide Information

67 You have a duty under section 2(2)(c) of the 1974 Act to provide such information, instruction and training, and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of all your employees (see Appendix 1 and Appendix 2 for more information). Appointed health and safety representatives will need to be given appropriate and sufficient information and knowledge to enable them to play an informed part in promoting health and safety at work. The recognised trade unions responsible for appointing health and safety representatives will make their own arrangements for providing them with the information and guidance they need to carry out their functions.

68 Employers have duties under the Management Regulations to, among other things, provide information on:

- (a) risks to their employees' health and safety identified by their risk assessment;
- (b) preventive and protective measures designed to ensure employees' health and safety;
- (c) procedures to be followed in the event of an emergency in the workplace;
- (d) the identity of any 'competent person' or persons nominated by the employer to help with implementing those procedures;
- (e) risks notified by another employer with whom a workplace is shared, arising out of, or in connection with, the conduct of the second employer's undertaking.

Objectives and Functions of Health and Safety Committees

75 Under section 2(7) of the 1974 Act, health and safety committees have the function of keeping measures taken to ensure the health and safety at work of the employees under review. In carrying out this function, health and safety committees should consider drawing up agreed objectives or terms of reference.

76 An objective should be the promotion of co-operation between employers and employees in instigating, developing and carrying out measures to ensure the employees' health and safety at work.

Regulation 4 Functions of Safety Representatives

(1) In addition to his function under section 2(4) of the 1974 Act to represent the employees in consultations with the employer under section 2(6) of the 1974 Act (which requires every employer to consult safety representatives with a view to the making and maintenance of arrangements which will enable him and his employees to cooperate effectively in promoting and developing measures to ensure the health and safety at work of the employees and in checking the effectiveness of such measures), each safety representative shall have the following functions –

(a) to investigate potential hazards and dangerous occurrences at the workplace (whether or not they are drawn to his attention by the employees he represents) and to examine the causes of accidents at the workplace;

(b) to investigate complaints by any employee he represents relating to that employee's health, safety or welfare at work;

(c) to make representations to the employer on matters arising out of sub-paragraphs (a) and (b) above;

(d) to make representations to the employer on general matters affecting the health, safety or welfare at work of the employees at the workplace;

(e) to carry out inspections in accordance with Regulations 5, 6 and 7 below;

(f) to represent the employees he was appointed to represent in consultations at the workplace with inspectors of the Health and Safety Executive and of any other enforcing authority;

(g) to receive information from inspectors in accordance with section 28(8) of the 1974 Act; and

(h) to attend meetings of safety committees where he attends in his capacity as a safety representative in connection with any of the above functions;