

Date: 26 May 2020

Your Ref:

Our ref: 200526/Coffey T/PR/FC

Rt Hon Thérèse Coffey MP
Secretary of State
Department for Work and Pensions
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NASUWT

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Dear Thérèse,

I am writing to you in the context of the Government's proposals for the wider reopening of schools from 1 June 2020 and to request you to exercise your statutory powers under the Health and Safety Act Work Act 1974. I am writing in similar terms to your colleague, the Secretary of State for Education.

The NASUWT notes that despite the efforts by the Government to provide advice to schools to assist their wider reopening to more children from 1 June 2020, there remains considerable uncertainty about whether schools will be in a position to reopen safely to more children from that date.

The NASUWT recognises that whilst the Department for Education has expertise in matters relating to school organisation and funding, child safeguarding, teaching and learning and associated matters, it does not have equivalent expertise in relation to the management of contagious diseases or in respect of the health and safety issues that have been raised by the Coronavirus pandemic. We have previously highlighted our concerns regarding the lack of adequate provision in the existing advice to schools and education settings regarding the health and safety requirements pertaining to the wider reopening of schools and with regard to the duties and obligations that rest with employers to ensure health and safety compliance and to demonstrate that schools and colleges are COVID-secure. To address this deficiency, the NASUWT believes that there is an important and urgent role for the Health and Safety Executive (HSE).

We note the assurances given by the Prime Minister in answer to a Parliamentary Question on 11 May 2020ⁱ, where it was made clear that:

'We are going to insist that businesses across this country look after their workers and are covid-secure and covid-compliant. The Health and Safety Executive will be enforcing that, and we will have spot inspections to make sure that businesses are keeping their employees safe'

However, it is unclear how these assurances are being translated to schools and colleges and, to date, we have not seen any evidence that the HSE has undertaken any research or published any advice to address the specific problems faced by schools or other educational settings, and, in particular, to assist the wider reopening of schools from June 1. We believe that this is unhelpful for a number of reasons, not least given that it is widely recognised that the country cannot fully get back to work unless schools re-open, and given that there is a strong case for sector guidance to be provided by the HSE in respect of the management of COVID-19 risks in schools and other education settings.

The provision of education is an essential public function and, therefore, schools and colleges are looking for unequivocal national guidance which will ensure that their responses are consistent with national requirements and are as closely aligned as possible.

The NASUWT reminds you that schools and colleges are also workplaces, and that the main statutory responsibility for regulating the proper management of risk in all workplaces rests with the HSE.

The HSE is the statutory body responsible for promoting, health, safety, and welfare at, and arising out of, work. Its legislative basis is found in Part 1 of, and schedule 2 to, the Health and Safety Act Work Act 1974 ('the 1974 Act').

Section 11 of the 1974 Act provides for the main functions of the HSE, as follows:

11. Functions of the Executive

(1) It shall be the general duty of the Executive to do such things and make such arrangements as it considers appropriate for the general purposes of this Part.

(2) In connection with the general purposes of this Part, the Executive shall—

(a) assist and encourage persons concerned with matters relevant to those purposes to further those purposes;

(b) make such arrangements as it considers appropriate for the carrying out of research and the publication of the results of research and the provision of training and information, and encourage research and the provision of training and information by others;

(c) make such arrangements as it considers appropriate to secure that the following persons are provided with an information and advisory service on matters relevant to those purposes and are kept informed of and are adequately advised on such matters—

(i) government departments,

(ii) local authorities,

(iii) employers,

(iv) employees,

(v) organisations representing employers or employees, and

...

[Italics added for emphasis]

Section 14 of the 1974 Act provides special powers of investigation and reporting, as follows:

14.— Power of the Commission to direct investigations and inquiries.

(1) This section applies to the following matters, that is to say any accident, occurrence, *situation or other matter whatsoever* which the Executive thinks it necessary or expedient to investigate *for any of the general purposes* of this Part or with a view to the making of regulations for those purposes; and for the purposes of this subsection—

(2) The Executive may at any time—

(a) *investigate and make a special report on any matter to which this section applies;*

...

[Italics added for emphasis]

Section 12 of the 1974 Act gives certain powers to the Secretary of State to direct the HSE:

12. Control of the Executive by the Secretary of State

[...]

(2) The Secretary of State may at any time give to the Executive—

(a) such directions as he thinks fit with respect to its functions, or

(b) such directions as appear to him requisite or expedient to give in the interests of the safety of the State.

(3) The Secretary of State may not under subsection (2) give any directions with regard to the enforcement of the relevant statutory provisions in any particular case.

We believe that it is necessary for you to exercise the powers to direct the HSE to provide support and advice to the sector.

The NASUWT has previously reported to the Government the extensive confusion and concern about the safe wider reopening of schools from 1 June 2020. The concerns of those working in schools have, regrettably not been addressed either by the advice published by the Government or by the scientific evidence published by SAGE. Indeed, these concerns have not abated, and we have also received many reports from individual schools as well as local authority and academy employers that they are unable to make appropriate and informed decisions on safe wider reopening of schools from 1 June without further information and advice.

The NASUWT believes that a special report by the HSE on the wider reopening of schools/colleges to more children in the context of the Coronavirus pandemic is essential. In publishing a special report, the HSE should be directed to assist school and college employers to be clear about what constitutes acceptable levels of risk and how these risks can be appropriately assessed and mitigated for each setting, taking into account such matters as:

- a. The extent of the health and safety risks to teachers, children and contractors posed by re-opening schools and other educational settings;
- b. The role of the Government's guidance for schools and other education settings in managing to acceptable levels the risk of transmission of the Coronavirus from 1 June 2020;
- c. How employers should interpret and deploy into a risk assessment the best scientific evidence available, including that considered by SAGE, relating to the risks of Coronavirus transmission amongst children and adults in schools and other educational settings;
- d. How employers will need to ensure that their school/college workplaces are COVID-secure, taking into account:
 - (i) the nature and physical layout and dimensions of the school/college premises;
 - (ii) the geographical location of the school/college so that the relevant local "R" rate;
 - (iii) the number of children and adults on the school or college premises;
 - (iv) the access to the school site/premises of other adults, including parents and contractors;
 - (v) the role/importance of testing and contact tracing;
 - (vi) any special indicators of heightened risk including the age, socio-economic and ethnic profile of the teachers, other staff and pupils;
 - (vii) the availability of PPE, and the other measures to reduce the risk of transmission of the virus;
 - (viii) the management of a COVID-19 incident/outbreak within a school/college setting.

It is our view that decisions about the reopening of schools and colleges must be taken with the benefit of clear and specific advice from the HSE. Such advice should give greater assurance and confidence to the sector, and to the public at large, and reduce the risk that the wider reopening of schools is interrupted indefinitely.

Given the importance and immediacy of these issues for our members, I trust that this matter will be given your immediate attention and that you will reply as a matter of urgency.

Yours sincerely,



Dr Patrick Roach
General Secretary

ⁱ <https://hansard.parliament.uk/commons/2020-05-11/debates/D92692B5-165B-4ACB-BC97-4C3F25D726EE/Covid-19Strategy>