

SCHOOLS (HEALTH PROMOTION AND NUTRITION) (SCOTLAND) ACT

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act has two main themes: health promotion in schools (sections 1 and 2) and the provision of food and drink in schools (sections 3 to 9).
4. Sections 1 and 2 make provision imposing duties on the Scottish Ministers, education authorities¹ and managers of grant aided schools to endeavour to ensure that public schools and grant-aided schools are health-promoting.
5. Section 3 inserts new sections into the Education (Scotland) Act 1980 (the “1980 Act”) which place duties on education authorities and managers of grant aided schools to ensure that all food and drink provided in schools, unless specifically exempt by the Act, complies with nutritional requirements, specified by regulations. Section 5 makes provision for education authorities to consider the nutritional requirements in situations where they enter into an arrangement with regard to a pupil’s education in an independent school.
6. Through the amendment of section 53 of the 1980 Act and the addition of new subsections to that section, the Act also amends the powers of education authorities to provide food and drink to pupils other than at lunch time.
7. Specific duties are also placed on education authorities to require the promotion of school lunches and to require the protection of the identity of those receiving free school lunches. Section 9 also places a duty on education authorities to have consideration to any sustainable development guidance issued by Scottish Ministers when providing food and drinks in schools or services relating to the provision of that food or drink.

¹ Each local authority in Scotland has been the education authority for its area since the re-organisation of local government under the Local Government etc. (Scotland) Act 1994. “Education authority” is the term used in education legislation relating to Scotland and is defined in section 135 of the 1980 Act as a council constituted under section 2 of that 1994 Act.

Health promotion

Section 1: Duties in relation to promotion of health

8. Section 1 inserts a new section 2A into the Standards in Scotland's Schools etc. Act 2000 (the "2000 Act") which places a duty on Scottish Ministers and education authorities to endeavour to ensure that all public schools and hostels provided and maintained by education authorities for pupils attending those schools are health-promoting. The new section 2A also places the same duty on managers of grant-aided schools in relation to a school under their management.

9. Subsection (4) of the new section 2A states that, in discharging their duties, education authorities and managers of grant-aided schools must have regard to any guidance about health promotion in schools which the Scottish Ministers may issue from time to time.

10. Subsection (5) of the new section 2A defines what constitutes a health-promoting school.

Section 2: Annual statement: account of health promotion

11. Section 5 of the 2000 Act places a duty on education authorities to prepare and publish an annual statement of improvement objectives. This is a detailed plan setting out objectives in respect of each of the national priorities for education which are set down in an order made under section 4 of the 2000 Act. The statement must be drawn up on an annual basis and sets out the improvement which the education authority is aiming to deliver. The statement then forms the basis for the school development plans prepared under section 6 of the 2000 Act by each school managed by the education authority.

12. Section 2 of the Act makes amendments to section 5 of the 2000 Act to ensure that strategies for ensuring that schools are health-promoting form part of the statement of improvement objectives. Paragraph (a) amends subsection (1) of section 5 to make clear that the annual statement is to be about the duty to ensure schools are health-promoting as well as being about the duty to secure improvement in education. Paragraph (b) amends subsection (2) of section 5 to make it clear that the statement must include an account of what the education authority plans to do in order to fulfil its duty in relation to health promotion.

13. As a result of these amendments to section 5 of the 2000 Act, all school development plans prepared under section 6 of that Act will have to take account of the improvement objectives set out by education authorities in relation to health promotion.

Food and drink

Section 3: Food and drink: nutritional requirements

14. This section inserts new sections 56A to 56D into the 1980 Act.

15. Section 56A requires education authorities to ensure that food and drink provided in schools, and hostels provided and maintained by education authorities for pupils, complies with the nutritional requirements specified in regulations. In this section "school" has the meaning given in section 135(1) of the 1980 Act (which defines various terms used in that Act).

16. Subsection (2) sets out the categories of food and drink which must comply with the nutritional requirements. Paragraph (a) covers food and drink provided for pupils under section 53(1)(a) of the 1980 Act. That is food and drink provided as a school lunch,

breakfast or snacks at any other time of the day. Paragraph (b) covers any other food and drink provided for pupils on the school premises or in a hostel, where that hostel is provided and maintained by education authorities for pupils. Food and drink covered by the exceptions listed in subsection (3) is not required to comply with the nutritional requirements.

17. Subsection (2)(b) deals only with food and drink provided for pupils on the premises of a school or hostel. Food and drink provided outwith a school or hostel (for example food and drink brought into school from a pupil's home or from a shop) does not have to meet the nutritional requirements. It also means that food and drink provided in a school for persons who are not pupils (for example teachers or members of the public) does not have to meet the requirements.

18. Subsection (3) of section 56A provides for exceptions where food and drink will not have to meet the nutritional requirements. Paragraph (a) ensures the nutritional requirements will not apply to food or drink brought onto the premises of a school or hostel by a pupil (for example, packed lunches). Paragraph (b) provides an exception for food or drink provided as part of a social, cultural or recreative activity. For example, school discos or sports days or cultural events such as school-organised Burns suppers or Christmas lunches. It also makes clear that the exception applies to an activity covered by paragraph (b) whether it is organised by the education authority or another person. Examples might be Parent Teacher Association meetings or community events.

19. Subsection (4) makes it clear that food or drink to which the duty in subsection (1) applies must comply with the nutritional requirements even if it is not the education authority itself who provides the food or drink. So the requirements will apply if food or drink is provided by a catering company or a supplier of vending machines under contract with the education authority or a breakfast club or after school club which has made an arrangement with an education authority.

20. New section 56B of the 1980 Act sets out some of the particular things that may be covered by the regulations specifying the nutritional requirements. In subsection (1), paragraph (a) provides that the regulations can specify or list foods or drinks which are nutritional and specify those which are not. Paragraph (b) provides that the regulations may set out circumstances where the nutritional requirements might not need to be adhered to. For example, the regulations could permit food or drink to be provided to pupils for various reasons including health, cultural or faith-based reasons even though the food or drink in question does not meet the nutritional requirements. Paragraph (c) makes clear that the regulations may require education authority schools or hostels to provide drinking water to all pupils free of charge. Subsection (2) makes it clear that the regulations might set out different requirements in different circumstances. For example, the nutritional requirements could be different for pupils of different ages.

21. New section 56C of the 1980 Act provides that education authorities have to take account of any guidance about the nutritional requirements that the Scottish Ministers may issue.

22. New section 56D of the 1980 Act provides that managers of grant-aided schools have to comply with sections 56A to 56C (and any regulations made under section 56A(1) specifying nutritional requirements) but subject to certain modifications to the new section 56A, set out in subsections (3) to (5). The modification set out in subsection (3) clarifies that food and drink provided as a school lunch, breakfast, meals or snacks at any other time of the day, must comply with the nutritional requirements. Subsection (4) omits

hostels from the duty placed on managers of grant-aided schools as this reference is not relevant. Accommodation provided at a grant-aided school will be covered as part of the school.

Section 4: Regulations specifying nutritional requirements: procedure

23. This section inserts a new subsection (2ZA) into section 133 of the 1980 Act. This requires the first regulations specifying the nutritional requirements, made under the new section 56A(1), to be subject to the affirmative resolution procedure.

Section 5: Education authorities' arrangements with independent schools

24. Section 5 makes amendments to sections 49 and 50 of the 1980 Act regarding the relevance of the nutritional requirements to arrangements made by education authorities with independent schools.

25. Subsection (1) inserts a new subsection (2ZA) into section 49 of the 1980 Act. Under subsection (2)(b) of section 49 an education authority has the power to pay fees on behalf of a pupil attending a fee-paying school. This could happen if the pupil (who must be a pupil in respect of whom the education authority owe a duty to provide school education for) or the pupil's parents would suffer hardship in taking advantage of educational facilities available to the pupil. New subsection (2ZA) provides that before the education authority decides to use this power to pay fees in relation to a pupil going to an independent school, the authority must have regard to the factor set out in new section 50A of the 1980 Act.

26. Subsection (2) inserts a new subsection (1ZA) into section 50 of the 1980 Act. Under subsection (1) of section 50 an education authority has to make special arrangements for a pupil (in respect of whom the education authority is responsible for providing school education for) if the authority is of the opinion that either;

- special arrangements are necessary due to the remoteness of the pupil's home or other exceptional circumstances; or
- school education suitable to the age, ability and aptitude of the pupil can best be provided for the pupil at a specific school.

27. New subsection (1ZA) is concerned with the second of these possible reasons for special arrangements. Specifically, it deals with the situation where an education authority is deciding whether it is best for a pupil to attend a specific school and that school is an independent school. Subsection (1ZA) provides that, in those circumstances, the authority must, in coming to its decision under subsection (1) of section 50, take into account the factor set out in new section 50A.

28. Subsection (3) inserts a new section 50A into the 1980 Act. Section 50A states that the factor that has to be taken into account under new sections 49(2ZA) and 50(1ZA) is the extent to which any food and drink which is provided to pupils at the independent school in question would comply with the regulations specifying nutritional requirements, if those regulations applied to independent schools. The duty to comply with the nutritional requirements under new section 56A(1) of the 1980 Act (inserted by section 3 of the Act) does not apply to independent schools and regulations under that section cannot be made in respect of independent schools. So where an education authority wishes to make an arrangement with an independent school under section 49 or 50, new section 50A provides that they must look at the regulations made under section 56A(1) as if they did apply to the independent school in question.

Section 6: School meals and snacks

29. This section makes a number of amendments to section 53 of the 1980 Act in relation to the provision of meals and snacks in schools.

30. Subsection (3) inserts new subsections (2) to (2D) into section 53. New subsection (2) re-enacts the existing rule that school lunches must be charged for unless the pupil is eligible for a free school lunch under subsection (3) of section 53. New subsections (2A) to (2C) give education authorities the power to provide pupils, either free of charge or subject to a charge, with food and drink at any time of the day (other than at lunchtime which is covered by new subsection (2)). This will, for example, enable education authorities to offer all children breakfasts or snacks in the morning or afternoon. New subsection (2B) provides that the food or drink can be provided for free or may be charged for. Where the food or drink is provided for free, new subsection (2C) provides that education authorities may target only certain children for free provision, or may offer food or drink for free at certain times of the day only. New subsection (2D) provides that where a charge is levied for a particular food or drink (whether as part of a lunch or other meal or snack) the amount charged has to be the same for each pupil who is charged.

31. Subsection (5) defines “school lunch” and provides that these words attract this definition in new sections 53A and 53B of the 1980 Act as well as in section 53.

Section 7: Promotion of school lunches

32. Section 7 of the Act inserts a new section 53A into the 1980 Act. Subsection (1)(a) of new section 53A requires education authorities to implement methods of promoting the availability of school lunches whereas subsection (1)(b) requires education authorities to encourage the uptake of those lunches.

33. Subsection (2) of new section 53A requires that education authorities take reasonable steps to ensure that those who are eligible to receive free school lunches actually take advantage of their entitlement.

Section 8: Protection of identity of pupils receiving free school lunches

34. This section inserts a new section 53B into the 1980 Act. Subsection (2) of new section 53B requires local authorities to take reasonable steps to ensure that, where a pupil is receiving free school lunches, that pupil cannot be identified, other than by authorised persons, as receiving free school lunches. The education authority can authorise individuals or categories of people who need to have access to the information which indicates that a pupil is eligible for a free school lunch. These individuals could be certain teachers or other people working in the school or volunteers, as the education authority sees fit.

35. Subsection (3) of new section 53B provides that education authorities should do what they can to prevent a pupil’s eligibility for free school lunches from being disclosed by certain persons mentioned in subsection (4). However, disclosures to an authorised person are permitted. An authorised person is defined in subsection (5) as being a parent of the pupil in question or a person authorised by the authority to have access to such information.

Section 9: Food and drink: guidance about sustainable development

36. This section inserts a new section 56E into the 1980 Act.

37. Subsection (2) of section 56E places a duty on education authorities to have regard to any relevant guidance issued by Scottish Ministers on the application of the principles of sustainable development. An education authority has to have regard to this guidance in three circumstances: (a) when the authority provides food and drink under s 53(1)(a) of the 1980 Act, (in effect any school meals or snacks); (b) when the authority provide services relating to the provision of that food or drink; or (c) when someone else provides the food or drink or associated services under an agreement entered into with the education authority.

38. Subsection (4) places a similar duty on the managers of grant aided schools to have regard to any relevant guidance issued by Scottish Ministers on the application of the principles of sustainable development. The duty applies to managers of grant aided schools when either: (a) they provide food or drink for pupils, or services relating to the provision of that food or drink; or (b) someone else provides the food or drink or associated services under an agreement entered into with the managers.

39. Subsection (5) provides that guidance under this section on sustainable development may include guidance about fair and ethical trading and/or the places where food or drink is produced or processed. These two topics are not essential elements of the guidance, the guidance may deal with a number of other aspects of the principles of sustainable development.

General

Section 11: Short title and commencement

40. Subsection (2) of this section contains power to make commencement orders to bring the Act into effect.

41. Subsection (4) provides the Scottish Ministers with power to make consequential, transitional and transitory provisions as part of a commencement order.

EFFECT OF SECTIONS 5 AND 6 OF THE ACT ON SECTIONS 49, 50 AND 53 OF THE EDUCATION (SCOTLAND) ACT 1980

Sections 49, 50 and 53 of the Education (Scotland) Act 1980 as amended by sections 5 and 6 the Act are shown below. This is attached into the explanatory notes to assist the reader to understand the provisions. The amendments are shown as *italics* and where text has been deleted this is indicated by ~~strikethrough~~.

The functions of Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) and therefore any reference to the Secretary of State should be taken to be references to the Scottish Ministers.

49 Power of education authorities to assist persons to take advantage of educational facilities.

- (1) Subject to the following provisions of this section, an education authority shall have power to grant, on such conditions as may be prescribed, and make payments in pursuance of, bursaries, scholarships or other allowances to persons over school age attending courses of full-time or part-time education (whether held in Scotland or elsewhere) which are not courses of school education or (in the case of courses held outside Scotland) are not courses of education comparable to school education in Scotland.

- (2) Subject to the following provisions of this section, an education authority shall have power, for the purpose of enabling persons to take advantage without hardship to themselves or their parents of the facilities for school education available to them, to grant, on such conditions as may be prescribed, and make payments in pursuance of, allowances for the purpose of defraying in whole or in part—
- (a) such expenses of persons attending any school as may be expedient to enable them to take full part in the activities of the school;
 - (b) the fees and expenses payable in respect of persons attending schools at which fees are payable;
 - (c) the maintenance expenses of persons over school age who are attending schools.

(2ZA) Before exercising the power conferred by subsection (2)(b) in respect of a person attending an independent school an education authority must have regard to the matter mentioned in section 50A.

(2A) In subsection (2) above, references to attending school are to so attending not only where the school is in Scotland, but also where it is in England and Wales or in Northern Ireland ('school education' being construed accordingly).

- (3) The Secretary of State may make regulations providing that the powers conferred on an education authority by subsections (1) and (2) above—
- (a) shall be exercised in accordance with such provisions as may be prescribed by or under the regulations; and
 - (b) shall not be exercised in relation to a person who does not fulfil such requirements as to residence in the area of the authority, or as to other matters, as may be specified in the regulations,

and regulations made under this subsection may contain provision for the determination by the Secretary of State of any question whether any such requirements are fulfilled in any particular case.

50 Education of pupils in exceptional circumstances

- (1) Where in the opinion of an education authority—
- (a) any pupil is, owing to the remoteness of his home or the conditions under which he is living or other exceptional circumstances, unable to receive the full benefit of school education unless special arrangements are made for him; or
 - (b) school education suitable to the age, ability and aptitude of any pupil can, *subject to subsection (1ZA)*, best be provided for him at any particular school,

the authority, in a case where subsection (3) applies, may and, in any other case, subject to subsection (4) below, shall, after consultation with the parent, make such arrangements of either a temporary or a permanent

character as they think best suited to the purpose of enabling that pupil to attend, in any case falling under—

- (i) paragraph (a) of this subsection, an appropriate school; and
- (ii) paragraph (b) thereof, the particular school.

(1ZA) In deciding whether school education suitable to the age, ability and aptitude of a pupil is best provided at a particular independent school, an education authority must have regard to the matter mentioned in section 50A.

(1A) In subsection (1) above, references to an appropriate school and to a particular school are references not only to schools in Scotland but also to schools in England and Wales or in Northern Ireland ('school education' being construed accordingly).

(2) The arrangements made under subsection (1) above may include—

- (a) the provision of travelling facilities or the payment of travelling expenses under subsection (1) of section 51 of this Act (for the purposes of this paragraph, any reference in that section to a school being construed as a reference not only to a school in Scotland but also to a school in England and Wales or in Northern Ireland); or
- (b) the accommodation of the pupil at a boarding school or in a hostel, home or other institution; or
- (c) other provision of board and lodging, provided that the education authority shall, so far as practicable, give effect to the wishes of the parent with respect to the religious denomination of the person with whom the pupil will reside; or
- (d) provision for the travelling, board and lodging of teachers.

(3) This subsection applies where—

- (a) the education authority have, in accordance with—
 - (i) their arrangements as published or otherwise made available under section 28B(1)(a) of this Act;
 - (ii) any arrangements made by them under section 23(1A) of this Act; or
 - (iii) the arrangements subsisting before the establishment of new local government areas under Part I of the Local Government etc. (Scotland) Act 1994 and continuing by virtue of section 23(1C) of this Act,

proposed to place the pupil in a particular school or in one of a number of schools named by them and have, in connection with that proposal, made or offered to make for the pupil suitable arrangements of the kind referred to in subsection (2) above; but

- (b) in consequence of a placing request, the pupil has been placed by them or another education authority in a school other than a school referred to in paragraph (a) above.

- (4) The duty imposed by subsection (1)(a) or (b) above does not apply where the pupil belongs (in accordance with section 23(3) of this Act) to the area of some other education authority or of a local education authority in England and Wales.

53 Provision of school meals

- (1) An education authority—
- (a) may provide ~~milk, meals or other refreshment~~ *food or drink* for pupils in attendance at public schools and other educational establishments under their management and may do so either on the premises or at any place other than the school premises where education is being provided; and
 - (b) shall provide such facilities as the authority consider appropriate for the consumption of any ~~meals or other refreshment~~ *food or drink* brought to the school or other educational establishment by such pupils.
- ~~(2) Subject to subsection (3) below, an authority must charge for anything provided by them under subsection (1)(a) above and must charge every pupil the same price for the same quantity of the same item.~~
- (2) *Where an education authority provide school lunches under subsection (1)(a), they must, subject to subsection (3), charge pupils for the lunches.*
- (2A) *Subsection (2B) applies where an education authority provide, under subsection (1)(a), anything other than school lunches.*
- (2B) *The authority may—*
- (a) *provide any food or drink free of charge, or*
 - (b) *charge pupils for any food or drink.*
- (2C) *An education authority may exercise the power conferred by subsection (2B)(a) in relation to—*
- (a) *pupils who satisfy such conditions as the authority think fit,*
 - (b) *the provision of food or drink at such times of the day (other than in the middle of the day) as they think fit.*
- (2D) *Where, by virtue of subsection (2) or (2B)(b), an education authority charge for a particular food or drink, they must charge the same price for the same quantity of the food or drink.*
- (3) Subsection (3AA) below applies in relation to a pupil—
- (a) whose parents are in receipt of—
 - (i) income support;
 - (ii) an income-based jobseeker's allowance (payable under the Jobseekers Act 1995);
 - (iii) support provided under Part VI of the Immigration and Asylum Act 1999; or

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- (iv) any other benefit or allowance or any tax credit or element of such a tax credit (within the meaning of the Tax Credits Act 2002 (c.21)) that the Scottish Ministers may by regulations prescribe, in such circumstances as may be so prescribed;
 - (b) who is himself in receipt of—
 - (i) income support;
 - (ii) an income-based jobseeker’s allowance; or
 - (iii) any other benefit or allowance or any tax credit or element of such a tax credit (within the meaning of the Tax Credits Act 2002 (c.21)) that the Scottish Ministers may by regulations prescribe, in such circumstances as may be so prescribed.
- (3AA) An authority shall so exercise the power conferred by subsection (1)(a) above as to ensure that ~~such provision is made for the pupil in the middle of the day as appears to the authority to be requisite and shall make that provision for him~~ a school lunch is provided for the pupil free of charge.
- (4) For the purposes of this section, a pupil for whom an education authority have made special arrangements under section 14 of this Act may, at the discretion of the authority, be deemed to be in attendance at a public school under their management.
- (5) *In this section and sections 53A and 53B of this Act, “school lunch” means anything provided under subsection (1)(a) in the middle of the day which the education authority consider is appropriate for consumption as a meal at that time of day.*

PARLIAMENTARY HISTORY OF SCHOOLS (HEALTH PROMOTION AND NUTRITION) (SCOTLAND) ACT 2006

38. The following table sets out the dates on which each Stage of the proceedings for the Bill to this Act took place in the Scottish Parliament. The references to the Official Report of those proceedings and the dates on which Committee Reports were published (and the references to those Reports) are also included.

Proceedings and Reports	Reference
Introduction	
8 September 2006	<i>SP Bill 68</i>

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(asp 15) which received Royal Assent on 19 April 2007*

Stage 1	
<i>(a) Finance Committee</i> 22 nd Meeting, 2006 25 th Meeting, 2006 27 th Meeting, 2006 29 th Meeting, 2006 scrutiny of report in private Report (23 November 2006)	19 September 2006, col 3917 31 October 2006, cols 3967 - 3984 7 November 2006, 4077 - 4094 21 November 2006
<i>(b) Communities Committee (lead)</i> 24 th Meeting, 2006 27 th Meeting, 2006 28 th Meeting, 2005 29 th Meeting, 2006 30 th Meeting, 2006 31 st Meeting, 2006 33 rd Meeting, 2006 35 th Meeting, 2006 scrutiny of Stage 1 report, in private 1 st Meeting, 2007 scrutiny of Stage 1 report, in private 2 nd Report 2007 (16 January 2007)	20 September 2006, col 3933 24 October 2006, cols 4143 - 4166 1 November 2006, cols 4171 - 4220 8 November 2006, cols 4222 - 4271 15 November 2006, cols 4276 - 4314 22 November 2006, cols 4315 - 4350 6 December 2006, cols 4392 - 4424 19 December 2006 10 January 2007 <i>SP Paper 718</i>
<i>(c) Subordinate Legislation Committee</i> 25 th Meeting, 2006 27 th Meeting, 2006	19 September 2006, cols 1982 - 1986 3 October 2006, col 2006
<i>(d) Consideration by the Parliament</i>	24 January 2007, cols 31327 – 31375

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Stage 2	
<i>Communities Committee</i> 5 th Meeting, 2007	13 February 2007, cols 4557 – 4602
Stage 3	
<i>Consideration by the Parliament</i>	14 February 2007, cols 28843 - 28918
Royal Assent	19 April 2007

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