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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 400**

**LOCAL GOVERNMENT  
EDUCATION**

**The Provision of School Lunches (Disapplication of  
the Requirement to Charge) (Scotland) Order 2008**

*Made - - - - 28th November 2008*

*Coming into force - - 1st December 2008*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 57(1) and (3) of the Local Government in Scotland Act 2003(1) (“the 2003 Act”) and all other powers enabling them to do so.

In accordance with section 57(6) of the 2003 Act, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

The Scottish Ministers, with reference to section 57(2)(c) of the 2003 Act, consider that section 53(2) of the Education (Scotland) Act 1980(2) prevents local authorities from exercising their power under section 20(1) of the 2003 Act.

**Citation and commencement**

1. This Order may be cited as the Provision of School Lunches (Disapplication of the Requirement to Charge) (Scotland) Order 2008 and comes into force on 1st December 2008.

**Interpretation**

2. In this Order—

“the 1980 Act” means the Education (Scotland) Act 1980;

“the 2003 Act” means the Local Government in Scotland Act 2003;

“Primary 1”, “Primary 2” and “Primary 3” mean respectively the first, second or third yearly stage of primary education;

“primary education” has the same meaning as in section 135(2)(a) of the 1980 Act;

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(1) 2003 asp 1.

(2) 1980 c. 44. Section 53 was amended by: the Social Security Act 1986 (c. 50), section 77; the Immigration and Asylum Act, section 169(1), Schedule 14, paragraph 74; the Education (School Meals) (Scotland) Act 2003 (asp 18), section 1; and the Schools (Health Promotion and Nutrition) (Scotland) Act 2007 (asp 15), section 6. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act .

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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“pupil” and “school” have the same meanings as in section 135(1) of the 1980 Act;  
“school lunch” has the same meaning as in section 53(5)(3) of the 1980 Act; and  
“council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(4).

### **Disapplication of section 53(2) of the 1980 Act**

3. Section 53(2) of the 1980 Act (duty to charge for school lunches) is disappplied in relation to councils to the extent necessary to enable them to provide, in pursuance of section 20(1) of the 2003 Act, school lunches free of charge to all pupils in Primary 1, Primary 2 and Primary 3 of primary education within schools under their management.

### **Revocation**

4. The Provision of School Lunches (Disapplication of the Requirement to Charge) (Scotland) Order 2007(5) is revoked.

St Andrew’s House,  
Edinburgh  
28th November 2008

*ADAM INGRAM*  
Authorised to sign by the Scottish Ministers

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(3) Section 53(5) was inserted by section 6(5) of the [Schools \(Health Promotion and Nutrition\) \(Scotland\) Act 2007 \(2007 asp 15\)](#).  
(4) 1994 c. 39.  
(5) S.S.I. 2007/451.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 57 of the Local Government in Scotland Act 2003 (“the 2003 Act”) provides, among other things, for the Scottish Ministers by order to amend, repeal, revoke or disapply any legislation that they consider prevents local authorities from exercising their power under section 20(1) of the 2003 Act to do anything which the authority considers is likely to promote or improve the well-being of its area, people in that area or both of these. The section 20(1) power is known as the local authorities’ ‘power to advance well-being’. The powers of the Scottish Ministers under section 57 may be exercised in relation to all local authorities, a class or classes of local authority, or a particular local authority or local authorities.

Section 53 (provision of school meals) of the Education (Scotland) Act 1980 (“the 1980 Act”) enables education authorities (councils) to provide food and drink to pupils and makes provision concerning the circumstances in which school lunches are provided free of charge.

Article 3 of this Order disapplies section 53(2) of the 1980 Act in relation to pupils in Primary 1, 2 and 3 in schools managed by councils. Therefore councils may, using their power to advance well-being under section 20 of the 2003 Act, provide school lunches, free of charge, to all pupils in Primary 1, 2 and 3 of their schools, rather than just to those pupils who are entitled to school lunches free of charge under section 53 of the 1980 Act.

Article 4 revokes the Provision of School Lunches (Disapplication of the Requirement to Charge) (Scotland) Order 2007. That order was similar to this, but only applied to 5 councils and ceased to have effect on 30th June 2008.