

# **SCHOOLS (HEALTH PROMOTION AND NUTRITION) (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***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

*These notes relate to the Schools (Health Promotion and Nutrition) (Scotland) Act 2007 (asp 15) which received Royal Assent on 19 April 2007*

- 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.