

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

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

EXPLANATORY NOTES

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 “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).

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- (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,

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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 “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
 - (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;

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- (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.*