POLICY NOTE

THE NUTRITIONAL REQUIREMENTS FOR FOOD AND DRINK IN SCHOOLS (SCOTLAND) AMENDMENT REGULATIONS 2023

SSI 2023/267

The above instrument was made in exercise of the powers conferred by sections 56A, 56B and 56D of the Education (Scotland) Act 1980. The instrument is subject to negative procedure.

Summary Box

Insert one or two sentences to explain what the purpose of the instrument is.

The purpose of this SSI is to:

- revoke regulations 2(3) and (4) and
- amend the formula currently set out at paragraph 5 of schedule 3

of the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020.

Policy Objectives

This instrument amends the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020 ("2020 Regulations") which have been in force since April 2021 and which place duties on education authorities and the managers of grant aided schools in Scotland.

The 2020 Regulations set out requirements in relation to certain types or items of food and drink that can, cannot or must be provided in schools. The requirements in the 2020 Regulations are based on scientific evidence and dietary advice and designed to ensure that children and young people are provided with an appropriate amount of energy and nutrients as part of their school day to support healthy growth and development.

In December 2021 an amendment was made to the 2020 Regulations (the Nutritional Requirements for Food and Drink in Schools (Scotland) Amendment Regulations 2021) setting out the limited circumstances in which an education authority or grant aided school can provide food and drink which does not comply with the 2020 Regulations. Namely, where they could not procure a product that complied with a requirement in the 2020 Regulations as a direct result of local or national disruptions to the supply of food which were outwith their control, despite their best efforts.

This amendment applied to food and drink provided under schedule 1, which applies to primary schools and schedule 2, which applies to secondary schools. It also applied to schedule 3, which sets the nutrient standards for meals provided in primary and secondary schools and in school hostels.

This amendment was intended to be a temporary response to specific circumstances and Ministers intended to revoke it as soon as circumstances allow.

Following recent engagement with key stakeholders, Ministers decided it was now appropriate to revoke the amendment.

In addition, this SSI aims to correct a calculation formula set out at paragraph 5 of schedule 3 of the 2020 Regulations to provide clarity for new nutritional analysis software providers who are offering their products to local authority school catering providers.

The updated calculation formula is designed to ensure the nutrient requirement for school meals is calculated as intended by the 2020 Regulations. Without this update, there is a risk that new nutritional analysis software providers could offer packages to local authority school caterers which do not meet the standards required by schedule 3 of the 2020 Regulations. Engagement with existing providers has confirmed that their software is working as intended and the issue highlighted above does not apply to them as they had already edited the formula to what had been originally intended.

EU Alignment Consideration
EU alignment would not be engaged as we already have the discretion to do what the SSI is seeking to do regardless of being in the EU or not.

Consultation
Consultation with ASSIST (local authority catering representatives), Convention of Scottish Local Authorities (CoSLA), Association of Directors of Education in Scotland (ADES) and Scotland Excel (public procurement service) has taken place.

Impact Assessments
All relevant impact assessments were undertaken when the 2020 Regulations were being developed. This SSI is designed to preserve the intention of those Regulations and it was considered unnecesary to carry out fresh impact assessments.

Financial Effects
A Business and Regulatory Impact Assessment (BRIA) is deemed not to be necessary for this SSI as it does not significantly impact on the legislative duties in the 2020 Regulations. A BRIA was carried out when the 2020 Regulations were being developed and this SSI is designed to preserve the intention of those Regulations.

Scottish Government
Learning Directorate

19 September 2023