

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

Proposed Healthy Eating in Schools (Wales) Measure 2009

[AS PASSED]

A MEASURE of the National Assembly for Wales to make provision about the promotion of healthy eating and drinking by pupils in maintained schools in Wales; to provide for the regulation of food and drink provided to pupils in maintained schools by the governing bodies of those schools or local authorities; and for connected purposes.

1 Promoting healthy eating and drinking by pupils in maintained schools

- (1) A local authority must take action to promote healthy eating and drinking by registered pupils of maintained schools in its area.
- (2) The governing body of a maintained school must take action to promote healthy eating and drinking by registered pupils of the school.
- (3) In discharging these duties a local authority and a governing body must have regard to guidance given from time to time by the Welsh Ministers –
 - (a) on what constitutes healthy eating and drinking;
 - (b) on appropriate action to promote healthy eating and drinking;
 - (c) on how principles of sustainable development are to apply in relation to the promotion of healthy eating and drinking.

2 Governors' reports

In section 30 of the 2002 Act (governors' reports (Wales) and other information), after subsection (2) insert –

“(2A) The governing body of a maintained school in Wales must include in a governors' report information about the action taken to promote healthy eating and drinking by pupils of the school.”.

3 Functions of the Chief Inspector of Education and Training in Wales

- (1) The Education Act 2005 (c.18) is amended as follows.
- (2) In section 20(1) (functions of chief inspector), after paragraph (f), insert –

“(g) actions taken at maintained schools to promote healthy eating and drinking.”.

- (3) In section 31(1) (interpretation of chapter 3), after the definition of “the Chief Inspector” insert –

“maintained school” means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school or a pupil referral unit in Wales.”.

4 Requirements for food and drink provided on school premises etc

- (1) The Welsh Ministers may by regulations prescribe requirements which, subject to such exceptions as may be provided for by or under the regulations, are to be complied with in connection with –

- (a) food or drink provided on the premises of any maintained school; or
- (b) food or drink provided at a place other than school premises by a local authority or the governing body of a maintained school to any registered pupil at the school.

- (2) Regulations under this section may in particular –

- (a) specify nutritional standards, or other nutritional requirements, which are to be complied with;
- (b) require that specified descriptions of food or drink are not to be provided;
- (c) specify maximum amounts of –
 - (i) fat;
 - (ii) saturated fat;
 - (iii) salt; and
 - (iv) sugar

which the food or drink can contain.

- (3) Requirements prescribed by virtue of subsection (1)(a) do not apply to food or drink brought on to the premises of a maintained school where the food or drink is brought on to those premises by any person for that person’s own consumption.

- (4) When a local authority or the governing body of a maintained school provides food or drink –

- (a) to anyone on the premises of the school; or
- (b) to any registered pupil at the school at a place other than school premises;

that authority or, as the case may be, that governing body must secure that any applicable provisions of the regulations are complied with.

- (5) Subsection (4) applies whether the food or drink is provided in pursuance of any statutory requirement or otherwise.
- (6) When –
- (a) food or drink is provided on the premises of a maintained school;
 - (b) the provision is by a person (“X”) other than the authority or the governing body of the school; and
 - (c) X uses or occupies the whole or a part of the premises in circumstances related to a use or occupation agreement made (whether by X or any other person) with the authority or the governing body;
- that authority or, as the case may be, that governing body must secure that any applicable provisions of the regulations are complied with.
- (7) A “use or occupation agreement”, in relation to the premises of a school, is an agreement or other arrangement relating to the use or occupation of the whole or any part of the premises.
- (8) Without prejudice to the generality of section 10, regulations under this section may prescribe –
- (a) different requirements in relation to different classes or descriptions of school as specified in the regulations;
 - (b) different requirements in connection with food or drink provided by or to different classes or descriptions of person as specified in the regulations;
 - (c) requirements which apply during different periods of the day as specified in the regulations.
- (9) A “place other than school premises” means a place other than the premises of any maintained school.
- (10) References in this section to food or drink provided by a local authority or the governing body of a school include references to food or drink provided in pursuance of an agreement or other arrangement made by such an authority or body for the provision of food or drink.
- (11) Before making regulations under this section the Welsh Ministers must –
- (a) take steps to ascertain the views of pupils as to the provisions proposed to be made by the regulations; and
 - (b) consult such other persons as they consider appropriate.

5 Drinking water in schools

- (1) A local authority must ensure that a supply of drinking water is available, free of charge, on the premises of any maintained school.

- (2) When deciding how best to discharge its duty under subsection (1) a local authority must have regard to any guidance issued by the Welsh Ministers under this subsection.

6 Promotion of meals in schools and other educational establishments

- (1) A local authority or governing body of a maintained school which provides school meals or milk under section 512 of the 1996 Act must –
 - (a) encourage the take-up of school meals and milk; and
 - (b) take reasonable steps to ensure that every pupil who is entitled to receive school lunches and milk free of charge under section 512ZB of the 1996 Act does receive them.

7 Protection of the identity of pupils receiving free school lunches or milk

After section 512ZB of the 1996 Act insert –

"512ZC Protection of identity of pupils receiving free school lunches or milk

- (1) This section applies when a school lunch or milk is provided for a pupil in Wales free of charge by a local education authority under section 512ZB or by the governing body of a maintained school by virtue of section 512A.
- (2) A local education authority or governing body in Wales must take reasonable steps to ensure that the pupil cannot be identified as a pupil who receives a school lunch or milk free of charge by any person other than an authorised person.
- (3) A local education authority or governing body in Wales must take reasonable steps to ensure that none of the persons mentioned in subsection (4) discloses to any person other than an authorised person the fact that the pupil receives school lunches or milk free of charge.
- (4) The persons referred to in subsection (3) are –
 - (a) a teacher in the school;
 - (b) any person (other than a teacher) who is –
 - (i) employed (whether by the local education authority or by another person) in the school, or
 - (ii) working there on an unpaid basis; and
 - (c) any other person employed by the local education authority or governing body.
- (5) In subsections (2) and (3), "authorised person" means –
 - (a) a parent of the pupil; and
 - (b) a person mentioned in subsection (4) who is authorised by the local education authority or governing body to have access to information about a pupil's entitlement to receive school lunches free of charge.
- (6) When deciding what steps to take in order to comply with their duties under subsections (2) and (3) a local education authority or governing body

in Wales must have regard to any guidance issued by the Welsh Ministers under this section.”.

8 Consequential amendments

- (1) In section 114A of the 1998 Act (requirements for food and drink provided on school premises etc)-
 - (a) in subsection (1), paragraph (a), after “local education authority” insert “in England”;
 - (b) in subsection (1), paragraph (b), after “local education authority” insert “in England”.
- (2) Section 512 of the 1996 Act (LEA functions concerning the provision of meals, etc) is amended as follows-
 - (a) in subsection (4), after “local education authority” insert “ in England”;
 - (b) after subsection (4), insert –

“(4A) Subject to section 7(5) of the Healthy Eating in Schools (Wales) Measure 2009, any school lunches provided by a local education authority in Wales pursuant to subsection (3) may take such form as the authority think fit.”.

9 Saving

Any regulations made under section 114A of the 1998 Act by the Assembly constituted by the Government of Wales Act 1998 or by the Welsh Ministers or which have effect as if made under that section by virtue of section 86(3) of the Education and Inspections Act 2006 and which have effect immediately before the commencement of this section have effect in relation to Wales after that commencement as if made by the Welsh Ministers under section 4 of this Measure.

10 Orders and regulations

- (1) Any power to make an order or regulations conferred by this Measure is exercisable by statutory instrument.
- (2) Any power of the Welsh Ministers to make regulations under this Measure includes power –
 - (a) to make provision generally or in relation to specific cases;
 - (b) to make different provision for different cases; and
 - (c) to make such incidental, supplementary, saving or transitional provision as the Welsh Ministers think fit.
- (3) Any power of the Welsh Ministers to make regulations or orders under this Measure (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to all those cases subject to exceptions or in relation to any particular case or class of case.

- (4) Subject to subsection (5) any statutory instrument containing an order or regulations made under this Measure is subject to annulment in pursuance of a resolution of the Assembly.
- (5) Subsection (4) does not apply to a statutory instrument containing an order which makes provision only under section 12(3).

11 Interpretation

In this Measure –

“the 1996 Act” (“*Deddf 1996*”) means the Education Act 1996 (c.56);

“the 1998 Act” (“*Deddf 1998*”) means the School Standards and Framework Act 1998 (c.31);

“the Assembly” (“*y Cynulliad*”) means the National Assembly for Wales;

“the Chief Inspector” (“*y Prif Arolygydd*”) means the Chief Inspector of Education and Training in Wales;

“local authority” (“*awdurdod lleol*”) means a local education authority in Wales;

“maintained school” (“*ysgol a gynhelir*”) means a community, foundation or voluntary school, a community or foundation special school, a maintained nursery school or a pupil referral unit in Wales.

12 Short title and commencement

- (1) This Measure may be referred to as the Healthy Eating in Schools (Wales) Measure 2009.
- (2) This section comes into force on the day on which this Measure is approved by Her Majesty in Council.
- (3) The remaining provisions of this Measure come into force on such day or days as the Welsh Ministers may appoint by order.
- (4) This Measure is to be included in the list of Education Acts set out in section 578 of the Education Act 1996.