

EXPLANATORY MEMORANDUM TO THE HEALTHY EATING IN SCHOOLS (NUTRITIONAL STANDARDS AND REQUIREMENTS) (WALES) REGULATIONS 2013

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Healthy Eating in Schools (Nutritional Standards and Requirements) (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Carwyn Jones

First Minister of Wales

8 August 2013

1. Description

- 1.1** These regulations set out requirements for food and drink provided on the premises of maintained schools and 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; and define the nutrient content of school lunches.
- 1.2** These regulations revoke the Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1** There are no matters of special interest.

3. Legislative Background

- 3.1** The Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001 currently sets out the standards for food and drink provided in schools maintained by local authorities in Wales ('maintained schools'). However, these regulations specify minimum compulsory standards in relation to school lunches only.
- 3.2** The Healthy Eating in Schools (Wales) Measure 2009 ("the Measure") makes provision (amongst other matters) about the promotion of healthy eating and drinking by pupils in maintained schools and provides for the regulation of food and drink provided to pupils in maintained schools.
- 3.3** The Healthy Eating in Schools (Wales) Measure 2009 (Commencement) Order 2013 brought the Welsh Minister's regulation making power under section 4 of the Measure into force on 8 August 2013. This Order will bring the remaining provisions in the Measure into force on 2 September 2013.
- 3.4** Section 4 of the Measure gives the Welsh Ministers the power to make regulations prescribing requirements about food or drink provided on the premises of any maintained school and 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. The exercise of the power is subject to subsection (11) which places a duty on the Welsh Ministers to ascertain the views of pupils about the provisions proposed to be made by the regulations and consult such other persons as they consider appropriate.
- 3.5** Section 10(4) of the Measure provides that regulations made under the Measure are subject to annulment in pursuance of a resolution of the National Assembly for Wales ('the negative procedure').

The Technical Standards and Regulations Directive 98/34/EC

3.6 The Technical Standards and Regulations Directive 98/34/EC (“the Directive”) is intended to help avoid the creation of new technical barriers to trade within the Community. Article 8(1) of the Directive requires the Welsh Ministers to submit regulations which introduce rules to regulate food products to the EU Commission and then observe a standstill period of three months before laying such regulations before the National Assembly for Wales. This period is intended to give Member States and the EU Commission the opportunity to raise concerns about potential barriers to trade. The Welsh Ministers notified the regulations, in draft, to the EU Commission during February 2013. The standstill period ended on 7 May 2013. No comments or detailed opinions were received from the EU Commission.

4. Purpose and intended effect of the legislation

4.1 There have been long-standing concerns about the numbers of children who are overweight or obese, and the impact this has on health and well-being, especially in relation to reducing health inequalities. Poor diet is a major contributing factor. To address these concerns along with the aim of preventing children becoming obese adults the Welsh Government published, in 2008, its *Appetite for Life Action Plan* (‘the AFL plan’), to improve the nutritional standards of food and drink provided in maintained schools in Wales. The AFL plan recommends stringent food and nutritional standards for food and drink provided by local authorities and governing bodies of maintained schools to children during the school day. The Welsh Government has encouraged all local authorities and maintained schools to work towards implementing these recommended standards supported by grant funding.

4.2 Local authorities and many schools have worked hard over the years to improve the quality of food and drink provided in schools, in line with the Appetite for Life Action Plan recommended standards. However, in the absence of legislation, there has been a resistance from some to making changes. As a consequence, not all schools are currently achieving the recommended standards. The new regulations will require compliance to improve the quality of food and drink.

Intended effect of the legislation

4.3 These regulations will apply to local authorities and governing bodies that provide food and drink to pupils of maintained schools (including maintained nursery schools) whether the pupils are on the school premises or not and to other persons on school premises. The aim is to achieve a whole school approach towards healthy eating and to encourage healthy attitudes to food and drink at an early age to

prevent children from becoming obese adults. It is also the intention that this long-term strategy will improve opportunities and quality of life for young people living in Wales and reduce health inequalities arising from poor diet. Extending provision to other persons on school premises will promote a consistent approach towards healthy eating in schools.

- 4.4** These regulations set out the types of food and drink that can, and cannot, be provided during the school day; and define the nutrient content of school lunches. The regulations will prohibit the provision of confectionery and salty, fatty and sugary snacks; increase the availability of fruit and vegetables; improve the quality of meat products served; and allow only healthy drinks options to be provided.
- 4.5** These Regulations will not apply to food or drink provided:
- at any school social event or school recreational event to mark any religious or cultural occasion;
 - at fund-raising events;
 - as rewards for achievement, good behaviour or effort;
 - for use in teaching food preparation and cookery skills provided that any food so prepared is not provided to pupils as part of a school breakfast or school lunch;
 - by a person for that persons' own consumption on school premises (e.g. brought in snacks, packed lunch);
 - as part of any medically prescribed diet
- 4.6** These Regulations will repeal the Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001.

5. Consultation

- 5.1 A consultation was undertaken. Details are included in the RIA below.

6. Regulatory Impact Assessment

- 6.1 See Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

The development of the provisions of these regulations has been undertaken with due regard to the United Nations Convention on the Rights of the Child, in accordance with the Rights of Children and Young Persons (Wales) Measure 2011.

The Regulations have no impact on the statutory duties of the Welsh Ministers under sections 77 – 79 of the Government of Wales Act 2006.

Options

1. There are two options available: do nothing or introduce regulations. These options are explored in detail below.

Option 1 - do nothing

2. If the regulations are not made the Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001 ('2001 regulations') will remain in force.

Benefits

3. There are no benefits to be gained from not introducing the new Regulations

Adverse consequences

4. The 2001 Regulations are not sufficient to ensure an effective provision of healthier school lunches or to prevent pupils from having access in school to foods high in salt, fat and sugar at other times of the school day; the recommended Appetite for Life standards are more challenging than the standards set out in the 2001 Regulations.
5. Evidence gathered to date shows that good progress has been made towards meeting the Appetite for Life standards in primary schools. Progress in secondary schools has been slower with some areas making more progress than others. Therefore, without legislation, there is a risk that not all schools, particularly some secondary schools, would fully implement the standards currently recommended in Appetite for Life, the Welsh Government's agenda for improving the nutritional standards of the food and drink provided in schools in Wales.
6. To fail to take any action to improve healthy eating in schools would impact adversely on the health and wellbeing of our children and young people; is likely to adversely affect their concentration levels and their ability to learn and is also likely to result in increased costs for the NHS over time, due to diet-related health problems such as obesity, cancer, coronary heart disease and diabetes.
7. The responses to the recent consultation on the proposed regulations were broadly supportive of these proposals and some even felt that the

regulations should go further. Therefore, to do nothing would not be acceptable to many key stakeholders and members of the public.

8. It is not considered that retaining the status quo would outweigh the benefits of introducing more stringent statutory standards. The objective of introducing regulations is to improve pupils' food choices, with the aim of; increasing the amount of fruit and vegetables they eat, and other foods containing essential nutrients like iron and calcium; and reducing the amount of fat, saturated fat, sugar and salt in the foods they eat.

Costs

9. There is a potential saving of £2.4m per annum if the Regulations are not introduced. Funding has been made available since 2008-09 to support all authorities to work with their schools to progress towards the Appetite for Life standards. The Appetite for Life grant funding of £2.4m for 2013-14 has transferred to local authorities' Revenue Support Grant and is now part of the local authority settlement from April 2013 onwards. This funding is intended to enable local authorities to continue to deliver improved food and drink in schools, and to comply with the new Regulations. However, without regulation it is likely that progress made to date would be eroded, and the grant funding would have been spent to no purpose.
10. There are potential costs in the form of rising health costs for the NHS in Wales, due to increased numbers of overweight or obese children and young people.
11. There is evidence from across many countries that increasing rates of obesity are an international problem and not particular to the UK or to Wales. Findings from the Welsh Health Survey suggest that rates of obesity in Wales are high and may be increasing. ¹
12. The 2012 Health Survey report found that 34% of children (2-15) are overweight or obese, including 19% obese. These figures are based on self reported BMI data. ²
13. The recently established Child Measure Programme reported that during academic year 2011-12 28% of reception age children were overweight or obese, including 12% who were obese. ³
14. As much as one fifth of the adult population is estimated to be obese (defined as BMI>30). Those with severe or morbid obesity (BMI>35) are at increased risk of obesity related morbidity. The prevalence of severe obesity (BMI>35) in Wales is estimated to be 6%; the

¹ Welsh Health Specialised Services Committee Bariatric Surgery Review Report to Management Group, 2012.

² <http://wales.gov.uk/topics/statistics/theme/health/health-survey/results/?lang=en>

³ <http://www.wales.nhs.uk/sitesplus/888/news/27963>

prevalence of BM>40 is just under 2%. 4

15. Estimates for the UK suggest that the end consequences of obesity cost the health economy £5 billion per year, and that this is forecast on the present trajectory to double by 2050. 5

Option 2 - Introduce Regulations

Benefits

16. Regulations will require compliance by LAs and governing bodies of maintained schools to ensure that children and young people in schools are offered a healthy balance of food throughout the entire school day.
17. These regulations are the most effective way to improve healthy eating, and to embed a whole school approach towards a long-term strategy for improving opportunities and quality of life for young people living in Wales.
18. More nutritious school food could help to reduce the risk of diet-related health problems such as obesity, cancer, coronary heart disease and diabetes – diseases which cost the NHS significantly annually.
19. The regulations are based on the Appetite for Life guidelines, which schools have been working towards since 2008 and receiving grant funding for. Therefore, these are not new requirements. Schools should already be meeting the nutritional standards, so there will be no additional bureaucratic burdens as part of introducing Regulations.
20. As the grant funding has moved to the RSG there will be no burdens on staff in administering claims; if legislation is introduced there will be less administration than in previous years.

Adverse consequences

21. There are no adverse consequences to implementing the Regulations.

Costs

22. Implementing the Regulations may have cost implications for local authorities, school meal providers and the drinks industry. However, it is arguable that these will be negligible as there is evidence⁶ that

⁴ Welsh Health Specialised Services Committee Bariatric Surgery Review Report to Management Group, 2012.

⁵ NCEPOD report Too Lean A Service, 2012 (National Confidential Inquiry into Patient Outcome and Death)

⁶ Based on evidence provided via the nutritional analysis software, Saffron; the system which ensures school menus are compliant with Appetite for Life recommended standards. The Welsh Local Government Association (WLGA) assist local authorities (LAs) by providing the licenses for Saffron to maintained schools and those schools that have opted out of local authority catering, to enable them to check their food provision is compliant. Figures from a snapshot of the system from May 2013 shows that all primary schools that are local authority

schools in Wales have made steady progress towards compliance with the Appetite for Life recommended nutritional standards already.

Consultation

23. A public consultation on the proposed regulations was held for twelve weeks from 31 January – 25 April 2013. Two versions of the consultation document were made available; a Children and Young People’s version and an Adult version. The questions in both versions differed slightly; therefore, these were summarised and analysed separately. Details of the consultation and the summary of responses will be published on the Welsh Governments consultation pages in due course.
24. A total of 936 responses were received; 85 respondents completed the adult consultation response form, and 851 respondents completed the children and young people’s consultation response form. The majority of adult respondents were broadly supportive of the provisions whilst respondents that completed the children and young people’s response form were more divided in their views.
25. The Welsh Government have considered the responses and made a few minor amendments to the proposed regulations. In addition, two key changes have been made to the breakfast food categories in Schedule 1: ‘fruit’ has changed to ‘fruit and vegetables’ ‘bread’ has changed to ‘bread and toppings’. The amendments will allow local authority and schools to offer a wider variety of food to pupils during breakfast.

Competition Assessment

26. The making of these Regulations does have an impact on business; school meal providers and the drinks industry. However, the actual impact on these businesses will be negligible as the requirements within the regulations are not new; LAs and schools have been working towards the Appetite for Life standards since 2008 with the use of Welsh Government grant funding. As referred to above, it is apparent that the majority of schools are now compliant with the nutritional standards so the impact has in fact already been made with regards to these businesses.

maintained in the 22 local authorities in Wales have evidenced compliance to the Appetite for Life nutrient and food based standards over the previous academic year. The standards are more challenging for secondary schools however, local authorities are making a lot of progress towards compliance.

Monitoring and post implementation review

27. The Measure makes provision for the promotion of healthy eating in schools to be monitored:
 - Section 2 requires governing bodies of maintained schools to include in their annual report information about the action taken to promote healthy eating by pupils at the school; and
 - Section 3 places a duty on the Chief Inspector of Education and Training in Wales to keep the Welsh Ministers informed about the action taken by maintained schools to promote healthy eating and drinking.
28. An example, of the action taken by schools to promote healthy eating and drinking could include the steps taken to implement, and comply with, these regulations.
29. Statutory guidance will be issued on the regulations and other provisions within the Measure. This will outline in further detail the duties of governing bodies and Chief Inspector of Education and Training in Wales.
30. These Regulations will be kept under review to ensure that the intent and policy requirements remain.

Summary

31. These regulations are required to ensure that children and young people in maintained schools are offered a healthy balance of food and drink throughout the entire school day and to repeal the Education (Nutritional Standards for School Lunches) (Wales) Regulations 2001.