

SCHOOLS (HEALTH PROMOTION AND NUTRITION) (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Schools (Health Promotion and Nutrition) (Scotland) Bill introduced in the Scottish Parliament on 8 September 2006:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 68–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill has two main themes: health promotion in schools (sections 1 and 2) and the provision of food and drink in schools (sections 3 to 8).

5. Sections 1 and 2 make provision imposing duties on the Scottish Ministers, education authorities¹ and managers of grant aided schools to endeavour to ensure that public schools and grant-aided schools are health-promoting.

6. Section 3 inserts new sections into the Education (Scotland) Act 1980 (the “1980 Act”) which place duties on education authorities and managers of grant aided schools to ensure that all food and drink provided in schools, unless specifically exempt by the Bill, complies with nutritional requirements, specified by regulations. Section 5 makes provision for education authorities to consider the nutritional requirements in situations where they enter into an arrangement with regard to a pupil’s education in an independent school.

7. Through the amendment of section 53 of the 1980 Act and the addition of new sub-sections to that section, the Bill also amends the powers of education authorities to provide food and drink to pupils other than at lunch time.

8. Specific duties are also placed on education authorities to require the promotion of school lunches and the protection of the identity of those receiving free school lunches.

¹ Each local authority in Scotland has been the education authority for its area since the re-organisation of local government under the Local Government etc. (Scotland) Act 1994. “Education authority” is the term used in education legislation relating to Scotland and is defined in section 135 of the 1980 Act as a council constituted under section 2 of that 1994 Act.

Health promotion

Section 1: Duties in relation to promotion of health

9. Section 1 inserts a new section 2A into the Standards in Scotland's Schools etc. Act 2000 (the "2000 Act") which places a duty on Scottish Ministers and education authorities to endeavour to ensure that all public schools and hostels provided and maintained by education authorities for pupils attending those schools are health-promoting. The new section 2A also places the same duty on managers of grant-aided schools in relation to a school under their management. Subsection (4) of the new section 2A states that, in discharging their duties, education authorities and managers of grant-aided schools must have regard to any guidance about health promotion in schools which the Scottish Ministers may issue from time to time.

10. Subsection (5) of the new section 2A defines what constitutes a health-promoting school.

Section 2: Annual statement: account of health promotion

11. Section 5 of the 2000 Act places a duty on education authorities to prepare and publish an annual statement of improvement objectives. This is a detailed plan setting out objectives in respect of each of the national priorities for education which are set down in an order made under section 4 of the 2000 Act. The statement must be drawn up on an annual basis and sets out the improvement which the education authority is aiming to deliver. The statement then forms the basis for the school development plans prepared under section 6 of the 2000 Act by each school managed by the education authority.

12. Section 2 of the Bill makes amendments to section 5 of the 2000 Act to ensure that strategies for ensuring that schools are health-promoting form part of the statement of improvement objectives. Paragraph (a) amends subsection (1) of section 5 to make clear that the annual statement is to be about the duty to ensure schools are health-promoting as well as being about the duty to secure improvement in education. Paragraph (b) amends subsection (2) of section 5 to make it clear that the statement must include an account of what the education authority plans to do in order to fulfil its duty in relation to health promotion.

13. As a result of these amendments to section 5 of the 2000 Act, all school development plans prepared under section 6 of that Act will have to take account of the plans in relation to health promotion.

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) and

therefore it includes nurseries operated by education authorities for the provision of pre-school education.

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. It follows therefore that food and drink provided outwith a school or hostel (for example at home or in 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.

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
- 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 Bill) does not apply to independent schools and regulations under that section cannot be made in respect of independent schools. So where a 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 Bill 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 eligibility.

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 such as 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. 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.

General

Section 10: Short title and commencement

36. Subsection (2) of this section contains power to make commencement orders to bring the Act into effect.

37. Subsection (4) provides the Scottish Ministers with power to make consequential, transitional and transitory provisions as part of a commencement order.

EFFECT OF SECTIONS 5 AND 6 OF THE BILL 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 Bill 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 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).
- (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,

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 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;
 - (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.*

FINANCIAL MEMORANDUM

INTRODUCTION

38. This document relates to the Schools (Health Promotion and Nutrition) (Scotland) Bill introduced in the Scottish Parliament on 8 September 2006. It has been prepared by the Scottish Executive, to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

39. Strategies to improve the health of children and young people have been particularly well received and are being implemented across Scotland. *Hungry for Success*, implemented in 2003, introduced national, nutrient defined standards for school meals in Scotland and a strategy for delivering the standards and improving the uptake of meals. Schools in Scotland are already working towards becoming health-promoting schools. The Schools (Health Promotion and Nutrition) (Scotland) Bill will build on this momentum and ensure that practice is brought up to a uniformly high standard across the country.

40. The Bill places a duty on Scottish Ministers, education authorities and managers of grant-aided schools to endeavour to ensure that every public and grant-aided school is health-promoting; places a duty on education authorities and managers of grant-aided schools to ensure that food and drinks provided by them in public schools, grant-aided schools and school hostels comply with nutritional requirements, specified by regulations; gives education authorities the power to provide pupils with nutritious food and drinks, either free of charge or with a charge, at

any time of the day; places a duty on education authorities to promote the uptake of school lunches and free school lunches; and places a duty on education authorities to protect the identity of pupils receiving free school lunches.

41. It is expected that all local authorities will be meeting the *Hungry for Success* recommendations for nutrient standards for school lunches, promoting the uptake of school meals and eliminating stigma for those in receipt of free school meals by the time that the Bill is implemented. The target date for the implementation of *Hungry for Success* in primary and special schools was December 2004, and December 2006 is the target date for implementation in secondary schools. Her Majesty's Inspectorate of Education (HMIE) published an evaluation of the implementation of *Hungry for Success*² in October 2005, which reported that the majority of primary and special schools are making good progress towards meeting the nutrient standards. In addition, all schools are expected to be health-promoting schools by 2007.

42. Given that local authorities should be complying with the recommendations of *Hungry for Success* and schools should have become, or will be close to becoming, health-promoting schools by the time the Bill commences, we do not expect the Bill to impose any significant additional costs. The Bill does extend nutritional requirements to **all** food and drinks in local authority primary, secondary and special schools - not just lunches. It also extends the requirements to local authority nurseries, school hostels and grant-aided schools. Extending the requirements in these areas however is not expected to have any material effect on costs currently incurred.

43. However, local authorities may be at different stages of implementation and the Bill may give rise to additional costs as some local authorities may be obliged to meet with the requirements of *Hungry for Success* sooner than would otherwise have been the case. Cost estimates associated with the implementation of *Hungry for Success* were calculated at the time of its publication (2003)³. Annex A provides updated cost estimates of the implementation and ongoing costs of *Hungry for Success* based on recent financial information.

44. A meeting to consider the financial implications of the Bill took place in Edinburgh on 29 June 2006. In attendance were representatives from the Scottish Executive, Cosla, local authorities, the food industry, catering providers, HMIE, the Scottish Parent Teacher Council, the Scottish School Board Association, the Educational Institute of Scotland and the Scottish Health Promoting Schools Unit. Contributions from this meeting have helped inform the best estimates used throughout the financial memorandum.

COSTS ON THE SCOTTISH EXECUTIVE

45. No additional SEED (Scottish Executive Education Department) or SEHD (Scottish Executive Health Department) staff costs are anticipated as a result of these measures. SEED officials are already in place to implement policy on nutritional requirements for food and drinks in schools and health-promoting schools. There may, however, be modest costs associated with

² Source: *Monitoring the Implementation of Hungry for Success: A Whole School Approach to School Meals in Scotland*. Available at: www.hmie.gov.uk/documents/publication/hmiemihs.html

³ www.scotland.gov.uk/Publications/2003/02/16273/17583

the administration of a short-term expert working group to set nutritional requirements for all food and drinks provided in schools.

46. The Bill places a duty on the managers of grant-aided schools to meet the nutrient requirements in grant-aided schools. As a result of this duty, there may be some additional costs on the Scottish Executive as grant-aided schools adapt to the nutritional requirements but these are expected to be marginal, as food in these schools is expected to be currently meeting the requirements.

COSTS ON LOCAL AUTHORITIES

Health-promoting schools

47. It is not anticipated that there will be any significant additional costs associated with a school being health-promoting, as a result of the Bill.

Nutritional requirements for food and drink in schools

48. The Bill places a duty on education authorities to meet the nutritional requirements in nurseries and there may be some additional expense for authorities as they adapt to this duty. However, all pre-school providers are already expected to meet the nutritional requirements set out in *Nutritional Guidance for Early Years: Food choices for Children aged 1-5 in Early Education and Childcare Settings* which was issued in January 2006. In addition, given that the majority of children who attend local authority nurseries and pre-school centres do so on a part-time basis and do not receive lunch, it is expected that any additional cost for nurseries of meeting the statutory standards should be negligible.

49. The Bill places a duty on education authorities to meet the nutrient requirements in school hostels. There are nine school hostels in Scotland operated by six educational authorities, which provide accommodation during the week for approximately 500 pupils. School hostels provide their residents with breakfast, drinks and snacks, and an evening meal. The mid-day meal is either taken in the hostel or in the school canteen. There may be some additional costs for authorities as they adapt to the nutritional requirements in school hostels but these are expected to be marginal, as food in hostels is expected to be currently meeting the requirements.

50. The Bill places a duty on education authorities to consider whether independent schools are meeting the nutrient requirements where a child's education is funded by a local authority. There are approximately 1,132 pupils attending 33 independent special schools funded by local authorities in Scotland. There may be some additional costs for authorities as the independent schools may require additional funding to meet the nutritional requirements but these are expected to be marginal as food in most if not all of these schools is reckoned to be currently meeting the relevant nutrient requirements.

51. It is expected that overall there will be no material loss of earnings from vending machines and tuck shops as a result of the Bill. However, evidence suggests that the impact of changing products to healthier options may vary across local authorities. One catering provider has reported losses as a result of removing certain products, whereas a local authority has not experienced any loss of earnings as healthier options were phased in to vending machines and

tuck shops. Recent research⁴ shows that the earnings associated with commercial activities in schools, such as product advertisement and sales of food and drink in vending machines and tuck shops, are a small proportion of school budgets and therefore any decrease in revenue should not have a significant impact.

School meals and snacks

52. The Bill gives local authorities the power to provide food and drink, either free or paid for, at times of the day other than lunchtime. The costs of this power will fall on local authorities should they choose to use it; many already provide breakfast clubs and healthy snacks at break time. Below are some indicative costs of providing breakfast, fruit and milk. The actual cost of using this power will depend on to what extent these items are provided free of charge. Table 1 provides the estimated average start-up, unit and total costs of providing breakfast, milk and fruit to all primary and secondary pupils.

53. **Breakfast:** A number of schools (and local authority pre-schools) already provide breakfast clubs. The 2006 school meals survey reports that 31 per cent of primary schools, 45 per cent of secondary and 36 per cent of special schools have breakfast club provision. Two local authorities have 100 per cent provision in either primary or secondary.

54. Breakfast clubs are provided in a variety of ways, involve a number of funding sources, and are either free or paid for. Staff costs are likely to be the main component of any breakfast club's expenditure. Costs associated with breakfast clubs are likely to vary according to the way in which the service is delivered and the numbers of pupils who attend. Some breakfast clubs are run by volunteers (often parents) who supervise the children.

55. There is little evidence available on the typical costs of providing a breakfast club in Scotland. Information provided by local authorities suggests that the cost per breakfast club is in the region of £1,000 to £4,000 per year. One local authority reports that the cost per breakfast is £1.26 (42p of which is the cost of food), whereas another states the cost per breakfast to be in the region of £1.00.

56. **Fruit:** The average unit cost of providing a portion of fruit in schools is unknown. However, the funding provided by the Scottish Executive for local authorities to provide free fruit 3 times a week to pupils in P1 and P2 is reported to have been (largely) sufficient to cover costs in most local authorities⁵. Therefore, the estimated unit cost per portion of fruit is 17p. Note that we are unable to separate the start-up costs and therefore we may be overestimating the average cost of supplying fruit in schools.

57. **Milk:** The average cost to local authorities of providing milk in 2004-05 was estimated at 9p per 250ml serving, with costs varying slightly by school sector. This is the cost of purchasing milk and does not include operational costs such as refrigeration and storage. The total cost of providing milk will depend on the size of portion, the time of day milk is provided (serving milk

⁴ Source: *Investigating the Extent of Commercial Activities in Schools*, National Foundation for Educational Research. Available at: www.scotland.gov.uk/Publications/2005/09/29103216/32167

⁵ Source: *Evaluation of Free Fruit in Schools Initiative*.

Available at: www.scotland.gov.uk/Publications/2005/12/21110322/03222

at break time when all children are present is likely to lead to higher uptake) and the number of pupils taking milk. An additional consideration is the level of EU milk subsidy⁶ that is received by local authorities.

Table 1: Total estimated costs on local authorities should they use the additional powers

	Start-up Costs	Unit Costs	Total Costs⁷
Free Breakfast	Unknown	£1.00 - £1.26 per breakfast	£70m - £88m per year for primary
			£52m - £66m per year for secondary
Free Fruit	N/A	£0.17 per portion ⁸	£12m per year for primary
			£9m per year for secondary
Free Milk	Minimal	£0.09 per serving ⁹	£6m per year for primary
			£4.5m per year for secondary

Promotion of school lunches

58. No additional costs are anticipated for local authorities as a result of this duty. There may be ongoing costs incurred by local authorities as a result of implementing the *Hungry for Success* recommendations on the promotion of school lunches, these are discussed in paragraphs 67 to 74 of Annex A.

Protection of identity of pupils receiving free school lunches

59. No additional costs are anticipated for local authorities as a result of this duty. There may be ongoing costs incurred by local authorities as a result of implementing the *Hungry for Success* recommendations on the elimination of stigma associated with receiving free school lunches, these are discussed in paragraphs 75 to 79 of Annex A.

Additional costs for remote/rural/island communities

60. School hostels are predominantly located in island and rural authorities. These authorities will have to meet any additional costs of ensuring the nutritional requirements are met for food and drinks served in hostels. Each local authority has a different number of pupils attending

⁶ The EU milk subsidy provides a subsidy for the provision of milk to 5-11 year olds. The maximum subsidised amount per child is 250ml per day. The EU payment for semi-skimmed milk is projected to fall by 5p per 250ml by 2007. It is not clear whether the UK intends to maintain the top up that it currently pays at the same level or to adjust it to compensate for the falling EU subsidy over the coming years.

⁷ These estimates represent the total cost to local authorities for providing free breakfasts, fruit and milk to all pupils. As we do not know the income and expenditure of the current provision of breakfast clubs, fruit and milk by local authorities, we are unable to identify the net additional cost for extending current provision to cover all pupils.

⁸ Start-up costs for providing fruit are included in unit costs.

⁹ The unit costs of milk do not include operational costs such as storing and serving milk.

school hostels. There will therefore be minimal additional costs for the relevant rural authorities in meeting the nutritional requirements for school hostels.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

61. Some food and drinks manufacturers and catering providers may receive reduced revenues in the short term as a result of vending machines stocking products that meet the nutritional requirements. However, one food manufacturer has commented that healthy products are potentially viable and therefore there is not expected to be a substantial loss of revenue associated with the Bill.

62. Some food manufacturers have reacted positively to *Hungry for Success* and see it as a good business opportunity. They have already developed and are in the process of developing new products that meet the nutritional requirements for vending machines as well as catering services. The costs associated with product development (such as factory trials and redesigning packaging) have been absorbed by some manufacturers and have not resulted in higher prices for school catering services. It is not anticipated that the Bill will have any significant financial implications for food manufacturers as changes to nutritional requirements can be built into the product development cycle.

ANNEX A – COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THE HUNGRY FOR SUCCESS RECOMMENDATIONS

63. The Bill builds on the work that local authorities are already doing to ensure that schools are working towards improving the health of Scotland's young people. All local authority primary, secondary and special schools are expected to be implementing *Hungry for Success* recommendations by December 2006. However, each local authority may be at a different stage of implementation and the Bill may give rise to additional costs as some local authorities may be obliged to meet with the requirements of *Hungry for Success* sooner than would otherwise have been the case. The following information relates to the estimated costs associated with implementing *Hungry for Success*, providing updated figures for the estimates that were provided at the time of the publication of *Hungry for Success*. Table 2 shows the estimated costs for implementing *Hungry for Success* in all publicly funded primary, secondary and special schools.

64. Meeting nutritional requirements for school lunches: There is no definitive data on what a typical school meal that meets the nutritional requirements costs. However, an estimate of this cost can be obtained by using the change in the cost per primary school meal in 2004-05, given that the majority of primary schools now meet the nutritional requirements. The average cost per meal in primary schools increased by 12p in real terms between 2003-04 and 2004-05. Assuming that this increase will be the same for secondary and special schools, the total additional cost for school meals in all primary, secondary and special schools complying with the nutritional requirements is estimated at £6.9m per year, at current levels of uptake.

65. It has not been possible to identify the proportion of the increase in cost per meal that relates to start-up costs. Some of the recent increase in expenditure on school meals will include one-off costs such as staff training, new equipment and menu redesign that will not contribute to permanently increased annual costs. Therefore, it is important to recognise that 12p per meal is likely to overestimate the ongoing annual cost of meeting the nutritional requirements. In addition, over time, it is possible that the cost of sourcing healthier products will fall and the cost per meal in each local authority will not be significantly higher than it would otherwise have been.

66. *Hungry for Success* recommends that free, fresh and chilled drinking water should be available in the dining hall and children should have access to drinking water throughout the day. The 2006 school meals survey reports that 92 per cent of primary schools, 80 per cent of secondary schools and 97 per cent of special schools are currently providing drinking water. It is not known how much it costs to provide water; however, the cost of providing free drinking water is included in the recent increase in the cost per meal of 12p, as discussed above.

67. Promoting uptake: There are a variety of activities that local authorities and schools are currently undertaking to promote the uptake of school meals, ranging from refurbishing dining areas and displaying children's art to providing incentives for children to take healthy meals via discounted prices and prizes. Consequently, costs associated with promoting uptake also vary. For example, promotional activities such as menu displays and posters about new meal offers etc. will represent minimal cost to local authorities. Whereas providing price incentives for children to choose healthier options may be more costly. One local authority currently promotes

meals by fixing the price of a meal in primary schools at £1. The cost of producing a meal at primary in this authority is £1.50 and therefore the local authority provides a subsidy of 50p per meal.

68. Increased uptake: It is difficult to accurately predict the rate by which future uptake of meals is likely to increase. The overall rate of uptake in primary schools increased by 0.7 per cent between 2004-05 and 2005-06 to 47.3 per cent. This halted the recent trend of falling uptake and may be attributed to the changes in the content of meals to meet the nutritional requirements and the promotional activities by schools and local authorities. The rate of increase varied significantly across local authorities, with the largest increase being 10.2 per cent.

69. It may be possible that uptake will increase further in future years but it is not possible to accurately forecast the rate of increase. The table below shows the estimated annual additional cost of school meal consumption in all primary and secondary schools for a range of possible increases in uptake. The figures are shown in 2004-05 prices.

Increase in uptake	0.7%	2%	5%	10%
Additional Cost	£0.68m per year	£1.95m per year	£4.9m per year	£9.7m per year

70. These figures are based on the cost per meal figure remaining the same as uptake increases, but this may not be the case. The cost of additional meals due to increased uptake should only include the cost of ingredients, not extra staff and infrastructure. Also, there may be scope for surplus meals to be absorbed by increased uptake and therefore not result in any increase in total expenditure (i.e. meals prepared by caterers which were not actually consumed); though the extent of this surplus is likely to vary across local authorities and in some cases may be minimal. Caterers may also be able to take advantage of bulk buying offers due to more meals being produced, which will reduce the cost per meal.

71. Capacity constraints may mean that local authorities might have to change how they operate their lunch service to cope with demand, for example by having two sittings for lunch. Staff costs may increase as a result.

72. Declining school rolls may permit increased uptake without a proportionate increase in the number of meals consumed, which may avoid potential capacity constraints and moderate the increase in total expenditure.

73. The total cost of increased uptake will also vary depending on who takes meals. If uptake increases mainly amongst pupils entitled to free school meals then the costs to local authorities alone will increase but if the increased uptake is amongst pupils who pay for their meals, then the level of income received from meals will also increase.

74. Overall, it is very difficult to estimate not only the possible rise in future uptake but also what impact this will have on the cost per meal.

75. Eliminating stigma: There are various methods currently used to achieve the anonymised distribution of free school meals. The 2006 school meals survey shows that 71 per cent of secondary schools and 40 per cent of primary schools already have an anonymised system of some description in place. One form of anonymised system is the use of a swipe card that enables cashless catering provision.

76. The cost of implementing a cashless catering system varies with the size of school and there will be start-up costs and ongoing operational costs. Typical start-up costs are in the region of £20,000 per school (based on a roll of 800 pupils – the national average for secondary schools) plus an additional £18,000 that covers items that can be shared across all the schools in a local authority. The annual operational costs are in the region of £3,000 per school plus £2,800 per local authority. The operational costs will vary with the number of cards that schools will have to produce for each year's intake and the number of cards that have to be re-issued due to loss or theft. The operational costs also vary depending on the cost of reproducing cards.

77. It may be that cashless catering systems are not appropriate for all schools. More secondary schools than primary schools are likely to install cashless catering systems. Currently, approximately half of all local authorities have cashless systems in 100 per cent of their secondary schools, with several others having cashless systems in place in a number of secondary schools but not all. Few local authorities have cashless systems in a large proportion of their primary estate. Glasgow City Council is the only authority to have implemented cashless catering in a significant number of primary schools. It is estimated that if the remaining local authorities were to introduce cashless systems in their secondary schools it would cost about £2.3m in start up costs and £344,000 in ongoing annual costs.

78. Alternative methods for achieving anonymised distribution of free school meals may be a lot less expensive than cashless catering systems. Examples include pre-payment for meals by weekly envelopes sent home to all parents and all pupils being provided with identical tickets to claim meals. These methods should not pose any increased cost to schools or local authorities.

79. For catering providers, there are likely to be efficiencies associated with using cashless catering systems, e.g. reduced queuing time, no cash handling, meals being paid for in advance and automatic reports, and potentially higher revenues due to increased uptake that will help counteract any increased costs of meeting nutritional requirements.

TABLE 2: TOTAL ESTIMATED COSTS OF IMPLEMENTING THE *HUNGRY FOR SUCCESS* RECOMMENDATIONS¹⁰

	Start-up Costs	Unit Costs	Total Costs¹¹
Meeting nutrient standards for school meals (Paragraphs 64 -66)	N/A	12p per meal ¹²	£6.9m per year
Promoting school meals (Paragraph 67)	Minimal	£0 - £0.50 per meal	£0 - £29m per year
Increased uptake (Paragraphs 68-74)	Minimal	£1.75 per primary meal and £1.76 per secondary meal	£0.68m - £9.7m per year for 0.7% - 10% increase in uptake
Eliminating Stigma (Paragraphs 75-79)	£20,000 per secondary school plus £18,000 per local authority	£3,000 per secondary school plus £2,800 per local authority	£8.2m start up and £1.2m ongoing costs for all secondary

¹⁰ All costs are presented in 2004-05 prices.

¹¹ Total costs have been calculated for all meals consumed in all local authorities in 2004-05. The total costs column should not be summed to estimate the total cost of *Hungry for Success*. The total costs do not account for money currently being spent by local authorities on the provision of *Hungry for Success*.

¹² This figure is based on the average increase in the cost per primary school meal between 2003-04 and 2004-05, in real terms. This figure includes start-up costs of meeting the nutrient standards. This figure includes the cost of providing drinking water.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

80. On 8 September 2006, the Minister for Education and Young People (Peter Peacock MSP) made the following statement:

“In my view, the provisions of the Schools (Health Promotion and Nutrition (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

81. On 6 September 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Schools (Health Promotion and Nutrition (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the Schools (Health Promotion and Nutrition) (Scotland) Bill (SP Bill 68) as introduced in the Scottish Parliament on 8 September 2006

SCHOOLS (HEALTH PROMOTION AND NUTRITION) (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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