

Consideration of subordinate legislation by the Education, Children and Young People Committee

1. This note provides information about the [Nutritional Requirements for Food and Drink in Schools \(Scotland\) Amendment Regulations 2021](#).
2. These regulations may also be referred to by their Scottish Statutory Instrument number which is SSI 2021/481.
3. These regulations are being considered under the negative procedure.

Timeline for considering these regulations

4. These regulations were laid before the Scottish Parliament on **20 December 2021**
5. They were considered by the Delegated Powers and Law Reform Committee (DPLRC) at its meeting on [18 January 2022](#). The Committee had no comments and the minutes from the meeting are [available here](#).
6. They will be considered by the Education, Children and Young People Committee at its meeting on **26 January 2022**.
7. If the committee wishes to produce a report on these regulations, it must do so by **14 February 2022**.

Is there a requirement to hear evidence from the Cabinet Secretary on these regulations?

8. No.

Purpose of the regulations

9. Purpose of the instrument. The aim is to set out the circumstances, relating to supply chain disruption in the provision of food and drink, in which an education authority or grant aided school can provide food and drink which does not comply with the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020.
10. A copy of the Scottish Government's Policy Note is included in [Annexe A](#).
11. A letter from the Learning Directorate of the Scottish Government regarding the regulations is provided in [Annexe B](#).

Consultation

12. The policy note states that the Scottish Government has consulted with ASSIST (local authority catering representatives), Convention of Scottish Local Authorities (CoSLA) and Association of Directors of Education in Scotland (ADES).

Impact Assessment

13. The policy note states all relevant impact assessments were considered and deemed unnecessary for this SSI.

Financial Impact

14. The policy note states that 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 Regs due to the very limited circumstances in which the provision would apply.

Procedure

15. These regulations are being considered by Education, Children and Young People Committee under the negative procedure.
16. This means that the regulations become law immediately, i.e. as soon as they have been laid before the Scottish Parliament. These regulations can, however, be annulled up to 40 days after this has happened.
17. Rule 10.4 of the Scottish Parliament's standing orders states that any Member of the Scottish Parliament can lodge a Parliamentary motion within the 40-day time period seeking an annulment of regulations.
18. All regulations considered under the negative procedure are scrutinised by both the Delegated Powers and Law Reform Committee (on various technical grounds) and by a lead committee (on policy grounds).
19. If a motion to annul is tabled, the lead committee will consider this and then hold a vote. If the motion is disagreed to (i.e. MSPs believe the regulations are OK as they are), then the regulations will remain in their current form.
20. If, however, the majority of MSPs on the lead committee agrees the regulations should be annulled, then a further motion is lodged by the Parliamentary Bureau. This is then voted on by the whole Parliament.
21. If that is also agreed to (i.e. the majority of MSPs agree with it), then Scottish Ministers must revoke (withdraw) the instrument. It will no longer be law and the Scottish Government must lay a new set of regulations before the Scottish Parliament.

22. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence.
23. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.
24. The Committee is invited to consider the instrument.

Jane Davidson
Committee Assistant
Education, Children and Young People Committee
12 January 2022

POLICY NOTE

The Nutritional Requirements for Food and Drink in Schools (Scotland) Amendment Regulations 2021

SSI 2021/481

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

Purpose of the instrument. The aim is to set out the circumstances, relating to supply chain disruption in the provision of food and drink, in which an education authority or grant aided school can provide food and drink which does not comply with 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.

The SSI amends the 2020 Regulations to set 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. Those circumstances are where they cannot procure a product that complies with a requirement in the 2020 Regulations as a direct result of local or national disruptions to the supply of food which are outwith their control, despite their best efforts.

The overarching aim of school food and drink policy continues to be the provision of balanced and nutritious food, drink and meals to children and young people to support their healthy growth and development.

Where education authorities or managers of grant aided schools cannot, despite best endeavours, procure food and drink which complies with a standard set out in

the 2020 Regulations, the amendment made by this SSI can be relied on. However, food or drink which is not compliant with the 2020 Regulations should only be provided where all other action has failed and the expectation, as set out in the statutory guidance that accompanies this SSI, is that such provision should be for as short a time as necessary with the aim of returning to full compliance as quickly as possible.

The statutory guidance which accompanies the SSI is designed to provide clarity of expectation for education authorities and grant aided schools in these circumstances. It sets out the steps they are expected to take and the considerations that should be thought about as they take action to address the effects on their ability to provide food, drink and meals under the circumstances set out in the SSI.

The 2020 Regulations are designed to keep salt, sugar, fat and saturated fats in food and drink that is provided to pupils to an appropriate level. As such, the overarching expectation when dealing with unavailability of usual items or equivalent alternatives is to find a substitute which is as close as possible to the standards set out in the 2020 Regulations.

When using a substitute product that does not comply with the requirements of the 2020 Regulations, it is expected that consideration will be given to whether menu redesign could compensate for the loss of a particular nutrient, for example by using beans to add more fibre to a meal which uses bread with a lower fibre content.

In the circumstances where no close alternatives are available, the expectation is that education authorities and managers of grant aided schools will choose the best possible provision to maintain as balanced and nutritious overall provision as possible.

This amendment will apply to food and drink provided under schedule 1, which applies to primary schools and schedule 2, which applies to secondary schools.

It will also apply to schedule 3, which sets the nutrient standards for meals provided in primary and secondary schools and in school hostels.

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

Consultation

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

Impact Assessments

All relevant impact assessments were considered and deemed unnecessary for this SSI as it does not significantly impact on the legislative duties in the 2020 Regs due to the very limited circumstances in which the provision would apply. All relevant

impact assessments were undertaken when the 2020 Regs were being developed and this SSI is designed to preserve the intention of those Regulations.

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 Regs due to the very limited circumstances in which the provision would apply. A BRIA was carried out when the 2020 Regs were being developed and this SSI is designed to preserve the intention of those Regulations.

Scottish Government
Learning Directorate

20 December 2021

Annexe B

Learning Directorate

Improvement, Attainment and Wellbeing Division

The Presiding Officer

c/o The Chamber Desk

Room G10

Scottish Parliament

Edinburgh

EH99 1SP

20 December 2021

Dear Presiding Officer

**THE NUTRITIONAL REQUIREMENTS FOR FOOD AND DRINK IN SCHOOLS
(SCOTLAND) AMENDMENT REGULATIONS 2021**

The Nutritional Requirements for Food and Drink in Schools (Scotland) Amendment Regulations 2021, SSI 2021/481 was made by the Scottish Ministers under sections 56A, 56B and 56D of the Education (Scotland) Act 1980 on 20 December 2021. It is being laid before the Scottish Parliament today, 20 December 2021 and comes into force on 21 December 2021

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) of that Act, this letter explains why.

All education authorities and managers of grant-aided schools are required to comply with the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020 ("the 2020 Regulations). On April 2021, the 2020 Regulations came into effect replacing the previous 2008 Regulations of the same name. The 2020 Regulations specify the food and drink standards and lunch nutrient standards for schools and are therefore very specific about what food and drink can and cannot be provided.

Education authorities have raised concerns at being unable to procure certain food and drinks as a result of current disruption to the school food supply chain and the effect this would have on their ability to meet their duties under the 2020 Regulations. For example, the 2020 Regulations prescribe a minimum fibre content for bread and in the event that only bread with a lower fibre content could be provided to pupils, that would result in a breach of the statutory requirements.

The SSI amends the 2020 Regulations to make provision for the circumstances where an education authority or the managers of a grant aided school, despite their best endeavours, are unable to provide food or drink that complies with a requirement in the 2020 Regulations because of local or national disruptions to the supply of food that are outwith their control. In such circumstances, food or drink that is not compliant with the 2020 Regulations may be provided.

Education authorities are already experiencing difficulties in procuring compliant products and as such the risk of them failing to comply with one or more of the requirements in the 2020 Regulations is significant. Ministers consider that it is necessary to take proactive steps to address and manage this risk and that, consequently, this SSI should be brought into force as soon as possible rather than waiting for the 28-day period to elapse.

Statutory guidance, published today, has been developed to assist education authorities and managers of grant aided schools with the implementation of the provision created by the Nutritional Requirements for Food and Drink in Schools (Scotland) Amendment Regulations 2021.

Alison Taylor
Deputy Director