

POLICY NOTE

THE EDUCATION (DISAPPLICATION OF SECTION 53B) (SCOTLAND) REGULATIONS 2014

SSI 2014/318

1. The above instrument is made by the Scottish Ministers in exercise of the powers conferred by section 53B(1A) of the Education (Scotland) Act 1980 (the 1980 Act) and all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objectives

2. The instrument forms part of an implementation package for the Children and Young People (Scotland) Act 2014 (the 2014 Act) comprising these Regulations, the Children and Young People (Scotland) Act 2014 (Commencement No. 4) Order 2014 and the Children and Young People (Scotland) Act 2014 (Ancillary Provision) (No.2) Order 2014. The package of instruments will come into force on 5 January 2015.

3. The purpose of this instrument is to set out the circumstances in which the obligations in section 53B (duty to protect the identity of pupils receiving free school lunches) of the 1980 Act are disapplied.

Background

4. On 7 January 2014, the First Minister made a commitment to extend the entitlement to free school lunches to children in Primary 1 to Primary 3 (P1-P3) from January 2015. In February, at stage 3 of the Children and Young People (Scotland) Bill, non-government amendments to section 53 of the 1980 Act were lodged. The purpose of these amendments was to allow more pupils in Scotland to have access to a free school lunch and ensure the delivery of the entitlement from January 2015. The amendments, which were supported by Scottish Ministers and passed on 19 February, introduced:

- a regulation making power (new section 53(3)(c) of the 1980 Act) to allow Scottish Ministers to prescribe the description of pupils (whether that be by reference to their yearly stage of education or such other description) to whom local authorities are obliged to provide free school lunches; and
- a power which will allow education authorities to provide a free school lunch to pupils for whom they are responsible within schools under their management who satisfy such conditions as the authority think fit (section 53(2B)(a) and (2C) of the 1980 Act).

5. The 2014 Act received Royal Assent on 27 March 2014.

6. Section 53B of the 1980 Act requires education authorities to take reasonable steps to ensure that pupils cannot be identified by any person other than an authorised person as a pupil who receives a school lunch free of charge. This was to ensure that pupils entitled to free school lunches by virtue of the circumstances set out in section 53(3)(a) and (b) (ie those where either the child or their parent are in receipt of certain benefits) could do so without fear of stigmatization.

7. When commenced on 5 January 2015, the provisions in section 53 of the 1980 Act as amended by the 2014 Act will have the effect of creating new groups of pupils who are

eligible for a free school lunch such as those pupils in Primary 1 to 3 where the education authority exercise their power under section 53(2B)(a) and (2C) of the 1980 Act. It is envisaged that this power will also be exercised in other ways thereby creating new groups of pupils eligible for free school lunches such as those who are in any particular individual school or those who are in a particular area of an education authority.

8. It is considered that where a pupil is eligible for a free school lunch by virtue of them (or their parent) being in receipt of certain welfare benefits (ie under section 53(3)(a) or (b) of the 1980 Act) but is *also* eligible because they are a pupil in one (or perhaps a combination) of the newly created groups then the issue of stigmatisation does not arise; this is because all pupils in that group will be entitled to a free school lunch rather than just a selected few who otherwise would stand out as being in financial need of a free school lunch.

9. In these limited circumstances, it is considered that the duty is an unnecessary one because if all pupils within that group are entitled to a free school lunch no one would know whether a pupil was entitled to a free school lunch due to them belonging to that group or due to their (or their parent's) financial situation. It is the scenario where a pupil is entitled to a free school lunch by virtue of their (or their parent's) financial situation that potentially results in stigma being experienced by a pupil as they are singled out as being 'poor' and in financial need of a free school lunch and may therefore be discriminated against by their peers.

10. Therefore, this instrument sets out the circumstances when the duty does not apply. It will not apply as regards a pupil who is eligible because he or she (or their parent are in receipt of certain welfare benefits) where that pupil would *also* be eligible for a free school lunch because they are a pupil in a newly created group such as:

- a yearly stage of primary or secondary education, for example P1;
- a particular school;
- an area of the education authority.

11. The duty to protect identity set out in section 53B of the 1980 Act will continue to apply where a pupil is eligible for free school lunches by virtue of them (or their parent) being in receipt of a recognised welfare benefit set out in section 53(3)(a) or (b), but is not a member of one of the newly created groups noted above, although attends a school where such a group exists.

Consultation

12. Consultation with stakeholders including Convention of Scottish Local Authorities (CoSLA), Association of Directors of Education Scotland (ADES) and the Information Commissioners Office took place in August 2014 with responses being supportive. Further engagement with Education Authorities and other interested parties is planned prior to these Regulations coming into force.

Impacts

13. The results of any equality impact assessment will be published on the Scottish Government website.

Financial effects

14. This Regulation, will have no direct financial effect as it is removing a burden on education authorities.

**Scottish Government
Learning Directorate
November 2014**