

## Final Business and Regulatory Impact Assessment

### **Title of Proposal: The Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2020**

#### **Purpose and intended effect**

The purpose of this Business and Regulatory Impact Assessment is to set out the potential impacts of the replacement for 'The Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008'. These Regulations set out what food and drink can, can't and must be provided in education authority and grant maintained schools in Scotland.

#### **Policy Objectives**

The Schools (Health Promotion and Nutrition) (Scotland) Act 2007 created powers for Scottish Ministers to specify nutritional requirements in regulation which apply to provision of food and drink in education authority and grant maintained schools in Scotland.

Currently those nutritional requirements are set out in 'the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008' which are based on the accepted scientific evidence and dietary advice at the time they were drafted. This evidence and advice has since changed and the Scottish Dietary Goals have been updated as a result.

The policy objective for replacing the current regulations is to make necessary changes to ensure food and drink served in schools is more closely aligned with the Scottish Dietary Goals and therefore continues to be based on current scientific evidence and dietary advice.

#### **Consultation**

The Deputy First Minister and Cabinet Secretary for Education and Skills initially set up a Technical Working Group in November 2016 to review the existing regulations, which have been in place since 2008. The group presented their recommendations for replacing the 2008 regulations to the Scottish Government at the end of 2017. The Technical Working Group contained representation from Education Scotland, Food Standards Scotland and NHS Health Scotland.

The Scottish Government commissioned the Children's parliament to undertake a consultation project with children and young people in Scotland, the results from which were used to inform the review of school food regulations.

In December 2017, the Deputy First Minister gave approval for those recommendations to be consulted on.

We held stakeholder engagement workshops in early 2018 in Edinburgh, Glasgow and Aberdeen with local authority catering and education representatives.

We consulted about drinks standards in primary and secondary schools; the provision of red and red processed meat, secondary school provision and energy tolerance.

In the case of primary school drinks standards, all workshops noted that a number of local authorities were moving to providing water, plain lower-fat milk and calcium enriched milk alternatives. Whilst this was seen as acceptable for primary schools, the workshops were less keen on this being implemented in secondary. The general consensus was that it would be difficult to achieve and would see young people buying lunch outside school. The preferred option was to have those drinks, plus lower-fat flavored milks; hot chocolate; tea and coffee; and sugar-free soft drinks to allow more choice.

In the case of providing red and red processed meat, all workshops opted for serving red or red processed meat twice per week outside of the lunch services. The other option would have seen red processed meat served once per week, with the option of serving unprocessed red meat on the second occasion each week. NB this applies only to secondary, red and red processed meat is not permitted outside of lunch in primary.

Further discussion revealed that local authorities would prefer to be given a fixed quantity of red and red processed meat to incorporate into menus as they saw fit. This would allow more flexibility than a frequency based model.

In respect to energy tolerance for analysed school lunches being built into software analysis packages, all workshops were in agreement with the proposals. All workshops were in agreement with the proposals on secondary school provision due to the differing habits of buying food across the day, rather than a 'sit-in lunch' like in primary school.

In spring 2018, we wrote to a wide range of stakeholders to notify them that we were undertaking a public consultation and encouraging them to participate in the consultation and share their views with us. Stakeholders included catering suppliers; teaching unions; parent groups; education authorities and schools; organisations in the food and drink industry; healthy lifestyle groups and children's groups, such as the Children's Parliament and Young Scot.

We carried out the public consultation on our consultation hub between 4 June and 29 August 2018. We received 1,359 responses to this consultation - 1,280 from individuals and 79 from organisations.

A majority of respondents supported all the proposed recommendations, either outright or in principle but with some caveats. 84% expressed support for increasing access to fruit and vegetables (with 0.5% disagreeing); 84% expressed support for reducing the amount of sugar being made available (with the other 16% disagreeing); and 53% expressing supporting for limiting the amount of red and red processed meat that can be served (with 3.9% disagreeing). There was also a consultation question about the arrangements for providing food for secondary pupils, 71% expressed support for those proposals (with 4.5% disagreeing).

Many of the comments received in the consultation related to the way in which food and drink is served in schools rather than the content. While the school food regulations focus on the content specifically, there is a key role for guidance to support how that content is delivered. As such the existing guidance – Healthy eating in schools, a guide to implementing the nutritional requirements for food and drink in schools (Scotland) regulations 2008 – will be updated to reflect the changes being made to the current regulations and will take into account the comments offered during the public consultation.

Deputy First Minister met with Quality Meat Scotland and National Farmers Union Scotland who accepted the explanation of the reasoning behind the limitation being introduced for red and red processed meat and whose primary concerns were allayed in relation to the definitions of red and red processed meat.

Officials met with representatives of Scotland Excel (who 30 of the 32 local authorities use to procure food and drink for schools) who raised no significant concerns in relation to the changes to the school food and drink regulations.

Discussions have taken place between officials and representatives of several drinks manufacturers in relation to the reintroduction of soft drinks to secondary schools. No significant concerns were raised.

Discussions have also taken place between officials and Food and Drink Federation Scotland to discuss the detail of the 2020 school food and drink regulations. Issues raised have been discussed and addressed.

Discussions with APSE and ASSIST did not identify any significant issues beyond those already commented on above.

Discussions with COSLA highlighted concern over the implementation timetable which has now been extended by six months to address those concerns. Concerns raised by COSLA in relation to potential increases in costs are ongoing, especially in light of the impacts on catering services arising from COVID-19. We will continue to work with COSLA on this issue.

## **Options**

### **Post consultation analysis**

The four themes used in the public consultation were:

- increase fruit and vegetable provision,
- reduce sugar in school food and drink,
- set a limit for red meat and processed red meat and,
- amend secondary school food and drink provision across the school day

The responses to the first four questions, focused on one each of the four themes above, were analysed to ascertain whether they agreed or disagreed with the proposal. Where a response did not specify agree or disagree but the comments indicated agree or disagree they were categorised as such. Responses that did not answer the question (instead providing general comment) or it was not clear whether they agreed or disagreed were categorised as inconclusive.

The fifth question asked about what further action could be taken to improve the content of school food and drink provision.

Where specific elements of the proposals set out in the first four questions were commented on, a multiple key word search was undertaken across the responses to all five questions and each associated response considered individually in order to provide percentages within the report for each of the specific common elements commented on. For example where respondents agreed with the theme two proposal to reduce sugar in the school day but felt that this should be achieved by removing flavoured milk and not by removing fruit juice.

The multiple key word search was done across all five questions to ensure that every comment on the specific elements highlighted in the first four questions were included regardless of where that comment was made. For example a comment about flavoured milk would be included in the percentages reported regardless of whether it was made in response to question four (reducing sugar) or question five (further improvement).

### **Main options**

Following the analysis of the consultation responses two main options were identified:

One – do nothing, accepting that the commitments given in the manifesto to undertake a review of the school food regulations would not be delivered and that the approach taken to school food provision would cease to be based on up to date scientific evidence and health advice. This approach would have had the effect of not taking account of the consultation response.

Two – replace the 2008 school food regulations to deliver the manifesto commitments given and bring school food and drink provision closer to the Scottish Dietary Goals, taking account of current scientific evidence and dietary advice. This reflected the response to the consultation as a whole.

Option two was chosen as the option to pursue. Option one would not be in the best interests of the health and wellbeing of our children and the original regulations had set the precedent of being based on up to date scientific evidence and dietary advice. To ignore changes to the advice on which they were based would undermine the credibility and appropriateness of the school food regulations and could have adverse effects on the health and wellbeing of school aged children choosing food and drink at school which would draw criticism from public health experts.

### **Sub options**

Within the chosen option two, 8 sub options were considered in relation to specific elements of the school food regulations which were raised during the public consultation.

Option 1 and 2 covered fruit juice and smoothies along with fruit and vegetable juice combinations. Option 1 recommended following the Working Group's advice and removing fruit juices, to align school meals with the Scottish Dietary Goals. Option 2 proposed allowing juices to remain but taking other steps to mitigate the effects of allowing juices high in sugar to remain on the menu by working with local authorities and school caterers.

Options 3 and 4 covered flavoured milk, hot chocolate and drinking yogurts. Option 3 allowed for no added sugar versions of those drinks to be provided, whilst option 4 proposed removing them.

Options 5 and 6 covered sugar-free carbonated drinks. Option 5 proposed allowing them to be made available in secondary schools, if local authorities chose to do so, whilst option 6 proposed continuing to ban them from schools.

Finally, options 7 and 8 covered the serving of red and red processed meat. Option 7 proposed following the scientific advice, linking excessive consumption of red and red processed meat with an increased risk of colorectal cancer in later life, and setting a maximum amount that could be made available throughout the school day. Option 8 proposed setting no limit but offering robust guidance to local authorities about the inclusion of red and red processed meat as options for school meals.

Options 1, 3, 5 and 7 were chosen to be pursued.

## **Benefits**

### **Fruit and vegetable juices**

The benefits of option 1, in removing fruit juices high in sugar, would be a positive step both towards bringing the content of school lunches into line with the Scottish Dietary Goals, and it would send a strong message about us being serious in our commitment to halving childhood obesity by 2030.

If we allowed fruit juices to remain on school menus, as per option 2, this would have heavily impacted against our policy of aiming to bring school lunches into line with the Scottish Dietary Goals as one carton of fruit juice alone exceeds the recommended amount of sugar for a primary school lunch. This option would also have raised significant questions about our commitment to tackling childhood obesity.

### **Flavoured milk, hot chocolate and drinking yogurts**

Among the benefits of option 3, allowing no added sugar milk based drinks, would be that pupils would be more likely to stay onsite at lunchtime, rather than going home or to local shops. Caterers noted that such drinks were popular among pupils and they would provide an additional choice over water and plain lower fat milk.

At present limited sugar version of such drinks are also allowed, so still allowing no added sugar means we are also reducing access to sugar without removing lunch time favourites.

If we were to pursue option 4, and remove no added sugar milk based drinks, we feel this would significantly reduce choice for both caterers and pupils. An excessively limited choice in school may risk pupils leaving the school premises at lunch time where they would have access to full sugar drinks. It was felt there would be few benefits associated with this option.

### **Sugar-free carbonated drinks**

These are currently banned in schools. Option 5 allows for their reintroduction to secondary schools only. We felt that allowing their re-introduction following the removal of fruit juices and smoothies would help to attract secondary pupils to stay onsite for lunch, rather than go to local shops. Local authorities have the discretion themselves as to whether they wish to provide such drinks and the Scottish Government has pledged to issue guidance to schools on this matter.

Option 6 carries more disadvantages. If choice is too limited, secondary pupils are more likely to go to local shops to buy lunch where they would have access to full sugar and energy drinks. Energy drinks in particular have been associated with reduced concentration and increased disruptive behaviour in the classroom.

### **Red and red processed meats**

Option 7 recognises the links between excessive consumption of red and red processed meat, and colorectal cancer in later life, and shows that the Scottish Government is willing to act to tackle those health risks in light of the emergence of this evidence after the current regulations had come into effect in 2008.

By following option 8, and not setting a maximum amount for red and red processed meat, we would continue to leave school children potentially exposed to a known health risk. This would certainly have resulted in increased scrutiny being placed upon the Scottish Government. Whilst the offer to produce robust guidance on the matter might show some willingness to act, it is questionable how effective it would actually be as local authorities would not be compelled to follow it.

### **Costs**

We expect the changes to be cost neutral overall. With some changes potentially bringing increased cost and others reducing costs or providing an additional income.

Increased costs could result from the proposal that two portions of vegetables and a portion of fruit must be offered as a part of school lunches. At present a choice of two types of vegetables, and two types of fruit, must be provided every day as opposed to full portions.

Furthermore, the 2020 regulations will also require full portions of fruit and vegetables to be made available at any place, and any time, where food is made available in the school as opposed to types of fruit and vegetables. However, provision will be demand led so costs will only increase where demand increases. The consultation responses indicate that many schools already offer more fruit and vegetables than is currently required.

A maximum limit on provision of red processed meat could result in more costly red meat being provided instead however this could be offset by incorporating less but better quality meat in recipes and increasing quantities of less costly vegetables. Red processed meat could also be replaced by alternatives which do

not have to be more costly and in some cases could be less costly for example vegetarian options.

Discussions with caterers and consideration of a sample of local authority menus indicate that provision of red meat in primary schools is already broadly within proposed limits and is unlikely to change. In secondary schools reductions in red processed meat may result in loss of revenue as it will no longer be possible to offer filled breakfast rolls every day however, the regulations do not prevent alternative fillings being offered. Ham is a popular filling in sandwiches and the 2020 regulations mean it will not be possible to serve ham every day. Comments raised in the consultation focused on loss of choice rather than increased cost of offering alternative fillings for sandwiches.

In the case of permitted drinks, the main focus will continue to be upon providing water; plain lower fat milk and calcium enriched milk alternatives, with fruit and vegetable juices, and smoothies, no longer being permitted due to their high sugar content.

Comment from the consultation indicated that smoothies were not common due to cost and we know from discussions with local authorities that provision of fruit juice was already in significant decline in primary schools with many removing them altogether. Secondary schools will now be able to offer alternative sugar free soft drinks which will be a potential new revenue stream.

Local authority caterers have extensive experience of developing menus and the school food regulations allow caterers the flexibility to incorporate a vast amount of choice in menu offerings. This means that cost of various ingredients will continue to be considered when designing menus and substitutes made where cost requires it.

The model used by the technical working group to test if the 2020 regulations were workable in practice was based on current menu offerings taken from a cross section of local authority recipes and menus.

In light of the above analysis we expect this policy to be deliverable within current school food and drink budgets when considered overall.

### **Scottish Firms Impact Test**

The impact of this regulation will predominantly be to local authorities rather than Scottish businesses.

While the Scottish Government encourages the use of fresh, sustainable and locally-sourced produce, procurement decisions are for local authorities within the confines of their statutory duties.

There may be some reduction in the purchase of items such as processed red meat by local authorities from suppliers but protecting children and young people's health by following the latest scientific evidence and dietary advice must be put ahead of this potential effect. The red meat industry have the opportunity to

reformulate products in order to mitigate this by providing products that fit within the 2020 regulations and Ministers have met with industry recently to discuss this.

Discussions with local authority caterers indicate that many have already been reducing provision of items such as fruit juice over recent years in recognition of the level of sugar they contain and as such the regulations are not expected to have a significant impact on current practice.

### **Competition Assessment**

All 32 local authorities will be required to comply with the new regulations on the nutritional requirements for food and drink in schools. There will be no competitive element to these provisions.

### **Consumer Assessment**

The intent of the new regulations is to:

Ensure school food and drink provision is based on up to date scientific evidence and dietary advice and aligned more closely with the Scottish Dietary Goals which in turn will help reduce the health risks associated with a lack of consumption of fruit and vegetables, and with excessive consumption of sugary foods and red and red processed meats.

Whilst there could potentially be the risk of decreased uptake of school meals, local authorities will have several months in which to plan for implementation and make provisions for mitigate this risk for example by gradually introducing the changes.

Local authorities are encouraged to involve pupils and parents in menu development to ensure they meet local needs and tastes.

Local authorities have a duty to promote school meals and are encouraged to communicate with consumers regularly to take account of local circumstances and changing demands or trends.

### **Test run of business forms**

This is not applicable in this case. The 2020 nutritional requirement for food and drink in schools will not introduce any statutory business forms.

### **Digital Impact Test**

This is not applicable in this case. The 2020 regulations will not change the way in which the school meal service is delivered.

### **Legal Aid Impact Test**

Legal Aid is not affected by these proposals, and therefore it is considered that there will be no impact.

### **Enforcement, sanctions and monitoring**



The Schools (Health Promotion and Nutrition) (Scotland) Act 2007, and the Nutritional Requirements for Food and Drink in Schools (Scotland) Regulations 2008, place duties on local authorities to comply with their provisions. Failure to comply with this legislation would mean that a complaint could be made about the school(s) concerned under the terms of section 70 of the Education (Scotland) Act 1980 (this is commonly known as a “section 70 complaint”).

A section 70 complaint can be made on any occasion where it is felt that a school has failed to carry out its statutory duties. If a complaint were to be upheld, this could result in Scottish Ministers making an order upon the authority to carry out the duty.

Local authorities publish information about school meal menus on their websites and are inspected by Education Scotland Health and Nutrition Inspectors who monitor compliance with the Act and associated Regulations as part of the overarching school inspections programme.

### **Summary of Costs**

Concerns relating to potential increases in costs are ongoing, especially in light of the impacts on catering services arising from COVID-19 and we will continue to work with COSLA on this issue.

### **Declaration and publication**

**Sign-off for Final BRIAs: I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.**

Signed: John Swinney

Date: 14th May 2020

John Swinney, Deputy First Minister and Cabinet Secretary for Education and Skills

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