

Proposed Healthy Eating in Schools (Wales) Measure 2008

Explanatory Memorandum

This Explanatory Memorandum has been prepared by Jenny Randerson AM and is laid before the National Assembly for Wales.

Declaration on Legislative Competence

In my view the provisions of the Proposed Healthy Eating in Schools (Wales) Measure, introduced by me on 14 March 2008 would be within the legislative competence of the National Assembly for Wales.

Jenny Randerson AM
Member in charge of the proposed Measure

14 March 2008

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Part 1: Background and Purpose of the Proposed Measure

1. Introduction

- 1.1 In June 2007 Jenny Randerson, Liberal Democrat Member for Cardiff Central, was successful in the first ballot held in the National Assembly for Wales for the right to seek agreement to introduce a Member proposed Assembly Measure (Standing Order 23.99).¹
- 1.2 The primary purpose of the proposed Measure is a holistic, comprehensive, made-in-Wales policy on nutrition which ensures that healthy eating is promoted and supported for all registered pupils of schools maintained by local authorities in Wales.

The nutritional content of school meals has been a source of concern for some time. Feeding our children shouldn't be about putting the easiest and quickest food on their plates, it should be a vital part of feeding their appetite for learning and feeding their ability to learn.²
- 1.3 On 19 September 2007 the Assembly agreed, without opposition, that the proposed Assembly Measure could be introduced for consideration by the Assembly (Standing Order 23.103).
- 1.4 This Explanatory Memorandum has been prepared and laid in accordance with Standing Order 23.18. It sets out the background to the provisions in the Member proposed Measure *Proposed Healthy Eating in Schools (Wales) Measure 2008* and explains the scope of the Measure.
- 1.5 This version of the Explanatory Memorandum has been revised to reflect the amendments agreed at Stage 2.

¹National Assembly for Wales Standing Orders, <http://www.assemblywales.org/bus-docs-third-standingorders.pdf> (118 pages)

² Proposed Healthier School Meals Measure, Ref: MB-005, Pre-ballot information, <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislative-ballots/business-measures-ballot-26-06-07/business-measures-mb-005.htm>

2. Legislative Background

- 2.1 The constitutional context to this proposal is set out by the Government of Wales Act 2006 (the 2006 Act). The Act provides a mechanism for enhancing the legislative powers of the National Assembly for Wales.
- 2.2 The Assembly's Standing Orders provide for Assembly Measures to be introduced by backbench Assembly Members as well as the Assembly Government where the Assembly has legislative competence in a policy area.
- 2.3 The principal power enabling the Assembly to make a Measure in relation to healthy eating in schools is contained in Matter 5.9 of Schedule 5 to the Government of Wales Act 2006 –

Matter 5.9

Provision about food and drink provided on school premises or provided for children at a place where they receive education or childcare.

- 2.4 The power in Matters 5.4 was originally a framework powers contained in section 178 of the Education and Inspections Act 2006, which were converted to a Measure-making power by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007.³

³ Office of Public Sector Information website, [National Assembly for Wales \(Legislative Competence\)\(Conversion of Framework Powers\) Order 2007](#)

3. Purpose and Policy Objectives

- 3.1 The overarching purpose is to enable a comprehensive “made-in-Wales” policy on nutrition in schools to be developed and implemented. The aim of this Measure is a holistic, comprehensive, made-in-Wales policy on nutrition in local authority maintained schools in Wales. It is essential that healthy nutrition is maintained through the whole education process.
- 3.2 The proposed Measure addresses more than just food eaten in schools. It reflects the need to educate the minds of young children as well as their palates. It intends to impose a duty on schools and local authorities to promote healthy eating generally.
- 3.3 There will be responsibility at various levels, imposing a duty on governing bodies and local authorities to promote healthy eating in schools. Governing bodies will also be required to include healthy eating in their annual report.
- 3.4 Healthy eating and good nutrition in schools should be part of the inspection regime.
- 3.5 The proposed Measure will impose a duty on schools and local authorities to encourage the take up of school meals and school milk. It also requires them to take reasonable steps to ensure that the highest percentage possible of those eligible for free school meals do eat them. Local authorities must also take reasonable steps to ensure that the identities of those children who have free school meals are protected.
- 3.6 The Measure does not, however, set out in detail the content of food served in schools, including quantities of fat, saturated fat, sugar, and salt. That may be done by the Minister through regulation, because the nutritional requirements and guidelines change from one year to another. It is envisaged that an incremental approach in the introduction of healthy nutritional standards will be used as the most effective way of introducing healthier foods. This approach is partially based on lessons learnt from experiences in England and Scotland.
- 3.7 Finally the proposed Measure recognises the importance of the availability of drinking water for all children.

The Policy Context:

Wales: Welsh Assembly Government *Appetite for Life Consultation and Action Plan*

- 3.8 A Welsh Assembly Government document *Appetite for Life*⁴ was subject to widespread consultation between June and October 2006. In broad terms, respondents were supportive of the majority of recommendations⁵ which included the adoption of nutritional standards identified for the provision of school food (proposal 1) and that snack food provision in schools must have a clear nutritional benefit (proposal 10).
- 3.9 The Welsh Assembly Government's *Appetite for Life Action Plan*⁶ was subsequently launched on 22 November 2007. The Action Plan has seven priority action areas including the implementation of new nutrient, food and drink based standards in four pilot local authority areas and to review, develop and establish monitoring and evaluation programmes to support the whole school approach to improving food and nutrition in schools.
- 3.10 Several of the recommendations in the *Appetite for Life* initiative would be encompassed in, and be given a statutory status by, this proposed Measure.

England

- 3.11 The UK Government announced new standards for school food in England⁷ in May 2006 which cover all food sold or served in schools. The nutritional standards are being implemented in three parts, to be phased in by September 2009. Further information on the healthy eating policies and funding in England are contained in the Annex to the Regulatory Impact Assessment (part 2).

Scotland

- 3.12 The Scottish Parliament has introduced an Act which has significant policy overlap with this proposed Measure.
- 3.13 *The Schools (Health Promotion and Nutrition) (Scotland) Act 2007*⁸ places a legal duty on education authorities to ensure that the food and drinks they provide will meet nutritional requirements as set out by Scottish Ministers. This includes both school meals and food offered at

⁴ *Appetite for Life* Consultation document, Welsh Assembly Government,

<http://new.wales.gov.uk/docrepos/40382/4038232/403829/Consultations/2006/appetite-for-life-final-e.pdf?lang=en>

⁵ Welsh Assembly Government Cabinet Paper, CAB(06-07)76, *Appetite for Life*, March 2007,

[http://new.wales.gov.uk/docrepos/40371/288363/908911/1268444/CAB\(06-07\)76-Appetite.doc?lang=en](http://new.wales.gov.uk/docrepos/40371/288363/908911/1268444/CAB(06-07)76-Appetite.doc?lang=en)

⁶ Welsh Assembly Government press release, 22 November 2007,

<http://new.wales.gov.uk/news/topic/education/2007/1867403/?lang=en>

⁷ The *Education (Nutritional Standards for School Lunches) (England) Regulations 2006* (SI2006/2381)

⁸ The *Schools (Health Promotion and Nutrition) (Scotland) Act 2007* (2007 asp 15)

the tuck shop or in the vending machine. The nutritional regulations for food and drink in came into effect in August 2008.

4. Consultation

4.1 A public consultation on the proposed Measure was held between 18 January and 29 February 2008. In addition to publishing the consultation documents on the National Assembly for Wales' website, it was also sent to over 200 key stakeholders including a sample of schools.

4.2 The consultation asked the following questions:

1. Do you think that the proposed Measure will promote a holistic "all school" approach to healthy eating? Are there any additional powers that could be included in the Measure to further promote this approach in schools?

2. The proposed Measure provides for Regulations which will specify nutritional standards to be introduced by Welsh Ministers. Do you think that this incremental approach will ensure that children, young people and parents are not alienated by the speed of the reforms?

3. Are there any additional powers which should be added to the proposed Measure that would further improve healthy eating in schools?

4. Does the proposed Measure promote satisfactorily the principles of sustainable development in the provision of healthy school food?

5. Do you agree with the duties, responsibilities and reporting requirements proposed in the Measure for head teachers and governors? Will these requirements ensure that progress is made on improving healthy eating in schools?

6. Do you think that the duties, responsibilities and reporting requirements proposed for Assembly Ministers, Local Authorities and the Chief Inspector of Schools are sufficient to have a positive impact on the implementation and monitoring of healthy eating in schools?

7. There will be a financial cost as a result of the proposals in the Measure on the Welsh Assembly Government, local authorities and schools, and to a lesser extent on Estyn. Will these proposals result in your organisation incurring financial costs, and if yes, what will these costs be? (please quantify)

4.3 Thirteen responses were received in response to the public consultation. The comments in all the responses were helpful and each response was given careful consideration. As the responses were

considered, it became obvious that a number of key themes were emerging. As a result, four changes were made to the original proposed Measure.

- 4.4 There were also a substantial number of comments that, whilst valid in the context of improving the health of children, were outside the scope of the Measure. Some issues raised are more appropriate for inclusion in the Regulations which may follow as a result of the proposed Measure, others would be more appropriate in guidance. The content of both the regulations and any guidance will be a matter for Welsh Ministers, subject to the appropriate Assembly procedure.
- 4.5 The four changes that have been made to the proposed Measure as a result of the public consultation responses are:

i. **Greater consultation**

It was always intended that there would be extensive consultation with key stakeholders for example pupils, young people, parents, carers, etc. recognising that a partnership approach is the most effective way of introducing changes successfully.

As a result of the consultation responses, it has been decided to formalise that policy by including a new duty on governing bodies and head teachers in section 1(3) (c) of the Measure as Introduced to consult with school councils from time to time and to have regard to their views. This provision was subsequently removed by amendment at Stage 2.

ii **Consultation prior to making Regulations**

A new duty has also been placed on Welsh Ministers to take steps to ascertain the views of pupils before making regulations on the nutritional requirements of food in schools and to consult such other persons as they consider appropriate (Section 7(12)).

iii **Drinking Water in Schools**

In response to the strength of views in the consultation responses, the supply of freely available drinking water has now been made a duty in the Measure, rather than a matter to be dealt with in regulations (Section 8).

iv **The Reporting Requirements on Governing Bodies and Head Teachers**

Finally section 4 of the proposed Measure has been amended to place a duty on governing bodies to report on healthy eating in schools as part of the current annual report by the governing body (Section 30 of the Education Act 2002). The intention is that this will be a less

onerous, but still effective way, of reporting on improvements and progress. The previous requirement was for head teachers to report annually on progress to local education bodies, parents, the governing body and the public.

- 4.6 The following comments, made in consultation responses, are outside the scope of the proposed Measure, for example:
- increasing the levels of physical activity for children and young people;
 - the creation of exclusion zones outside school gates to prevent the presence of mobile food vans close to schools;
 - improvements to school toilets;
 - the procurement of locally produced/locally sourced foods; and
 - the restriction of the off-site movements during the school lunchtime.
- 4.7 Many comments made as part of the consultation process were valid but are more appropriately covered by regulations made by Welsh Ministers or Welsh Assembly Government guidance, for example:
- ensuring that the whole spectrum of nutritional needs are catered for, for example vegetarians/vegans, cultural or religious dietary requirements etc.;
 - the involvement of dietitians and nutritionists;
 - school Food and Fitness policies;
 - further training for catering staff and improvements to dining rooms/kitchen facilities; and
 - the implications for existing contracts.
- 4.8 Concerns were expressed about the following matters:
- the criteria by which progress and improvement in schools' policies would be evaluated and inspected;
 - whether it is reasonable to expect head teachers to be responsible for improvements if they do not control the funding for school meals;
 - the criteria that Estyn might use in their inspections; and
 - the potential bureaucratic burden on head teachers.
- 4.9 Many of these issues would be covered by regulations. The concern about the burden on head teachers has been partially addressed by inclusion of the annual report on healthy eating as part of the current reporting structure (see 4.5 iv).

5. Power to Make Subordinate Legislation

- 5.1 The proposed Measure contains limited powers for Welsh Ministers to implement and set out the detail required to support the principles contained in the proposed Measure.

Section 1 - Promoting healthy eating and drinking by pupils in maintained schools

- 5.2 Sub-section (3) provides for Welsh Ministers to issue guidance on what constitutes healthy eating and drinking; what action would be appropriate and how the principles of sustainable development should apply to healthy eating and drinking.
- 5.3 It has been considered appropriate to provide this power to ensure that there is some consistency in the way in which the duty is applied.
- 5.4 As the provision of guidance is the lowest level of delegated power, it is not appropriate for any Assembly procedure to apply to it.

Section 7 - Requirements for food and drink provided on school premises etc.

- 5.5 This section provides a power for Welsh Ministers to make regulations in relation to the food and drink provided on school premises.
- 5.6 As in the current section 114A of the School Standards and Framework Act 1998, upon which this section is based, the power will enable Ministers to make new regulations whenever new expert advice is received in relation to what is appropriate.
- 5.7 The negative procedure would apply, as is currently the case under section 114A. This provides a degree of Assembly scrutiny, without the requirement for plenary time to be found whenever it is considered appropriate to revise the standards.

Section 8 – Drinking water in schools

- 5.8 Subsection (2) provides for local authorities to have regard to any guidance issued by Welsh Ministers on this subject. This will ensure that all authorities benefit from best practice that is developed in relation to this issue. As the provision of guidance is the lowest level of delegated power, it is not appropriate for any Assembly procedure to apply to it.

Section 10 - Protection of the identity of pupils receiving free school lunches or milk

5.9 Sub-section 10(6) provides for local authorities and governing bodies to have regard to guidance issued by Welsh Ministers in relation to the protection of the identity of pupils receiving free school lunches or milk

5.10 This will ensure that all authorities benefit from best practice that is developed in relation to this issue.

5.11 As the provision of guidance is the lowest level of delegated power, it is not appropriate for any Assembly procedure to apply to it.

Section 13 - Orders and regulations

5.12 This section contains the details usually contained in Acts of Parliament about the powers of Ministers to make regulations.

5.13 They would normally be subject to the negative procedure in the National Assembly, with one exception. In accordance with normal practice, there would be no procedure in relation to commencement orders made under section 16(3).

6. Territorial Application

This Measure will apply in relation to Wales. It will confer function on Welsh Ministers, local authorities in Wales, and the governing bodies and head teachers of schools in Wales. It will therefore affect pupils who attend schools in Wales, but not pupils from Wales who attend schools in England.

Part 2: Regulatory Impact Assessment

7. Options

- 7.1 The importance of promoting and monitoring healthy eating in schools in England, Scotland and Wales is widely recognised by respective governments, key stakeholders and the public.
- 7.2 As a result of the *Government of Wales Act 2006*, there is an opportunity in Wales to use the new legislative powers of the National Assembly for Wales to embed in primary legislation a holistic approach towards healthy eating in schools and the monitoring of improved nutrition for pupils in local authority maintained schools in Wales.

The current options are:

- Option 1:** Do nothing.
- Option 2:** Continue to use current legislative powers.
- Option 3:** Introduce an Assembly Measure.

Option 1: Do Nothing

- 7.3 To take no positive action to promote and support healthy eating in schools is not an acceptable option for many key stakeholders and many members of the public. This was seen clearly, for example, in the responses to the Welsh Assembly Government's *Appetite for Life* public consultation.
- 7.4 To fail to take any action to improve healthy eating in schools would impact adversely on the health and well-being of our children and young people; is likely to adversely affect their concentration levels and their ability to learn and is also likely to result in increased costs for the health service.
- 7.5 In his Annual Report 2006⁹, the Chief Medical Officer talks about his concerns about "the rising tide of obesity" :

I am concerned about the persistent relatively high smoking rates in Wales and also the rising tide of obesity. Smoking and obesity are two factors which contribute to our relatively high rates of heart disease and stroke in Wales.

and

The rising epidemic of obesity in children and adults needs to be strategically addressed by working on all the factors which contribute to our obesogenic society which encourages a sedentary lifestyle, and over-consumption of convenience foods and sugary drinks.

and

Being overweight or obese can increase the risk of many health conditions, including high blood pressure, diabetes, heart disease and stroke. And it is not just adults - in recent years, there has been growing evidence of a rising level of childhood obesity. In particular, the *Health Behaviour in School-Aged Children* (HBSC) studies indicate the particular challenges Wales faces.

⁹ Chief Medical Officer's Annual Report 2006,
http://new.wales.gov.uk/dphp/publication/cmo/reports/report2006/report_e.pdf?lang=en

Option 2: Use of Current Legislative Powers

- 7.6 This option relies on the use of current legislative powers in conjunction with co-operation and partnership with key stakeholders. Progress has been made on this basis by the Welsh Assembly Government and its *Appetite for Life* policies.
- 7.7 The Welsh Assembly Government's *Appetite for Life Action Plan*, November 2007¹⁰ identified seven key priority areas including introducing nutritional based standards, developing and utilising catering staff and equipment to maximum effect and developing marketing strategies. The Welsh Assembly Government is piloting two year action research projects with four local authorities to develop and test the guidelines for implementing the food and nutritional standards. The action research projects began in September 2008.

Option 3: Introduce a Measure

- 7.8 The third option, as proposed in this Measure is the only option that would bring together existing legislation and embed a holistic policy towards healthy eating in schools in primary legislation. This is the most effective way to improve healthy eating, and to foster an understanding of the importance of healthy eating, in all local authority maintained schools.
- 7.9 Importantly it is the most effective option to monitor and evaluate the progress towards this goal, to ensure that robust and effective reporting and monitoring systems are implemented and to ensure that progress on healthy eating continues in the future when facing competition from other priorities within the education system.
- 7.10 To place the reporting and monitoring of progress towards healthy eating in primary legislation will also help to ensure a consistent approach and on-going levels of improvement across Wales.

¹⁰ *The Appetite for Life Action Plan*, Welsh Assembly Government website, <http://new.wales.gov.uk/topics/educationandskills/publications/guidance/appetiteforlife/?lang=en>

8 Estimate of Costs

Estimate of Costs: Option 1 – do nothing

- 8.1 To do nothing may have serious financial consequences for the National Health Service and the economy in the long term. Levels of obesity in Wales, the UK, Europe and across the world have been increasing rapidly. In the UK, the prevalence has almost tripled since 1980. The health implications of obesity include Type 2 diabetes, hypertension, cardiovascular disease and osteo-arthritis.¹¹ In Wales, 29 per cent of residents aged 16-24 were reported as being overweight or obese and 27 per cent of residents aged 65 and above were being treated for diabetes.¹²
- 8.2 The costs of caring for people with chronic disease are high although finding quantifiable evidence is difficult. An example of the estimated costs in England of diabetes care is given in a 2007 report from the Healthcare Commission.¹³ The report states that estimates for 2007/2008 suggested that total expenditure for diabetes could be as high as 10 per cent of the planned total NHS expenditure (around £92 billion). This means £9 billion per year being spent on care for people with diabetes, over £25 million every day in England.
- 8.3 Diabetes is associated with renal problems which are becoming more common, partly because of obesity.¹⁴ In the UK, the number of people being treated for kidney failure is rising by about 7 per cent per annum.¹⁵ Kidney failure is associated with age, with diabetes and hypertension as key underlying conditions and, in 2006/07, NHS investment in renal dialysis in Wales was £26.6 million.¹⁶
- 8.4 Diabetes also has implications for social services expenditure as it is estimated the cost of caring for people suffering from long term complications is four times higher than caring for those without such problems.

Estimate of Costs: Option 2 – use existing legislation and co-operation of key stakeholders

- 8.5 This option closely follows the Welsh Assembly Government's current *Appetite for Life Action Plan* and policies. However even fully costing the current strategy was not easy. The Assembly Government set up a Food in Schools Working Group to identify the costs and advise on other aspects of the strategy however they quickly recognised how difficult it is to accurately estimate the costs of measures to improve healthy eating in schools, mainly because of a lack of baseline data in Wales.

¹¹ National Public Health Service Wales, Tackling Obesity in Wales, July 2007, <http://www.wales.nhs.uk/sites3/news.cfm?orgid=719&contentid=7165>

¹² Welsh Assembly Government, Welsh Health Survey 2005/06, <http://new.wales.gov.uk/topics/statistics/publications/health-survey200506/?lang=en>

¹³ Healthcare Commission, Managing Diabetes, July 2007, http://www.healthcarecommission.org.uk/db/documents/Managing_Diabetes_1_200707300356.pdf

¹⁴ NHS Wales, *Designed to Tackle Renal Disease in Wales*, 2007, <http://www.wales.nhs.uk/sites3/docmetadata.cfm?orgid=434&id=81459>

¹⁵ Department of Health, *Saving Lives, Valuing Donors: a Transplant Framework for England*, 2003 http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4006700

¹⁶ The Members' Research Service, MRS080484, source: Health Commission Wales

- 8.6 A substantial proportion of the costs in the current English, Scottish and Welsh healthy eating in schools policies are contained in the implementation of higher nutritional standards, especially if these are introduced in every school and local authority area.
- 8.7 This proposed Measure enables Welsh Ministers to make Regulations on nutritional standards at a later date. It is expected that an incremental approach will be adopted through these Regulations, as a result of which the costs will be incurred incrementally as well. This will be for the Welsh Ministers to decide on and implement.
- 8.8 Information on the costs of introducing stricter nutritional standards in England and Scotland are contained in Annex A. Annex A also contains the estimates of costs of introducing higher nutritional standards for the whole of Wales, which were produced by the Food in Schools Working Group in 2006.

Current funding in Wales

- 8.9 The cost of school meals is currently met through a combination of expenditure by local authorities, or schools where budgets are delegated, parents and carers. The costs of free school meals are met by local authorities.
- 8.10 Local authorities receive funding from the Welsh Assembly Government for their costs for school meals and free school meals mainly through the annual non-hypothecated Revenue Support Grant (RSG). The funding that local authorities receive from the Welsh Assembly Government for free school meals reflects levels of deprivation; an individual school's share of the local authorities' schools budget typically takes the numbers of free school meals into account.
- 8.11 Since April 2000 local authorities (LAs) in Wales have delegated funding for school meals to all secondary schools and may also delegate funding for school meals to primary and special schools if they wish. Where a school has a delegated budget for meals, the school governing body takes on much the same responsibility as the LA in connection with their provision.
- 8.12 Schools with delegated budgets are free to buy back into LA catering services if they want. Through the school meals contract, responsibility for day to day provision is discharged to the service provider; however the provision of school meals still remains the responsibility of the body letting the contract (i.e. the LA or school governing body).
- 8.13 Many local authorities have already made good progress on introducing healthy eating policies in schools. As a result the costs incurred by different local authorities will vary substantially making it extremely difficult to calculate an all Wales cost on this basis.
- 8.14 In November 2007, The *Appetite for Life Action Plan* announced a 2 year action research project involving four local authorities to run from September 2008 to develop, and test the guidelines for implementing the food and nutritional standards proposed in the action plan and learn lessons from this project to inform wider application across all maintained schools in Wales.

- 8.15 Alongside these projects, the Welsh Assembly Government will make funding available via a specific grant scheme to support, across all authorities, those schools not involved in the action research project who wish to progress to the new standards proposed in the *Appetite for Life Action Plan*.
- 8.16 The Welsh Assembly Government said that £6.6 million will be available over two years to support the pilot projects announced in the *Appetite for Life Action Plan* and *Appetite for Life Grant scheme*.
- 8.17 The *Appetite for Life Action Plan* also contained commitments to funding for nutritional analysis software; grants to train school catering staff, support for initiatives to support a whole school policy; and the development of whole school food and fitness policies (through the Better Schools Fund).

Estimate of Costs: Option 3 – Introduce a Measure

- 8.18 The estimates of costs contained in the *Appetite for Life Consultation document* and *Action Plan* and comparisons with England and Scotland (details in Annex A) provide a general idea of the likely costs of the policies to promote healthy eating. However the majority of the costs in Scotland and England derive from the implementation of higher nutritional standards for school meals and other food provided on school premises.
- 8.19 This Measure does not itself specify nutritional standards for food in schools in Wales but enables Welsh Ministers to specify nutritional standards by Regulations (section 7).
- 8.20 It is expected that an incremental approach would be taken by Welsh Ministers in prescribing nutritional standards, based on experiences in England and Scotland. If this approach is adopted then the resulting costs would be incurred incrementally as well.
- 8.21 The estimates that follow are estimates of the **direct costs** that may result from the proposed Measure. There may also be indirect costs as a result of Regulations that Welsh Ministers may make as a result of the Measure. An estimate of the possible costs resulting from the Regulations is in Annex A.

More Detailed Estimates of Costs for option 3

Promotion of Healthy Eating in Schools (Section 1)

- 8.22 This proposed Measure places a duty on local authorities, and governing bodies of maintained schools to exercise their functions so as to promote healthy eating by registered pupils.
- 8.23 There are a number of strategies already in place as a result of the Welsh Assembly Government's *Appetite for Life* policies and *Action Plan*. The costs of these initiatives are already being accommodated in current Welsh Assembly Government *Appetite for Life* budgets.

Examples of currently funded healthy eating in schools initiatives:

- 8.24 Guidance was sent to all schools in September 2007 by the Welsh Assembly Government's Health Improvement Division on how to develop and implement a whole-school food and fitness policy in partnership with key stakeholders. Schools are encouraged to have this policy in place by September 2008 and school preparation and early implementation of this policy is supported by current funding from the Welsh Assembly Government's Better Schools Fund.
- 8.25 The Welsh Assembly Government is funding an *Appetite for Life* co-ordinator for two years. A key part of the *Appetite for Life* Co-ordinator's role will be to develop a communications and marketing strategy to support the delivery of *Appetite for Life* at local and national level.
- 8.26 A new qualification for staff involved in the preparation and service of school meals has been accredited by the Welsh Assembly Government. In addition, grant funding of £1.2m was available to local authorities for January - December 2007 and £0.6m is available for January - December 2008 to train school catering staff (including school caterers not employed by local authorities) in healthy eating and practical cookery skills to enable them to prepare healthier foods and promote healthier choices within schools.

On a smaller scale:

- 8.27 A Cooking Bus is visiting primary schools to offer cooking lessons for pupils, a training session for teachers, and a cookery session for parents of young children at each location.
- 8.28 The Welsh Assembly Government is working with the Urdd Gobaith Cymru to introduce a cooking competition as part of the curriculum for the Urdd Eisteddfod.
- 8.29 All these activities are currently being funded by the Welsh Assembly Government.
- 8.30 Not all activities to promote healthy eating in schools need incur costs. It is envisaged that local authorities and schools will use innovative and imaginative ideas to promote healthy eating in ways that are appropriate and relevant to their own pupils. There may be lower costs for local authorities as a result of healthy eating policies and these savings could be used to fund those ideas which do incur costs.
- 8.31 The Scottish Executive estimated the cost of incentivising healthier options in the region of £4.2million. This was based on a range of 5p -10p in additional costs per meal to cover the cost of incentive schemes, the provision of water, fruit and bread, labelling and promotional activities.
- 8.32 As part of the *Hungry for Success* policies in Scotland, it was estimated that additional training for catering staff in all schools in Scotland and staff costs for additional part-time catering staff for all secondary schools would create an additional public expenditure of around £2.2m. The staff costs included an additional part-time catering assistant in every secondary school in Scotland.

Duty of governing bodies to report (section 4)

- 8.33 The duty to report on improvements and progress towards healthy eating has been placed on the school's governing body, as part of the current reporting structures, to keep the costs of this requirement to a minimum level while still ensuring that progress is monitored.

Functions of the Chief Inspector of Schools (section 5)

- 8.34 Since April 2007, some additional information has been collected by Estyn on healthy eating in schools. As part of their inspections, inspectors consider whether the school has appropriate arrangements that encourage and enable learners to be healthy.¹⁷ This ensures that inspection arrangements take a broad view of healthy living that encompasses physical activity and fitness as well as eating and drinking. However section 5 in the Measure goes further and Estyn will be required to inspect "actions taken at maintained schools to promote healthy eating and drinking" as part of their inspection regime. It is anticipated that any additional costs incurred by this approach will be minimal and will be met from existing budgets.

Requirements, by Regulations, for food and drink provided on school premises (section 7)

- 8.35 The Measure does not set out in detail the content of food to be served in schools, including quantities of fat, saturated fat, sugar and salt. That may be done by the Minister through regulation. The reason for this approach is that the nutritional requirements and guidelines change regularly.
- 8.36 However it is envisaged that an incremental approach in the introduction of healthy nutritional standards will be used as the most effective way of introducing healthier foods. This approach is partially based on lessons learnt in England and Scotland. This approach also means that the costs will be incurred incrementally as well and are entirely dependent on the nutritional standards specified in the regulations.
- 8.37 The Welsh Assembly Government says that to put a precise figure on the cost of the transition to the nutrient and food based standards is extremely difficult especially in the absence of good quality baseline data.
- 8.38 The information available on the position across Wales on the provision of school meals, including the amount of funding spent on ingredients for them is very patchy and not collected on a consistent or comparable basis.
- 8.39 Information collected, as part of the *Appetite for Life* research, from ten local authorities across Wales showed that the cost of ingredients for a primary school meal ranged from 40.5p to 53.1p in 2006. This did not include other costs such as labour; training; cleaning; and administration costs that need to be taken into account in arriving at a gross cost per meal. The Assembly

¹⁷ *Supplementary guidance on inspecting healthy living (including physical activity and food and drink) May 2007*, Crown Copyright, Estyn website, http://www.estyn.gov.uk/publications/Supplementary_Guidance_for_Inspecting_Healthy_Living_May_2007.pdf

Government said that it is not currently clear how the price of a school meal relates to the gross cost of providing that meal.

- 8.40 The Scottish Executive estimated the cost of meeting the Scottish nutritional standards as an additional cost per meal in the range of 5-15 per cent. Based on information from their annual school meals census, they estimated that this would result in additional public expenditure in the region of £9.6 million per annum.

Requirement for a supply of free drinking water (section 8)

- 8.41 As the result of a duty in the Education (School Premises) Regulations 1999, free water coolers were provided to 384 Communities First schools in Wales. Funding of £225,000 for the scheme was provided by the Assembly's Health and Education Departments and Dŵr Cymru.
- 8.42 Theoretically, to provide water coolers to the other 1,500 schools in Wales would cost approximately £0.9 million but in practice some of these schools will already have accommodated the provision of free water.
- 8.43 The provision of water, free of charge, at a number of sites throughout the school (such water sources to be physically divorced from the toilets) and throughout the school day is also a proposal in the *Appetite for Life* Action Plan.

Promotion of Meals in Schools and other educational establishments (Section 9)

- 8.44 The type of activity and methods used to promote the take-up of school meals is not prescribed in the proposed Measure. A significant level of activity is already currently planned as part of the *Appetite for Life Action Plan* and will be funded by current budgets for example a commitment to promote and encourage the take up of school meals through a national and local marketing campaign.
- 8.45 The level of activity undertaken could range for example from distributing posters, sharing of good practice, and guidance for schools to a national marketing campaign, or significant refurbishment of dining rooms and kitchen facilities.
- 8.46 Improvements to school dining rooms have been highlighted as a way of encouraging the take up of school meals by both the Welsh Assembly Government, the Department for Children, Schools and Families and the Scottish Executive.
- 8.47 Scotland gives an average cost of upgrading facilities as £24,000 per school with associated resource costs of around £1,500 per annum.¹⁸ However it is very difficult to use this figure to calculate the possible total costs for Wales. Limited information is collected at a national level and data collected at a local level is frequently not collected on a consistent or comparable basis. In the *Appetite for Life consultation document*, the Welsh Assembly Government said:

¹⁸ *Hungry for Success*, Annex I, Scottish Government website:
<http://www.scotland.gov.uk/Publications/2003/02/16273/17583>

The standards of school kitchens and dining rooms vary significantly across Wales. Some schools have no kitchen on site and have to receive meals prepared elsewhere. We do not have a complete picture of the position . . .

- 8.48 A specific revenue grant of £1.3 million was made available by the Welsh Assembly Government to local authorities in January 2007 to purchase kitchen/ dining room utensils/ equipment.
- 8.49 The *Appetite for Life Action Plan* contains a commitment to promote and encourage the take up of school meals through a national and local marketing campaign.

Local Authorities to take reasonable steps to ensure take up of free school meals (section 9(2))

- 8.50 The Welsh Assembly Government's Statistical Directorate publishes information on the number and percentage¹⁹ of pupils who are eligible for free school meals. It also intends to commission a literature review of work undertaken on take-up of free school meal entitlement; and following this work, to consider the need to commission a specific piece of research aimed at identifying reasons affecting take up of free school meals. The costs of this work are already accommodated within existing budgets.

Local Authorities to protect the identity of pupils receiving free school meals (section 10)

- 8.51 The Welsh Assembly Government is currently working in partnership with the Department for Children, Schools and Families in England to introduce an electronic system for determining eligibility for free school meals. This is intended to reduce bureaucracy, particularly for schools; to encourage take-up of entitlement by removing the stigma from the application process; and to reduce the scope for fraud and error. The aim is a national scheme, based on local authority checking, in place of the variety of systems operating at present.
- 8.52 In a Decision Report²⁰ in September 2007, the Minister for Children, Education, Lifelong Learning and Skills agreed that the Welsh Assembly Government would buy into the Free School Meals Electronic Eligibility Checking system in Wales and that the costs will be accommodated from within the current Budget.
- 8.53 The Welsh Assembly Government says that it will also consider and develop cashless systems and that this should be linked with the ongoing national citizen smartcard infrastructure work.
- 8.54 In Scotland the installation of a card system has been estimated to cost around £16,000 per school, plus associated resource costs of £1,000. The costs can however vary depending on the size of the school and the type of system used (swipe or smart cards).

Summary

¹⁹ Schools in Wales : General Statistics 2007, Chapter 9,
<http://new.wales.gov.uk/topics/statistics/publications/swgs2007/?lang=en>

²⁰ Welsh Assembly Government Decision Report, 28 September 2007,
<http://wales.gov.uk/publications/accessinfo/decisionreport/educationdrs/educationdrs2007/1727075/?lang=en>

- 8.55 The Measure itself imposes some direct costs in the areas of monitoring and reporting which have been summarised where available in Table 1, but the Measure is essentially a mechanism to ensure the Government puts many of the policies in its *Appetite for Life Action Plan* on a statutory footing and to ensure that these policies are monitored and evaluated.
- 8.56 The consequential costs which relate to providing healthier meals in schools will very much depend on how quickly the Welsh Assembly Government moves along an incremental path of introducing nutritional standards as well as how successful local authorities are in obtaining value for money. If the Welsh Assembly Government decides to follow the standards being set out in England and Scotland this would result in an anticipated maximum investment £17 million - £38 million for Wales over a three year period. (Annex A).

Table 1: Summary of Cost Implications as a Direct Result of the Proposed Measure

Description of the Duty	Impact
Promotion of Healthy Eating in Schools (Section 1)	<p>Initially a significant level of promotional activity is already proposed by the Welsh Assembly Government as part of the <i>Appetite for Life Action Plan</i> and policies. These are already accommodated in current Welsh Assembly Government budgets.</p> <p>It is also expected that schools and local authorities will develop imaginative ways of promoting healthy eating that incur negligible costs or may result in savings.</p>
Duty of governing bodies to report (section 4)	The duty on governing bodies is not intended to be onerous as it is included in current reporting structures.
Functions of the Chief Inspector of Schools (section 5)	An estimate of between £100,000 and £250,000 per annum was originally provided by Estyn. The costs depend on the level of expert staff used during the inspection. However following subsequent discussion with Estyn, it was agreed that “the actions taken at maintained schools to promote healthy eating and drinking” could be inspected as part of the regular inspection regime and would not require the expertise of nutritionists. The costs of proceeding in this way are minimal.
Requirement for a supply of free drinking water (section 8)	Free water coolers were provided to 384 Communities First schools in Wales at a cost of £225,000. Theoretically, to provide water coolers to the other 1,500 schools in Wales would cost approximately £0.9 million but in practice some of these schools will already have accommodated the provision of free water. This is also a policy in <i>Appetite for Life</i> . The provision of mains water would be more sustainable and incur lower costs.
Promotion of Meals in Schools and other educational establishments (Section 9)	<p>A significant level of activity is currently planned as part of the <i>Appetite for Life Action Plan</i> and will be funded by current budgets for example a commitment to promote and encourage the take up of school meals through a national and local marketing campaign</p> <p>The costs depend on the level of activity undertaken. This could range for example from distributing posters, sharing of good practice, guidance for schools to a national marketing campaign, or significant refurbishment of dining rooms and kitchen facilities.</p> <p>A specific revenue grant of £1.3 million was made available by the Welsh Assembly Government to local authorities in January 2007 to purchase kitchen/ dining</p>

	<p>room utensils/ equipment for schools.</p> <p>Some promotional activity will incur negligible costs only or be funded by savings in other areas.</p>
<p>Local authorities to take reasonable steps to ensure take up of free school meals (section 9(2))</p>	<p>The Welsh Assembly Government is currently undertaking research to identify these costs.</p>
<p>Local authorities to protect the identity of pupils receiving free school meals (section 10)</p>	<p>The Welsh Assembly Government has already agreed the costs of introducing an electronic system for determining eligibility for free school meals.</p> <p>The Welsh Assembly Government says that it will also consider and develop cashless systems and that this should be linked with the ongoing national citizen smartcard infrastructure work.</p>

Annex A

- 1 The following paragraphs are intended to give an idea of the cost implications of the **indirect costs** of the Proposed Measure, that is the potential costs resulting from future Regulations made by Welsh Ministers.
- 2 These costs have been estimated based on information used in costing the *Appetite for Wales* policies in Wales, the *Hungry for Success* policies in Scotland and the healthy schools eating policies in England. All three contain estimates of the costs of introducing stricter nutritional standards.
- 3 The Welsh Assembly Government set up a Food in Schools Working Group to identify the costs and advise on other aspects of the *Appetite for Life* strategy however the group quickly recognised how difficult it is to accurately estimate the costs of measures to improve healthy eating in schools, mainly because of a lack of baseline data in Wales.
- 4 Limited information is collected at a national level and data collected at a local level is frequently not collected on a consistent or comparable basis. In the *Appetite for Life Action Plan*, the Assembly Government say:

In undertaking their review of school meal provision it became increasingly apparent to the Food in Schools Working Group that there was a lack of good quality baseline data available to help inform decisions on the levels of financial investment required to fully implement the changes proposed in *Appetite for Life*. . . . To take this forward, the Welsh Assembly Government is seeking to develop, in discussion with local authorities, an agreed approach to calculating the cost of producing a school meal.

Estimates of Costs in Scotland

- 5 Substantial work has been undertaken by the Scottish Executive on estimating the costs of their *Hungry for Success* initiative.
- 6 The money to support the policies in Scotland is used to fund for example:
 - new nutrient standards for school meals,
 - free fruit for all pupils in primary one and two;
 - the provision of drinking water,
 - improved facilities in dining rooms,
 - standard portion sizes and product specifications and
 - action to incentivise uptake of free school meal entitlement.
- 7 The Scottish Executive undertakes an annual survey relating to school meals. This survey provided much of the data on which the estimates of costs for the *Hungry for Success* policies were based.
- 8 In 2007, 46 per cent of pupils present on the day of the survey in Scotland in all publicly funded schools took a meal supplied by the school. The percentage of pupils registered in Scotland for free school meals was 16.0 per cent. Of those identified as entitled, 67.5 per cent took a free school meal on the survey day. This equates to 11.5 per cent of all pupils. Four out of five secondary schools and half of primary schools in Scotland had an

anonymised system for free school meals receipt. 90 per cent of all schools had free fresh chilled water available to pupils and staff at all times.²¹

- 9 There is no annual survey of school meals in Wales although some information is collected and published in the Welsh Assembly Government's annual schools survey. In 2007, 16 per cent of pupils in maintained schools in Wales were entitled to free meals, the same as in Scotland.²²
- 10 The *Appetite for Life* report said that £63.5 million was allocated by the Scottish Executive over the 3 years (2003-2005), of which £14 million was distributed to local authorities in the first year, £21 million in the second and £24 million in the third and a further £4.5 million was retained centrally for evaluation and central support.

Additional Funding in Scotland for 2006 - 2008

- 11 In December 2005, a further three year package (2006-2008) of funding for *Hungry for Success* in Scotland of more than £70 million was announced to allow local authorities to continue the work they had started with the initial investment.

Costs in England for 2005 -2008

- 12 The priorities for funding for the *Food in Schools* policies in England are:
 - minimum spending on ingredients in both primary and secondary schools to meet tough minimum nutritional standards;
 - increased training and working hours for school cooks;
 - a new Schools Food Trust to provide independent advice to schools and parents;
 - a responsibility on Ofsted to review the quality of schools meals as part of regular school inspections;
 - a new vocational qualification for school caterers;
 - new or upgraded school kitchen facilities; and
 - a whole school team approach.
- 13 In March 2005, £220 million was pledged over 3 years in England for funding grants to schools and LEAs to transform school meals. This funded a minimum spend on ingredients of 50p per pupil per day for all primary schools, and 60p per pupil per day for all secondary schools, as well as providing increased training and working hours for school cooks.²³
- 14 In 2005, £60 million of funding from the Big Lottery Fund and the Department for Education and Skills²⁴ was also provided to enable a new School Food Trust to give independent support and advice to schools and parents to improve the standard of school meals.
- 15 It was reported that a review group set up by the then UK Education Secretary, Ruth Kelly, recommended that the amount of funding in England

²¹ School Meals in Scotland 2007, The Scottish Government Statistics website, <http://www.scotland.gov.uk/Publications/2007/06/04134749/1>

²² Schools in Wales: General Statistics 2007, Table 9.2 <http://new.wales.gov.uk/topics/statistics/publications/swgs2007/?lang=en>

²³ *Healthy Food In Schools - Transforming School Meals*, Department for Children, Schools and Families, 30 March 2005, http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2005_0044

²⁴ £45 million from the Big Lottery Fund and £15 million from the then Department for Education and Skills

was insufficient and that an additional £266million was required over three years. The review group also proposed more stringent nutritional standards.

- 16 In fact £240 million was allocated towards the cost of producing school lunches from 2008-11.²⁵
- 17 Capital funding of £150 million was announced in October 2007 to help local authorities with the greatest need build new school kitchens, as part of a larger capital funding package.²⁶
- 18 In February 2008, a further £21 million over three years, plus £2 million capital investment, was announced to support the ongoing work of the School Food Trust.²⁷

The Food in Schools Working Group calculations for Wales

- 19 Using the Scottish levels of funding for 2003-2005, the Food in Schools Working Group calculated, using a proportionate basis (60%) that this would give a total indicative cost of around £38 million over three years for Wales with £8.4 million in the first year, £12.6 million in the second year, and £14.4 million in the third year together with a further £2.7 million retained centrally.
- 20 Using the English levels of funding announced in 2005, the Food in Schools Working Group calculated that providing this level of support in Wales on a proportionate basis (6.1%) would give total costs of around £17 million over 3 years.
- 21 **Using the English and Scottish budget figures, the Food in Schools Working Group identified a required estimate level of investment for their healthy eating policies ranging from £17 million - £38 million for Wales over a three year period. They also anticipated that there would need to be some annual investment after the initial three year period.**

²⁵ Department for Children, Schools and Families, press release, 7 February 2008, notes section http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0026

²⁶ Department for Children, Schools and Families, press release, 10 October 2007, http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2007_0185

²⁷ Department for Children, Schools and Families, press release, 7 February 2008, http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0026

Part 3: Explanatory Notes on sections as amended at Stage 2

Section 1: Promoting healthy eating and drinking by pupils in maintained schools

1 This section would impose a duty on local authorities and governing bodies of maintained schools to take action to promote healthy eating and drinking.

2 In fulfilling that duty, they would have to have regard to any guidance issued by Welsh Ministers in relation to what constitutes healthy eating and drinking; what action would be appropriate and how the principles of sustainable development should apply to healthy eating and drinking.

Section 4: Governors' reports

3 This section would require the governing body to include in their annual report information about the action taken to promote healthy eating and drinking by pupils of the school.

Section 5: Functions of the Chief Inspector of Education and Training in Wales

4 Section 20(1) of the Education Act 2005 sets out the matters upon which the Chief Inspector of Education and Training in Wales has a duty to keep Welsh Ministers informed. This section would add a new paragraph (g) to that subsection so as to require the Chief Inspector also to report on the action taken to promote healthy eating and drinking.

Section 7: Requirements for food and drink provided on school premises etc.

5 This section is based on the current section 114A of the School Standards and Framework Act 1998, which is brought into the Measure so that all the relevant legislation about nutritional standards in schools is dealt with in one piece of primary legislation. It continues to empower Welsh Ministers to make regulations to prescribe requirements applicable to food and drink provided on the premises of any maintained school. Regulations may also be made in relation to food and drink provided by the local authority or governing body elsewhere to pupils registered at the school. The requirements will not, however, apply to packed lunches.

6 It also adds, in subsection (3), a power to specify maximum levels of fat, saturated fat, salt and sugar in food and drink provided for pupils.

7 It also includes a requirement for Welsh Ministers to ascertain the views of pupils and others before making regulations under this section.

Section 8: Drinking Water in Schools

8 This section would impose a duty on local authorities to ensure that a supply of water is available free of charge, and to have regard to any guidance issued by Welsh Ministers.

Section 9: Promotion of meals in schools and other educational establishments

9 This section would require local authorities to promote the availability and consumption of school meals and milk in general, and free school lunches and milk in particular.

Section 10: Protection of the identity of pupils receiving free school lunches or milk

10 In order to encourage the take-up of healthy school meals, this section would impose a duty on local authorities and governing bodies to protect the identity of those entitled to free school lunches or milk, and to do so in accordance with any guidance issued by Welsh Ministers. This is done by inserting a new section 512ZC into the Education Act 1996 immediately after the section of that Act that deals with entitlement to free school lunches.

Section 11: Consequential amendments

11 As section 7 of this Measure would replace section 114A of the School Standards and Framework Act 1998 in relation to Wales, this section makes consequential changes to section 114A to make it clear that it does not apply to Wales.

Section 12: Saving

12 This section gives continuing effect to any regulations made under section 114A before this Measure comes into force, so that there is no lack of regulations during the period before regulations are made under the powers contained in this Measure.

Section 13: Orders and regulations

13 This section contains the usual details about the power of Welsh Ministers to make subordinate legislation. This would be subject to the negative procedure in the National Assembly, with one exception. In accordance with normal practice, there would be no procedure in relation to commencement orders made under section 16(3).

Section 15: Interpretation

14 This section defines a number of terms used in the Measure, but contains no substantive provisions.

Section 16: Short title and commencement

15 This section introduces the title by which the Measure will generally be known. It also provides for the coming into force of the Measure. This section comes into force on the date that it is approved by Her Majesty at a meeting of the Privy Council, and the remainder of the Measure would come into force in accordance with a Commencement Order made by Welsh Ministers.

16 The section also provides that the Measure is to be included in the list of Education Acts set out in section 578 of the Education Act 1996. This will enable Welsh Ministers to exercise default powers if local authorities or governing bodies are in breach of the provisions of this Measure.