

Proposals for a Healthy Eating in Schools Measure

Contents

1. Summary of the Measure proposals
2. Consultation Questions
3. Draft Assembly Measure
4. Explanatory notes

1. Summary of the Measure proposals

Introduction

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.

On 19 September 2007 the Assembly agreed, without opposition, that a proposed Assembly Measure relating to healthy eating in schools could be introduced for consideration by the Assembly.

This consultation document invites you to comment on the draft proposed Measure before it is presented to the Assembly and responses to the consultation will inform the final proposals for the Measure which will be introduced for consideration by the Assembly in March 2008.

You are invited to comment on any of the proposals in the proposed Measure and a number of specific questions are outlined in Section 2 of this document.

Legislative Background

The constitutional context to this proposal is set out by the Government of Wales Act 2006 (the 2006 Act). It provides a mechanism for enhancing the legislative powers of the National Assembly for Wales.

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.

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.

The following Matter may also be relevant to the promotion in schools of healthy eating more generally –

Matter 5.4

Provision about the curriculum in schools maintained by local education authorities.

These powers were originally framework powers contained in section 178 of the Education and Inspections Act 2006, that were converted to Measure-making powers by the National Assembly for Wales (Legislative Competence) (Conversion of Framework Powers) Order 2007.

Background

There is substantial evidence that both obesity and the number of people who are overweight are steadily increasing. The latest Welsh Health Survey found that 56% of adults were classified as overweight or obese, including 19% classified as obese.

There is also much greater awareness that a poor diet can predispose individuals to a variety of serious illnesses, including diabetes, cardiovascular disease and some cancers; a poorer quality of life is a significant factor in many premature deaths. Obesity not only has a major impact on our health but also has significant economic consequences especially for our health service.

It is also widely accepted that obesity and being overweight are serious health problems amongst our children and young people. The latest obesity figures show that 37 per cent of school children are overweight.

It is not just obesity that is related to nutrition and our eating patterns. More than 50 per cent of young people in Wales experience tooth decay. This is much higher than for the rest of the United Kingdom.

It is widely accepted that a healthy balanced diet and access to drinking water improve children's ability to learn through better concentration and improved attention span. Children who eat a healthy diet are less likely to be hyperactive and are likely to be more alert in class.

Encouraging healthy eating during childhood and adolescence is particularly important as many behaviours, such as eating habits, are established in these early years. Children start to take increasing responsibility for their food intake and it is important that they understand the need for a healthy balanced diet and the benefits of maintaining a healthy weight. School is an ideal environment to promote understanding of good nutrition.

Policies and initiatives to improve nutrition and embed healthy eating habits have already been started in Wales and in other countries. Tackling obesity has been identified as a key public health priority by the National Public Health Centre for Wales.

The Children's National Service Framework¹ identifies four key actions to help improve the diet of children and young people in Wales including the following key action:

2.41 All settings where food is provided for children and young people have policies in place to promote healthy food options (including in vending machines) as well as

¹ Welsh Assembly Government's National Service Framework for Children, Young People & Maternity Services (English version) <http://www.wales.nhs.uk/sites3/docmetadata.cfm?orgid=441&id=46873>

reducing the promotion and availability of snacks that are high in fat, salt and sugar and drinks that are high in sugar.

The Welsh Assembly Government's Sustainable Action Plan 2004-07² made improving school meals one of its top ten targets.

Poverty is also an issue that has an impact on the opportunities for healthy eating and needs to be addressed. The poorest of our children have the worst diet. In order to address this, a duty must be imposed on schools and local education authorities to ensure that the highest percentage possible of those eligible for free school meals take those school meals. The percentage take-up of free school meals is only 72 per cent at the moment, and it is even lower among ethnic minority groups. It is essential that the uptake of free school meals is encouraged and that the identities of those children who have them are protected.

Purpose of the proposed Measure

The overarching purpose of this Measure is a holistic, comprehensive, made-in-Wales policy on nutrition in primary and secondary schools, and in nurseries. It is essential that healthy nutrition is maintained through the whole education process.

The proposed Measure brings together existing relevant legislation together with the additional powers envisaged in this proposal.

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 education authorities to promote healthy eating generally, and that has implications for the curriculum.

The Measure will not only regulate school lunches, but will look at the drinks provided in schools, and at what is provided in tuck shops and vending machines.

There will be responsibility at all levels throughout schools, imposing a duty on governing bodies and local education authorities to report regularly on the promotion of healthy eating. Head teachers will also be required to report to parents on progress.

Healthy eating and good nutrition in schools should be part of the inspection regime and the proposed Measure requires Ministers to report annually on progress on nutrition in schools and on the improving standards.

The proposed Measure will also impose a duty on schools and local education authorities to ensure that the highest percentage possible of those eligible for free school meals take those school meals. It is essential that the uptake of free school meals is encouraged and that the identities of those children who have them are protected.

The Measure does not, however, set out in detail the content of food served in schools, including quantities of fat, sugar, salt and artificial additives. That must be done by the Minister through regulation, because the nutritional requirements and guidelines change from one year to another.

² Welsh Assembly Government's Sustainable Action Plan 2004-07
<http://wales.gov.uk/caec/publications/susdevactionplan/plane.pdf?lang=en>

The proposed Measure will ensure that Ministers will have a duty to provide guidance in relation to the application of sustainable development principles to food in schools, and to introduce a duty on Local Education Authorities to have regard to that guidance.

Finally the proposed Measure recognises the importance of the availability of drinking water for all children and the promotion of that availability.

Current Policy in Wales

The Welsh Assembly Government has already undertaken public consultation and started to make progress on its plans to improve healthy eating in schools but this Measure intends to build on and go further than the current initiatives.

Appetite for Life

Based on the work done by a *Food in Schools* working group, the Welsh Assembly Government issued the *Appetite for Life*³ consultation document between June and October 2006. Their report contained 41 proposals and separate versions of the report were produced targeting children of primary school age and also 11-14 year olds. Over 500 responses were received and in broad terms, respondents were supportive of the majority of recommendations.⁴

The proposals included a recommendation that the nutritional standards identified in the report be adopted and the sale of confectionary, cereal bars and packaged, processed, savoury snacks should be banned. There were also proposals relating to utilising and training of catering staff; linking healthy eating to the curriculum; sustainability and catering facilities.

The Welsh Assembly Government's *Appetite for Life Action Plan*⁵ was launched on 22 November 2007 and focuses on seven key priority areas.

The Welsh Assembly Government intends to introduce and implement new nutrient, food and drink based standards. This will be achieved through a two year Action Research project, from September 2008, to develop and test the guidelines for implementing the food and nutritional standards. Four local authorities will operate the project and feedback to all maintained schools. There will also be a specific grant scheme to support schools not involved in the project, to progress to the new standards proposed in the action plan.

Consultation document "Proposals for Electronic Scheme for Determining Eligibility for Free School Meals"⁶

The Welsh Assembly Government has consulted on a proposed electronic scheme for determining eligibility for free school meals. The scheme 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 capacity for

³ National Assembly for Wales, [Appetite for Life](#), June 2006

⁴ Welsh Assembly Government Cabinet Paper, CAB(06-07)76, *Appetite for Life*, March 2007

⁵ Welsh Assembly Government press release, 22 November 2007, <http://new.wales.gov.uk/news/presreleasearchive/221107persuasion/?lang=en>

⁶ Welsh Assembly Government archived consultation, [Proposal for an Electronic Scheme for Determining Eligibility for Free School Meals](#), January 2007

fraud and error. The aim is for a national scheme, based on checking by the Local Education Authority, in place of the various systems operating at present. The consultation closed on 19 February 2007 and as a result, an electronic eligibility checking system is due to be introduced by the Welsh Assembly Government.

Consultation on a quality food strategy

Finally the Welsh Assembly Government's public consultation⁷ on an overarching quality food strategy closed on 31 December 2007.

England

In May 2006, the UK Government announced new standards for school food which are to be phased in by September 2009. Together they cover all food sold or served in schools. The first of the new standards are the interim food-based standards for school lunches which came into force in September 2006. Guidance has also been issued on food-based standards for all school food other than lunches which became compulsory in schools from September 2007.

There are lessons however to learn from the English experience where a healthy diet was possibly introduced too quickly in some areas resulting in a reduction in the number of children taking school meals.

As a result, this proposed Measure adopts an incremental approach for Wales to ensure that children, young people and parents are not alienated by the speed of the reforms. The Measure requires Welsh Ministers to make Regulations which will specify the nutritional standards for healthy eating in schools. These standards are not specified in the Measure.

Scotland

There has also been substantial progress made in Scotland. In 2001 Scottish Ministers announced plans to improve the provision, presentation and nutritional content of school meals. This resulted in the *Hungry for Success*⁸ initiative where the focus is on getting the balance right and helping pupils make informed choices. A wide range of healthy food and drink are promoted through marketing, education and active encouragement. The *Hungry for Success* initiative was then followed by a Scottish Act.

*The Schools (Health Promotion and Nutrition) (Scotland) Act 2007*⁹ 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 will go beyond the achievements of *Hungry for Success* and include food offered at the tuck shop or in the vending machine.

The Act:

- Places health promotion at the heart of schools' activities;
- Ensures that food and drink served in schools meets nutritional standards set out by Scottish Ministers;

⁷ Welsh Assembly Government website,

<http://new.wales.gov.uk/consultations/currentconsultation/healandsoccarecurrcons/qualityfood/?lang=en>

⁸ Expert Panel on School Meals, *Hungry for Success, a Whole School Approach to School Meals in Scotland*, November 2002

⁹ The *Schools (Health Promotion and Nutrition) (Scotland) Act 2007* (2007 asp 15)

- Ensures local authorities promote the uptake and benefits of school meals and, in particular, free school meals;
- Reduces the stigma associated with free school meals by requiring local authorities to protect the identity of those eligible for free school meals;
- Gives local authorities the power to provide pupils with healthy snacks and drinks, either at a cost or free of charge;
- Requires local authorities to consider sustainable development when they provide food or drink in schools.

The nutritional regulations for food and drink in schools prescribed in the Act will come into effect in August 2008.

Costs

The costs resulting from this proposed Measure will be incurred mainly by the Welsh Assembly Government, Local Education Authorities, individual schools and to a lesser extent by Estyn.

The activities and responsibilities which could result in costs being incurred as a direct result of the Measure include the requirement on authorities to promote healthy eating; changes to the curriculum; requirements on head teachers to report annually; additions to school inspection reports; a requirement on Welsh Ministers to report annually to the Assembly; the promotion of school meals generally, the promotion of free school meals to eligible pupils; and the protection of the identity of pupils receiving free school meals.

The Measure allows for Welsh Ministers to make Regulations which may specify nutritional standards and include the provision of drinking water. The costs as a result of these provisions would be dependent on the detail specified in the Regulations.

Options

The proposed Measure is not the only option when considering how to improve the nutritional value of food and drink in schools.

The first option is to do nothing. However the risks of this approach are increasingly recognised. To do nothing is likely to result in increased costs for the health service; would impact adversely on the health and well-being of our children and young people; and adversely affect their concentration levels and ability to learn.

The second option is to continue to rely on goodwill, co-operation and partnership in conjunction with subordinate legislation made under current legislative powers. Progress has been made on this basis to date.

However 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 legislation. This is the most effective way to improve nutritional standards of all food and drink in schools and to monitor and evaluate the progress towards this goal.

Summary

This Measure proposes to build on the good progress already made in Wales towards improving the nutrition in schools of our children and young people. Several of the aims of the proposed Measure have been outlined in the Welsh Assembly Government's *Appetite for Life Action Plan*.

Assembly Ministers are currently planning to take action on healthy eating under existing regulatory powers. Jenny Randerson believes that while this may be a pragmatic way for the Assembly Government to proceed her success in the first private Members' ballot has given an opportunity for a holistic, all school approach, to be enshrined properly in legislation. The proposed Measure seeks to put on a statutory basis the key elements necessary to introduce and promote healthy eating in schools in Wales.

2 Consultation 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 Education 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 Education Authorities, 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. Explanatory Notes

1 Duties in relation to the promotion of healthy eating in schools

This section would impose a duty on Welsh Ministers, local education authorities (LEAs), school governing bodies of maintained schools and their head teachers to exercise their functions in such a way as to promote healthy eating in schools, or during incidental activities such as visits, walks etc.

In fulfilling that duty, they would have to have regard to any guidance issued by Welsh Ministers and to any relevant reputable scientific advice.

The section would not require any restrictions to be imposed on food and drink that pupils bring for their own individual consumption.

Welsh Ministers would have to have regard to the general duty imposed by this section when making regulations under section 7, which deals with the prescribing of nutritional standards for food provided on school premises.

2 Further Duty on Welsh Ministers

This section would require Welsh Ministers to exercise their functions in relation to the curriculum in schools maintained by LEAs so as to promote healthy eating. This could be relevant, for example, to the curriculum for physical education and biology as well as the provision of cookery lessons.

3 Meaning of “healthy eating”

This section is intended to provide a very broad definition of “healthy eating”, to include not only the health of the individual consumer but also its effect on the general health of the population and the environment.

4 Duty of head teachers to report

This section would require head teachers to report annually to the LEA, the governing body, parents and the general public on the steps taken to promote healthy eating and the extent to which they have succeeded. There is also a power for Welsh Ministers to prescribe by regulations the form of the reports and how they are to be communicated to parents and to the public.

5. Functions of the Chief Inspector of Schools

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 sub-section so as to require the Chief Inspector also to report on the way in which the duty to promote healthy eating (contained in section 1 of this Measure) is being complied with and how effective that has been.

6. Reports by the Welsh Ministers

This section would require Welsh Ministers to report annually to the National Assembly on the progress being made in relation to the promotion of healthy eating in schools. The section sets out the matters to be included in such reports.

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

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 also adds, in subsection (2), a specific requirement to specify maximum levels of fat, salt, sugar and artificial additives in food and drink provided for pupils on school premises.

The section would also permit the prescribing of exceptions, such as Christmas lunches, by regulations made by Welsh Ministers.

8. Promotion of meals in schools and other educational establishments

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

9. Protection of the identity of pupils receiving free school lunches

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

10. Consequential amendments

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 a consequential addition of a new subsection into section 114A to make it clear that it does not apply to Wales.

11. Saving

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.

12. Orders and regulations

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 two exceptions. Firstly, if the subordinate legislation proposed to amend an Act of Parliament or Assembly Measure, it would be subject to an affirmative procedure. Secondly, and in accordance with normal practice, there would be no procedure in relation to commencement orders.

13. Power to make further supplementary and consequential provision etc.

This is a standard provision to permit Welsh Ministers to make supplementary or consequential provisions to enable the Measure to be fully effective.

14. Interpretation

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

15 Short title and commencement

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.