

Briefing for the Public Petitions Committee

Petition Number: [PE1775](#)

Main Petitioner: Catrina Drummond

Subject: Introduce statutory allergy care legislation in nurseries and schools

Calls on the Parliament [...] to pass legislation that will make an allergy care policy statutory for every nursery and school and to establish appropriate standards for nursery and school staff of medical training, education and care for children with anaphylaxis.

Background

Anaphylaxis is the result of an individual's immune system overreacting to a trigger. This is often something an individual is allergic to, but not always. Anaphylaxis is a severe reaction and can be potentially life-threatening.¹ Symptoms can start very quickly after exposure to an allergen and swift appropriate action is vital.

Concerns about the treatment of anaphylaxis in schools grew after the tragic death of a boy in a school in London in 2017. Following the inquest, the [Coroner raised concerns](#) that pupils "had a patchy understanding of his allergies, what they were and the consequences of exposure to allergens." The Coroner was also concerned about the schools' care plan. Following the Coroner's conclusions, the [Anaphylaxis Campaign established its Making Schools Safer Project](#) to support schools' allergy awareness and planning.

Schools and nurseries have both common-law duties of care to their pupils and are also subject to statutory provisions and guidance in relation to supporting their health.

Common law

Schools have a duty of care for pupils, particularly (but not exclusively) when pupils are on the school premises. A duty of care can be breached, either by act or omission, where the act or omission falls "below the standard which might reasonably be expected and which has as its reasonable and probable consequences harm".²

¹ <https://www.nhs.uk/conditions/anaphylaxis/>

² Scott (2003) *Education Law in Scotland*, para 20-11.

Courts will apply a number of tests in considering a case where a breach of a duty of care is alleged. One of these is the professional person test – what an equivalent professional person of ordinary skill would do if acting with ordinary care. In this respect, cases have referred to whether guidance is followed by a teacher. Current guidance for schools is highlighted below.

Health and Safety at Work etc. Act 1974

Health and Safety legislation applies to the safety of school staff and pupils. Managers of education facilities must make sure that risks are managed so far as reasonably practical. [The Management of Health and Safety at Work Regulations 1999](#) provide that every employer should assess any risks to employees and others in connection with the undertaking.

Education (Scotland) 1980 Act

[Section 19 of the Education \(Scotland\) Act 1980](#) provides that schools should have the premises and equipment conducive “to the good health and safety of all persons occupying or frequenting the premises or using the equipment.”

Standards in Scotland’s Schools etc. Act 2000

The 2000 Act (as amended by the Schools (Health Promotion and Nutrition) (Scotland) Act 2007) gives the Scottish Government and education authorities duties to ensure that schools are health promoting.

The 2000 Act defines health promoting as provision of activities and of an environment and facilities which “promote the physical, social, mental and emotional health and well-being of pupils in attendance at the school.”

The Schools (Safety and Supervision of Pupils) (Scotland) Regulations 1990

[The 1990 Regulations](#) were made under the 1980 Act. Among other things, the regulations provide that every education authority “shall take reasonable care for the safety of pupils when under their charge”.

Scottish Government Guidance

[Supporting children and young people with healthcare needs in schools: guidance Annex B](#) provided detailed guidance for schools and early learning and childcare centres on the use of Adrenaline Auto-injectors (e.g. Epipens) in schools. This guidance noted that from 1 October 2017 the Human Medicines (Amendment) Regulations 2017 allowed schools to obtain, without a prescription, adrenaline auto-injector devices, if they wish, for use in emergencies.

The guidance noted that any staff can volunteer for training but cannot be forced to do so and that schools should ensure there are a reasonable number of designated members of staff to provide sufficient coverage. The guidance stated—

“Schools must arrange specialist anaphylaxis training for staff where a pupil in the school has been diagnosed as being at risk of anaphylaxis. The specialist training should include practical instruction in how to use the different [Adrenaline Auto-injector] devices available.”

General Teaching Council for Scotland

The GTCS provides standards for teaching which all teachers in Scotland are required to meet. The GTCS also provides standards for school leaders, which will be mandatory for teachers taking up their first permanent headteacher post at local authority and grant-aided schools in Scotland from 1 August 2020. The current [Standards for Leadership and Management](#) stated that school leaders should “give due regard to health and safety legislation to ensure safety and welfare of all”.

Training

The responsibility for the training of staff in schools and early learning centres is a matter for the employer. For most public sector schools, the employer is the local authority.

First aid training may include how to respond to a severe allergic reaction.³

Inspection

Education Scotland’s [How Good is Our School? \(4th edition\)](#) (“HGIOS4”) is used for schools’ self-evaluation and as a framework for school inspectors. HGIOS4 makes explicit reference to the efficacy and proportionality of health and safety procedures.

The Care Inspectorate is responsible for inspecting daycare settings such as nurseries. Its guidance on the [management of medication in daycare of children and childminding services](#) mentions allergies, albeit not in great detail.

Scottish Parliament and Scottish Government Actions

As noted above, the Scottish Government issued relevant guidance for schools on the treatment of anaphylaxis, which is also applicable to early learning and childcare centres.

A number of written questions may be relevant to the petition. Those questions and responses are included in the Annexe to this paper.

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Senior Researcher
12 December 2019

³ E.g. <https://www.redcrossfirstaidtraining.co.uk/courses/first-aid-at-work-courses-uk-mainland/in-company-courses/first-aid-for-teachers/>

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Relevant Recent Written Questions

Question S5W-25737: Alex Cole-Hamilton, Edinburgh Western, Scottish Liberal Democrats, Date Lodged: 09/10/2019

To ask the Scottish Government what steps it is taking to ensure that children with a food allergy or intolerance who are eligible for free school meals have their requirements met.

Answered by John Swinney (25/10/2019):

The Scottish Government is committed to ensuring that our children and young people are provided with balanced and nutritious food and drink at school. We expect all local authorities to have robust procedures in place to ensure that pupils' medical and dietary needs are taken into account when planning and providing food and drink in schools. This applies to all pupils, including those who are entitled to a free school meal.

Food and drink provided as part of a medically prescribed diet are exempt from the school food and drink regulations. We expect local authorities to work with parents/carers of a child or young person with food allergy or intolerance to agree a way forward which ensures the pupil is provided with a balanced and nutritious meal which complies with the regulations in so far as they are compatible with medical advice.

Question S5W-22860: Maurice Golden, West Scotland, Scottish Conservative and Unionist Party, Date Lodged: 29/04/2019

To ask the Scottish Government how many people in each of the last five years have (a) received emergency treatment for and (b) died as a result of a food allergy.

Answered by Joe FitzPatrick (08/05/2019):

Most emergency treatment for food allergies is provided in a primary care or emergency department setting and information on this specific activity is not centrally held.

The number of patients who have been admitted to hospital as an emergency due to food allergies and the number of deaths due to food allergies in the last five years are shown in the following two tables.

Table 1. Patients admitted to hospital as an emergency due to a diagnosis of food allergy; NHS Scotland; 2014–18.

Year	Patients
2014	432
2015	367

2016	372
2017	401
2018	357

Table 2. Deaths where food allergy was recorded as an underlying or contributing cause of death; 2013-17

Year	Patients
2013	0
2014	0
2015	1
2016	0
2017	0

Source: National Records of Scotland (NRS)
Data extracted: May 2019

Question S5W-24677: Maurice Golden, West Scotland, Scottish Conservative and Unionist Party, Date Lodged: 09/08/2019

To ask the Scottish Government what support it provides to Anaphylaxis Campaign's Making Schools Safer Project.

Answered by John Swinney (29/08/2019):

The Scottish Government does not provide support to the Anaphylaxis Campaign's Making Schools Safer Project.

The Scottish Government is committed to ensuring that education authorities, health boards and schools have the guidance they need to effectively deliver on their responsibilities to support pupils' healthcare needs. Comprehensive guidance on Supporting Children and Young People with Healthcare Needs in Schools was published in December 2017.

Information on anaphylaxis and allergies is covered in Annex B of the guidance.