

Consultation on the Food Hygiene Rating (Wales) Bill – Response of the Welsh Retail Consortium (WRC)

1.0 Introduction

The WRC is the representative organisation for retailers in Wales and we welcome the opportunity to share our comments with the Committee. Around 10 per cent of Welsh businesses are retailers and we are the nation's largest private-sector employer, with around 131,000 employees (over 11 per cent of the workforce). Our membership comprises a large number of businesses that are affected by the proposals, including supermarkets, food to go outlets and members that operate cafes within their stores. Our food retail members account for over 90% of all grocery sales in Wales and we also have a growing membership amongst food to go members who have stores on many Welsh high streets

We have previously shared our views with the Welsh Government on this issue and were pleased that some of our comments were incorporated in the revised Bill. We still, however, have concerns regarding the effectiveness of the Bill and unnecessary burdens it will place on food businesses, which we have elaborated on in our answers to the questions posed by the Committee.

We have been involved in the discussions on food hygiene ratings for a number of years, both contributing through our sister organisation the British Retail Consortium (BRC) to FSA consultations and as a member of the FSA's food hygiene ratings stakeholder group

2.0 Is there a need for a Bill to introduce a statutory food hygiene rating scheme in Wales?

We believe the creation of a statutory scheme is disproportionate in regulatory terms and would only be justified if there was clear evidence of its role in reducing food borne illness.

We certainly support the need for a national scheme that is operated across all relevant businesses in a consistent fashion so that consumers can judge premises equally. We are not convinced if it is necessary to establish a statutory scheme. The information is already freely available, and whilst we accept the point made around access to the internet, the continued growth in its use and the increasing exchange in information will quickly address this point. Our members' experience suggests consumer use of the scheme is not extensive.

We believe it would have been more appropriate for the Government to assess the value of the voluntary scheme before pursuing a statutory one. Now the scheme has comprehensive coverage we would have considered a thorough assessment before adding a regulatory burden to thousands of businesses would have been justified. The evidence provided in the consultation is primarily drawn from the FSA review of use around the world, which does not include food retailers, in 2008 and a report from Consumer Focus Wales which was an interview with consumers not an assessment of the impact on reducing food borne illness which is the ultimate aim of the scheme.

3.0 Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum?

We have consistently raised a number of concerns about the need for and value of such schemes, particularly in food retail where it is not operated in other countries. We do not believe it is possible to show evidence of a link between its use in a supermarket and a reduction in food borne illness. This is because it is not possible to determine the cause of food illness in the home, which may well be due to the manner in which food is stored and handled in the home rather than the hygiene of the store. We have raised this issue a number of times with the FSA who are evaluating the effectiveness of their scheme and they have confirmed they are unable to calculate this when it is used in supermarkets.

On a more general note we believe a better approach would be more targeted and faster enforcement of existing food law. We fully support rigorous enforcement against all poorly run food businesses and believe this is a more effective approach to reduce food borne illness.

4.0 Are the sections of the Bill appropriate in terms of introducing a statutory food hygiene rating scheme in Wales? If not how does the Bill need to change?

We accept that the Bill, in principle, establishes a workable scheme but do have some concerns regarding the detail of enforcement and the safeguards for business, most of which can be covered by guidance. It is very important the guidance is prepared in advance of implementation, in consultation with industry and enforcers, to ensure maximum compliance.

We have given more details on how the guidance should apply to specific Clauses later in this submission.

5.0 How will the proposed measure change what organisations do currently and what impact will such changes have, if any?

The mandatory scheme is likely to intensify current approaches to the scheme rather than introduce wholesale changes to their business. Our members already monitor ratings as they are awarded and ask for revisions where appropriate and they will amend their systems to take account of the provisions for appeals and reviews in the Bill.

Compliance with food safety legislation is of primary concern to our members and is apparent in their day to day management of their businesses. They will work with enforcers to ensure compliance with the new measures.

We do feel, however, that there needs to be appropriate guidance to take into account the fact that even responsible companies such as our members that use internal procedures to ensure compliance may have occasional problems, for example, where a sticker may not be displayed due to wear and tear or tampering. Other areas of food legislation acknowledge the use of due diligence as a defence and we trust the Government will ensure a proportionate approach to enforcement that accounts for internal procedures to ensure compliance.

6.0 What are your views on the financial implications of the Bill?

We have some concerns that the use of fixed penalty notices could drive a money making culture amongst enforcers and have made points below on the need for guidance to be clear on the use of these notices.

We would also like to see a review of Clause 21 to provide more scrutiny of what use will be made of fixed penalties. As businesses will be contributing towards the fund that Ministers will use to improve food hygiene we believe it is appropriate to include a provision to consult annually on the use of those funds. This would ensure appropriate scrutiny of the spending and that it is being correctly targeted.

7.0 Are there any other comments you wish to make about specific sections of the Bill?

As previously noted, our main concern is the guidance and how it will apply to certain Clauses. The guidance to the Act will be crucial to ensure local authorities and businesses are fully aware of the processes that will be followed. Clause 22 suggests guidance will be issued and we welcome that and look forward to contributing to its production, something we have done with FSA and other regulators on a number of occasions.

The detailed areas where we feel the guidance will be most appropriate are as follows.

- Clause 6. This requires the food authority to notify the food establishment of the rating. Many of our members are national companies with a number of premises and they would review the rating and whether to appeal centrally, it is therefore imperative to send a copy of the rating to both the individual site and the headquarters of the company
- Clauses 7 and 9. This details the requirement to display a sticker and when an offence is committed. Guidance can clarify the appropriate location for the sticker but it is worth emphasising the issues. A store may have multiple entrances and sliding doors that remain open. Also retailers already use front facing doors and windows for key information such as licences and customer recall safety notices. The key thing is to allow for flexibility that ensures customers can see the rating but that it allows for the day to day operation of the store.
- Clause 8. This details the request by a customer to be informed verbally of the rating. Whilst we have no problem in complying with the request and would seek to include it in training for store staff, we believe it is reasonable to expect a proportionate response, for example allowing a temporary or part-time member of staff to ask a colleague to answer the request.
- Clause 10. This allows the business to have a right of reply and we believe this should be stronger to protect the businesses' interests, particularly where the rights of appeal in Clause 5 are relatively limited. We would suggest the Clause makes it a requirement for the FSA to publish it on their website and allows the company to display it in store.
- Clauses 11 and 12. These cover the right to request a re-rating and paying for that visit. On the re-rating request, we hope that guidance will suggest a revisit takes part as soon as practical and the latest that can happen is 3 months, practically that would encourage businesses to deal with non-conformances quicker. On paying for

revisiting and revising ratings we do not object in principle to the food business paying for this but would expect to see guidance on what would be seen as a reasonable charge.

- Clause 20. This sets out when a fixed penalty can be given and we have real concerns that if guidance is not clear on when it is and is not appropriate it could quickly turn into a money making exercise. We would expect to see justifiable reasons for non-compliance exhausted before the authority considers issuing a penalty notice. We feel this is such a key concern for businesses that further discussion with industry is essential.