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29th June 2012

RESPONSE TO THE HEALTH AND SOCIAL CARE COMMITTEE CONSULTATION ON THE FOOD HYGIENE RATING (WALES) BILL

The Better Regulation Delivery Office (BRDO) welcomes the opportunity to respond to the Health and Social Care Committee call for evidence on the general principles of the Food Hygiene Rating (Wales) Bill. This short response focuses on key areas where the work of the BRDO has relevance to the basis for and future delivery of a mandatory Food Hygiene Rating Scheme in Wales.

Background

The BRDO was established as a distinct unit within the UK Government Department for Business, Innovation and Skills on 1 April 2012. It replaces and draws on the expertise, experience and previous activity of the Local Better Regulation Delivery Office (LBRO), previously established by the Regulatory Enforcement and Sanctions Act 2008.

The role of the BRDO is to drive better delivery of regulation. It aims to do this by working towards a simple and clear regulatory environment in which businesses have the confidence to invest and grow, and citizens and communities are properly protected. It seeks to ensure that the business voice is heard in the delivery of regulation and to develop practical tools for regulators to help transform the way businesses experience regulations on a day-to-day basis.

The BRDO's remit covers both England and Wales and there is close collaboration with the Welsh Government to ensure a consistent approach to delivering better regulation, whilst taking account of the respective policies of the UK and Welsh Governments. To this end, the BRDO delivers a specific programme of activity in

Wales (funded by the Welsh Government) to reflect the distinctive priorities and focus of Welsh Ministers regarding better regulatory delivery.

Our specific comments are as follows grouped under key themes outlined for consideration by the Committee:

1. The need for a Bill

1.1. National Enforcement Priorities for Wales

We recognise the important role regulation plays in safeguarding public health and protecting consumers. The National Enforcement Priorities (NEPs) for Wales published by LBRO and the Welsh Government in July 2010 provide a focus for local regulatory activity in delivering protection and prosperity for citizens and business at local and national levels, and two of the four priorities specifically focus on health improvement and the safety and quality of the food chain:

- Protecting individuals from harm and promoting health improvement
- Ensuring the safety and quality of the food chain to minimise risk to human and animal health

Providing appropriate information to allow citizens to make informed choices could potentially contribute to effective delivery of these priorities and the outcomes that citizens and businesses wish to see, such as a reduction in foodborne illness. Furthermore, the food hygiene rating scores, when considered alongside with other suitable input, outcome and impact measures could also provide effective feedback to citizens and businesses to demonstrate local and national progress towards delivering the relevant priority outcomes.

1.2. Transparency and accountability

In addition to improving transparency to citizens, the Food Hygiene Ratings Bill should help improve transparency of business performance and accountability of local regulatory activity, whilst also strengthening the relationship between central and local government. Our work over the last four years has demonstrated that businesses value clear advice and support- without transparent standards, businesses do not know what is expected of them and see enforcement as inconsistent. The Bill would provide a clear explanation to businesses of why a particular rating was awarded together with a description of the expectation of hygiene standards and improvements required to improve the rating.

As noted in the Transforming Regulatory Enforcement strategy published by the UK Government, the Regulators Compliance Code provides a means to ensure transparency and accountability of regulatory activity to business. This provides an excellent opportunity for further collaboration as BRDO takes forward work to review

the success of the Code to date, including specific consideration of how the Code has been adopted in Wales and the potential to extend its applicability across Welsh regulatory activity.

2. Potential barriers to implementation

2.1. Consistency

Consistency of advice and enforcement action by Local Authority Regulatory Services will be fundamental to the successful operation of the Food Hygiene Rating Scheme. This will require consistency both in awarding the ratings between Local Authorities in Wales and in how dispute resolution is handled from one Local Authority to another. There will need to be systems and checks in place to ensure consistency of interpretation from area to area.

The BRDO is responsible for the operation of the Primary Authority scheme which was introduced to address issues of consistency. It gives businesses the right to form a statutory partnership with one Local Authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance. The Primary Authority scheme therefore offers assurance of consistency for businesses that trade across local authority boundaries, including for the purposes of inspections leading to award of ratings.

2.2. Inspections

The Enterprise and Regulatory Reform Bill, announced in the Queen's speech and which has just entered its Committee stage, includes a clause to make Primary Authority inspection plans binding. These inspection plans are intended to improve targeting, sharpen the focus of work, and inform risk assessment. There is a perception on the part of some Local Authority Regulatory officers that these more focussed inspections could potentially conflict with those conducted for scoring purposes as part of the Food Hygiene Rating Scheme. BRDO is actively engaged in dialogue with both Welsh Government and the FSA in Wales to ensure the inspection regimes required by the two schemes dovetail. All parties are clear that this is a non-issue from a policy perspective, and BRDO is actively promoting this message to stakeholders in Wales through its Primary Authority training courses and other engagement channels.

2.3. Risk

Further consideration may need to be given to frequency of programmed inspections for premises based on risk as this may lead to the display of scores which are not current. Local Authority regulatory services use various schemes to assess the level of risk associated with a particular business, activity, or premises, and to determine subsequent regulatory response including the frequency of inspection. Businesses in turn have the right to expect objective, consistent criteria to be applied in forming an assessment of their likelihood of compliance. To support this, the BRDO as part of its

common approach to competency for regulators includes modules on assessing risks and conducting inspections. More detail on the common approach to competency is given in section 4.2. BRDO is also actively working with Local Authorities and national regulators on common approaches to risk, particularly how regulators can share risk-based intelligence to identify non-compliance within a business.

3. Unintended consequences

3.1. Business size and diversity

There may be a differential effect depending on business size and diversity. We know that the burden of regulatory compliance is greater for small businesses- the resource implications for small businesses aiming to achieve the highest ratings and paying for re-inspection visits could further compound this. Diverse businesses also often face specific challenges when accessing and using support networks designed to facilitate regulatory compliance. There would therefore need to be clear provision for advice and support for smaller businesses which are the lifeblood of the economy in Wales to help them develop an appropriate compliance solution, safeguarding their reputation and keeping transactional costs to a minimum.

3.2. Cross-border considerations

Changes have been made to the Bill following consultation to exempt food business establishments registered outside Wales but trading on a transient basis in Wales from the scheme. This could expose Welsh businesses displaying ratings to competitive disadvantage when operating alongside unrated English businesses e.g. at food festivals.

3.3. Data collections

The LBRO undertook a piece of work in Wales in 2010-11 examining ways to reduce the administrative burden of data reporting. This concluded that any data gathering should be justified, efficient and mutually beneficial. There is a requirement within the Bill for Local Authorities to provide the FSA with regular updates on their ratings- this is an additional collection but is arguably for collective benefit. We would advocate however that in the spirit of freeing up frontline resources that consideration be given to the costs and benefits of reporting of 'failure to display' offences by Local Authorities to Welsh Government and that any provision be subject to periodic review between these parties.

4. Impact on stakeholders

4.1. Business

The BRDO is committed to reducing unnecessary regulatory burdens on business and believes this to be a key growth opportunity. Whilst mandatory display of food

hygiene ratings will support informed consumer choice by providing assurance that food outlets have good food hygiene standards, it should also provide a driver for business competitiveness.

BRDO believes this scheme will incentivise businesses to comply with the law and that through so doing, the rating awarded will reflect the efforts made by the business to comply. Additionally, we believe the ratings awarded will provide a basis for food authorities to target limited resources towards higher risk businesses.

4.2. Local Authority Regulatory Services

Assured advice, provided by professionally competent officers should lie at the heart of any scheme such as the Food Hygiene Rating Scheme. We are confident that Welsh Local Authorities are working towards the principles of good regulation following on from a piece of work we undertook for Welsh Government in relation to granting them civil sanctioning powers under the Single Use Carrier Bag Charge Regulations (Wales) 2010.

The effective practical implementation of the Food Hygiene Rating Scheme will depend on the professionals who carry out the work. Accordingly, their efforts to develop their skills and knowledge will need to be strongly supported. The BRDO's common approach to competency for regulators, which was launched in November 2011 and endorsed by both Welsh Government and the Welsh Local Government Association, provides a unique set of agreed core skills for regulators to use supported by web-based resources for personal development planning. As part of the suite of resources there are modules dealing with key regulatory skills such as risk assessment and inspections, complemented by a suite of technical modules including one on food. The framework dovetails with the relevant qualifications frameworks provided by relevant professional bodies – including the Chartered Institute of Environmental Health.

I hope you find our comments useful and if you have any queries relating to the projects/initiatives outlined above, please contact the lead officer for Wales, Lorna Thompson, lorna.thompson@lbro.org.uk - in the first instance.