



# **Cynulliad Cenedlaethol Cymru** **The National Assembly for Wales**

## **Y Pwyllgor Iechyd a Gofal Cymdeithasol** **The Health and Social Care Committee**

**Dydd Iau, 12 Gorffennaf 2012**  
**Thursday, 12 July 2012**

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir  
trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In

addition, a transcription of the simultaneous interpretation is included.

**Aelodau'r pwyllgor yn bresennol**  
**Committee members in attendance**

Mick Antoniw	Llafur Labour
Mark Drakeford	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Rebecca Evans	Llafur Labour
Vaughan Gething	Llafur Labour
William Graham	Ceidwadwyr Cymreig Welsh Conservatives
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Lynne Neagle	Llafur Labour
Aled Roberts	Democratiaid Rhyddfrydol Cymru (yn dirprwyo ar ran Kirsty Williams) Welsh Liberal Democrats (substitute for Kirsty Williams)
Lindsay Whittle	Plaid Cymru The Party of Wales

**Eraill yn bresennol**  
**Others in attendance**

Graham Perry	Cyngor Sir Fynwy/Cyfarwyddwyr Diogelu'r Cyhoedd Monmouthshire County Council/Directors of Public Protection Wales
Steve Wearne	Cyfarwyddwr Cymru, Asiantaeth Safonau Bwyd Director Wales, Food Standards Agency
Simon Wilkinson	Swyddog Polisi—Gwasanaethau Rheoliadol, Cymdeithas Llywodraeth Leol Cymru Policy Officer—Regulatory Services, Welsh Local Government Association
Liz Withers	Pennaeth Polisi, Llais Defnyddwyr Cymru Head of Policy, Consumer Focus Wales

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol**  
**National Assembly for Wales officials in attendance**

Faye Buckle	Clerc Clerk
Llinos Dafydd	Clerc Clerk
Claire Griffiths	Dirprwy Glerc Deputy Clerk
Catherine Hunt	Dirprwy Glerc Deputy Clerk
Victoria Paris	Y Gwasanaeth Ymchwil Research Service

Lisa Salkeld  
 Philippa Watkins

Cynghorydd Cyfreithiol  
 Legal Adviser  
 Y Gwasanaeth Ymchwil  
 Research Service

*Dechreuodd y cyfarfod am 9.57 a.m.  
 The meeting began at 9.57 a.m.*

### **Cyflwyniad, Ymddiheuriadau a Dirprwyon Introduction, Apologies and Substitutions**

[1] **Mark Drakeford:** Bore da i chi gyd. Mae'r cyfarfod hwn o'r Pwyllgor Iechyd a Gofal Cymdeithasol wedi'i agor. Croeso i bawb. Rydym wedi derbyn ymddiheuriadau gan Kirsty Williams, a chroeso i Aled Roberts sydd yma ar ei rhan. Ni fydd Vaughan Gething gyda ni y prynhawn yma, ond bydd Jenny Rathbone yma yn ei le.

**Mark Drakeford:** Good morning to you all. I open this meeting of the Health and Social Care Committee. Welcome to you all. We have received apologies from Kirsty Williams, and I welcome Aled Roberts, who is substituting on her behalf. Vaughan Gething will not be joining us this afternoon, but Jenny Rathbone will be substituting on his behalf.

9.57 a.m.

### **Ystyried Cynnig a Hysbyswyd i'r Pwyllgor yn Unol â Rheol Sefydlog Rhif 17.44**

#### **Consideration of a Motion Notified to the Committee in Accordance with Standing Order No. 17.44**

[2] **Mark Drakeford:** Members will have seen yesterday that Elin Jones has proposed a motion, in accordance with that Standing Order. I will read it out so that everyone is clear about it.

[3] **Elin Jones:** Cynigiaf fod

**Elin Jones:** I propose that

*y Pwyllgor Iechyd a Gofal Cymdeithasol yn neilltuo amser yn ystod ei gyfarfod nesaf, ar 18 Gorffennaf 2012, i graffu ar waith y Gweinidog Iechyd, ei swyddogion ac, os ar gael, yr Athro Marcus Longley, a hynny o ran yr ohebiaeth rhwng swyddogion Llywodraeth Cymru a'r Athro Longley a gyhoeddwyd yn ddiweddar.*

*the Health and Social Care Committee allocates time at its next meeting on 18 July 2012 to scrutinise the Health Minister, her officials and, if available, Professor Marcus Longley, on the recently published correspondence between Welsh Government officials and Professor Longley.*

[4] **Mark Drakeford:** Does any Member object? I see that no-one does. The motion is therefore agreed, in accordance with Standing Order No. 17.34(i).

*Derbyniwyd y cynnig.  
 Motion agreed.*

[5] **Mark Drakeford:** As the motion is in Elin's name, I will check whether she wants to say anything.

[6] **Elin Jones:** I do not have anything to add at this stage, other than to thank the committee for allowing the time for this important scrutiny session next week. I hope that the

Minister for Health and Social Services and her officials will be available, and it will be for Marcus Longley to tell us whether or not he is available. I suggest that if Marcus Longley is not available, we hear the Minister and her officials next week, and if he wants to make himself available at any other point in the autumn, then we can provide him with that opportunity at that time.

[7] **Mark Drakeford:** Thank you. We know that the Minister and her officials are available because they were on the agenda in any case for the Food Hygiene Rating (Wales) Bill. We are clear there. We have made an enquiry in principle with Professor Longley as to whether or not he would wish to give evidence were there to be a session, and we know that he is very willing to come. However, he does not know about today's motion so he does not know that it could be next week. We will have to find out whether he is available for that, but he is certainly happy to come and give evidence. Mick, did you want to say something?

10.00 a.m.

[8] **Mick Antoniw:** Only that I welcome the availability of the Minister to take up this issue at the next session. The motion is appropriately brought; it is a specific role of this committee to scrutinise and to hold to account and I am sure that we will undertake that function properly.

[9] **William Graham:** On procedure, will we see the Minister and her officials separately?

[10] **Mark Drakeford:** I had assumed that we would see the Minister and her officials side by side.

[11] **Lynne Neagle:** As we always do.

[12] **Mark Drakeford:** I will think about that; I had not thought of it as a question, but thank you for raising it.

[13] **Darren Millar:** I think that it would be useful if they were separate and able to give their own independent evidence.

[14] **Mark Drakeford:** I will give that some thought and see what is possible. What will happen now, in a practical sense, is that I will ask the clerk to have a discussion with the Minister's office about how much time she has available. If possible, I am also keen to have time with her on the Food Hygiene Rating (Wales) Bill next week because we are up against this very tight timetable from the Business Committee to complete Stage 1. So we will have to have some discussion with her office about how long she is able to be with us because we cannot do both in the one hour that we currently have. That will mean that we may need to extend next week's session to accommodate all the different things that we want to achieve. We will send around, if not a formal, final agenda to you by the end of today, at least an indication of what time we will need to start and finish, so that people can make their own diary arrangements accordingly.

[15] Diolch yn fawr i Elin am hynny. Thank you very much to Elin for that.

10.02 a.m.

**Ymchwiliad i'r Gwaith o Weithredu'r Fframwaith Gwasanaeth Cenedlaethol  
ar gyfer Diabetes yng Nghymru a'i Ddatblygiad yn y Dyfodol—Ystyriaeth  
o'r Cylch Gorchwyl**

**Inquiry into the Implementation of the National Service Framework for  
Diabetes in Wales and its Future Direction—Consideration of Terms of  
Reference**

[16] **Mark Drakeford:** Mae gan Aelodau gopi o'r cylch gorchwyl. A oes gan unrhyw Aelod sylwadau am y cylch gorchwyl drafft ar ddiabetes?

**Mark Drakeford:** Members have a copy of the terms of reference. Does any Member have any comments on the draft terms of reference on diabetes?

[17] Do you have any suggestions on the draft terms of reference that have been circulated in relation to our intention to hold a short inquiry into the national service framework? I will quickly remind you what we said we would do: we said that we would look at the implementation of the current NSF for diabetes in Wales, which is reaching its end in terms of the time that it was meant to cover, and then to look at the future direction of diabetes policy in Wales. We have three sessions that we can devote to this. The paper that you have also suggests that we divide that time up by, first, having a session with patients and voluntary sector groups that represent the interests of patients and families, using the middle session to hear from people who are direct providers of services in the diabetes field, including clinicians and health board representatives and so on, and allocating the third session to policy makers and the Welsh Government. Is everyone happy with that? I see that you are.

[18] Felly, gallwn gasglu tystiolaeth gan bobl dros yr haf ac ystyried hwn yn yr hydref.

We can therefore collect evidence from people during the summer and consider this in the autumn.

[19] On medical technologies, if you remember, we said that we would flag it up as a topic that the committee would be taking an interest in when we had an opportunity to do so. We are slightly less certain about when that opportunity will arise, but because we are keen to be in a position to be able to consider this, even at relatively short notice if time suddenly appears in our timetable, the intention is to announce our intention to undertake work on the appraisal of medical technologies in Wales.

[20] Over the summer, we would consult on the scope of the inquiry. So, we will not be publishing terms of reference, but we will alert anyone out there who has an interest in this field that we are going to be doing this work and ask them for their views on potential terms of reference. We will ask for comments on the three points that Members specifically raised when we discussed this a week or so ago: first, the uptake of medical technologies and possible barriers to effective new non-drug treatments being made more available to Welsh patients; secondly, the current appraisal process for new medical technologies; and, thirdly, the decision-making process in NHS Wales regarding how new medical technologies and treatments are funded. So, we will signal to people that we already have a particular interest in those three themes, but invite them to identify any others things that they think ought to be part of any terms of reference.

[21] We will then report all that to the committee early in the autumn. The preparation for such an inquiry will then be well under way and we will be in a position to take advantage of any time that might become available. Is there anything on that that anybody would like to clarify or ask about at this stage? I see that there is not. Is everyone happy that we should go ahead? I see that you are. I think that that is a helpful way for the committee to use the summer period actively to prepare ourselves properly for the autumn. Diolch yn fawr iawn.

10.06 a.m.

**Bil Sgorio Hylendid Bwyd (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 2**  
**Food Hygiene Rating (Wales) Bill: Stage 1—Evidence Session 2**

[22] **Mark Drakeford:** Bore da a **Mark Drakeford:** Good morning and chroeso. Rydym yn barod i fwrw ymlaen welcome. We are ready to move on with item gydag eitem 4 ar ein hagenda. Dyma'r ail 4 on our agenda. This is the second session sesiwn ar y pwnc hwn. Croeso mawr i Steve on this subject. A warm welcome to Steve Wearne, cyfarwyddwr yr Asiantaeth Safonau Wearne, the director of the Food Standards Bwyd yng Nghymru, ac i Liz Withers, Agency in Wales, and to Liz Withers, head of pennaeth polisi Llais Defnyddwyr Cymru. policy at Consumer Focus Wales.

[23] The committee will be spending the rest of today taking evidence in our Stage 1 inquiry into the Government's proposed Food Hygiene Rating (Wales) Bill. I will begin by asking you both a general question to get your position of principle on the Bill on the record, and then I will turn to Members. I have no doubt that there will be a series of questions that Members will want to ask as well. My opening question to you both in relation to the Food Hygiene Rating (Wales) Bill is: why bother? We have a voluntary scheme in place and the Government's explanatory memorandum tells us that it is working well. Why should we move to a next stage and have a Bill that makes all this compulsory?

[24] **Mr Wearne:** I will kick off. There is general agreement, certainly from us and from equivalent agencies in countries and regions that have operated similar schemes, that the publication of food hygiene ratings is a very effective public health measure. That has been shown by evaluations in Denmark, the US and other places. However, to be effective, that information has to be available to consumers at the point where they make a purchasing decision, or decide where to eat or where to buy food. We know that many of those decisions are spontaneous and, even when they are pre-planned, not everyone will have the means to check online at the website that currently exists what the rating is of the place from which they may choose to buy food. So, to be effective, there needs to be a universal display of ratings in premises.

[25] We know that only a low proportion of businesses choose to display them voluntarily in Wales under the current scheme; it is only about a third and only two thirds of those businesses with the highest rating of 5 and only 6% of those businesses with ratings of 0, 1 and 2, about which you might presume that consumers have the greatest need or right to know. So, our view is that legislation is required in order to deliver universal display, and it is universal display that leads to consumer protection.

[26] **Ms Withers:** I would support most of what Steve said and echo the majority of that. The voluntary scheme has shown that there is demand for such a scheme and there is support among consumers for having this information available, but we know that consumers do not make decisions by going to websites before deciding where to eat. Therefore, we feel that it is really important that people have this information available to them when they are making a decision on a Friday night about which takeaway or restaurant to choose on a particular street.

[27] From research we have done, we also know that 94% of consumers in Wales would like to see a compulsory system here. Looking at schemes in other areas of the world—in Europe, including Denmark, and in Los Angeles and New York in the US—there is evidence that mandatory schemes are much more successful than voluntary schemes. They are more successful at reducing food-borne illness. In LA, food-borne illness was reduced by 20% by the introduction of a mandatory scheme. They are also more successful at increasing business improvements in food hygiene and in gaining support from business for the schemes. They are also more successful at informing consumers and encouraging them to make better

choices about where they eat. The whole point of having a scheme is to inform consumers to encourage them to make better choices, but, ultimately, to raise food hygiene standards. Therefore, we strongly support the Bill and feel that it should be a mandatory scheme moving forward.

[28] **Lindsay Whittle:** I have to say that I am a huge fan of this scores on the doors scheme, and I am fully supportive of the idea of making it compulsory. Mr Wearne, you mentioned in your opening evidence that 6% of those businesses that have a score of 1 or 0 display it. Well done to them, really. They have great courage to tell the world that they are not very good. However, at least it gives them the incentive to improve. It is great to have this in Wales. However, there is a lot of food crossing the Severn bridge and coming along the A55 from other places. Although the kitchen of the Welsh establishment preparing the food and serving it to the customer is probably very good indeed, how do we know that the food coming into this country is of good quality and a good standard and that it has been kept at the regulatory temperatures in the lorries that bring it into this country?

[29] **Mr Wearne:** I think that we have to recognise that the current food hygiene rating scheme—and this would also be the case with the scheme that the Welsh Governance is proposing—is simply a public reflection of what goes on already and what will continue to go on across the whole of the UK and, in fact, across the whole of the European Union, where there is harmonised food hygiene legislation and where environmental health and food safety officers inspect products and premises. All of that goes on consistently across the UK. The difference is that, in some local authority areas, that is given a public face through the food hygiene rating scheme—including, I am pleased to say, all 22 local authorities in Wales since October 2010—but, in other places, it is not. However, that does not change the safeguards that are applied by environmental health and other food safety officials at the point where food is being produced, prepared or sold.

[30] **Lindsay Whittle:** However, there has been evidence that some of the contaminated food that has got into the supply chain has not emanated from the servers, but from elsewhere.

[31] **Mr Wearne:** Indeed, and that is precisely why control at all points of the food chain will continue to be important in protecting the public. However, what the Bill aims to do is open up that black box, if you like, of regulatory inspection of food businesses to public scrutiny and to allow the public to make choices on where they choose to eat or buy food based on that information.

[32] **Mark Drakeford:** To pick up on Lindsay's point, would it be true to say that this particular Bill would make no difference one way or another to the circumstances he described, where food is coming into Wales from outside Wales? The existing regime would be in place, as it is now, but this particular Bill would make no difference one way or another to that.

[33] **Mr Wearne:** Absolutely. I would like to say that the same high standards would continue to be applied.

10.15 a.m.

[34] **Rebecca Evans:** On the cross-border issue, I was wondering whether you think that food standards stickers would hinder Welsh businesses or give them a competitive edge in situations like festivals, for example, where you might have a burger van that has come across from England next to one with a rating of 5 from Wales? What impact would that have on competition?

[35] **Mr Wearne:** We introduced the scheme primarily as a consumer information

measure, so that was not at the forefront of our minds, although it stands to reason that, if you have a long line of takeaways on one of our city-centre streets, and one has a rating of 2 and the others have ratings of 5, that might influence its getting less business than the others. We think that that is entirely right and appropriate—that consumers should be able to have that information and use it in that way. Building consumer awareness will give you a thirst and a demand among consumers for that information, and I would hope that, as we progress with the scheme, consumers will become more confident in asking what the rating is where they do not see it displayed. If there is no answer, or the business says, ‘I will not tell you’, which is possible at present, the consumer will also take that into account when they make a choice about where to buy food.

[36] **Rebecca Evans:** At a festival, if you had a burger van from England that was not required to show a sticker next to one from Wales, would that have an impact on consumer choice?

[37] **Mr Wearne:** We have no research on this issue, but I would like to think that, where a business was openly displaying that it had higher food hygiene standards, that would be weighed up by consumers in their purchasing decisions. Clearly, the ideal situation to reach, and one that the Food Standards Agency has said that it wants to help bring about across the UK, is for there to be mandatory display across all four countries. We will be working with departments in the other administrations to undertake impact assessments and make the case for mandatory display. That must be the long-term goal.

[38] **Mark Drakeford:** Mick has a point on this, then I will allow Liz to reply, before going to Darren for another point.

[39] **Mick Antoniw:** Is not the opposite the case? At big festivals, where you often have vans side by side, the obligations on Welsh businesses will disadvantage them in that they have to do more than their counterparts from over the border. You raise the point that there is concern as to why we are excluding a significant element of the provision of food from regulation within Wales, and it would also create an unfair competitive advantage to those from outside Wales.

[40] **Mr Wearne:** I understand that the Bill, as drafted, captures within its scope all food businesses registered in Wales. I do not know whether it would be feasible to broaden that scope. The only additional burden that this legislation would place on businesses in our analysis would be the need to put the sticker up. What you are talking about is not the burden on business but the impact in the minds of consumers of one competitor displaying it and one not. As I said, we have no research evidence that would allow me to do anything other than take a punt at what might happen.

[41] **Mark Drakeford:** Liz, do you want to reflect on any of the points that have come up so far?

[42] **Ms Withers:** Yes, on just a couple of points. On the issue of people coming from outside Wales, ideally we would like all food businesses across the UK to have to display their rating, and we support the FSA in encouraging the UK Government to consider that for England. Businesses in Wales will have a competitive advantage if this Bill is taken forward, because of displaying their stickers; as an individual consumer, I would certainly choose to visit a food van that had a rating of 5 or 4 rather than a van next door that did not have a score at all. That will come with increased awareness of what the score or rating actually means. I would also say that we have done some research with consumers about what they think of the potential scheme and whether it would affect their decision. The evidence that we have from consumers is that a high score would impact their decision. That gives you some indication of the implications of having the score available. If we are saying that consumers also need to be



more aware of the implications of the rating or the score, then I think that they would decide to go with the business that had the rating on display.

[43] Going back to the question asked initially, we also have evidence from other places where a mandatory scheme has been introduced, particularly Los Angeles, that it increased revenue for businesses with higher scores by 5.7% in the first couple of years. So, where a business has the equivalent of a 5, its profits increased by 5.7%, because people actively chose to purchase from that business rather than from another business down the road.

[44] Finally, businesses should be achieving good hygiene standards as a matter of course anyway. It is not something that they should not already be doing.

[45] **Darren Millar:** I just want to ask a little more about promotional materials from food establishments. From your research, Consumer Focus Wales seems to suggest that 82% of people think that ratings should be made available on such things as leaflets for takeaway establishments, for example. Of course, the Welsh Government is concerned, as is the FSA, that these may not be updated regularly or refreshed often enough, and that this could have an impact on consumers in that they would not have the latest information available to them when deciding to order a kebab, a pizza or whatever it is they might order. How might those sorts of challenges be overcome from a Consumer Focus Wales point of view?

[46] **Ms Withers:** Certainly, our preferred position is that businesses should display the score on all promotional material. We understand that there are burdens on business regarding some of the issues that you have mentioned. So, as a starting point, we think that, at the very least, businesses should display their rating on their website. That should be the minimum, and it should be an offence for businesses not to display the rating on their website. Some 80% of consumers told us that ratings should be displayed on a business's website. Having said that, 75% of people thought that they should be displayed on any printed advertising material.

[47] With regard to your question, in terms of undue burden and the issue of confusing information for consumers, it is also about taking a step back and saying that, if businesses have an expectation on them to put these things in place, for instance by publishing the information on a takeaway leaflet, they will have to think about that in how they design and how often they print those leaflets. So, printing in bulk just after they have received the rating is quite reasonable, and time periods between inspections should allow businesses, quite reasonably, to produce the amounts that they need without adversely affecting their costs, as long as they take that into account in the publication of their materials.

[48] **Darren Millar:** There is an added incentive for takeaway businesses to get things right in the first place, given that there is potentially a significant cost in reprinting leaflets and so on.

[49] **Ms Withers:** Definitely. You should not do something just because of the fear of a business potentially printing lots and lots of materials. You should be saying to the business that you want it to display this rating and to think about how it will achieve it and make it happen. The other thing to say is that, if you receive five takeaway leaflets, as I do regularly, through your door, you will probably pick up the one that receives a 4 as opposed to any that receive a 1.

[50] **Darren Millar:** Does the FSA see that there is a potential incentive for takeaway businesses to aim much higher in their standards if there is a potential cost implication in reprinting leaflets if they are way down the scale?

[51] **Mr Wearne:** We certainly appreciate all the arguments that have been put by

Consumer Focus Wales and by industry respondents to the consultation. We would want to come back to the fact that this is not imposing a new regulatory burden on businesses; we are not asking businesses to do something new or testing that we have not done before. Every business that is fully compliant with existing food hygiene legislation should get the highest rating of 5. So, we do not accept the argument that there is some huge new and undue burden on businesses. For compliant businesses, there is not.

[52] **Darren Millar:** Is there a risk that, if hygiene ratings are displayed and then standards slip at a takeaway, it will be reluctant to republish information in printed form and distribute it to local residents?

[53] **Ms Withers:** I suppose that you will only know whether standards have slipped through a formal inspection by the environmental health officer. That creates an impetus potentially to make it a requirement for businesses to display on their printed material, because if you make it a requirement, when they get the new rating and standards have slipped, they have to ensure that they reproduce their materials to reflect that.

[54] **Darren Millar:** I have one final question. In conjunction with displaying its rating on its leaflet, should it include the date of its last inspection in order to ensure that there is sufficient information for consumers to make a choice with up-to-date information? It is a relatively straightforward, simple thing to do—you print the date of your inspection, print the rating that you received, and there people have it. That overcomes the argument that the information could be out of date, does it not?

[55] **Mr Wearne:** It does, and that would also reflect the information that is already available on the FSA's website, which is the rating and the date of the last inspection.

[56] **Mark Drakeford:** That was an interesting point. Mick, briefly on this point.

[57] **Mick Antoniw:** Do you think that the Bill should include, as part of its enforcement regime, an offence of sending out material that falsely represents the rating that a business has?

[58] **Mr Wearne:** I am not a lawyer, but I would think that false claims such as that might be covered by other existing legislation as well.

[59] **Vaughan Gething:** I am interested in your views on the display issue. You have mentioned Denmark as an example of somewhere where this already happens and where there is a definable benefit. Denmark, of course, has slightly wider requirements in the information to be published. We are just talking about stars, but, in Denmark, more information has to be given about the detail. It is an issue that all of us are interested in. Should we not either have a summary or make available the full inspection report—perhaps on a website—or should we be requiring the food business to publish more than just the rating, so that you can go through and see which particular areas have been assessed and what the ratings are for each of those? Some people may be more concerned about food preparation than they are about other aspects of food storage, for example, depending on the sort of establishment that it is.

[60] **Ms Withers:** Obviously, you will have seen from our submission that we feel that more information should be available to consumers further to the rating. A rating is great as a snapshot for a large number of consumers, but if people want to find out the reasons behind a rating, it is currently extremely difficult to do that—you currently have to make a freedom of information request to your local authority for a copy of the full food hygiene inspection report. We did that as an exercise to find out how easy it would be, and it was incredibly difficult, varying between local authorities and between individual reports. Some local authorities would not release the information on the basis that there might be a prosecution at

some point in the future. However, if you look at the figures, there are very few prosecutions in Wales each year. So, there is the potential for a future prosecution, but I do not feel that that is an adequate reason.

[61] Some local authorities also held back on the basis that there might be a re-rating. In some local authorities, there was confusion as to whether they would release the information under the freedom of information request, or whether it should be held back under environmental information regulations. So, there was a lot of confusion and it was incredibly difficult. About a quarter of the reports that we requested from across Wales were held back. So, there is certainly an argument for further information. It is confusing for consumers at the moment, to some extent, partly because there is still a lot to do around awareness and education about what the rating means, because there are three elements to the rating: food hygiene, the structure of the premises and the food safety management system.

10.30 a.m.

[62] There have been incidences where, for example, schools have received poor ratings—a 1 or 2—and parents have wanted to know the reasons behind those ratings. It is incredibly difficult to find those at the moment. By making further information available to people, you provide an impetus to encourage those premises to improve and you enable people to make more informed decisions—particularly when they have a choice, but also when they do not have a choice—and to be able to campaign for improvement, particularly in the instance of schools. As a parent, I would want to know why my child's school was getting a rating of only 2. If it was down to the fact that the ceiling needed to be fixed and the local authority had not provided the money for that or was not prioritising it, then I would want to campaign to the school and to the local authority to get that sorted because it would be impacting on my child's health. So, that is important.

[63] We have asked consumers across Wales about this, and 92% of people told us that they thought that they should be able to access the information more easily; 85% of people thought that that information should be available on the FSA's website. I know that there has been some pushback from local authorities on this issue in terms of the fact that it may be additionally burdensome and could be quite difficult because, currently, inspection reports are not produced in a template or a format that is consistent across Wales. However, that is not a reason not to do this; in fact, it is more of a reason to do this, because, from the information that we have, there is incredible variation in how inspection reports are written and how they are presented. If we created this obligation, there would be the added benefit of greater consistency in inspection report completion across Wales. That would provide greater benefits in terms of monitoring for the FSA and for other agencies, and we would be able to compare authorities more easily. So, we would certainly call for more information to be available.

[64] **Vaughan Gething:** Does the FSA have a view on this?

[65] **Mr Wearne:** Yes. What Liz says is completely right. We should note that there are just a small handful of local authorities across the UK—none in Wales—that currently publish inspection reports. Norwich City Council is the one that I would propose as an exemplar. It publishes the rating from 0 to 5, an indication of what parts of the various scores were most important in reaching that composite view, and then the inspection report in what I find to be accessible language. This is a key point. We have commissioned a qualitative study that will get behind and underneath some of the figures that Liz mentioned from the Consumer Focus Wales survey, which uses consumer forum methodology—an established methodology—to explore consumer views and expectations about possible extensions to the publication of information on food business compliance. I apologise that we do not yet have a final report from that study; it is due at the end of this month and I will ensure that the

committee receives a copy.

[66] **Vaughan Gething:** I have a couple of questions on what you have said. First, on your comment on the lack of consistency in report writing and the lack of understanding of how ratings are reached, I am interested in whether you would support the provision of further guidance, whether in the Bill, in regulations or in statutory guidance, on how those reports should be written and whether that would be helpful or unhelpful.

[67] I am also interested in the point about consumer confidence and confusion. I am a little perplexed about the ratings. If you get a rating of 0, you can still continue in business. If this is about consumers' understanding so that they can make more informed choices, and given the points that you both made about consumer education, how do you educate people to understand when you can still purchase food safely at an establishment with a rating of 0? Would not a summary of why a rating has been reached and what factors have influenced it be more helpful? I know that I am putting words in your mouths, but I am genuinely interested in what your views are.

[68] **Ms Withers:** The answer to the question on consistency in report writing is 'yes'—we would warmly welcome greater guidance through regulation for local authorities as part of any guidance that is taken forward relating to the scheme. On consumer confusion about what the ratings actually mean, yes, ideally, a summary should be displayed alongside the rating on the website, and then people should be able to access the full inspection report for further detail. With regard to establishments that have received a rating of 0, Steve can obviously talk technically about this. It is an issue we have raised on a number of occasions through our annual E. coli report. Basically, if a business is getting a rating of 0, we do not think it should be trading, full stop. I think that that is incredibly confusing for consumers. If you are not good enough to even get a number, why are you still trading and serving food to the public in the first place?

[69] My understanding from the work that we have done to gather information about food hygiene is that, certainly until recently, it has been incredibly difficult to close down businesses if they were really not meeting the required standards, because the burden of proof was imminent risk, which is actually extremely difficult to prove. That has recently been changed with the introduction of remedial action notices. So, I suppose that I am saying that I hope that, potentially, environmental health officers will have more tools at their disposal to take action more quickly where businesses are really failing to meet the required standards. We would like to see fewer 0 ratings, so hopefully there will be less confusion for consumers. However, it is another justification for a mandatory scheme because I would really hope that anyone seeing a 0 rating for business would not go in and the business would have to face the consequences of that.

[70] **Mr Wearne:** With hindsight, I suppose it would have been easier for us to set the ratings between 1 and 6, rather than 0 and 5, given that we understand that that drives a certain perception among consumers. As well as publishing the number, there are also one to three words of explanation. A rating of 0 is accompanied by the words 'urgent improvement required'. That brings me to my substantive point, which is that the rating is a snapshot of the circumstances at the time of the primary inspection. Businesses that are generally compliant and above receive a letter saying what they need to do in order to be fully compliant, but there will probably be no formal enforcement action taken, although there may be some reminders and some follow-up activity. Local authority environmental health officers take action on ratings of 0, 1 and 2. Those businesses are not just left.

[71] I would like to bring it to the committee's attention that the all-Wales food safety technical panel to the Welsh heads of environmental health has proposed a procedure that would see consistent standards implemented and adopted by all local authorities in Wales.

This would involve a second visit to a business with a rating of 0 within 28 days to check that all the necessary improvements have been implemented; premises with a rating of 1 or 2 would be revisited within three months. None of that would prevent the environmental health officer and the local authority, where they believe it is justified, taking formal enforcement action of the types that Liz referred to.

[72] Here in Wales now, as in Scotland and Northern Ireland, local authority officers have access to remedial action notices, which are similar to the 'stop now' notices in other regulatory fields. Those allow officers to stop immediately risky processes or practices they observe on inspection without the need to take the case before a magistrate. We think that that will become an increasingly important and well used part of local authority officers' armoury or toolbox, if you like. In the very worst cases, where there is an imminent risk to human health, local authorities are able to, and we would expect them to, serve a hygiene emergency prohibition notice, which would close the business. That does happen.

[73] **Mark Drakeford:** William and Mick have brief supplementary questions on this point. Then William will ask his main questions.

[74] **William Graham:** I think that you have largely covered my point, but, for clarification, I seem to remember that when one saw evidence of this kind, there were usually quite a few paragraphs on the number of times an enforcement officer had called and offered advice to those establishments under existing legislation. No doubt, you would propose the same sort of action in this regard.

[75] **Mr Wearne:** Yes. I think this goes back to a point I made earlier, namely that publication of the ratings does not change the behind-the-scenes activity that is going on all the time by local authority officers in inspecting and taking follow-up action with regard to food businesses.

[76] **Mick Antoniw:** I find that very confusing and, to some extent, contradictory as regards what the Bill is seeking to achieve. When Mr Wilkins from the Food Standards Agency gave evidence to us a while back, he said that businesses rated 0, 1 and 2 have significantly contravened food safety law. Part of the purpose of the scrutiny is to assess the principles, outcomes and objectives of the Bill. It seems totally contradictory to have a regime that allows a business to continue operating while it is in substantial breach of food safety law. By implication, there must be potential risk to people. Is this an area that needs to be looked at again while we are in the process of developing this Bill?

[77] **Mr Wearne:** The comments Rob Wilkins made to you are correct. A rating of 3 signifies broad compliance with food hygiene legislation, which is a huge corpus of quite technically complex law, and it is no surprise that not every business secures full compliance all of the time. That equates to a rating of 5, and about a quarter of businesses reach that high standard. Therefore, where there is a rating of less than 3, so where businesses are, by definition, less than broadly compliant, they are not left alone and there needs to be follow-up action, which is taken by local authorities, to bring those businesses into compliance, take formal enforcement action or, in some cases, to do both simultaneously. I would not want anyone to go away from this committee or from viewing this scheme with the impression that businesses are given a low rating and then just left alone. They are not, and once the necessary improvements are made, the business can apply for a re-rating and, it is hoped, demonstrate to the satisfaction of the local authority officer that improvements have been made in order to secure a rating of 3, 4 or 5.

[78] **Mick Antoniw:** Does that not just highlight the contradiction? We have premises that are clearly significantly unsatisfactory and we are providing a rating that they can maintain, irrespective of what is happening behind the scenes, and continue to operate. Does that not

give the public exactly the wrong information?

[79] **Mr Wearne:** I think this comes down to the point of when you should close a business. Businesses are closed by local authority officers where there is an imminent risk to human health. Remedial action notices give them the opportunity to stop individual processes or practices where there is a significant risk to human health. What the food hygiene rating scheme reflects is the overall compliance of that business with food hygiene legislation.

[80] **Mark Drakeford:** Thank you. I think we have rehearsed that one as much as we are going to today. It is a very important point for the committee.

[81] **William Graham:** I want to ask you again about this business of the exemption of certain charities and voluntary bodies because I am still concerned. You will know that normal community activities of coffee mornings, lunches, teas and so on are a significant source of income for voluntary organisations and political parties. My concern is that with the change and the increasing burden on trustees in particular, legally and financially, these organisations often become a company and they are therefore technically a business. They may hold regular pensioners' lunches, breakfasts for homeless people and things of this nature. Can we be sure that these things are still intended to be exempt?

10.45 a.m.

[82] **Mr Wearne:** The current scheme and the proposals made by the Welsh Government in no way change the underpinning food hygiene legislation. Those provisions remain the same, so food hygiene regulations apply only when a business, which may be voluntary, has a degree of continuity and 'organisation', which is the word used in the European legislation and which we can take to mean a degree of formality. Someone who handles, stores or serves food occasionally and on an informal basis is not subject to food hygiene legislation and so would not be subject to the current scheme or the requirements in the Bill that the Welsh Government has brought forward.

[83] **William Graham:** My point is that, often, these activities are regular and are organised, so are you saying that they would be subject to it?

[84] **Mr Wearne:** Where they are regular and organised, they are currently subject to food hygiene legislation and that would continue. We have only to think back to the outbreak in central Scotland more than a decade ago in which more than 20 people died. That was a lunch served in a village hall, so we should not believe that those types of undertaking are without significant risk. There can be significant risk, and that is why the legislation is designed to apply.

[85] **William Graham:** I do not challenge that. Clearly, food safety legislation should apply and be rigorously enforced, but should this legislation also apply?

[86] **Mr Wearne:** The current scope of the proposal from the Welsh Government is that all registered food businesses in Wales fall within the scope, and a registered business is one that would have that degree of continuity and organisation, and would then be subject to food hygiene legislation. So, yes, within the current scope, all registered food businesses, which would include some of those of the type that you have alluded to, would continue to be subject to food hygiene legislation and would be subject to this requirement.

[87] **William Graham:** So, to be clear, a voluntary body offering pensioners lunch once a week on, say, 50 weeks of the year would be subject to legislation and have to get a food hygiene rating.

[88] **Mr Wearne:** My understanding is that they would be caught within its scope, but there are practical issues. For example, when several undertakings of this type use the same building, how and where should you provide that information to consumers? However, that is about the practical application of the display of stickers rather than whether those businesses should be subject to food hygiene legislation in its entirety.

[89] **Mark Drakeford:** I will come to Darren in a moment, but I just want to follow up on one issue. Additional to the point that Mr Graham is making, we have already heard from the Welsh Government that there will be certain categories of provider that are captured by the regularity rule, and so on, but will not be required to display a sticker. Child minders, we were told specifically, meet your first category, but will not be required to display a sticker. So, thinking of William Graham's example of an organisation that is captured by the regularity principle and is therefore inspected, quite properly, to ensure that its standards are sufficient, are there additional activities of the sort that he described, voluntary activities, where there is an additional requirement to display a rating on top of the underlying need to satisfy hygiene requirements, which might be good examples of something that the Government ought to think of exempting?

[90] **Mr Wearne:** It is for the Welsh Government to consider. What it may be useful to do is outline the types of business that are exempt from the current scheme that we operate with local authorities voluntarily. There are three types. The first is low-risk establishments that generally would not be recognised by consumers as food businesses—for example, a visitor centre that sells pre-packaged souvenir biscuits and fudge among a range of other goods, or a chemist's shop that sells pre-packaged health foods. Those would be exempt, we decided when setting up the scheme, because they are not generally recognised to be food businesses, and it might cause confusion.

[91] Secondly, there are some businesses that operate from private addresses, primarily child minders, that are included within the scope of the scheme, and so are inspected, and a rating is communicated to the child minder, but they are not published on the FSA's website, because it would be inappropriate to publish private addresses in that way. However, those child minders—and similar undertakings from private addresses—may choose to display or otherwise publicise their ratings quite properly.

[92] Finally, there is the point of irregular and informal events that are not captured by food hygiene legislation at all. So, those are the three current types of exemption in the scheme that applies voluntarily, and it will be a matter for the Welsh Government to choose whether to keep any or all of those or whether, indeed, to extend them.

[93] **Mark Drakeford:** Thank you very much for that. Darren and Rebecca both have small points to make on this and then I will move on to Elin.

[94] **Darren Millar:** I just want to explore that third point on the irregular and informal events. Very often, groups will organise outside caterers to provide catering on specific premises. The typical thing might be a wedding reception in a marquee, or events like that. In your view, should the legislation require the display of food hygiene ratings for those sorts of informal events? Should that be prescribed in the Bill?

[95] **Mr Wearne:** The food business in that type of example would be the catering company providing the services. I took the liberty, before I came here, of checking on Charlton House Catering Services Ltd, which runs the catering services here in this building, and I am pleased to report that it has a rating of 4, and that is reported on our website. So, it is the catering company that would be caught by the legislation, not the organisers of the wedding or event. The issue then is, in practical terms, where it should display its rating. Should it be on the website and on promotional material, would it just be at the head office,

which would be the registered premises, if you like, for that business, or should it be wherever it provides services?

[96] **Darren Millar:** However, these companies are regularly preparing food for people to consume, but may be irregular in where they deploy their food services, as it were. So, how can consumers, those who are going to eat the food, determine the rating of the organisation?

[97] **Mr Wearne:** As I said, this is an issue relating to the practical application of the requirements—

[98] **Darren Millar:** I am asking whether that practical application should be prescribed on the face of the Bill or whether it ought to be left to regulations.

[99] **Mr Wearne:** The FSA and I have no view on the most effective way of delivering that information to consumers, but we firmly believe that the underlying principle is that consumers, in those cases, should be able to have access to that information before they pick up the chicken wing and decide to eat it.

[100] **Mark Drakeford:** It could be on the wedding invitation: ‘You are safe with us’. [*Laughter.*] Rebecca, you have a small point to make on this.

[101] **Rebecca Evans:** On a similar point to Darren’s, what about people who sell at farmers’ markets? That is, those who make produce at home in fairly small volumes. How would a consumer make an informed choice at a farmers’ market? Should a sign be displayed on the table, or would people be expected to go online? How do you see that working for the consumer?

[102] **Mr Wearne:** A display on the table at the point of sale would seem to be an appropriate means of delivering that information.

[103] **Ms Withers:** I agree with that. On the previous point, it is about providing detailed guidance for businesses as a consequence of this Bill on how they should be making that information available to consumers in different circumstances. It will be really important as part of that guidance to provide specific examples such as the farmers’ markets. Certainly, it should be available on the stall. We also mentioned in our written evidence to the Welsh Government that businesses should be able to request a number of different stickers if they have mobile vans, for instance. So, in the case of a catering company that comes along to a wedding, the guests could potentially find out the rating by seeing the sticker on the van. However, the people who had organised the event would have hopefully seen the rating on the catering company’s website and/or promotional material.

[104] **Elin Jones:** I have a question for Mr Wearne, first of all. You mentioned earlier that, in hindsight, perhaps, ratings from 1 to 6 would have been more logical or appropriate than 0 to 5. Why do you not believe that this legislative process allows for us to have a 1-to-6 rating in Wales? Would that not be the point of it, to change the rating? Will you give your views on the currency of a rating as displayed? If a business is re-rated from 3 to 1, say, the legislation allows the business 21 days in which to submit an appeal, and then the food authority has up to 21 days in which to respond. That means that 42 days could possibly go by without the public being aware that that business has been re-rated from 3 to 1. Do you have views on whether that is sufficiently current for the consumer?

[105] As regards the financial aspect of the legislation, it says that between 2013 and 2015, a total of £200,000 will be spent on marketing by the Food Standards Agency. We have discussed the importance of avoiding confusion for consumers, so is that sufficient? It is currently meant to be met from within the FSA budget, so what will not have money spent on



it for that £200,000 to be spent on marketing the new legislation?

[106] **Mr Wearne:** I am sure that you will remind me if I miss out any part of your questions. You asked about the currency of information. We all want to be in a situation of food business standards increasing incrementally with every local authority intervention. That is the ideal position. We recognise that there may be situations—for example, on a change of ownership—in which the ratings of a premises decrease. You raise a real issue, namely, following a business being informed that it does not warrant the earlier, higher rating but a new lower one, the extent to which it should be allowed to display its earlier, higher rating. The issue is covered in legislation, and I know that Consumer Focus Wales has views about how long it should take for the new rating to be displayed once the opportunity for appeal has elapsed. A key issue if there is a reduction in a business's rating is whether the local authority officer should ceremoniously remove the sticker from the window as they exit the shop following the primary inspection, or is there some other process whereby consumers would not be given a false assurance that standards are as they were previously observed to be? That is an issue, but the legislation, the supporting regulations or the guidance to local authorities—any, or all of those—may be effective ways of dealing with that.

[107] The financial commitment from the Food Standards Agency to the scheme is absolute. It is one of our flagship policies to which we have committed, that we have developed and are delivering in partnership with local authorities across the UK, because we believe that it has the potential to be an effective public protection measure. So, we have invested heavily in the website and a policy team at our headquarters in London. The figures that you refer to reflect just our Wales-specific activity. There have been two rounds of campaigning. If you add in the time spent by staff from the Cardiff office on developing and promoting the scheme and working with local authorities, my best estimate would be that we have committed around £0.33 million over the past three years to that. So, that is more or less the same level of expenditure that we would aim to commit continuously in Wales. It is within our baseline. As far as we understand it, the money that we receive from the Welsh Government will remain flat on cash throughout this spending review period, and I am confident that we will be able to meet those forward-spending commitments that I have identified from that budget.

[108] We are comfortable with the range of new duties that the proposed legislation would place on the Food Standards Agency. We continue to be fully committed to the delivery of this scheme.

11.00 a.m.

[109] I have now remembered, after stalling, what the first part of your question was, which was whether any aspect of the scheme should be changed as a result of this legislation. It is entirely open to the Welsh Government to do what it likes in bringing forward a scheme. I do not mean to sound egotistical, but ours is currently the only show in town. It is the only established food hygiene rating scheme in Wales. It has been run by local authorities since October 2010. If there were to be a significant change to how it was presented to consumers, how useful they found it and how consistently consumers looked at the information, I would urge this committee and the Welsh Government to seriously consider whether that would jettison the work that has been done up to this point with effectively displaying the 20,000 ratings that have already been given to food businesses in Wales. Over two thirds of businesses that sell food directly to consumers in Wales have a rating. I understand why, because this is a pragmatic approach that allows it to build on the success of the voluntary scheme to date. The Welsh Government has chosen to continue the scheme and give it a statutory footing. That is a practical and pragmatic approach. It is open to the Welsh Government to make proposals for a different scheme and for the National Assembly to pass that into law. Personally, I would be disappointed if that were the case, because I would fear

that we would effectively need to start again.

[110] **Elin Jones:** On changing the range from 0 to 5 to 1 to 6, superficially it sounds to me as an easy thing to do and it avoids consumer confusion on seeing a 0-rated premises still being operational. However, will simply changing the 0 to a 1 and the 5 to a 6 not be an easy thing for you to do?

[111] **Mr Wearne:** We could reprint the stickers and redistribute them, but having a business that was a 0 now displaying a 1, not because it had improved but just because everything had shifted up a number, would have the potential to cause significant consumer confusion.

[112] **Mark Drakeford:** We are already running close to time. I want to give Liz a chance to comment on timescales, because I know that that is an important part of your evidence. The Minister changed her mind about timescales as a result of the original consultation. I will give you a chance to do that, and then Rebecca, Aled and Elin all have points to add. I want to make sure that we have a chance to do all of that.

[113] **Ms Withers:** Okay, stop me if I talk too much. On delays, there are three areas around the timescales where we have concerns that we would like to raise with the committee. The first is about when the business has to display the rating, the second is about appeals, which you have mentioned, and the third is about when the rating is made available and published on the website. Starting with when the rating is displayed, section 3 notes that a rating ceases to be valid when a food business receives notification of a new food hygiene rating. The business then has 21 days to display the rating. Whether a business decides to appeal or not, it has 21 days to sit on that rating before it decides to display it. It is important to note that a local authority will do an inspection and then has 14 days to send the rating out to a business. There are 14 days for the local authority to send it out, and then the business can sit on it for 21 days without putting it in the window of its premises. I raise concerns around that. I think that 21 days is excessive. If you are a business—and you can put this point to colleagues coming later in the day—you will know if you are going to appeal about the rating pretty quickly. If you have a 1 or a 2, but you think that you are a 4 or a 5, then you know that you are going to appeal.

[114] I think that that is excessive and unnecessary, so I draw the committee's attention to that and our concern around that specifically.

[115] In the voluntary scheme, the appeal period currently gives seven days for a business to appeal against any new rating, and then the local authority has seven days to consider that appeal. As a result of consultation, the Minister decided to extend the appeal period to 21 days. So, the business has 21 days to consider whether it has an appeal, and the local authority has 21 days to make a determination of that appeal. However, prior to that, we also have the 14 days when the local authority undertakes the inspection and notifies the business in the first place. Our concern is that, potentially, as a result of an appeal, a new rating would not actually be displayed on the premises following an inspection for a period of 56 days. For that period of 56 days, the consumer is not getting the accurate rating. I think that that is important. If you take the 14 days out of that, you will find that, for that significant period, there is not actually a rating on display at the business at all. That potentially causes confusion for consumers where they understand that all businesses in Wales are meant to display a rating, and they do not know why that business does not have a rating. It could also be detrimental to the business. Therefore, that is the issues with appeals. We understand the issue about local authorities having time pressures and the issue of holidays for businesses, so we suggest, perhaps, that the appeal period could be reduced. Ten days would be a reasonable amount of time for the business and for the local authority around the appeal. I therefore ask the committee to consider that.

[116] On the issue of notification of ratings, I suppose that my concern is that all of these numbers are currently on the face of the Bill. I know that these are all maximum periods, but they are maximum periods and they could potentially be the timescales that we are looking at. I have concerns about them being on the face of the Bill. The relevant period for local authorities to notify the Food Standards Agency to publish the rating on the website works out to be 49 days. It would be 63 days if you add the amount of time that the local authority has to consider the rating after it has done the inspection in the first place. Actually, you could be looking at a rating not being published online for up to three months after inspection. According to my calculations—and I might be wrong—that increases to 112 days, potentially, if an appeal is submitted and considered by a local authority. That is calculated by looking at all of your maximum timescales, but not only is that an incredible amount of time for a consumer to find out an accurate and current rating, it also causes confusion between a rating on a website and the rating that is available at the premises. Therefore, I ask the committee to look at that issue.

[117] **Mark Drakeford:** Does anyone wish to follow up on any of those points? Aled, do you have a point on this?

[118] **Aled Roberts:** Yes. I was quite surprised when I read the Consumer Focus Wales evidence regarding the 91 days, potentially, and the 112 days, which I think was the worst-case scenario. I was wondering whether the Food Standards Agency had any views as to why that needed to be so long.

[119] **Mr Wearne:** I think that it has already been stated that the current timings reflect the points made to the Welsh Government in consultation. One of the parts of that timeframe, currently in the Bill, is at section 6(3), which states:

[120] ‘The FSA must publish the food hygiene rating on its website within 28 days of its receipt.’

[121] Currently, we need no time at all because local authorities upload their ratings remotely and automatically. As long as we retain the current website that continues to be the case. In practice, therefore, those 28 days will be zero—the maximum will be zero time elapsed.

[122] We would be willing to commit to a shorter timescale for us doing that part to allow us the flexibility, if we develop or change the website, to change the process by which ratings are received by us and then uploaded. The other parts are not unreasonable each one in themselves. The issue, as Consumer Focus Wales has rightly identified, is that if the maximum duration elapses at each stage of that process, it may then be up to three months or so before a rating is published.

[123] **Aled Roberts:** So, given what you have said, is there any reason why the food authorities are given 49 days in which to notify the FSA of the rating?

[124] **Mr Wearne:** For practical purposes, local authorities currently put their ratings into batches to upload every month. In practical terms, that is a reasonable approach that should continue.

[125] **Mick Antoniw:** Is there any reason why the full inspection report should not be on the website and available to the public?

[126] **Mr Wearne:** We have heard some concerns from local authority colleagues, who you may get the opportunity to question on this point later, about the additional burden on them to

ensure that all of their reports are appropriate and accessible. We could draw a parallel with the same type of activity that goes on regarding premises in which the FSA is the enforcing authority—for example, to approve meat premises, slaughter houses and cutting plants—and we are working on how we might publish our audit reports of those premises as we have made a commitment to do that. The only observation I can make is that publication of inspection reports by local authorities would be completely analogous to that. Some, albeit a small number of local authorities, already do it.

[127] **Rebecca Evans:** Steve, you said that the scheme was the only show in town, but it is quite a new show. Do you both feel that the scheme has been running sufficiently long to evaluate its usefulness and success?

[128] **Mr Wearne:** I can quickly tell you what evaluation we have done. We have evaluated the extent to which the scheme is used by business and how often ratings are displayed and I gave you those figures earlier. Two thirds of businesses given the highest rating of 5 display their rating, but only 6% of businesses that receive a rating of less than 3 do so. We have evaluated consumer awareness of the scheme because it will only be effective if consumers are aware of it and use it. Following each of the two rounds of campaigning that we undertook in March 2011 and February 2012, after the first round, 36% of consumers in Wales were aware of the scheme and after the second round, that figure increased to 48%. So, we certainly feel that we are getting there, but the Bill would commit us and put a new duty on us to continue that activity, which we would entirely want to do because we want those figures to increase.

[129] On the third bit of evaluation, which is the qualitative consumer research on what more consumers would like to see, as I said, I am happy to provide the committee with that report when it is published at the end of the month.

[130] **Ms Withers:** I will make two quick points. Fundamentally, I would say that the issue is that businesses are not displaying. We know, as Steve has implied, that only 6% of businesses with a score of less than 3 are displaying. That is fundamental as far as we are concerned.

[131] The other issue is that, where schemes operate in other countries, they are much more successful when they are mandatory. There are a number of measures for that.

[132] **Mark Drakeford:** Thank you both very much. We have covered a lot of ground and very rapidly at some points. We are grateful to you both for your help with our work this morning.

11.15 a.m.

### **Bil Sgorio Hylendid Bwyd (Cymru): Cyfnod 1—Sesiwn Dystiolaeth 2 Food Hygiene Rating (Wales) Bill: Stage 1—Evidence Session 2**

[133] **Mark Drakeford:** Awn ymlaen i eitem 5 ar yr agenda. Mae'r tystion fwy neu lai yn barod.

**Mark Drakeford:** We will move on to item 5 on the agenda. The witnesses are more or less ready.

[134] Bore da a chroeso i'r ddau ohonoch i'r cyfarfod hwn o'r Pwyllgor Iechyd a Gofal Cymdeithasol. Yn awr, rydym yn bwrw ymlaen â'n gwaith ar Fil Sgorio Hylendid Bwyd (Cymru). Croeso, yn gyntaf, i Simon

Good morning and welcome to you both to this meeting of the Health and Social Care Committee. We will now press on with our work on the Food Hygiene Rating (Wales) Bill. Welcome, first, to Simon Wilkinson,

Wilkinson, swyddog polisi, gwasanaethau rheoliadol, Cymdeithas Llywodraeth Leol Cymru. Croeso hefyd i Graham Perry, sydd o Gyngor Sir Fynwy ac sy'n cynrychioli Cyfarwyddwyr Diogelu'r Cyhoedd Cymru. Diolch yn fawr i'r ddau ohonoch am ddod i'r cyfarfod y bore yma.

policy officer, regulatory services, Welsh Local Government Association. Welcome also to Graham Perry, who is from Monmouthshire County Council and who represents the Directors of Public Protection Wales. Thank you both for attending this morning's meeting.

[135] I will begin with the same question that I asked our previous witnesses. Why do you think that this Bill is necessary? We have a voluntary scheme, and the Welsh Government tells us that it is working well. What is the case for change here?

[136] **Mr Wilkinson:** I will take this opportunity to thank you for allowing us to sit in front of you today, to provide some information and to answer any questions relating to the Bill. I work extensively on behalf of the Welsh Local Government Association with Directors of Public Protection Wales, the Welsh heads of environmental health and environmental health professionals across Wales. All those groups of people, as do I, take very seriously the responsibilities placed upon us by local authorities to positively impact upon the health and wellbeing of people in Wales.

[137] By way of an opening statement regarding the Bill, I submit that local government welcomes the introduction of a statutory food hygiene rating scheme in Wales. Welsh local authorities have already embraced the voluntary scheme, which has been applied across all 22 local authorities in Wales. The scheme is simple, but is very effective in terms of public health measures that will deliver both consumer and business benefits for the people of Wales. My environmental health colleagues have had the opportunity to discuss and debate the Bill at some length with Welsh Government colleagues during its construction. Where local government has suggested changes or improvements, they have been incorporated into the Bill as it stands now. So, it appears, certainly to Welsh local government and to professionals, to be a very useful and workable tool to improve consumer information and choice, and to provide a clear and transparent level playing field in which businesses can operate.

[138] Some concerns had been expressed by my chief executive at the WLGA regarding the possible lack of finance accompanying the legislation. As you may expect, as a general principle, the WLGA will consider it to be fundamental that new legislative duties on local authorities should be accompanied by appropriate finance if the legislation is to be implemented and enforced effectively in the longer term. However, having had discussions with Steve Thomas regarding this particular Bill, we are content that the additional work that would arise from the reinspection of businesses should be recoverable. Hopefully, this would be upfront, using the provisions contained in the Bill.

[139] To sum up, as the responsible officer for regulatory policy in Wales, I would submit that the Bill is a good thing for the people of Wales and that the proposed measures being placed on a statutory footing would raise the profile of food safety within local authorities and hopefully ensure that the service is adequately resourced in the future.

[140] **Mark Drakeford:** Mr Perry, do you have anything to add at this stage?

[141] **Mr Perry:** It has been suggested that this is a very simple but effective measure. It is a very workable initiative. We feel that it has brought about demonstrable improvements already. However, research from the Food Standards Agency suggests that only 31% of businesses currently display their ratings, and only 6% of those with the poorest scores do so. If we are to deliver the full benefits of the project, we feel that placing it on a statutory footing is a requirement.

[142] **Mark Drakeford:** I will turn to Members for questions now. I will bring Lynne in first before moving on to Lindsay.

[143] **Lynne Neagle:** I wanted to ask about the issue of resources. Some local authorities, in their consultation responses, said that they felt that the costs of reviewing and amending existing literature provided on the current scheme had not been fully taken into account. Do you have any comment to make on that? You also referred to the concerns of the WLGA around the general issue of resources, and to the fact that the WLGA had now been reassured by the possibility of recouping the reinspection costs. However, are there any other resource issues that you wish to highlight to the committee? Linked to that, I also wanted to ask about capacity issues within environmental health departments. The initial inspection is something that you would obviously be doing anyway, so do you think that the reinspection issue has been fully taken into account in terms of any extra pressure that might put on already pressed staff?

[144] **Mr Wilkinson:** In terms of the general financing, having spoken to Steve, we now understand that the food hygiene inspection scheme in environmental health departments is already catered for under finance arrangements within local government. We are happy that the provisions of the Bill will cover the reinspection costs. Any additional resources that may be required that have not been highlighted so far relate to the fixed-penalty notices that may be issued by local authorities. I have had some experience of fixed-penalty notices when I worked as a trading standards officer, which is my professional background—and that is why Graham, as an environmental health officer, understands the technical detail much better than I do—so I know that a lot of procedures and processes, documentation and training would need to be put in place in local authorities in order for them to be able to administer those fixed-penalty notice procedures correctly and lawfully. I am not entirely sure that has been taken into account, so that is a possible additional resource burden on local authorities.

[145] **Lynne Neagle:** What about the capacity issues? Are you satisfied that reinspection is not going to place too much of a burden on environmental health officers?

[146] **Mr Perry:** The key issue is that local authorities will be able to recover their costs. Provided we are able to do that, this is something we can pick up and take forward. The key issue is the re-ratings.

[147] **Mr Wilkinson:** From discussions I have had with Steve Wearne and some of his colleagues at the FSA, I know that there is a realisation that local authorities are under considerable financial constraint at the moment. They have to prioritise their work extremely carefully, and they do that on a daily basis. So, we have had a discussion with the FSA about the fact that, in future, there may have to be discussions with the FSA to come to some agreement about what the actual priorities are—whether they are getting out to visit low-risk premises or medium-risk premises, or maintaining the food hygiene rating scheme so that all businesses that have requested revisits and so on get those—while other things perhaps do not get done. However, we are intending to have that sort of adult conversation, if you like, with the FSA in order to come to a mutual understanding and agreement.

[148] **Darren Millar:** On the financial implications of the Bill for local authorities, what you are saying does not correspond with the paper you provided as the WLGA, and I just want to tease a little bit more information out of you. Obviously, fixed-penalty notices will help local authorities to derive an income that ought to cover the cost of the processes, documents, procedures and so on that you have mentioned would need to be put in place.

[149] **Mr Wilkinson:** If I am correct, I think that that is entirely in Ministers' hands. They would determine how that money was dealt with. It would not be retained within the local

authority. It has to go back to Welsh Ministers, and they would determine what use that money is put to. However, in general terms, I think it would be used for the improvement of food hygiene within Wales.

[150] **Darren Millar:** I see. So, would you request that a provision ought to be made for any income from fixed-penalty notices issued by local authorities to be retained in the local authority area in order to improve food hygiene?

[151] **Mr Wilkinson:** As an ideal starting point, yes, absolutely.

[152] **Darren Millar:** As a local authority, you will already be used to collecting fixed penalties for all sorts of matters. You should have the procedures and so on in place to follow those up from an enforcement point of view, should you not?

[153] **Mr Wilkinson:** Yes, that is the case within certain local authority departments. This would be something new for environmental health services, and it would not be the same officers within the local authority who would be dealing with dog-fouling penalty notices and with food hygiene inspections or reinspections. Therefore, there will have to be a certain amount of training to ensure understanding of the fixed-penalty notice system and what that entails.

[154] **Darren Millar:** I appreciate that, but many local authorities have a regulatory services unit that deals with all of those things, do they not?

[155] **Mr Wilkinson:** Absolutely.

[156] **Darren Millar:** So, it would be the same department that would deal with these notices. I appreciate that individual officers will require training and so on.

[157] **Mr Wilkinson:** Yes, and although I have raised the fixed-penalty notice as an issue, I do not think that it will be a massive issue in terms of the way that this Bill will work in practice. It is an optional way of using another tool within the tool box to make sure that businesses comply with the requirements of the legislation.

[158] **Mark Drakeford:** Aled has a point on this.

[159] **Aled Roberts:** Darren has made my point; it was on regulatory services in some authorities.

[160] **Mark Drakeford:** Okay. Some respondents to the consultation have expressed the fear that local authorities might use the re-rating scheme as a way of raising revenue. Are they right to be worried?

[161] **Mr Perry:** I do not think so. There is too much guidance around how local authorities must undertake their inspections. The findings are what they are—a statement of facts found on the date of the inspection—and I do not for one moment think that that would be an issue.

[162] **Lindsay Whittle:** Steve Thomas, the chief executive of the WLGA, is nothing if not consistent with his comments to the Assembly, and I have to say I am not unsympathetic at all. I was previously the leader of a local authority, but I do not have that hat on today. However, I am not unsympathetic. I want to ask a question that I asked the previous witnesses about the cross-border implications of a mandatory scheme that applies only in Wales. Lots of the food supply chains come across the bridge and via the A55—other highways are available—so how would that affect our safety and health? I will just ask that first, Chair.

[163] **Mr Perry:** Yes, it is an issue. The Bill is about requiring businesses to display their rating and to inform anyone who asks of that rating. The problem that we have across the border is that there is not a consistent scheme in place, and a lot of those businesses will not have a rating. It will be something that they will not be able to comply with because it would not be possible to ask them to display something that they do not have. If a time comes when there is a comprehensive mandatory scheme in England, where all food businesses have to have a rating, then I imagine that we could well require them to provide it, but at the minute, it is something that they could not comply with.

[164] **Lindsay Whittle:** We heard from the previous witnesses about the scores on the doors, as I call them, and we heard that you can still serve the public with a 0 rating. Do you have any opinions on changing the ratings so that premises rated with a 0 could not carry on serving? Some of those that need improvement could instead have a rating of 1, with the range of ratings perhaps extended to 6 instead of 5.

[165] **Mr Perry:** The scheme has been running for some time, and the proposals within the Bill are based very much on the scheme that has been operating voluntarily since October 2010. I think that the scheme is quite workable. It has demonstrated itself to be sound and stood the test in terms of the categories that are there. They do make sense. I would not suggest that they need to be changed in any way. My colleagues would fully support the descriptors as they stand, and the ratings as they stand, as workable and meaningful descriptors.

[166] **Mark Drakeford:** Mick is next, and then I will come across to Elin and Darren.

[167] **Mick Antoniw:** Would it be a good idea for the full inspection reports to be published on the website so that they are accessible to the public? Is there any practical reason why this could not be done?

[168] **Mr Perry:** I do not support the forced publication of reports or a requirement for local authorities to do that merely because of the burden; it would be a significant burden on local authorities to do that, and I am happy to explain why. When the inspection report is issued, it is often quite lengthy—it may be a number of pages, particularly in relation to a big premises, such as a hospital. That would be a very lengthy report. That report might list a considerable number of recommendations or requirements, and one might imagine that, in a hospital like the Royal Gwent, that could be quite extensive, even if the standards there are very good. What the ratings do is put that in a context that the public can understand, rating it from 0 to 5 and telling you whether major improvement is needed, or some improvement, or whether it is generally satisfactory.

11.30 a.m.

[169] It puts all of that in a context, which a report on its own does not really do. I do not think that it necessarily helps the public to make a particularly informed decision. Our experience is that the public is not generally asking for these reports. People want to know about hygiene in the premises where they want to eat or buy food from, and the scheme provides them with something clear that gives them an indication, so they can say, 'That has a 5, and this has a 2, so I will eat at the 5', and it is quite clear. The administrative burden of the reports is that there is often a lot of personal information in there such as, 'Jane Bloggs requires training to an advanced level, and so-and-so currently does not have a training certificate, and that needs to be sorted out', or 'When asking so-and-so about such-and-such, they did not seem to have the knowledge required', or whatever. So, there is a lot of work involved in going through those reports and redacting any personal information before you can publish them. If it were mandatory for local authorities to do it, there might also be a



translation implication under the Welsh Language Act 1993. That is something on which you would need to seek advice from your legal advisers, but I understand that that might be the case, so that might be another significant administrative and financial burden on local authorities. What we do, though, is provide reports on request. The information commissioner has indicated that that is something that we should do, and we do. If we are asked for a report on a particular premises by a member of the public, we redact the personal information and we give them the report. However, those requests are few and far between, and to insist that we do that in each and every case would be overly burdensome.

[170] **Aled Roberts:** We were told that Norwich City Council, for example, does publish all its reports, so I am intrigued as to why ratepayers in Norwich would be entitled to have that information as a matter of course, whereas you are saying that it would cause resource problems for local authorities in Wales.

[171] **Mr Perry:** I am not familiar with what Norwich does, or how it is done, and whether it redacts the personal information. It may not even be in compliance with the Data Protection Act 1998. I have no idea. What I am suggesting to you is that it would be a significant burden on Welsh local authorities if they were required to do that, but the facility is there for the public if people want it. Our experience suggests that people do not generally ask for it. What people do want is the information to help them make a decision quite quickly, often, about whether they should eat at or buy food from a premises. The important thing about this Bill is that it provides them with that opportunity.

[172] **Mark Drakeford:** Consumer Focus Wales would probably say that the reason why people do not ask is that it is difficult to get the information even when you do. It carried out a mystery shopper exercise, and, in 25% of cases, never got a report of any sort at all, and, in the other 75% of cases, there was often a considerable struggle to persuade a local authority to divulge a report in any form, redacted or not.

[173] **Mr Perry:** It depends upon the particular premises, I would suggest. There are instances where it would not be appropriate to provide a report, such as where the authority was considering legal action against a particular premises. An example would be if a premises was found to be quite poor; there would be an opportunity to advise and educate as to the responsibilities that the food operator must meet and there would be an opportunity for the food operator to demonstrate that they would improve and meet their responsibilities. The authority might consider, if that did not happen, that the premises would warrant prosecution. So, there is a period of time during which you are actively considering the potential for a legal case, and the information that you would be providing in court would be founded on the inspection that took place at that time. That is, there is a period during which, in respect of some of the poorer premises, it would be right and proper not to provide that information publicly—and that is supported by the information commissioner. It is really a matter of legal process.

[174] **Mark Drakeford:** Indeed. Consumer Focus Wales did say that a number of cases where it did not get information fell into that category.

[175] **Mr Perry:** I see no other reason why authorities should not provide the reports when requested.

[176] **Elin Jones:** I wanted to ask you about the timescales involved in the requirement to display a new rating—a re-rating, or a down-rating in particular, because the legislation allows for 14 days for the local authority to provide the information of the re-rating, then 21 days for the right to appeal and then a further 21 days for the local authority to consider the appeal. Therefore, it could be 56 days before a new rating is displayed and the information provided to the consumer. Consumer Focus Wales was very concerned about the length of

time taken in that regard, and I want to ask you whether the timescales need to be that long from your point of view in undertaking this work.

[177] Secondly, some concerns have been expressed in the consultation responses to the Welsh Government about consistency in delivering the rating scheme throughout Wales in different local authorities. What measures are you currently working on and would you look to increase in order to ensure that the scheme is run consistently in all local authorities in Wales?

[178] **Mr Wilkinson:** I think that the timescales, as they stand, are probably workable from a local authority perspective. To cut them down any more would create a burden. There are some capacity issues in Wales for environmental health services, as there are across the whole of regulatory services. So, to pull those timescales even tighter would quite possibly put environmental health officers in some difficulty in responding. I do not consider that the time periods are excessive. It is much more important for environmental health officers, if they find problems in premises, to address the problems at the premises physically rather than having to worry about sorting out the paperwork as the priority to get the food hygiene rating put in place.

[179] **Elin Jones:** There is one timescale that does not affect the local authority officers' work, namely the 21 days for a business to submit an appeal. Could that be shortened without there being implications for local authorities?

[180] **Mr Wilkinson:** That may be a matter of opinion, I suppose. When I used to deal with businesses and you had to tell them about certain things that they were doing incorrectly and needed to change, they might often fly off the handle and respond very quickly but, within the next couple of days, they would calm down and reflect on what was said to them, and, over time, their attitudes can change. We are talking about a period of only three weeks, and that is an opportunity for them to consider what the implications are for that business—both financially, if they need to put certain things in place, and also reputationally if they do not do that. So, I do not consider that the 21-day period is a bad period of time in order for businesses to consider their position.

[181] **Elin Jones:** I also asked about consistency in delivering the scheme across local authorities.

[182] **Mr Perry:** We have a number of mechanisms currently by which we seek to ensure that there are consistent approaches. The Wales heads of environmental health group has a food safety technical panel and work is also going on with a food hygiene rating scheme group. We work closely with the FSA, which has developed guidance to help with consistency and to ensure, as best we can, that there are consistent approaches throughout Wales. We are ideally placed, in having 22 authorities in Wales, to get together and to ensure that we work to a common standard and a common approach. I think that we have done that and I see that we could continue to do that.

[183] **Mark Drakeford:** There is a bit of silence about who should carry out the inspection. In the current situation, is it people of similar training and similar professional backgrounds and standards who you would expect to do this work in all parts of Wales?

[184] **Mr Perry:** Yes, very much so. They would be authorised food safety officers and the Food Standards Agency sets out the code of practice and the qualifications and the knowledge and experience that those officers must have in order to inspect certain categories of premises. There is a very consistent approach in that regard.

[185] **Mark Drakeford:** Thank you; that is helpful.

[186] **Darren Millar:** I am pleased that you raised that issue, because I wanted to discuss consistency of approach. One thing that consumers will want to know is that, to use a word that Elin used earlier, the currency of a 5\* rating in Cardiff is the same as a 5\* rating in Conwy. What do you feel needs to be done to ensure that there is a consistent approach? You have mentioned authorised officers and training, but do there need to be clear specifications on the face of the Bill, or through regulation, to determine that there will be a consistent approach across Wales to give consumers confidence that the ratings system is being applied in the same way in all corners of the country?

[187] **Mr Perry:** The Bill, as it stands, addresses that issue in that it requires the FSA to provide support and to review and monitor the consistent delivery of the scheme and requires local authorities to review how they undertake their delivery and implementation of the scheme. The sorts of things that would occur at the local authority level would be peer review—officers would double-up on inspections and senior officers would visit businesses with various members of their team. There would be team meetings to discuss and consider issues. That is the important point in relation to the previous question about time periods. To ensure a consistent approach, it is important to allow the authority to have an opportunity to discuss the circumstances of a premises and to ensure that they are dealing with that and issuing ratings in a comparable way. That is something that commonly goes on. It is a routine occurrence. Between authorities and through our panels, working with the FSA, there are plenty of opportunities to ensure that we are working together in a consistent way.

[188] **Darren Millar:** My constituency straddles two local authority areas and regional Members here will represent regions that straddle even more local authority areas. There are often complaints about inconsistency from businesses that operate in two local authority areas. People say that officers apply things differently in different local authority areas, even though there are frameworks across Wales. As regards independent verification of standards, how do you think we should approach ensuring consistency? What kind of audit tool should there be across Wales to ensure that there is a consistent approach?

[189] **Mr Perry:** Inevitably, there is a professional judgment in every case. There is no black and white with regard to some of this—it is a judgment by an officer at a particular point in time. It is not a science; it is more of an art. So, there will always be the opportunity for some inconsistency, but, at the same time, I think that the measures that we currently have in place are sufficient. I think that the Bill as it stands addresses that issue sufficiently. I do not think that anything is needed beyond that. Certainly, I think that the FSA's role in supporting that, in getting local authorities together and checking the data they are getting to highlight whether there are any particular concerns and examining that, is probably sufficient. I do not see that a legal framework could be put in place.

[190] **Darren Millar:** Some food businesses will have concerns about your suggestion that the application of this is sometimes an art. Moving on, earlier on in our meeting, with the FSA and Consumer Focus Wales, we discussed takeaway establishments, from which people will often order food over the telephone from a printed leaflet. It seemed that an approach whereby businesses were required to display their rating on their leaflets could be implemented if there were a simple date stamp noting the date of the most recent inspection so that people could be informed as to how up to date the information on the leaflet was. Would that be easy for local authorities to enforce?

[191] **Mr Perry:** No, I do not think so. I think that it would be difficult for local authorities to enforce and it would be difficult for businesses to comply with. Perhaps businesses would be better placed to answer this than I am, but I guess that typical takeaways would print batches of menus at a time. I assume that there is a cost associated with that. People take those menus home and keep them for a while—I have some in my home that I have had for

over a year. The information would go out of date, and businesses would then perhaps be advertising a rating of 5 when things might have changed and they were not rated as high in the latest inspection. There are all sorts of implications. It would be difficult for the authority to police that.

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[192] More importantly, however, there is scope for the public to be misled, not necessarily intentionally, by the rating that an organisation has. The more important thing is that the public could ask the business what its current food hygiene rating is at the time of ordering. The Bill addresses that, as it would require food operators to inform anyone who asked about their current rating. That addresses the question of current status. There would be practical difficulties and financial implications for businesses and the authorities if businesses were required to display rating on their leaflets.

[193] **Darren Millar:** There was a suggestion that the potential financial cost of having to do a reprint would perhaps give takeaways an additional incentive to raise standards prior to a leaflet run. Is that a factor we should consider as a committee, in terms of our recommendations?

[194] **Mr Perry:** Off the top of my head, I do not think so. The key issue is that a member of the public can ask, at the time of ordering, what the current rating of a business is. The operator would be required to inform them truthfully of that rating. Anything beyond that would be too much of a financial burden for businesses and would be a question better answered by them. Practically, in terms of legal processes, it would be very difficult to police.

[195] **Mark Drakeford:** I believe that Elin wishes to follow this up.

[196] **Elin Jones:** I want to ask about the very issue of information being provided, let us say on the phone, to someone who requests it. As a local authority, how would you be able to enforce that aspect of the legislation? There is no record of the information given by the takeaway outlet to the individual. Do you have any concerns about how that aspect could be enforced, such as in the case of a consumer who makes a complaint and says, 'The operator told me it had a rating of 3, but when I looked it up, it had a rating of 1'?

[197] **Mr Perry:** As with everything like this, we would be reliant on information provided by the public. If we were getting consistent complaints about a particular premises, that would raise concerns about it. We would be reliant on information provided by members of the public.

[198] **Mr Wilkinson:** More than that, it is very easy for an officer to pick up the phone and ask. There is nothing more straightforward than that. The evidence is then with the officer, who can record it and put it in whatever format it needs to be in to be taken forward in a legal way. I do not think that that is a difficulty. Initially, we would have to react to consumer complaints first. I do not imagine that environmental health officers would often be lined up on the phones, looking to phone up takeaway businesses, but reacting to complaints initially, and then verifying that information personally, would be the right way to go.

[199] **Mick Antoniw:** Section 9 of the Bill sets out the offences. In respect of enforcement, it seems that the only offence is to display an invalid sticker. Do you think that that is sufficiently broad to cover situations where people may be putting out publicity material with old, out-of-date categories and so on, which might mislead and imply a rating that is higher than the one that the business has? Is that enforcement side sufficiently strong? I put this question to you as that is obviously your area of specialty.

[200] **Mr Wilkinson:** That may be an omission, and something that could be looked at—the use of a false or fraudulent certificate and so on. That is something that could go in. However, there is other legislation in other fields of regulatory services within the trading standards profession under which things like that could be picked up. However, if you wanted to keep this legislation quite tight to cover every eventuality, I would take on board that point.

[201] **William Graham:** Everyone would support the need for environmental health officers to have complete power of entry, particularly where human health is at risk. However, I do not see the need for it in this particular legislation. What is your comment on that?

[202] **Mr Wilkinson:** I imagine that it has been lifted from existing consumer protection legislation. It may be overkill in this particular circumstance.

[203] **William Graham:** That is my point. Rogue traders are already caught by existing legislation. I do not see the need for power of entry in this particular Bill.

[204] **Mr Perry:** I would not want to comment in depth on the legal thinking behind that, but from a practical perspective, the food authority's inspecting officers would have power of entry to inspect under food safety legislation. This provides the opportunity to use the powers contained specifically within this Bill. There is always a danger with trying to use powers from some other Act to implement the powers within this one. There is always a danger in using some other power to gain access to enforce the provisions of this Bill. Legally, there is always a potential conflict.

[205] **William Graham:** What power will this give you? You are hardly going to go in to rip off the sign because somewhere that had a 5 rating had gone down to a 0 rating.

[206] **Mr Wilkinson:** It goes back to legal definitions. You would have to comply with very strict processes should you want to take something as far as the magistrates' court. If an officer was refused entry—

[207] **William Graham:** But he would not be, would he? Under existing legislation, he could go in.

[208] **Mr Wilkinson:** Not for the purposes of this.

[209] **William Graham:** Why would he need to go in for this?

[210] **Mr Wilkinson:** If he was, for example, reacting to complaints about the premises and there was not the power to go in for this particular purpose—I am thinking off the top of my head on this one—he could well be acting ultra vires. When the prosecution would come to court, the first thing that the defence solicitor would say is that he had no power to be on the premises anyway. It would get no further than that. It has taken a great leap forward to get to that stage. Looking at the potential and the possibilities of what could happen, taking it to the nth degree—

[211] **William Graham:** My second question is about the penalty fines. That seems a modern way to proceed and is generally effective, in many ways. Would you support that as being a worthwhile part of the Bill?

[212] **Mr Perry:** I think so. It is a way of keeping relatively simple offences out of the courts. We hope that it is something that we will not have to use. Clearly, if we have to use fixed penalties, it is not working very well. We anticipate that the majority of businesses will comply, and we will not see much activity in that area—or at least I hope not.

[213] **Darren Millar:** Going back to the power of entry issue, if there are existing provisions for power of entry within other pieces of legislation to enable local authority officers to go in to carry out inspections and see what is going on, is there a danger that, if the provisions on the face of the Bill are quite narrow, they will restrict powers of entry when it comes to this issue? Should you not rely on the wider scope of other pieces of legislation?

[214] **Mr Wilkinson:** That would be ideal. A review of trading standards powers and wider regulatory powers is going on at Westminster at the moment, with the aim of consolidating these things to make them more straightforward and simpler for businesses and enforcement officers to understand. We are not yet at that stage with this. The powers contained in other food hygiene legislation will run parallel to this and complement it. There would not be that conflict.

[215] **Darren Millar:** So, you do not think that there is a danger that there could be a potential restriction on your powers if these are quite specific? They are very specific circumstances.

[216] **Mr Wilkinson:** I do not think so. This is addressing a very specific thing. Local authorities already have powers and so on for wider food hygiene offences, which are adequate.

[217] **Mark Drakeford:** We may ask for a note for the committee on this particular point from our adviser, as it is very specifically legal. I am looking to see whether anybody else has questions; I have two or three that I would like to ask. The first is in relation to consistency. You will have seen from our questions that the committee is concerned about the balance between making sure that there is sufficient local flexibility to do the business on the ground and a consistency of approach across Wales. Do you know, from how the voluntary scheme has been conducted, whether local authorities across Wales have a generally shared view on how regularly inspections should be carried out and, therefore, new ratings issued?

[218] **Mr Perry:** The inspections would be carried out in line with the programme of inspections, which is risk-based and is set by the FSA. So, local authorities are generally required, particularly in relation to higher-risk premises, to inspect at particular intervals. That, in effect, sets the programme. We currently do that routinely and consistently across Wales. The only thing that would be different is the entitlement for a business to request a re-rating, which would perhaps involve an inspection that would not otherwise be carried out. Clearly, the timescale for that is also set out in the Bill.

[219] **Mark Drakeford:** If premises have received a rating of 4, am I right to assume that that would last for a specific period of years before a local authority thought that it needed to make a reassessment? Would that last for broadly the same period of time across the 22 local authorities?

[220] **Mr Perry:** No it would not, but it would across local authorities. I had better explain this. Basically, premises are risk-assessed. For the higher-risk premises, we are talking about categories A, B and C. Category A premises are inspected every six months, category B premises are inspected yearly and category C premises are inspected every 18 months. So, wherever they fall in terms of their hygiene rating, they may be inspected more or less frequently, depending, to some extent, on the level of risk. For example, perhaps a school serving a large, high-risk population with high-risk products would be inspected regularly, even if it was good. However, premises that serve few people low-risk food, even though they might not be that good, might not be inspected all that often. The inspection frequency relates more to the risk of the premises rather than to the hygiene rating. However, between local authorities, there would be absolute consistency in terms of how often they would rate, but

that would relate to the risk assessment set by the FSA.

[221] **Mark Drakeford:** Thank you; that is helpful to know. My second question relates to the appeals process. Pembrokeshire County Council, in its written evidence to us, suggested that the acceptability of the appeals process might be strengthened if the Bill provided for a situation where an appeal against the rating given by one local authority would be heard by a different local authority rather than by a different officer of the same local authority that had issued the rating, which you were appealing against, in the first place. Pembrokeshire County Council suggests that—given the relatively small number of appeals and that it is largely a desk-based exercise—it would not be particularly onerous and that it would strengthen the sense of independence in the system, if the Bill were to provide for that. Does that idea have any merit?

[222] **Mr Wilkinson:** That is something that could be thought about in more detail and developed. I would not oppose that, but it would depend very much on neighbouring local authorities' resourcing and the availability of staff to be able to cope with that. We do not yet know the number of appeals likely to come forward. However, as an idea, I would not oppose it.

[223] **Mark Drakeford:** Finally from me, the Food Standards Agency described the Bill to us as essentially a consumer information measure. How then do we understand the Minister's decision, as a result of consultation, to include business-to-business ratings in the scope of the Bill? In what sense do those ratings provide the consumer with useful information?

12.00 p.m.

[224] **Mr Perry:** I guess that it assures the consumer, in particular, that they can find out about food that they are consuming or purchasing and that they can understand the source of that food. So, in the example of a school, hospital or care home, from where they are not purchasing food directly, they could establish the trail of that food. We feel, in environmental health, that that is an important addition to the Bill. We think that it is important that the public can be sure that the same kind of standards and approach apply and that the people who are providing food in those circumstances can demonstrate that they are purchasing from the right sources, and, if they want to find out what those sources are, they can do so. This strengthens the information available to the public, but, importantly, it strengthens the ability of other providers, if you like, to find out for themselves the information that they need to make their purchasing decisions.

[225] **Mark Drakeford:** Are there any further questions that anyone would like to raise at this stage? I see that there are none. Therefore, I thank you both very much indeed. The session has been very helpful to us and there have been some interesting points of detail that are useful to us, particularly with regard to consistency across local authorities. So, thank you both very much indeed for helping us this morning. Diolch yn fawr.

[226] Dyna ddiwedd sesiwn y bore. That is the end of this morning's session. We  
Byddwn yn ôl yma am 1.15 p.m. ar gyfer will return here at 1.15 p.m. for the afternoon  
sesiwn y prynhawn. Diolch yn fawr. session. Thank you very much.

*Daeth y cyfarfod i ben am 12.01 p.m.  
The meeting ended at 12.01 p.m.*