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Llywodraeth Cymru  
Welsh Government

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Mark Drakeford AM  
Chair, Health and Social Care Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

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Dear Mark,

**Food Hygiene Rating (Wales) Bill**

Thank you for your letter of 18 July setting out the Committee's questions on the Food Hygiene Rating (Wales) Bill. I have provided an answer to each of the questions in the attached Annex.

Thank you for alerting me to a possible appearance at the Committee's meeting on 27 September, I am available from 9.00 to 9.30 to provide evidence on the Bill, should the Committee have further questions.

I would like to take this opportunity to thank the Committee for its valuable work in scrutinising the Bill and I look forward to receiving the Committee's report at the end of Stage 1.

Kind Regards  
Lesley

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Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

## **Response to questions raised by the Health and Social Care Committee – 18 July 2012**

**Question 1: Is the Minister satisfied that the voluntary scheme has been given sufficient time to become established, and that there is a clear need to introduce it on a statutory basis?**

I am fully satisfied that it is time to move to a mandatory Food Hygiene Rating Scheme. In October 2012 the voluntary scheme will have been operating for 2 years with all local authorities in Wales participating. Over 20,000 premises have been rated yet an Food Standards Agency (FSA) review in 2011 revealed that only 31% of food businesses are displaying their food hygiene rating. This figure falls to only 6% for those rated 0, 1 or 2. The voluntary scheme is mature in Wales but will only have maximum effect when all food businesses are required to display their rating.

**Question 2: Concerns have been raised regarding the practical application of the scheme with regards to the use of community facilities, such as community centres, which may be used by various groups to prepare and serve food. In such cases, can you clarify who would be rated, for example would it be the premises and/or the caterer, how would each group be rated and how would the rating be displayed?**

A 'food business' is rated (not the premises) after an inspection by the food authority and assessed against rating criteria published by the FSA. Where the community hall or centre's operators do not provide food, only facilities, the business would be excluded from the scheme as it is not supplying food direct to the consumer. If only 'low risk' foods, e.g. teas/coffees and biscuits, are being provided as a peripheral part of a business's activities, it would not be rated. If regular full meals are being provided, e.g. to the elderly it would be given a rating. If a registered food business were using the hall or centre then that food business would be rated.

The location for the display of a rating sticker is included in regulation making powers that will be subject to consultation. The arrangements for the display of hygiene stickers at eligible community halls or centres will be consulted upon, but our current proposal is a sticker is placed at the main door of the building if being used as a registered food business. If the building is being used by multiple food businesses, for example to host a farmers market, then the sticker might be best located at the stall or table being used by each food business. There might be circumstances where the location for the display of the sticker is agreed between the food business and the authorised officer of the food authority. This will be set out in the forthcoming consultation.

**Question 3: Is there a conflict between the Bill and Food Standards Agency/Government work to reduce burdens on businesses?**

No, I do not consider there to be a conflict between the Bill and the work being undertaken to reduce burdens on businesses. I do not wish to place unnecessary burdens on food businesses and have deliberately avoided over-complicating the Bill to prevent giving rise to additional burdens. The primary objective of this Bill is to require food businesses to display

their food hygiene ratings at their premises for consumers to see. That is why I am not persuaded to place additional burdens on food businesses by requiring them to display their ratings in other ways.

**Question 4: Will any additional financial assistance be made available to businesses for improvements that would help compliance with food hygiene legislation and improve their rating?**

The Bill simply requires a food business to display their food hygiene rating sticker at their premises. Food business operators are still required to ensure compliance with food hygiene legislation as previously and must decide on the resources they wish to invest in their business. Currently there are no capital grants available from the Welsh Government to retail outlets that supply the end consumer but support is available for training in food hygiene.

The FSA has produced a number of publications to assist food business operators to improve their hygiene standards, and thus their food hygiene rating. The FSA publication, *Safer Food, Better Business*, which was specifically designed to assist businesses to comply with the requirement to have a documented food safety management system in place, was developed in 2005. It is available free of charge to food business operators and is widely used by businesses in Wales, along with printed support material and multi-language DVDs. Working closely with Welsh local authorities, the FSA also provides funding for food safety management (FSM) projects which aim to ensure that food businesses operators devise, maintain and implement documented (Hazard Analysis and Critical Control Point based) FSM procedures appropriate to the nature of their business. FSM projects to date have resulted in seminar and coaching visits for many hundreds of food business operators in Wales.

**Question 5: Has the Minister given any thought to how the funds raised from Fixed Penalty Notices might be used? Some witnesses have suggested that such funds should be retained by the relevant local authority to use to improve food hygiene standards by raising awareness of the scheme and supporting low scoring businesses in improving hygiene standards. Do you have any comments on this suggestion?**

I do not anticipate the generation of a significant number of receipts from fixed penalty notices as I hope that most food businesses will comply with the requirement to display their hygiene rating sticker. However, in developing the Bill I did consider where the fixed penalty receipts should be directed and decided that the proposal in the Bill for these receipts to be returned to the Welsh Ministers will give me the opportunity to recycle these receipts to fund future food safety work. I intend to take advice from the FSA on how such resources might be best used. I am specifically against the retention by local authorities of monies raised from fixed penalty notices to avoid any suggestion that the use of these penalties is a hidden revenue-raising exercise.

**Question 6: Given the various elements to the rating criteria, do you think there is sufficient public understanding of the meaning of ratings and the criteria on which they are based? Do you think details of ratings criteria should be displayed alongside or incorporated into the food hygiene sticker?**

The FSA currently provides information for consumers about how the food hygiene rating scheme works, what is inspected, how to spot rating stickers and where to go to for more information. The Bill requires the FSA to promote the scheme to consumers in Wales which will include increasing the public understanding of ratings and the criteria on which they are based.

My primary consideration has been to ensure that consumers easily recognise the food hygiene rating sticker and for this reason my intention is to maintain consistency with those already being displayed on a voluntary basis. The regulations to be made under the Bill will therefore require these stickers to conform to design criteria already established by the FSA but with the addition of the Welsh Government logo. I would not like to see the sticker become overly complicated or overshadowed by the display of additional information around it. The stickers will continue to be bilingual and will indicate the food hygiene rating in exactly the same way as the current stickers do.

**Question 7: Is the Minister satisfied that a 0-5 rating system will give clear information to consumers about a premises' hygiene system?**

The intention of the Food Hygiene Rating (Wales) Bill is to put the current FSA Voluntary scheme on a statutory footing. I am satisfied that the current system enables consumers to differentiate between the food hygiene standards at premises and provides an incentive for businesses to improve. To consider amending the scheme in Wales would mean moving it away from a scheme that has already been implemented in Wales with over 20,000 businesses rated. The current FSA voluntary scheme is also in place in Northern Ireland and in the majority of England. On 17 July the FSA announced that most of the London boroughs are joining the 0 to 5 rating scheme. To amend it in Wales would have cross-border implications and impact on consumer understanding of the scheme.

I understand that during the Committee's evidence session on 12 July the Committee discussed a rating system of 1-6. To introduce this in Wales would mean premises automatically moving up a number, implying improvements which hadn't been made. This could mislead consumers and result in cross border inconsistencies. Again this may confuse businesses and mislead consumers, particularly visitors to Wales. I am also looking to the future when I hope other UK countries will follow Wales' lead in creating a mandatory scheme – moving away from an established, though voluntary, scheme, could create unacceptable and confusing inconsistencies.

**Question 8: In developing the Bill, has any thought been given to using other grading systems that may be easier for the public to understand, such as Scotland's pass or fail system or A B C grading as seen in other countries?**

The decision about the best voluntary scheme for Wales, England and Northern Ireland was taken by the FSA Board in December 2008, following a major public consultation. The majority of those responding to the consultation favoured a multi-tier scheme, with the majority supporting six-tiers, as these were seen to provide differentiation for consumers and provided an incentive for businesses to improve. In 2008 83% of local authorities with scores on the doors schemes operated a six-tier scheme, covering 48% of the population.



The consensus of the FSA Board was that adoption of the six-tier scheme offered the greatest improvement for the greatest number of the population in the shortest time. The choice of a six tier scheme was seen as cheaper, easier and quicker to implement. I am also aware that moving to an entirely different set of weighting criteria would necessarily mean that the existing evaluations of around 20,000 premises in Wales would be lost and businesses and enforcement authorities would be starting again from scratch.

**Question 9: Are you satisfied that the appeals process as set out in the Bill is sufficiently independent, and what are your views on the suggestion that appeals should be considered by an independent food authority?**

In order to ensure that the mandatory scheme is fair to businesses, the Bill provides a number of safeguards. These are an appeal procedure, a "right to reply" and an opportunity to request a re-rating inspection when improvements have been made.

To provide a level of impartiality the Bill requires the appeal be determined by an authorised officer who was not involved in the assessment of the food hygiene rating that is being appealed. The inspecting officer must not consider the appeal. It should be noted that of the 20 local authorities who responded to consultation on the Bill only one suggested that review by another local authority might be a good idea.

Requiring an officer who was not involved in the original food hygiene assessment to determine the appeal will assist food authorities in their duty to review the operation of the food hygiene rating scheme in their areas. It will help them to ensure that the rating criteria are assessed fairly and consistently within their own authority. This should also ensure a consistent approach to the appeals process within that authority. In addition, all food authorities must have regard to guidance issued by the Welsh Ministers which will include guidance on the determination of appeals. If a food business operator considered that the food authority had not properly undertaken their duties in relation to the Act, they can pursue the food authority's complaints procedure (including taking the matter to the Local Government Ombudsman where appropriate). The food business operator could also challenge the local authority's decision by means of judicial review.

Given the safeguards the Bill provides, and the other review procedures currently available, I am not persuaded that appeals need to be considered by an independent food authority. To impose such a requirement would place an additional administrative burden on both the food authority providing the rating and that determining the appeal.

**Question 10: According to the Explanatory Memorandum, the number of appeals is expected to double from 40 to 80 under the mandatory scheme – what is this estimate based on?**

The FSA has estimated that there are currently around 40 appeals per year against ratings awarded under their voluntary scheme. Between December 2011 to March 2012 the Welsh Government consulted upon the draft Food Hygiene Rating (Wales) Bill together with the Regulatory Impact Assessment (RIA); this draft RIA suggested that appeals would increase from 40 to 60. Respondents to the consultation exercise suggested that appeals would more than likely double from 40 to 80. This higher estimate of appeal numbers was considered to reflect more accurately the view that food business were more likely to appeal once the scheme became mandatory as they would be required to display the rating sticker.

**Question 11: Is there a danger that businesses will use the right of appeal to try to improve their ratings as an alternative to paying for a re-rating inspection? How might this impact on food authorities' resources?**

A food business operator can only appeal against their rating on the grounds that it does not truly reflect the food hygiene standards at the premises at the time of the inspection and / or that the rating criteria were not correctly applied. Whilst a food authority may conduct a further inspection of the establishment for considering the matters raised in the appeal they do not have to do so.

An appeal would not be appropriate in circumstances where a food business operator has merely rectified non-compliances identified by the food officer at the time of the initial inspection. In these circumstances a food business operator would have to request a re-rating inspection and pay the reasonable costs for that inspection to the food authority.

Regulations will prescribe the form in which a written appeal against a food hygiene rating must be made. Subject to consultation, this will include a requirement for the food business operator to explain why they do not agree with the food hygiene rating given under each of the rating criteria. This requirement, together with the grounds for the appeal specified in the Bill, will help prevent inappropriate appeals being made. Inappropriate appeals should not therefore significantly impact on a food authority resources.

**Question 12: What is the Minister's response to the concern that the Bill's provisions regarding the requirement to display ratings allow for extended periods of time when no rating is displayed at a premises and therefore no information is provided to consumers?**

It is my intention for the timescales in the Bill to be workable for all concerned. The timescales in the Bill were therefore decided upon after taking account of the responses received during the consultation. It should be emphasised that the timescales in the Bill are maximums, and the concerns expressed related to the very worst case scenarios. It will often be the case that ratings are displayed at a food business establishment and on the FSA website earlier than those maximum timescales specified in the Bill.

For example with regard to the timescales for the right of appeal, we consulted on this issue as we wanted to ensure the timescales included in the Bill were fair and workable for both food businesses and food authorities. The consultation draft of the Bill provided food businesses with 14 days to appeal their rating and a food authority seven days to determine an appeal.

The responses received from food businesses were to the effect that the 14-day period to submit an appeal was too short as it takes time to gather evidence to make an appeal. It did not allow for holiday periods and absence of key staff. Food authorities responded that the seven-day period for them to consider and determine appeals is also too short. I therefore decided to extend the appeal timescales for both food businesses and food authorities to 21 days. This increase allows for holiday periods by food businesses and food authorities and also allows for the anticipated increased number of appeals expected from the mandatory requirement to display.

**Question 13: Would prescribing these time periods in regulations, rather than on the face of the Bill, allow for greater flexibility in the development of a workable food hygiene rating scheme?**

As the policy in relation to each of these periods is clear, I considered it appropriate for them to appear on the face of the Bill to promote transparency. This will help food authorities and business operators to understand their obligations.

**Question 14: Given the evidence the Committee has received in support of the need for food business establishments to publish their food hygiene ratings on promotional material and/or their website, together with dates detailing the validity of the rating, what are your views on this?**

I acknowledge that initially the proposed requirement for takeaways to display their ratings on their promotional material seems a positive idea, particularly in respect of home delivery. That said, there are complications in that some UK wide take away food outlets issue blanket flyers and menus for all their outlets. These outlets may well have different food hygiene ratings and, if this requirement were imposed, they would be required to identify individual outlets with their respective ratings on each menu. We would also be placing an additional burden on one food business sector which could be regarded as unfair. We would also be placing an additional burden on local authorities by requiring them to enforce such a requirement.

I would also anticipate problems with the suggestion that a rating should be provided on a takeaway menu with a date stamp and a date of expiry. Whilst this would again place burdens on businesses, it could also be seen as undermining European food hygiene legislation which requires that food hygiene inspections are unannounced.

I am still not convinced that imposing an additional requirement to publish food hygiene ratings on promotional material and/or business websites will lead to significant benefits to the consumer. Customers can simply ask when ordering a takeaway what food hygiene rating a food business has been awarded or if ordering or collecting their food at the premises can view the hygiene rating there. They can also view the rating of the business on the FSA website. I have previously stated that I do not wish to place unnecessary additional burdens on food businesses. To impose such a requirement may well be seen as giving rise to additional burdens on food businesses in Wales. I do not wish to over complicate the Bill and on balance I am not yet persuaded to include such a provision.

If food businesses wish to put their food hygiene ratings on their promotional materials voluntarily, I would support that. I am keen to build consumer awareness of the mandatory scheme and acknowledge that businesses that achieve a good rating may want to capitalise on this in their promotional activity. Currently food authorities engage with food businesses to remind them that displaying an invalid rating in publicity material may constitute an offence under trading standards legislation, for example an offence under the Consumer Protection from Unfair Trading Regulations 2008.

**Question 15: To what extent do you think that a requirement to publish inspection reports would help promote consistency in reporting and what might the likely impact be on food authority resources? For example, would the reports be required to be redacted and bilingual? Are there any reports which you would consider would be unable to be published?**

I consider the impact and burden of requiring food authorities to publish inspection reports would be significant; food authorities would be required to remove all personal information from the report before publishing to ensure compliance with the Data Protection Act. There would also be significant translation costs which will have a financial impact for local authorities. The FSA would also face additional development costs if they were required to publish the 30,000 plus inspection reports on their website bilingually.

60% of respondents to the consultation on the draft Bill did not think that inspection reports should be routinely published. Consumer Focus Wales are supportive of the publication of inspection reports but current evidence does not fully support its provision. Consumers are already able to request this information from food authorities and food authorities are obliged under the Freedom of Information Act 2000 to ensure that such information is released, when it is appropriate to do so.

I am confident that the requirements in the Bill will be implemented consistently throughout Wales. The hygiene ratings will be awarded by authorised officers who are similarly qualified. Training has previously been provided by the FSA on the voluntary scheme and additional training will be provided to help introduce the mandatory scheme. Food authorities routinely arrange and participate in consistency training exercises and the FSA discusses consistency of implementation of the FSA voluntary scheme when undertaking their routine audit of food authorities in Wales.

The Bill places duties on the FSA to monitor and audit the implementation of the scheme and to undertake three-yearly evaluations and make recommendations to the Welsh Ministers. I expect the FSA, as part of their duties, to ensure consistency wherever possible. Food authorities must review the operation of the food hygiene rating scheme in their areas with a view to ensuring that the rating criteria are assessed fairly and consistently. They must also have regard to guidance issued by the Welsh Ministers in the exercise of their functions under the Bill. This guidance will promote the importance of a consistent approach to the mandatory scheme.

I note that the Committee may recommend that food hygiene inspection reports should be published in their entirety, either on the FSA website or the website of the relevant food authority. The driving philosophy behind the development of the scheme was to provide information for consumers in an easy to understand format that has minimal impact on local authorities' ability to carry out their statutory responsibilities. This is not a good time to be placing additional burdens on local authorities, particularly when the benefits to the consumer of releasing such information are not sufficiently clear. I would prefer to look at alternative ways of providing information by way of a consistent approach by local authorities in Wales to releasing such reports by way of FOI requests and by developing a more detailed definition for each of the hygiene ratings for consumers who would like more information. I think we should allow time for the compulsory display of hygiene ratings to take effect and consider this issue again at the first evaluation of the mandatory scheme in three years time.



**Question 16: The Bill as drafted makes it an offence to fail to comply with a request by a person to be informed verbally of a food hygiene rating. Can you confirm that this offence relates to circumstances where an operator provides an incorrect rating as well as when they fail to provide a rating? Do you think this is made sufficiently clear in the Bill or is there a need for further clarification?**

The Bill provides that an offence will be committed by an operator if without reasonable excuse they fail to comply with a request by a person to be informed verbally of the food hygiene rating of an establishment. The intention of this is to allow consumers with impaired vision or enquiring by telephone to find out a rating of a food business prior to use. The offence relates to circumstances where an operator either does not disclose the rating or provides an incorrect rating. I consider that the Bill makes this sufficiently clear because unless the true rating is given, the request will not have been complied with.

**Question 17: Sections 8 and 9 of the Bill makes it an offence for the operator of a food business establishment to comply with a request by a person to be informed verbally of the food hygiene rating of the establishment. What consideration has been given to extending the duty to cover employees of the food business, as of course the manager may not always be present when the request is made?**

I am currently considering this issue as it is the intention of the Bill that food hygiene ratings are given verbally in all circumstances, including when the operator is absent. My lawyers will be looking at this clause to ensure it captures this intention.

**Question 18: If the number of requests for re-rating prior to mandatory scheme coming into force is higher than the anticipated 1,110, how will this additional cost be met?**

Prior to the implementation of the Act, the Welsh Government will be seeking feedback from food authorities regarding the number of requests for re-rating inspections. The Regulatory Impact Assessment sets out our views on the impact the mandatory scheme may have, but this is a best estimate. I recognise that the Welsh Government will need to be flexible to adapt to any changes in the number of re-ratings and my officials will work closely with food authorities to ensure we address any additional pressures that might arise.

**Question 19: How will a consistent approach to the calculating of 'reasonable costs' by food authorities in relation to re-rating inspections be ensured?**

The Bill places a responsibility on a food authority to calculate the reasonable cost of a re-rating inspection. It also requires the food authority to inform the operator of those costs and how they were calculated, prior to carrying out a re-rating inspection.

I will be issuing guidance to food authorities in relation to the exercise of their functions under the Bill and this will include guidance on the calculation of reasonable costs for re-rating inspections. The guidance will also encourage Food Authorities in rural areas to manage their programme of inspections to accommodate re-rating inspections in such a way as to not make the cost of inspection disproportionately high compared with those in urban areas.

**Question 20: Will additional financial support be available to local authorities in relation to the administering of fixed penalty notices?**

Local Authority Environmental Health Departments are experienced in issuing fixed penalty notices (FPNs) for example in the areas of enforcement of smoking legislation, dog fouling and litter. I anticipate that most food businesses will comply with the requirement to display their hygiene rating sticker and therefore the need to use the FPN and prosecution powers will be limited.

My officials will be working with the FSA and food authorities to identify areas where food safety officers require additional training and will be developing a training package that offers training and assistance to all food authorities in Wales.