

National Assembly for Wales
Health and Social Care Committee

Food Hygiene Rating (Wales) Bill
Stage 1 Committee Report

October 2012



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Health and Social Care Committee

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Stage 1 Committee Report

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Health and Social Care Committee

The Committee was established on 22 June 2011 with a remit to examine legislation and hold the Welsh Government to account by scrutinising expenditure, administration and policy matters encompassing: the physical, mental and public health of the people of Wales, including the social care system.

Current Committee membership



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Welsh Labour
Cardiff West



Mick Antoniw
Welsh Labour
Pontypridd



Rebecca Evans
Welsh Labour
Mid and West Wales



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Summary of Conclusions and Recommendations

The report outlines the findings of the Health and Social Care Committee Stage 1 consideration of the Food Hygiene Rating (Wales) Bill.

We agree with the general principles of the Bill and the need for legislation, both of which were clearly demonstrated and supported in evidence received by the Committee.

Most witnesses welcomed the compulsory display of food hygiene ratings as a means of ensuring universal display of food hygiene ratings, increasing consumer information and improving food hygiene standards.

We undertook detailed scrutiny of the Bill and as a result have made a number of recommendations to the Minister for Health and Social Services, which are detailed below.

Recommendation 1 We recommend that consideration should be given to bringing forward an amendment that provides the Welsh Ministers with powers to amend the time-scales, detailed in section 5 of the Bill, through regulations. This would allow greater flexibility should there be a need to amend these time-scales at a later date. We suggest that any such powers be subject to negative resolution (paragraph 84).

Recommendation 2 We are of the view that an independent appeals process would be more robust and transparent, and would give confidence to businesses and the public in the independence and openness of the process. We welcome the Minister's commitment that she will give further consideration to establishing an independent appeals process and therefore recommend that an amendment be brought forward to this effect (paragraph 86).

1. Introduction

1. At its meeting on 15 May 2012, the National Assembly's Business Committee referred the Food Hygiene Rating (Wales) Bill¹ ('the Bill') to the Health and Social Care Committee ('the Committee'), for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 5 October 2012.

2. On 28 May 2012, Lesley Griffiths AM, Minister for Health and Social Services ('the Minister'), introduced the Bill and Explanatory Memorandum and made a statement² in plenary³ the following day.

Terms of Scrutiny

3. At our meeting on 30 May 2012, we agreed the following framework within which to scrutinise the general principles (Stage 1) of the Bill, to consider:

- i. the need for a Bill to introduce a statutory food hygiene rating scheme in Wales;
- ii. whether the Bill achieves its stated purposes;
- iii. the key provisions set out in the Bill and whether they are appropriate to deliver its stated purposes;
- iv. potential barriers to the implementation of the key provisions and whether the Bill takes account of them;
- v. whether there are any unintended consequences arising from the Bill;
- vi. the views of stakeholders who will have to work with the new arrangements; and

¹ Food Hygiene Rating (Wales) Bill available at:
<http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld8916-e.pdf?langoption=3&ttl=PRI-LD8916%20-%20Food%20Hygiene%20Rating%20%28Wales%29%20Bill>

² <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=234781&ds=5%2F2012#dat4>

³ A full meeting of the National Assembly for Wales

- vii. whether the Bill contains a reasonable balance between the powers on the face of the Bill and the powers conferred by Regulations.

The Committee's Approach

4. The Committee issued a consultation and invited key stakeholders to submit written evidence to inform the Committee's work. A list of the consultation responses is attached at Annex A.
5. The Committee took oral evidence from a number of witnesses on the Bill. The schedule of oral evidence sessions is attached at Annex B.
6. The Assembly's Outreach Team also conducted interviews with members of the public, and businesses that could be affected by the proposed Bill at the Urdd Eisteddfod in Caernarfon and the Llangollen International Festival⁴. The following report represents the conclusions and recommendations the Committee have reached based on the evidence received during the course of their work.
7. The Committee would like to thank all those who have contributed.

⁴ FHR24, Urdd and Llangollen Eisteddfodd Interview Responses

2. Background

The National Assembly's Legislative Competence to make the Bill

8. The National Assembly for Wales has the legislative competence to make the provisions in the Food Hygiene Rating (Wales) Bill by virtue of section 7, subject 8 (Food) of the Government of Wales Act 2006.

Explanatory Memorandum

9. The Explanatory Memorandum accompanying the Bill states that:

“The Food Hygiene Rating (Wales) Bill gives effect to the Welsh Government’s proposals to introduce a statutory food hygiene rating scheme in Wales”⁵.

10. The Explanatory Memorandum explains:

“The Bill establishes a statutory requirement for food authorities to operate a food hygiene rating scheme and places a duty on food businesses to display their food hygiene rating at their establishment”⁶.

11. The Explanatory Memorandum states that:

“The intention of the Bill is to ensure that consumers are provided with information about the food hygiene standards of food businesses in Wales enabling consumers to make better informed choices about where to eat or shop for food”⁷.

⁵ The Food Hygiene Rating (Wales) Bill Explanatory Memorandum, paragraph 1

⁶ *ibid*

⁷ *ibid*

3. General Principles and the Need for Legislation

Background

12. The Food Hygiene Rating (Wales) Bill gives effect to the Welsh Government's proposals to introduce a statutory food hygiene rating scheme in Wales.

Evidence from Witnesses

13. The majority of witnesses agreed with the general principles of the Bill and the need for legislation to make it compulsory for those food businesses in Wales that are within the scope of the Bill, to display food hygiene rating information at their establishments and, if requested, verbally inform consumers of the food hygiene rating.

14. In supporting the need for legislation, the Food Standards Agency (FSA) informed us that:

“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”⁸.

15. They added that:

“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 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”⁹.

16. Such views were shared by several other witnesses including Consumer Focus Wales (CFW), Directors of Public Protection Wales (DPPW), the Welsh Local Government Association (WLGA), the British

⁸ RoP, paragraph 24, 12 July 2012 (am)

⁹ RoP, paragraph 25, 12 July 2012 (am)

Sandwich Association (BSA), The Pizza, Pasta & Italian Food Association (PAPA) and the Café Society¹⁰.

17. The Chartered Institute of Environmental Health Wales (CIEHW) also supported this view and informed us that weaknesses in the current voluntary scheme meant that a mandatory scheme was necessary. They stated that:

“For those people scoring 4 and 5, there is some evidence that the rating is displayed, but certainly for those scoring 0 to 3, there is not that evidence, and they are the people we are concerned with. We would like the public to be cognisant of the rating and to take a view on whether they want to go there. The fact that the system is not working, in my view, is why we need the mandatory scheme”¹¹.

18. Public Health Wales (PHW) provided us with further evidence to support the need for a mandatory scheme outlining that:

“There is sufficient evidence now from countries such as Canada, America and Denmark that not only has the hygiene standard risen considerably with the introduction of mandatory schemes, but rates of hospitalisation for food-borne illnesses has decreased quite dramatically in some areas. This could not be accounted for just by people voting with their feet, by not going somewhere with a bad rating; it had to mean that a substantial number of premises raised the standard of their food hygiene. So, we would support this”¹².

19. Interviews conducted by the Assembly’s Outreach Team with members of the public and businesses that could be affected by the Bill at the Urdd Eisteddfod and Llangollen International Festival demonstrated that the majority of interviewees were supportive of legislation. Most interviewees agreed that it was a good idea to require food businesses to display their food hygiene ratings¹³.

20. However, some witnesses did not support the need for legislation. These included the Federation of Small Business (FSB) Wales who commented that:

¹⁰ FHR4, Written Evidence

¹¹ RoP, paragraph 117, 12 July 2012 (pm)

¹² RoP, paragraph 119, 12 July 2012 (pm)

¹³ FHR24, Urdd and Llangollen Eisteddfodd Interview Responses

“We have yet to be convinced that there is a problem with the voluntary scheme other than what you are saying, namely that people are choosing not to display ratings of 0, 1, 2 or 3 on their doors. However, that may change once public awareness increases”¹⁴.

21. Similarly the British Beer and Pub Association (BPA) were opposed to the Bill stating that:

“We are against making the display mandatory, and we believe that, at a time when there is very little money available to businesses, it is the role of Governments, wherever they are in the UK, to reduce the burdens on business. We do not believe that this mandatory display of rating for food hygiene will either improve food hygiene in Wales or, indeed, make it easier for business”¹⁵.

22. This view was shared by the British Hospitality Association (BHA)¹⁶ and the Association of Convenience Stores (ACS)¹⁷.

23. Equally the Welsh Retail Consortium were opposed to the Bill and commented that:

“We believe the creation of a statutory scheme is disproportionate in regulatory terms and would only be justified if there was clear evidence of its role in reducing food borne illness”¹⁸.

Evidence from the Minister

24. The Minister clarified that the intention of the Bill is to introduce a mandatory requirement for food businesses to display information about their food hygiene compliance. In explaining that under the existing voluntary scheme those businesses tending to display their ratings were those scoring 4 or 5 she commented that:

“That is really the weakness of the voluntary scheme: it is the lack of lower-numbered stickers being displayed. The scheme will force businesses to display their stickers and will then give

¹⁴ RoP, paragraph 37, 12 July 2012 (pm)

¹⁵ RoP, paragraph 262, 18 July 2012

¹⁶ RoP, paragraph 264, 18 July 2012

¹⁷ FHR10, Written Evidence

¹⁸ FHR14, Written Evidence

consumers the information that I think that they need in order to make informed choices about where they eat or buy their food. I think that is a very effective way of improving food hygiene standards”¹⁹.

Our View

25. We note that the majority of witnesses support the principle of the Bill and the need for legislation. We agree with the view that legislation is necessary to ensure that the displaying of food hygiene ratings is universal across all businesses included within the scope of the Bill. We recognise that, under the voluntary scheme, many low scoring businesses are not displaying their ratings. We believe that making the scheme compulsory will ensure that information available to consumers is maximised.

26. Therefore having taken these views into account we agree with the general principles of the Bill and the need for legislation.

27. Our views on some of the specific sections of the Bill are set out in section 4.

¹⁹ RoP, paragraph 123, 20 June 2012

4. Specific Comments on Sections

Section 2 – Programme of Food Hygiene Inspections

Background

28. Section 2 requires food authorities in Wales (local authorities and port authorities) to prepare programmes of inspections of food business establishments in their areas in order to assess the hygiene standards of those establishments.

29. The meaning of “food business establishment”, “operator” and “food authority” for the purpose of the Bill is set out in section 2(5). The Welsh Ministers may by regulations amend the definitions of “food business establishment” and “food authority”.

Evidence from Witnesses

Consistency

30. Some witnesses raised concerns regarding the potential for inconsistencies in the application of the food hygiene rating scheme, which could occur either between local authorities and or within a local authority.

31. In commenting on this issue, Dean Bolton a member of FSB Wales, stated that:

“...it is not just about the relationship between different local authorities, but within the same local authority, you get different inspectors who have a different take on how they inspect, even though they have the same regime to follow. It can be very frustrating when you have just done an expensive piece of work and you find that it was not needed, because it was not explained in the right way”²⁰.

32. Similar views were expressed by the BSA, PAPA and the Café Society²¹, who commented that:

“There are also differences of opinion between inspectors on the interpretation of regulations and also on different aspects of

²⁰ RoP, paragraph 108, 12 July 2012 (pm)

²¹ FHR4, Written Evidence

practices operating in food businesses”²².

33. In contrast, a representative of DPPW informed us, that there were already a number of mechanisms in place to ensure consistency of application within the existing scheme. We were told that:

“The Wales heads of environmental health group has a food safety technical panel and work is also going on with a food hygiene rating 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 in Wales”²³.

34. We also received evidence from the Better Regulation Delivery Office (BRDO) outlining their role in addressing inconsistencies in that:

“It gives businesses the right to form a statutory partnership with one local authority, which then provides robust and reliable advice for other councils to take into account when carrying out inspections or dealing with non-compliance. The Primary Authority scheme therefore offers assurance of consistency for businesses that trade across local authority boundaries, including for the purposes of inspections leading to award of ratings”²⁴.

35. On the issue of consistency, we questioned relevant witnesses on the mechanisms that would be in place to give consumers confidence that the ratings system was being applied consistently. For example, could a 5 rating in one authority be regarded as the same as a 5 rating in another.

36. In responding, DPPW informed us that:

“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”²⁵.

²² FHR4, Written Evidence

²³ RoP, paragraph 182, 12 July 2012 (am)

²⁴ FHR16, Written Evidence

²⁵ RoP, paragraph 187, 12 July 2012 (am)

Scope

37. We sought views on the scope of the Bill and specifically the definition of “food business establishment”, “operator” and “food authority” for the purpose of the Bill as set out in section 2(5).

38. Some witnesses, including the Wales Tourism Alliance (WTA), commented on the need for exemptions from the Bill to be specified at the earliest opportunity²⁶ given that these are not detailed in the Bill.

39. Witnesses also raised concerns regarding the inclusion of business-to-business establishments within the scope of the Bill. FSB Wales suggested that this inclusion would create a new regulatory burden on businesses in Wales, which would subsequently lead to increased costs that might make Welsh businesses less competitive²⁷.

40. In written evidence they commented that:

“It is important to recognise that many businesses in Wales will be supplied from companies operating across the UK and the EU that will not fall under the remit of the legislation. This could impede the Welsh Government’s stated objectives with regard to food hygiene, whilst placing Wales based wholesalers at a competitive disadvantage”²⁸.

41. In contrast, other witnesses supported the inclusion of business-to-business trade within the scope of the Bill. Caerphilly County Borough Council commented that:

“We are pleased that the Bill addresses the inclusion of business to business trade premises as we feel that it is important that these businesses are included in the scheme so that those responsible for procurement of foods via contracts have knowledge of the hygiene ratings of these establishments”²⁹.

42. WLGA/DDPW supported the inclusion of business-to-business trade within the scope of the Bill. They stated that:

²⁶ FHR3, Written Evidence

²⁷ RoP, paragraphs 68 and 69, 12 July 2012 (pm)

²⁸ FHR19, Written Evidence

²⁹ FHR8, Written Evidence

“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”³⁰.

43. During our evidence gathering we sought views on the breadth of the scope of the Bill. Most witnesses asked expressed a view that a registered business for the purpose of the Bill would be defined as being one that has a degree of continuity and organisation, and would therefore be subject to food hygiene legislation.

44. In commenting on the scope of the Bill, CIEHW told us that:

“We are keen to ensure that only businesses that are true businesses fall within this scheme. Therefore, if you have someone who, on odd occasions, bakes a cake for a church fete, a school cake sale or whatever in domestic premises, they should not be caught by this”³¹.

45. They added that:

“With regard to a business or charity doing something that is regular, if we are talking about the WRVS producing meals on wheels or a church that does a pensioners lunch once a week as part of its business and conduct, yes, it should be caught by the scheme. However, if we are talking about a church hall that, on the odd occasion, puts some sandwiches together say for a funeral service, and the event is random and involves different individuals, that is not a business in the sense that we are looking at consistent and on-going food provision, so it should not be caught”³².

³⁰ RoP, paragraph 224, 12 July 2012 (pm)

³¹ RoP, paragraph 218, 12 July 2012 (pm)

³² RoP, paragraph 221, 12 July 2012 (pm)

46. During our consideration of the Bill we were presented with some practical considerations in terms of how the Bill might apply to certain types of food establishments contained within the scope of the Bill. Specifically these concerns related to the use of community facilities, such as community centres, which may be used by various groups to prepare and serve food³³. For example, would it be the premises and/or the caterer that is rated, how would each group be rated and how would that rating be displayed?

Evidence from the Minister

Consistency

47. In oral evidence, the Minister highlighted that provisions in the Bill and guidance to be issued would help ensure a consistent and fair approach³⁴. We were informed that the FSA will monitor and audit implementation of the scheme and there is an expectation that the FSA will ensure a fair and consistent approach³⁵. We were assured that there will be three yearly evaluations to allow the FSA to report to Welsh Ministers.

48. The Minister added that there is also a joint steering group of which local authorities are members of to ensure a consistent approach.

Scope

49. The Minister confirmed her intention to publish and consult upon draft regulations to be made under the Food Hygiene Rating (Wales) Bill at the end of Stage 2 of the Bill process (November 2012), which will include details of exemptions³⁶.

50. The Minister also highlighted that during the consultation on the draft Bill comments were sought on whether any food establishments that provide food directly to consumers should be exempt from the scheme. She added that although there is a need for some flexibility, where there is a good case to exempt a certain food business, there was an expectation that exemptions would be few. She informed us

³³ RoP, paragraph 88, 12 July 2012 (pm)

³⁴ RoP, paragraph 238, 20 June 2012

³⁵ RoP, paragraph 239, 20 June 2012

³⁶ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

that the intention was for certain low risk establishments to be exempt such as sensitive establishments³⁷.

51. In oral evidence the Minister's official clarified that in some instances registered businesses would be exempt. He explained that:

"...exemptions would apply for registered businesses- predominantly child minders, probably. Again, this is a question of degree. A child minder registered as a food business, predominantly because the child minder would provide food for children in their care, would not be required to display a sticker, because they are potentially identifiable as vulnerable people. They would not be required to display a sticker, they would not be identified under the scheme and they would not appear on the Food Standards Agency website"³⁸.

52. The Minister added that:

"The other exemptions would be sensitive establishments, such as those related to the armed forces. They would not be required to display a sticker. They would still be awarded a rating for local display, but they would not have to be on the FSA website, for security reasons"³⁹.

53. The Minister also confirmed that certain low risk establishments would also be exempt from the scheme. She stated that:

"Low-risk establishments would be places like leisure centres, where you only have food in vending machines, or newsagents, where you have pre-packed sweets and chocolates. Those would be the low-risk establishments"⁴⁰.

54. With regard to concerns regarding the practical application of the scheme, such as the use of community facilities, the Minister clarified that it would be the registered food business that would be subject to scheme and not the premises⁴¹. Furthermore, if only 'low risk' foods,

³⁷ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

³⁸ RoP, paragraph 139, 20 June 2012

³⁹ RoP, paragraph 140, 20 June 2012

⁴⁰ RoP, paragraph 152, 20 June 2012

⁴¹ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

e.g. teas/coffees and biscuits, were being provided as a peripheral part of a business' activities, it would not be rated⁴².

Our View

55. We have considered the views of witnesses in relation to section 2 of the Bill and note the concerns regarding the potential for inconsistencies in the application of the Bill by different local authorities or within local authorities.

56. Having considered the strength of evidence received from organisations with responsibility for the practical implementation of the Bill, we are content that there are sufficient safeguards in place to ensure consistency.

57. However, although we are satisfied that such safeguards are sufficient in theory, we are of the view that these need to be thoroughly implemented in practice to provide reassurance and confidence in the consistency of application of the food hygiene rating scheme.

58. We are also content with the meaning of “food business establishment”, “operator” and “food authority” for the purpose of the Bill as set out in section 2(5). We are satisfied with the provisions set out in section 2(6)(a) and (b), which give powers to Welsh Ministers to amend the definition of a food business establishment and food authority through regulations.

Sections 3 - 4 – Food Hygiene Ratings and Rating Criteria

Background

59. Section 3 details the procedure a food authority must follow after the inspection of a food business establishment. Section 4 outlines that the rating criteria must score the food business establishment, not only on its hygiene standards but also on its food handling practices, physical environment, management and control procedures.

⁴² Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

Evidence from Witnesses

60. Some witnesses highlighted the importance of ensuring the public fully understand the food hygiene rating scheme. The BSA, PAPA and the Café Society suggested that action must be taken:

“...to promote the scheme to the public so that they fully understand the rating system as there is a serious danger that it may otherwise be confused with other star rating schemes”⁴³.

61. Similar concerns were raised by ACS who stated that:

“...the Welsh Government and Local Authorities should work together to create and provide materials to educate the public as to the meaning of the ratings”⁴⁴.

62. In response to concerns regarding public understanding and awareness of the scheme the FSA explained some of the on-going work being undertaken to promote and raise awareness amongst the public. They informed us that numerous publicity campaigns had been run prior to the introduction of the voluntary scheme to help prepare businesses and to assist them in achieving higher ratings⁴⁵.

63. We are also informed that the FSA has previously run two campaigns to promote the scheme to consumers in Wales. Evidence provided by the FSA suggested that these campaigns had been successful in that 48% of respondents in a survey of Welsh consumers undertaken after a publicity campaign in 2012 were aware of the scheme, compared to 36% following a publicity campaign in 2011⁴⁶.

64. The FSA fully supported the new statutory duties imposed on the FSA in the Bill, which include the promotion of the statutory scheme and provision of support to local authorities. In reference to these duties they stated that:

“The FSA notes that these duties would underpin our continuing work in this area, and welcome them”⁴⁷.

⁴³ FHR4, Written Evidence

⁴⁴ FHR10, Written Evidence

⁴⁵ FHR18, Written Evidence

⁴⁶ *ibid*

⁴⁷ RoP, paragraph 82, 12 July 2012 (am)

65. Evidence gathered by the Assembly's Outreach Team demonstrated a general awareness amongst the public of the food hygiene rating scheme, with most respondents distinguishing that a low score was unsatisfactory and a high score was good. A number of respondents indicated that the score would influence their decision as to whether to eat from an establishment or not⁴⁸.

Evidence from the Minister

66. In terms of ensuring public understanding of the scheme, the Minister commented that there would be a duty placed on the FSA to ensure that the public understand the ratings⁴⁹.

Our View

67. We are generally content with sections 3 and 4 of the Bill. However, we note that there are concerns surrounding the level of public understanding of the food hygiene rating criteria and recognise that there will be a time delay in educating the public and promoting understanding of the scheme. We therefore agree that greater explanation of food hygiene ratings will be necessary.

68. With regard to this issue we have taken into account evidence received from the FSA who will be given the task of promoting understanding and awareness of the scheme. We are assured that the FSA are fully content with this role and support the new statutory duties placed upon them. We are content that the FSA will undertake these duties effectively.

69. Furthermore, given the evidence gathered by the Assembly's Outreach Team we are assured that there is already an existing level of public understanding of the voluntary scheme and awareness of what the ratings mean. We feel that this a firm foundation on which the duties of the FSA can build upon.

Section 5 – Appeals

Background

70. Section 5 details a food operator's right of appeal to the food authority against a food hygiene rating given to the establishment.

⁴⁸ FHR 24, Urdd and Llangollen Eisteddfod Interview Responses

⁴⁹ RoP, paragraph 172, 20 June 1012

Evidence from Witnesses

71. Some witnesses raised concerns that the time-scale for appeals, as detailed in the Bill, are too long and would cause unnecessary delay in consumers having access to ratings.

72. CFW raised concerns 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”⁵⁰.

73. Some witnesses suggested that the appeals process should be independent and preferably undertaken by a different local authority to the one that undertook the initial inspection.

74. Evidence from Pembrokeshire County Council stated that:

“The appeals process might be strengthened, and seen as being more robust, if appeals were considered by an external assessor. This role might be performed by nominated officers in other local authorities, or by the Food Standards Agency. As the majority of appeals are dealt with as a desk top exercise, supplemented by discussions with inspecting officers, this should not be impracticable (having regard to the number of appeals anticipated). This should help promote consistency in the application of scores across and not just within LAs”⁵¹.

75. The need for an independent appeals process was also supported by representatives of the business sector. FSB Wales commented on the importance of an independent appeals process in maintaining a good relationship between businesses and the local authority. They stated that:

“...it is not beyond the realms of possibility for there to be serious problems in the nature of the relationship between an inspector and someone who is being inspected. So, there must be good governance and a good arm’s-length principle at work

⁵⁰ RoP, paragraph 115, 12 July 2012 (am)

⁵¹ FHR11, Written Evidence

here, because business and employment opportunities are at stake if those goes wrong”⁵².

76. However, there were some reservations regarding the impact upon local authorities of having to undertake independent appeal processes. The WLGA/DDPW stated that:

“...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”⁵³.

Evidence from the Minister

77. In response to concerns raised around time-scales, the Minister clarified that the intention of the time-scales were to ensure they were workable for all those involved. She explained that:

“It should be emphasised that the time-scales 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 displaying at a food business establishment and on the FSA website earlier than those maximum time-scales specified in the Bill”⁵⁴.

78. The Minister also provided us with evidence to support the decision to extend the appeals time-scale for both food businesses and food authorities to 21 days. She explained that consultation responses from food businesses indicated that the 14 day period to submit an appeal was too short given the time taken to gather evidence to make an appeal. It also did not allow for holiday periods and absence of key staff. She added that responses from food authorities indicated that the 7 day time period for them to consider and determine appeals was also too short⁵⁵.

79. In response to concerns raised, regarding the independence of the appeals process, the Minister informed us that to provide a level of impartiality the Bill requires the appeal to be determined by an authorised officer who was not involved in the assessment of the food

⁵² RoP, paragraph 105, 12 July 2012 (pm)

⁵³ RoP, paragraph 222, 12 July 2012 (am)

⁵⁴ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

⁵⁵ *ibid*

hygiene rating that is being appealed. Furthermore, the Inspecting Officer must not consider the appeal⁵⁶.

80. The Minister also stated that:

“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”⁵⁷.

81. In concluding on this issue, the Minister initially expressed a view that she was not persuaded that appeals need to be considered by an independent food authority and stated that:

“To impose such a requirement would place an additional administrative burden on both the food authority providing the rating and that determining the appeal”⁵⁸.

82. In further evidence, the Minister advised us that having reflected on the concerns raised by witnesses regarding the independency of the appeals process she was minded to reconsider the issue in the interest of ensuring fairness to businesses. She stated:

“...first, we need to look initially to the food authority retaining its own appeals and then look at neighbouring authorities and the issue of a regional panel. I will certainly report at the end of Stage 1”⁵⁹.

Our View

83. We have considered the views of witnesses regarding the times-scales detailed within section 5 of the Bill and we are not of the view that extending the times-scales would be advantageous at this time. We are content that the existing time-scales are appropriate and workable for all those involved.

⁵⁶ *ibid*

⁵⁷ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

⁵⁸ *ibid*

⁵⁹ RoP, paragraph 20, 27 September 2012

84. We recommend that consideration should be given to bringing forward an amendment that provides the Welsh Ministers with powers to amend the time-scales, detailed in section 5 of the Bill, through regulations. This would allow greater flexibility should there be a need to amend these time-scales at a later date. We suggest that any such powers be subject to negative resolution.

85. With regard to the issue of whether the appeals process should be conducted independently, that being by a different local authority to the one that undertook the initial inspection, we agree with views of witnesses that such appeals should be undertaken independently, by reference to another local authority.

86. We are of the view that an independent appeals process would be more robust and transparent, and would give confidence to businesses and public in the independence and openness of the process. We welcome the Minister's commitment that she will give further consideration to establishing an independent appeals process and therefore recommend that an amendment be brought forward to this effect.

Section 6 - Publication and Display Arrangements

Background

87. Section 6 relates to the notification and publication of food hygiene ratings on the FSA website and outlines the procedure by which a food authority must advise the FSA of the food hygiene rating of a food business establishment following the inspection.

Evidence from Witnesses

88. Some witnesses raised concerns regarding the potential for extended periods of time when no rating is displayed at food business establishments and therefore no information is provided to the consumer. In referring to the time-scales set out in section 6 of the Bill, CFW informed us that:

“This means in practise that for any standard food hygiene inspection, the rating of that inspection is not required to be published on the FSA's Food Hygiene Ratings Scheme website

for 91 days (approx 3 months) from the date of inspection (where there is no appeal from the food business operator”⁶⁰.

89. They added that:

“...if a food business operator appeals, not only will the rating not be displayed at the premises for up to 56 days but the corresponding rating will not be visible to consumers for up to 112 days (approx. 4 months)”⁶¹.

90. They concluded that:

“We are extremely concerned about these potential delays to publications of the food hygiene rating on the FSA’s food hygiene rating scheme website have been allowed on the face of the Bill. Whilst we appreciate these are maximum periods, we do not consider these to be appropriate, given both food operators and the FSA should be working to make ratings available to consumers at the earliest opportunity”⁶².

91. Some witnesses suggested that to further inform the consumer, full inspection reports should be published on the FSA website and that this would also improve general understanding of the food hygiene ratings scheme. However, arguments both for and against this practice were heard by the Committee.

92. In supporting the publishing of inspection reports CFW commented that:

“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 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”⁶³.

⁶⁰ FHR17, Written Evidence

⁶¹ *ibid*

⁶² FHR17, Written Evidence

⁶³ RoP, paragraph 60, 12 July 2012 (am)

93. Furthermore, they suggested that:

“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”⁶⁴.

94. They further supported their argument in claiming that:

“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 provide 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”⁶⁵.

95. In conclusion they stated that:

“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”⁶⁶.

96. Representatives from the business sector also supported the publishing of full inspection reports. FSB Wales commented that:

“If you are going to publicise the ratings that the establishments are getting - I will not say ‘name and shame’ - it is only fair and equitable to publish what the authority is saying about these establishments”⁶⁷.

97. Furthermore, ACS⁶⁸ and Which?⁶⁹, were unopposed to inspection reports being made fully available.

⁶⁴ RoP, paragraph 61, 12 July 2012 (am)

⁶⁵ RoP, paragraph 62, 12 July 2012 (am)

⁶⁶ RoP, paragraph 63, 12 July 2012 (am)

⁶⁷ RoP, paragraph 111, 12 July 2012 (pm)

⁶⁸ FHR10, Written Evidence

98. Those witnesses opposed to the publication of inspection reports suggested that publishing such reports may be burdensome on local authorities.

99. A representative of DPPW stated that:

“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”⁷⁰.

100. This was also a view shared by Pembrokeshire County Council⁷¹.

101. We were also informed by DPPW that the administrative burden of reports arose from the level of personal information included, for example references to named individuals regarding their levels of training and knowledge⁷². Furthermore, burdens could arise from local authorities having to redact such personal information before publishing reports and the possible requirement for Welsh translation under the Welsh Language Act 1993⁷³.

102. In response to these claims, CFW commented 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”⁷⁴.

⁶⁹ FHR12, Written Evidence

⁷⁰ RoP, paragraph 168, 12 July 2012 (am)

⁷¹ FHR11, Written Evidence

⁷² RoP, paragraph 169, 12 July 2012 (am)

⁷³ *ibid*

⁷⁴ RoP, paragraph 63, 12 July 2012 (am)

103. These arguments were supported by the FSA who commented that:

“We should note that there are just a 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 – 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 find to be accessible language”⁷⁵.

104. We contacted Norwich City Council to seek views on their experiences of publication of inspection reports. In correspondence received, officers from the Council stated that:

“Norwich City Council has been publishing its inspection reports online since October 2005 without major incident or complaint. We have effectively assimilated the publication of reports into our existing procedures”⁷⁶.

105. In terms of the resource implications of publishing such reports Norwich City Council Officers informed us that:

“Although time must be spent pdf'ing documents, naming them correctly and filing them electronically in the right place (where the report we run for our website can pick up the link) the process, at least from the officer's perspective, is not burdensome. I suspect that is also the case for our web team.

From the outset we designed our reports and procedures with the eventual publication of the report in mind. For instance, our aim is to create an inspection document that does not need redacting. Personal information is kept to the covering letter (which is not published) and care is taken not to identify individuals in the published report. We peer review inspection reports which hopefully ensures errors, of which there are some, are picked up”⁷⁷.

106. Similar views were shared by Lichfield Council, which is part of a consortium of local authorities, who share a website called

⁷⁵ RoP, paragraph 65, 12 July 2012 (am)

⁷⁶ HSC (4)-24-12, (paper to note) 27 September 2012

⁷⁷ *ibid*

www.ratemyplace.org.uk that publishes inspection reports alongside food hygiene ratings for participating councils. Officers informed us that:

“We have been publishing food hygiene inspection reports since 2007. Publishing couldn't be easier. We remove confidential information such as names and then secure the document using Adobe Writer. We include this task as part of the overall inspection process and essentially on average it takes 5 minutes to do. Publishing our reports has been positive in a number of ways:

- it allows the public to rightly see what we do and ask questions of our work
- it has changed the way we write letters to our customers. No longer do we quote legislation or make our sentences long and verbose, we try to come straight to the point e.g. clean the wall or paint the ceiling. Customers like this and officers find it easier to do.
- press coverage (both positive & negative) has led to an increased interest in food safety and has driven up standards without the need for regulation in some instances”⁷⁸.

107. In terms of the cost implications Lichfield Council Officers were also able to confirm that:

“In terms of costs, if you take the running of *ratemyplace* it costs each partner council about £600 per year. This includes hosting, training, website development and website management”⁷⁹.

Evidence from the Minister

108. The Minister raised concerns that the impact and burden of requiring food authorities to publish inspection reports would be significant⁸⁰. She highlighted that: food authorities would be required

⁷⁸ HSC (4)-24-12, (paper to note) 27 September 2012

⁷⁹ *ibid*

⁸⁰ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

to remove all personal information from the report before publishing to ensure compliance with the Data Protection Act; there would be significant translation costs which will have a financial impact for local authorities; and the FSA would face additional development costs if they were required to publish 30,000 plus inspection reports on their website bilingually⁸¹.

109. The Minister also informed us that the driving philosophy behind the development of the food hygiene rating 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. She explained that now was not the time to be placing additional burdens on local authorities, particularly when the benefits to the consumer of releasing such information were not sufficiently clear⁸².

110. The Minister initially advised that she would prefer to consider alternative ways of providing information consistently by local authorities in Wales to releasing inspection reports. This would be 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. She added that time should be allowed for the compulsory display of hygiene ratings to take effect and that this issue should be considered again at the first evaluation of the mandatory scheme in three years time⁸³.

111. Having re-examined this issue the Minister informed us that:

“...rather than people having to go down the freedom of information route to get that information, the report should be available on request”⁸⁴.

112. She added that:

“...I do not think that many members of the public or businesses want a full report – they want a summary”⁸⁵.

Our View

⁸¹ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

⁸² *ibid*

⁸³ *ibid*

⁸⁴ RoP, paragraph 44, 27 September 2012

⁸⁵ *ibid*

113. Having carefully considered the evidence and the arguments for and against the publication of inspection reports we are of the view that the publication of inspection reports would be advantageous.

114. Given the purpose of the Bill is to inform the consumer, we feel that the publication of full inspection reports would go further to achieve this. We believe that the publishing of inspection reports would not only assist public understanding of the food hygiene rating scheme but also promote fairness, consistency and transparency in reporting. For example, businesses and the public could look to see if there was consistency in reporting, which should aid the development of greater consistency over time.

115. We also considered examples from other local authorities, where the practice of publishing inspection reports online has been adopted. We found the information made available on such websites to be clear and informative to the consumer. We have also noted the evidence from those local authorities that the publishing of inspection reports has not been burdensome and has a number of advantages for both the public and the local authority.

116. Having considered all of the evidence, we support the principle that all inspection reports should be published on either the relevant local authority or the Food Standards Agency website. Although we welcome the Minister's suggestion that inspection reports could be made available on request, we feel that this may create a further barrier to the public accessing this information. We would like to see reports being published routinely to enable and encourage more people to access them.

117. We acknowledge that Standards under the Welsh Language (Wales) Measure 2011 have yet to come into force and it is not certain the extent to which inspection reports will be captured by the requirements. We also feel that initially inspection reports should be published in the language in which they are written, i.e. English or Welsh. Translation of such reports could be undertaken on request to minimise the costs involved. However, in the long term we would like to see bilingual summary reports published to the relevant websites.

Sections 7 - 8 – Informing the Public about Food Hygiene Ratings

Background

118. Sections 7 and 8 relate to informing the public about food hygiene ratings. The Bill will make it compulsory for food businesses in Wales to display information on their hygiene standards in a position where it can easily be seen by consumers. Section 8 specifically states that food operators must advise consumers verbally of the food hygiene rating of the establishment when requested to do so.

Evidence from Witnesses

119. Many witnesses highlighted that the Bill, as drafted, does not include a requirement for ratings to be included in a business' advertising, promotional material or websites. However, there was widespread support for ratings to be displayed on such material.

120. FSB Wales commented that should the scheme be introduced:

“...the FSB would welcome the fact that, wherever you purchase or consume foods, you are made aware of the standards of those premises”⁸⁶.

121. CFW expressed views that the Bill should include a requirement for food businesses to display their food hygiene rating on appropriate publicity material⁸⁷. They stated that:

“Whilst we appreciate that business may be concerned about the cost of having ratings on printed material that may go out of date, every effort should be made by the business or premises to make their rating available through any publicity or communication material. Placing a requirement on a food business to make a rating available on their website should be achievable given that this can easily be changed following a change in rating”⁸⁸.

122. However, some witnesses had reservations about the displaying of food hygiene ratings on promotional material. CIEHW raised

⁸⁶ RoP, paragraph 94, 12 July 2012 (pm)

⁸⁷ FHR 17, Written Evidence

⁸⁸ *ibid*

concerns regarding the inclusion of information on fliers, given their time-limited lifespan or on take away menus, for example, which people tend to keep for many years. They stated that:

“Our concern with displaying the rating on those is that you would have to put a date on them to show that, for example, as of 10 June 2012, the rating was 4. That will remain true even if the rating changes”⁸⁹.

123. They added that:

“The Chartered Institute will certainly support the display of food hygiene ratings on premises and on websites – stuff that can be readily changed. However, our concern is that a small business might buy 5,000 fliers tomorrow and find that, next Friday they are out of date. That does not help the business, because it then has material that is out of date, and it then has to decide either to continue to use it or withdraw it, which is a burden on the business. That does not help the consumer, because it is giving the wrong information”⁹⁰.

124. They concluded that:

“...we do not want to see the public being misled – accidentally or by design – as a result of printed material that has been generated in quantity and that a business feels inclined to use”⁹¹.

125. During our evidence gathering we questioned witnesses on the issue of when businesses are selling food in different locations/events, where should they be required to display their rating stickers. We considered the example of farmers markets and whether there should be a requirement to display stickers on the market stall or at the registered premises or both.

126. The FSA indicated that the display on the table at the point of sale would seem to be appropriate⁹². This was supported by CFW who commented that:

“...it is about providing detailed guidance for businesses as a consequence of this Bill on how they should be making that

⁸⁹ RoP, paragraph 145, 12 July 2012 (pm)

⁹⁰ RoP, paragraph 152, 12 July 2012 (pm)

⁹¹ RoP, paragraph 160, 12 July 2012 (pm)

⁹² RoP, paragraph 102, 12 July 2012 (am)

information available to consumers in different circumstances. It will be really important as part of that guidance to provide specific examples such as farmers' markets. Certainly it should be available on the stall"⁹³.

127. Witnesses also supported the idea that additional stickers should be supplied where, for example, food business establishments have multiple entrances or mobile units⁹⁴.

128. With regard to section 8 of the Bill many witnesses raised concerns that the requirement to inform consumers verbally of the food hygiene rating of a food business establishment would be difficult to monitor.

129. In written evidence, the WTA questioned whether:

“Will this mean the owner of the establishment will become liable for the behaviour of an employee, whether through malicious intent; ignorance or simply because they are busy”⁹⁵.

Evidence from the Minister

130. With regard to the displaying of food hygiene ratings on a business' promotional material the Minister commented that:

“...the decision not to compel businesses to put their ratings on the menus was because of the cost involved in reprinting menus. If the rating changed, the business would have to re-do their menus, so that was the reason for that”⁹⁶.

131. The Minister's official provided further clarification in stating that:

“...the reason we recommended against publication in promotional material was twofold: first, as the Minister says, there is a cost of changing promotional material if the rating changed, which is potentially several thousands of pounds”⁹⁷.

⁹³ RoP, paragraph 104, 12 July 2012 (am)

⁹⁴ FHR17, Written Evidence

⁹⁵ FHR3, Written Evidence

⁹⁶ RoP, 20 June 2012, paragraph 197

⁹⁷ RoP, 20 June 2012, paragraph 203

132. Furthermore, he added that:

“...given that people could be using the same promotional material over a period of, potentially, several years, our view was that such a requirement could promote confusion”⁹⁸.

133. The Minister highlighted potential problems regarding the inclusion of ratings on take away menus, particularly with a date stamp and date of expiry. She informed us that this would place burdens on businesses and could also undermine European food hygiene legislation that requires that food hygiene inspections are unannounced⁹⁹.

134. The Minister further stated that:

“I am 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”¹⁰⁰.

135. In concluding on this issue the Minister commented that:

“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 overcomplicate the Bill and on balance I am not yet persuaded to include such a provision”¹⁰¹.

136. During further questioning the Minister confirmed that she had looked at the option of displaying food hygiene ratings on food business establishment’s websites, and although she acknowledged that there would be issues where a third party was responsible for maintaining a website, she felt that:

“...it would probably be more practical to require food businesses to place a statement on their website regarding their food hygiene rating and then redirect consumers via an

⁹⁸ RoP, 20 June 2012, paragraph 203

⁹⁹ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

¹⁰⁰ *ibid*

¹⁰¹ *ibid*

automatic hyperlink to the FSA website where the individual business rating can be viewed”¹⁰².

Our View

137. Having carefully considered the views of witnesses, regarding the issue of whether food hygiene ratings should be included on a food business’ promotional material, we have concluded that it would not be appropriate for there to be a statutory requirement for such information to be included on material at this time, particularly since there is nothing to prevent businesses from doing this voluntarily at present.

138. We also note and share the concerns raised by witnesses that the inclusion of food hygiene ratings on promotional material could cause confusion as such material is liable to become out-dated.

139. However, we note the evidence from witnesses to suggest that there should be little or no additional cost to businesses to include details of their food hygiene rating on their website. We also acknowledge the ease with which websites can be kept updated with accurate information. Similarly, we feel that businesses could easily include information on their promotional material directing consumers to the FSA website, where details of their latest food hygiene rating would be available. The inclusion of such information should not lead to any inaccuracies or additional burden for businesses as such information would not need to be updated regularly.

140. We welcome the Minister’s commitment to us that she would consider whether food business establishments should be required to place a statement on their website regarding their food hygiene ratings. To ensure that consumers are able to access the most up to date information about an establishment, she indicated that such statements might be required to include a hyperlink directing consumers to the relevant page on the FSA website. We are supportive of this approach.

141. Finally to further inform the consumer we share the views of those witnesses who have suggested that there should be a requirement on business selling food at different locations and/or at events, to display their food hygiene rating stickers at the point of

¹⁰² RoP, paragraph 22, 27 September 2012

sale/location and/or at their registered premises. Such businesses may include for example those selling food at farmers markets or mobile catering companies. We note that this point is also endorsed by the Minister.

Section 9 – Offences

Background

142. Section 9 details how food business establishment operators will commit offences under the legislation.

Evidence from Witnesses

143. There was widespread support for the requirement verbally to inform consumers of the hygiene rating of establishments. However, many witnesses raised concerns regarding how failure to comply with a request by a person to be informed verbally of a food hygiene rating would be monitored and enforced.

144. The BPA commented that:

“It is not clear how this would be enforced, and it also has the potential to be anecdotal and therefore difficult to prove. It could put operators at risk of vexatious or fictitious claims against them which they would equally find difficult to defend”¹⁰³.

145. Evidence from local government representatives, who would be responsible for enforcement, suggested that the monitoring of offences would rely on the public informing the relevant food authority although some work would be undertaken by inspectors to police compliance with the scheme¹⁰⁴.

146. In commenting on the issue of monitoring compliance with the scheme a representative from the WLGA informed us 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

¹⁰³ FHR13, Written Evidence

¹⁰⁴ RoP, paragraph 107, 12 July 2012 (am)

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”¹⁰⁵.

Evidence from the Minister

147. The Minister confirmed that the monitoring of offences, with regard to the requirement to verbally provide a food hygiene rating upon request, would be a matter for local authorities. She commented that:

“We would be reliant on people informing the food authorities, if, having rung up and asked for a verbal confirmation on the food hygiene rating, they did not get it”¹⁰⁶.

148. In response to concerns regarding the difficulties of enforcement, particularly in terms of vexatious or disingenuous claims, an official accompanying the Minister informed us that:

“With regard to enforcement action, many authorities conduct blind trials, including ringing up anonymously and asking the question themselves”¹⁰⁷.

149. With regard to the issue of offences the Minister clarified that 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. She added that 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.

150. The Minister confirmed that she considered the Bill to make this sufficiently clear because unless the true rating is given, the request will not have been complied with¹⁰⁸.

¹⁰⁵ RoP, paragraph 198, 12 July 2012 (am)

¹⁰⁶ RoP, paragraph 208, 20 June 2012

¹⁰⁷ RoP, paragraph 228, 20 June 2012

¹⁰⁸ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

151. The Minister clarified that:

“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”¹⁰⁹.

152. Upon further discussion of this issue, the Minister agreed to consider the Committee’s suggestion that a minor drafting amendment would clarify, beyond any doubt, that an offence would have been committed should an incorrect rating be given verbally¹¹⁰.

Our View

153. We have considered the Minister’s evidence in respect of section 9 of the Bill and are satisfied that local authorities who are already experienced in carrying out enforcement action in relation to consumer protection and anti-social behaviour for example, will be able to adequately ‘police’ the offences created by the Bill.

154. Notwithstanding the Minister’s evidence that section 9(1)(e) would include those operators of a food business establishment who provided an incorrect rating, we consider that as criminal offences must be drafted with certainty, the Bill as currently drafted should make specific reference to the offence of verbally providing an incorrect rating in response to a request under section 8, for the avoidance of any doubt. A parallel could be drawn with section 9(1)(b) which creates a specific offence of displaying an invalid sticker, even though section 9(1)(a) makes it an offence to fail to display a valid food hygiene rating sticker in the location and manner prescribed.

155. We welcome the commitment from the Minister that she will give further consideration to amend the drafting of section 9 of the Bill to make reference to the specific offence of providing an incorrect hygiene rating in response to a verbal request.

¹⁰⁹ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

¹¹⁰ RoP, paragraphs 9 – 15, 27 September 2012

Sections 10 - 12 – Safeguards for food businesses

Background

156. Section 10 enables a food business establishment operator the opportunity to comment on the establishment's food hygiene rating. Section 11 provides for an operator of a food business establishment to request that a food authority carries out a further inspection of the food hygiene standards of the establishment for the purpose of considering whether to change its food hygiene rating. Section 12 details the procedure for payment of the re-rating inspection.

Evidence from Witnesses

157. Some witnesses, for example Caerphilly County Borough Council¹¹¹ and Conwy County Borough Council¹¹², referred to the need for consistency in terms of the costs to businesses of re-ratings. We were told that there were concerns that charges may be levied differently by local authorities and some may use this as an opportunity to boost revenue¹¹³. Some witnesses suggested, as a means of preventing inconsistency, that there should be a prescribed standard charge¹¹⁴.

Evidence from the Minister

158. With regard to the issue of ensuring consistency of approach in calculating 'reasonable costs' by food authorities in relation to re-rating inspections, the Minister informed us of her intention to issue guidance to food authorities in relation to the exercise of these functions under the Bill. This will include guidance on the calculations 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 not to make the costs of inspection disproportionately high compared with those in urban areas¹¹⁵.

159. In addition, during oral evidence, the Minister's official highlighted that it would be difficult to put in place a standing charge for re-ratings as this would mean that a single-handed business would be

¹¹¹ FHR8, Written Evidence

¹¹² FHR9, Written Evidence

¹¹³ FHR4, Written Evidence

¹¹⁴ FHR8, Written Evidence

¹¹⁵ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

charged the same as a supermarket or manufacturing premises¹¹⁶. He added that re-ratings may not necessitate a full inspection of premises and re-inspections could be long or short. He also confirmed that a view has been taken that the charges should reflect the actual work¹¹⁷.

160. In clarifying this point further he stated that:

“...we have asked the Food Standards Agency to look at this and it is also an issue that the food safety technical panel of the Directors of Public Protection Wales will look at. So, we are satisfied not only that there is a mechanism to charge what it is actually going to cost the local authorities, but that there is a degree of consistency and a way of monitoring that consistency right from day one”¹¹⁸.

Our View

161. We have considered evidence from witnesses in respect of sections 10 – 12 of the Bill and accept the assurances provided by the Minister that there are measures in place to ensure fairness and consistency in terms of the charges for re-ratings.

Sections 13 – 15 – Powers and Responsibilities

Background

162. Section 13 details the duties of the FSA with regard to the Food Hygiene Rating scheme. Section 14 outlines other powers and responsibilities of food authorities such as sending information on the scheme to the operators of new food business establishments. Section 15 relates to other responsibilities of operators of food business establishment, such as providing information.

Evidence from Witnesses

163. In evidence, CFW raised the importance of monitoring and evaluating the scheme to ensure its success and made suggestions as to how this might be achieved. They suggested that spot checks on the displaying of ratings and the issuing of ratings verbally on request,

¹¹⁶ RoP, paragraph 249, 20 June 2012

¹¹⁷ *ibid*

¹¹⁸ RoP, paragraph 249, 20 June 2012

regular engagement with consumers and implementing mechanisms to record the reduction of food borne illnesses¹¹⁹.

164. The FSB Wales commented that the duties of the FSA should go beyond promoting the scheme to actively highlighting good practice to businesses in order to better enable them to achieve satisfactory ratings.

Evidence from the Minister

165. The Minister said that promoting and educating consumers about the scheme is going to be an important part of the duties of FSA¹²⁰.

Our View

166. We were content with these sections and the evidence received.

Sections 16 – 21 - Enforcement

Background

167. Sections 16 – 18 deal with power of entry, offences by bodies corporate, penalties and fixed penalty notices.

168. Sections 20 – 21 relate to penalties applicable for operators found guilty of committing offences under the Bill (Act) and the use of the fixed penalty receipts.

Evidence from Witnesses

169. Witnesses were content with the provisions for power of entry detailed in the Bill. We heard evidence from CIEHW to support the need for such powers as concurrent power of entry is required alongside existing powers of entry under existing food hygiene legislation¹²¹.

170. Some witnesses, such as the FSB Wales, suggested that funds raised from fixed penalty receipts could be used to raise awareness amongst small businesses of good practice¹²². This was a view supported by the BPA¹²³ and BHA¹²⁴.

¹¹⁹ FHR17, Written Evidence

¹²⁰ RoP, paragraph 170, 20 June 2012

¹²¹ RoP, paragraph 213, 12 July 2012 (pm)

¹²² FHR19, Written Evidence

¹²³ RoP, paragraph 303, 18 July 2012

¹²⁴ RoP, paragraph 305, 18 July 2012

171. The BPA raised concerns regarding the level of fixed penalty fines. With regard to the level 3 fines proposed for offences outlined in section 9 of the Bill, they stated that:

“We are opposed to fines for minor mis-demeanours like non-display of signs. However, they should be at level 1; a level 3 fine seems excessive. We believe that a level 1 fine - £200 - would be better and less of a burden on businesses”¹²⁵.

Evidence from the Minister

172. The Minister clarified that a significant number of receipts from fixed penalty notices was not anticipated as most food businesses will comply with the requirement to display their hygiene rating sticker. She added that consideration had been given to where fixed penalty receipts should be directed and had decided that the proposal in the Bill, for these to be returned to Welsh Ministers, would give the opportunity for them to be used to fund future food safety work¹²⁶.

173. The Minister concluded that:

“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”¹²⁷.

Our View

174. We were content with these sections and the evidence received.

¹²⁵ RoP, paragraph 314, 18 July 2012

¹²⁶ Letter from Lesley Griffiths AM, Minister for Health and Social Services, 8 August 2012

¹²⁷ *ibid*

5. Financial Implications

Background

175. The Welsh Government considers that there would be costs associated with the introduction of a mandatory scheme and that these would fall to:

- (a) local authorities;
- (b) food business operators;
- (c) the FSA; and
- (d) the Welsh Government¹²⁸.

176. The Bill will also include a provision for cost recovery for food hygiene re-rating inspections, which will enable local authorities to charge food businesses for cost recovery where they request a re-visit¹²⁹.

177. The Explanatory Memorandum accompanying the Bill states¹³⁰ that the main cost implications for the Welsh Government will be in relation to providing funding for local authorities in Wales to enforce the mandatory scheme and training for local authority staff in Wales. A total of £120,000 is expected to be incurred in the first year of the operation of the mandatory scheme. This includes £110,000 for enforcement and one off costs of £10,000 for training local authority staff. Staff time for this activity will be met from within existing budgets.

178. The Explanatory Memorandum also highlights that there will not be any major additional costs to the FSA arising from the mandatory scheme and any costs will be met from within existing budgets and resources¹³¹.

Evidence from Witnesses

179. A number of witnesses referred to the financial implications for local authorities in implementing the scheme and particularly the

¹²⁸ The Food Hygiene Rating (Wales) Bill Explanatory Memorandum, paragraph 64

¹²⁹ *ibid*, paragraph 87

¹³⁰ *ibid*, paragraph 84

¹³¹ *ibid*, paragraph 80

requirement for local authorities to undertake revisits to re-rate businesses should the need arise.

180. Most witnesses welcomed the proposals for local authorities to implement cost recovery in terms of re-visits. The WLGA commented that:

“We are happy that the provisions of the Bill will cover the re-inspection costs”¹³².

181. Such views were shared by CIEHW who commented that:

“We support the provisions in the Bill that allow food authorities to recover the reasonable costs of re-rating premises, and feel that it is fair and equitable that business wishing to be re-rated should bear at least part of the additional cost of this service”¹³³.

182. The FSA informed us that they were content with the financial implications of the Bill. In oral evidence they stated that:

“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 that it has the potential to be an effective public protection measure. So, we have heavily invested in the website and a policy team at our headquarters in London”¹³⁴.

183. They also stated, with regard to the work undertaken by the FSA in Wales regarding the voluntary scheme:

“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

¹³² RoP, paragraph 144, 12 July 2012 (am)

¹³³ FHR2, Written Evidence

¹³⁴ RoP, paragraph 107, 12 July 2012 (am)

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”¹³⁵.

Evidence from the Minister

184. The Minister provided the Committee with assurances that significant analysis of the costs of scheme had been undertaken. We were informed that:

“In the first year of the scheme, the estimated cost is £475,350. That includes £225,000 for food businesses requesting re-rating inspections, £101,000 for the FSA to cover marketing and the provision of stickers, £10,000 for the training of local authority enforcement officers, and £139,350 for local authorities’ communication with food businesses, the consideration of appeals, and the enforcement of the scheme”¹³⁶.

185. The Minister also explained that:

“In the period time before the mandatory scheme comes in, some food establishments will want to be re-inspected. The figure was about £166,000, for which we, as a Welsh Government, will foot the bill”¹³⁷.

Our View

186. Having considered the advice of the Minister and the evidence from the FSA we are satisfied that any financial implications have been adequately addressed.

¹³⁵ RoP, paragraph 107, 12 July 2012 (am)

¹³⁶ RoP, paragraph 241, 20 June 2012

¹³⁷ *ibid*

6. Report of the Constitutional and Legislative Affairs Committee

187. The Constitutional and Legislative Affairs Committee took evidence from the Minister for Health and Social Services on 2 July 2012¹³⁸.

188. The Committee published its report on 3 October 2012.

¹³⁸ RoP, paragraphs 141 – 244, 2 July 2012
<http://www.senedd.assemblywales.org/documents/s9311/2%20July%202012.pdf>

Annex A - Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=3812>

20 June 2012

Lesley Griffiths AM Minister for Health and Social Services

12 July 2012

Steve Wearne Director, Food Standards Agency Cymru

Liz Withers Head of Policy, Consumer Focus Wales

Simon Wilkinson Policy Officer - Regulatory Services, Welsh
Local Government Association

Graham Perry Monmouthshire County Council/Directors
of Public Protection Wales

Iestyn Davies Head of External Affairs, FSB Wales

Mike Jones FSB Wales Member

Dean Bolton FSB Wales Member

Julie Barratt Director Chartered Institute of
Environmental Health, Wales

Dr Marion Lyons Director of Health Protection for Public
Health Wales

18 July 2012

Shane Brennan Public Affairs Director, Association of
Convenience Stores

Brigid Simmonds Chief Executive, British Beer and Pub
Association

John Dyson Food & Technical Affairs Adviser, British
Hospitality Association

27 September 2012

Lesley Griffiths AM Minister for Health and Social Services

Annex B - List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=4138>

<i>Organisation</i>	<i>Reference</i>
Food Solutions Ltd	FHR1
Chartered Institute of Environmental Health Wales	FHR2
Wales Tourism Alliance	FHR3
British Sandwich Association, The Pizza, Pasta & Italian Food Association and the Café Society	FHR4
Cwm Taf Health Board	FHR5
Welsh Local Government Association and the Directors of Public Protection in Wales	FHR6
Estyn	FHR7
Caerphilly County Borough Council	FHR8
Conwy County Borough Council	FHR9
Association of Convenience Stores	FHR10
Pembrokeshire County Council	FHR11
Which?	FHR12
British Beer and Pub Association	FHR13
Welsh Retail Consortium	FHR14
Carmarthenshire County Council	FHR15
Better Regulation Delivery Office	FHR16
Consumer Focus Wales	FHR17
Food Standards Agency	FHR18
The Federation of Small Businesses in Wales	FHR19
Newport City Council	FHR20
British Hospitality Association	FHR21
Public Health Wales	FHR22
All Wales Food Safety Technical Panel	FHR23

