

Health and Social Care Committee

Meeting Venue:
Committee Room 1 – Senedd

Meeting date:
27 September 2012

Meeting time:
09:00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Policy: Llinos Dafydd **Legislation: Fay Buckle**
Committee Clerk
029 2089 8403/8041
HSCCommittee@wales.gov.uk

Agenda

1. Introductions, apologies and substitutions

2. Food Hygiene Rating (Wales) Bill: Stage 1 – Evidence Session 5 (09.00 – 09.30)

Minister for Health and Social Services

Lesley Griffiths AM, Minister for Health and Social Services
Christopher Brereton – Head of Environmental Public Health Legislation, Welsh Government
Christopher Humphreys – Legal Services Department, Welsh Government

3. Papers to note (09.30 – 09.35) (Pages 1 – 2)

Minutes from Committee meetings held on 12 and 18 July 2012 (Pages 3 – 8)

Food Hygiene Rating (Wales) Bill: letter from the Minister for Health and Social Services to the Chair (17 July 2012) (Pages 9 – 11)

Food Hygiene Rating (Wales) Bill: Letter from the Federation of Small Businesses (30 July 2012) (Pages 12 – 14)

Food Hygiene Rating (Wales) Bill: Note on Norwich City Council and Lichfield

District Council food hygiene rating web pages (31 July 2012) (Pages 15 – 17)

Food Hygiene Rating (Wales) Bill : letter from the Chair to the Minister for Health and Social Services (19 July 2012) (Pages 18 – 21)

Food Hygiene Rating (Wales) Bill: letter from the Minister for Health and Social Services to the Chair (8 August 2012) (Pages 22 – 31)

**4. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business: (09.35)
Items 5 & 6**

Private session

5. Food Hygiene Rating (Wales) Bill: Stage 1 – Consideration of the draft report (09.40 – 11.00)

6. Preparation for Draft Budget 2013–14 (13.15 – 15.00)

Health and Social Care Committee

Meeting Venue: **Committee Room 1 – Senedd**

Meeting date: **Wednesday, 18 July 2012**

Meeting time: **08:30 – 12:40**

This meeting can be viewed on Senedd TV at:

http://www.senedd.tv/archiveplayer.jsf?v=en_800000_18_07_2012&t=0&l=en

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Concise Minutes:

Assembly Members:

Mark Drakeford (Chair)
Mick Antoniw
Rebecca Evans
Vaughan Gething
William Graham
Elin Jones
Darren Millar
Lynne Neagle
Lindsay Whittle
Kirsty Williams

Witnesses:

Dr Chris Jones, Welsh Government
David Sissling, Director General for Health and Social Services, Welsh Government
Shane Brennan, Association of Convenience Stores
John Dyson, British Hospitality Association
Brigid Simmonds, British Beer and Pub Association

Committee Staff:

Llinos Dafydd (Clerk)
Fay Buckle (Clerk)
Claire Griffiths (Deputy Clerk)
Joanest Jackson (Legal Advisor)
Lisa Salkeld (Legal Advisor)
Philippa Watkins (Researcher)

1. Introductions, apologies and substitutions

1.1 There were no apologies or substitutions.

2. Consideration of recently published correspondence between Welsh Government officials and Professor Marcus Longley

2.1 The Committee questioned Professor Marcus Longley on the recently published correspondence between Welsh Government Officials and himself.

2.2 The Committee questioned Lesley Griffiths AM, Minister for Health and Social Services, David Sissling and Dr Chris Jones on the recently published correspondence between Welsh Government Officials and Professor Marcus Longley.

2.3 Due to a technical issue, the Committee adjourned from 9.32 to 10.05.

3. Food Hygiene Rating (Wales) Bill: Stage 1 – Evidence session 4

3.1 Due to the earlier technical problem and time restraints, the Minister for Health and Social Services agreed that the Chair would write to her with the questions Members would have asked and she will respond to the Committee in writing.

4. Food Hygiene Rating (Wales) Bill: Stage 1 – Evidence session 4

4.1 The Committee took evidence from the Association of Convenience Stores, British Beer and Pub Association and the British Hospitality Association.

5. Papers to note

5.1 The Committee noted the minutes of the meetings held on 28 June and 4 July

5.1 Inquiry into Residential Care for Older People – Notes of reference group meetings held on 24 May & 12 June

5.2 The Committee noted the papers.

5.3 The Chair recorded the Committee's thanks for the work undertaken by – and the valuable contribution of – the members of the Reference Group, established to assist the Committee in its inquiry into residential care for older people.

6. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

6.1 The Committee agreed the motion.

7. Food Hygiene Rating (Wales) Bill: Key Issues

7.1 The Committee considered and agreed the key issues paper and also made a number of suggestions for the report.

8. Inquiry into Residential Care for Older People: Key Issues

8.1 The Committee discussed and agreed the key issues for the report on the inquiry into residential care for older people.

Health and Social Care Committee

Meeting Venue: **Committee Room 3 – Senedd**

Meeting date: **Thursday, 12 July 2012**

Meeting time: **10:00 – 12:03**

This meeting can be viewed on Senedd TV at:

http://www.senedd.tv/archiveplayer.jsf?v=en_400000_12_07_2012&t=0&l=en

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Rebecca Evans
Vaughan Gething
William Graham
Elin Jones
Darren Millar
Lynne Neagle
Aled Roberts
Lindsay Whittle

Witnesses:

Graham Perry, Monmouthshire County Council
Steve Wearne, Food Standards Agency Cymru
Simon Wilkinson, Welsh Local Government Association
Liz Withers, Consumer Focus Wales

Committee Staff:

Fay Buckle (Clerk)
Llinos Dafydd (Clerk)
Claire Griffiths (Deputy Clerk)
Catherine Hunt (Deputy Clerk)
Lisa Salkeld (Legal Advisor)
Victoria Paris (Researcher)
Philippa Watkins (Researcher)

1. Introductions, apologies and substitutions

1.1 Apologies were received from Kirsty Williams. Aled Roberts attended as a substitute.

2. Consideration of a motion notified to the Committee in accordance with Standing Order 17.44

2.1 There were no objections to the motion, therefore the motion was agreed in accordance with Standing Order 17.34(i).

3. Inquiry into the implementation of the NSF for diabetes in Wales and its future direction – Consideration of terms of reference

3.1 The Committee agreed the terms of reference for its inquiry into the implementation of the NSF for diabetes in Wales and its future direction, and that it would issue a consultation over the summer recess.

3.2 The Committee agreed its intention to undertake an inquiry into the appraisal of medical technologies and to consult on the scope of the inquiry over the summer recess.

4. Food Hygiene Rating (Wales) Bill: Stage 1 – Evidence Session 2

4.1 The Committee took evidence from the Food Standards Agency and ConsumerFocus Wales.

4.2 Steve Wearne (FSA) agreed to send a copy of the qualitative study to the Committee on further work commissioned following the ConsumerFocus Wales consumer study when published at the end of July.

5. Food Hygiene Rating (Wales) Bill: Stage 1 – Evidence Session 2

5.1 The Committee took evidence from the Welsh Local Government Association and the Directors of Public Protection Wales.

6. Papers to Note

6.1 The papers were noted.

TRANSCRIPT

View the [meeting transcript](#).

Health and Social Care Committee

Meeting Venue: **Committee Room 3 – Senedd**

Meeting date: **Thursday, 12 July 2012**

Meeting time: **13:15 – 15:11**

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Concise Minutes:

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Rebecca Evans
William Graham
Elin Jones
Darren Millar
Lynne Neagle
Jenny Rathbone
Aled Roberts
Lindsay Whittle

Witnesses:

Julie Barratt, Chartered Institute for Environmental Health
Dean Bolton, FSB Wales
Iestyn Davies, Federation of Small Business
Mike Jones, FSB Wales
Dr Marion Lyons, Public Health Wales

Committee Staff:

Fay Buckle (Clerk)
Claire Griffiths (Deputy Clerk)
Lisa Salkeld (Legal Advisor)
Philippa Watkins (Researcher)

1. Introductions, apologies and substitutions

1.1 Apologies were received from Vaughan Gething and Kirsty Williams. Jenny Rathbone and Aled Roberts substituted.

2. Food Hygiene Rating (Wales) Bill: Stage 1 – Evidence Session 3

2.1 The Committee took evidence from the Federation of Small Businesses (FSB).

2.2 The FSB agreed to write to the Committee with specific details regarding numbers and businesses doing well and not as well with food hygiene from the focus group of FSB Members who assisted with the written evidence submitted to the Committee.

3. Food Hygiene Rating (Wales) Bill: Stage 1 – Evidence Session 3

3.1 The Committee took evidence from the Chartered Institute of Environmental Health Wales and Public Health Wales.

4. Food Hygiene Rating (Wales) Bill: Stage 1 – Discussion of evidence received

4.1 Members identified key issues that had emerged from the evidence received on the scrutiny of the Food Hygiene Rating (Wales) Bill.

TRANSCRIPT

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Health and Social Care Committee

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John Dyson, British Hospitality Association
Brigid Simmonds, British Beer and Pub Association

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8.1 The Committee discussed and agreed the key issues for the report on the inquiry into residential care for older people.

Lesley Griffiths AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/LG/0237/12

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

17 July 2012

Dear Mark

Food Hygiene Rating (Wales) Bill

Thank you for your letter of 21 June. I was pleased to attend the Committee's meeting on 20 June and answer Committee members' questions regarding the Food Hygiene Rating (Wales) Bill. I am responding below to the points raised in your letter and some other questions that came up at the meeting.

It is my 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). I will be consulting after Stage 2 as I do not wish to presume the will of the Assembly during the main amending stage of the Bill. The consultation period will last for 12 weeks, following which my officials will carefully analyse the responses before producing final regulations for laying before the Assembly. As the consultation will extend beyond Stage 3, it is not possible to make available the results of the consultation before the start of Stage 3. I will, however, if the Committee would find it useful, provide a draft of the regulations to the Committee two weeks prior to the launch of the consultation. It is my intention to launch the consultation in late November. I will, therefore, provide the Committee with these documents in early/mid November.

In response to your request regarding the scope of the Bill, I can clarify Section 2(5) of the draft Bill defines those businesses covered. This section requires any food business establishment in Wales, either registered or approved, which provides food direct to consumers or supplies food to another business to be provided with a food hygiene rating that must be displayed.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.lesley.Griffiths@wales.gsi.gov.uk
Printed on 100% recycled paper

Any businesses which carries out any activities related to any stage of production, processing and distribution of food, would be classed as a food business and is required to be registered with an appropriate food authority. This applies to organisations involved in activities that take place on a regular basis, whether for profit or not. This could, for example, include a weekly luncheon club but would not include a one off event such as an occasional small-scale cake sale for charity. If the business is registered as a food business, it will be within the scope of the Bill and will, unless exempted, be required to display its food hygiene rating. The size of the business is not relevant to whether it is required to be registered or not.

I can also confirm market stalls and occasional farmer's markets are included in the FSA voluntary scheme and it is my intention they will continue to be included in the mandatory scheme. It will be the responsibility of the food authority in which the market stall holder's business is registered to determine its food hygiene rating. When a market trader sets up their stall in another local authority area, the 'registering authority' will take into account information supplied to it by the 'inspecting authority' when determining the stall holder's next rating.

Although the scope of the draft Bill is very wide, section 3(5) enables Welsh Ministers to exempt certain categories of food businesses from rating. During the consultation on the draft Bill, we asked for comments on whether any food business establishments that provide food directly to consumers should be exempt from the scheme. 50% of respondents thought all businesses should be included in the scheme and 36% commented some businesses should be exempt. The remaining 14% did not express a view. It has always been my intention to include as many food businesses as possible within the scope of the scheme. However, I also recognise the need to be flexible where there is a good case to exempt certain food businesses. I, therefore, expect the exemptions to be few in number. As described in the policy document for the regulations proposed under the Bill document, it is my intention to make regulations to exempt certain low risk establishments, certain food business establishments operating from private addresses and sensitive establishments.

During the Committee's meeting on 20 June, I was asked questions about the application of the Bill to mobile traders from England, the publication of food hygiene ratings on a food businesses' promotional material (including takeaway menus), and fixed penalties. Regarding mobile traders, those registered in Wales will be included in the scope of the Bill, those registered outside Wales will not be included. Similarly, I do not propose to require traders from Europe to display a hygiene rating. To seek to include mobile traders from outside Wales would disproportionately complicate what is presently a relatively straightforward Bill for the sake of a minority of cases. Rating requires an assessment of both the mobile facility and its home base. As inspectors in Wales do not have access to premises outside Wales, they cannot provide the necessary rating assessment. Therefore, my view is these traders should be excluded from the mandatory scheme. I believe consumer demand for the display of hygiene ratings in Wales will be such it will be in the interests of mobile traders from England who cross the border to Wales, to display their food hygiene ratings awarded to them under their own voluntary scheme (if they have one).

I am pleased by the FSA Board's decision of 22 May to pursue a mandatory approach in the other UK Administrations once full roll-out of the relevant voluntary scheme for each country is achieved and a detailed Impact Assessment undertaken. This could mean that all mobile traders across the UK will eventually be required to display a rating.

I am concerned about the implications of introducing provision to require the display of food hygiene ratings on promotional material, including takeaway menus. In Wales, there are currently around 2,500 takeaway food businesses that could be affected by requirement to publish ratings on their menus. A takeaway food business could order a stock of menus just prior to an unannounced food hygiene inspection and be faced with disposing of that stock of menus and consequent reprinting costs. In my view, it would not be practical to overprint or amend large numbers of menus after printing. To require the food business to destroy, amend or recall their menus from printers, distributors and potentially consumers may well be considered as imposing a disproportionate burden on businesses. It would be unfair to impose such an obligation if there was not also a reasonable prospect of the food business being able to comply. I also consider a requirement to display a rating on takeaway menus would be very difficult to enforce. This would be both time and labour intensive. Also it would be difficult for a food authority to determine if an offence had been committed if the menu did not also include a date of publication. There would also be difficulties for food businesses with multiple outlets because some major takeaway food premises operate across the UK but produce promotional material covering all of their outlets.

The Bill imposes an equal duty on all food businesses within its scope to display their food hygiene rating and to verbally confirm a rating upon request. The introduction of a requirement on those businesses that produce takeaway menus would differentiate them from other types of food businesses captured by the Bill and from those takeaway businesses that do not routinely publish a distributed menu, such as fish and chip shops. Arguably, this would place a disproportionate (and potentially discriminatory) burden on some food businesses compared with others. I have decided to defer any decision on this issue until after Stage 1 of the Bill process. The Bill currently includes a requirement for food business operators to inform consumers verbally of their food hygiene rating if asked to do so. This will enable consumers to ask for the food hygiene rating of a food business at the time of ordering over the telephone. Consumers can also check the FSA website which holds the most up to date ratings information.

At the meeting on 20 June I was also asked to explain why the amounts of the fixed penalty and the discounted fixed penalty are shown on the face of the Bill while other matters, such as exemptions are left to be specified in regulations. My intention as to the appropriate amounts for the fixed penalty and the discounted fixed penalty is clear and straightforward in the sense these will be the same of all categories of establishment and all types of offence. Therefore, it is appropriate to show these amounts on the face of the Bill, while retaining the flexibility to change them by regulations. In the case of exemptions, the position is more complicated. As explained above, I will be consulting on regulations to exempt certain low-risk establishments, certain food business establishments operating from private addresses, and sensitive establishments from the scope of the mandatory food hygiene rating scheme. I do not consider it to be practicable to identify those exemptions on the face of the Bill.

Regards
Lesley

Lesley Griffiths AC / AM

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



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Fax/Ffacs: 029 2074 7595 Website/Safle We: www.fsb.org.uk

19th July 2012

Fay Buckle
Health and Social Care Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Ms Buckle

RE: Food Hygiene Rating (Wales) Bill

Further to our evidence session on the above topic; FSB Wales would like to provide clarification on its position around some aspects of the Food Hygiene Rating (Wales) Bill.

Firstly, FSB Wales welcomes the serious consideration given by the committee to our evidence, particularly around the need for businesses to be supported in order to improve their rating and the importance of consistency in applying food hygiene ratings to food operators across Wales.

The Committee requested further information regarding the make-up of FSB Wales members involved in the focus group. For obvious data protection reasons, FSB Wales does not disclose the names of individuals or companies involved, however a list of their local authority area and hygiene rating is enclosed. Please note thirteen participants have current food hygiene ratings, a further five do not as they are involved in business to business trade. A consultant to the hospitality and tourism industry was also included, who is an FSB Wales member. All apart from the consultant were selected at random without reference to their food hygiene rating.

FSB Wales would like to clarify its position on the evidence base for the inclusion of business to business trade within the proposed mandatory scheme. FSB Wales recognises that business to business trade already complies with food hygiene regulation and that the introduction of a mandatory food hygiene rating scheme would not increase the regulatory burden. However, FSB Wales is not aware of any evidence that suggests that business to business traders on the whole perform poorly in terms of food hygiene and that the introduction of a mandatory rating scheme would lead to better outcomes.

FSB Wales believes that before a new scheme is introduced to an additional category of food operator, evidence should be compiled that assesses the current state of affairs and should be published for public debate. It is our assertion that the Welsh Government should not assume that legislation is the best course of action without recourse to evidence that suggests that it is so.

I hope you find the comments of FSB Wales of interest and I would be happy to clarify any issues further should the Committee require it.

Yours sincerely



Iestyn Davies

Head of External Affairs

Federation of Small Businesses Wales



Food Hygiene Rating (Wales) Bill

Focus group participants

FSB Branch	Food Hygiene Rating
Conwy	3
Gwynedd	Business to Business
Conwy	5
Flintshire	3
Conwy	4
Powys	0
Conwy	3
Powys	Business to Business
RCT	Business to Business
Pembrokeshire	5
Ceredigion	3
Neath Port Talbot	4
Swansea	5
Swansea	5
Cardiff	5
Blaenau Gwent	Business to Business
Neath Port Talbot	Business to Business
Cardiff	4
Swansea	Consultant
Participants	19

Food Hygiene Rating (Wales) Bill

At the last Health and Social Care Committee meeting, Members received print outs of web pages from Norwich City Council and a consortium of local authorities in the Staffordshire area relating to food hygiene ratings. I also wrote to both asking a number of questions and their responses are below.

Norwich City Council

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. To answer your questions in turn:

1. Have you found publishing inspection reports to be burdensome and do you redact any information prior to publication?

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.

2. Has publishing the reports incurred any extra costs to the council?

Yes, I am sure there is an additional cost to the publishing of reports but I suspect these are minimal. However I am unable to quantify this for you.

3. Have you employed any additional staff to undertake management of the food hygiene element of the website?

We have not employed any additional staff to manage the food hygiene element of the website.

Publication has ensured that our reports are easier to understand than previously, have a summary of each compliance area which serves to qualify and balance the content (bringing out the good points as well as the bad)

and ensured the content of the report relates to the hygiene rating awarded – especially in regard to where improvements are needed.

All this came out of the need to communicate to a different audience, be fairer to the food business operator, be transparent in our thinking and accountable for the rating we give. It has been such a worthwhile exercise that in my opinion the benefits more than meet the costs of publication, such as they are. I would strongly recommend all local authorities do something similar.

Lichfield District Council (member of ratemyplace)

1. Have you found publishing inspection reports to be burdensome and do you redact any information prior to publication?

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

2. Has publishing the reports incurred any extra costs to the council?

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.

3. Have you employed any additional staff to undertake management of the food hygiene element of the website?

No additional staff have been employed. The site is run by ourselves at Lichfield DC and the time element to it is part of everyday roles.

All 8 partner councils have recently joined the NFHRS even so, ratemyplace continues to thrive. We re-launched the site to coincide with this move to the NFHRS.

From the ratemyplace site we populate all the information to the national site automatically. Locally the brand is well known. Future developments include photographs of the business and menus (which will allow us to do trading standards checks), charges will be levied for this service to our business customers.

Finally this is how we display in the windows! The square in the corner is a 3D barcode which takes you to ratemyplace, the scores and access to the reports!



Agenda Item 3e

Y Pwyllgor Iechyd a Gofal Cymdeithasol Health and Social Care Committee

Lesley Griffiths AM
Minister for Health and Social Services
Welsh Government

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18 July 2012

Dear Lesley,

Food Hygiene Rating (Wales) Bill

I am most grateful for your understanding of the technical issues we experienced in the Health and Social Care Committee meeting, held on 18th July, and your willingness to answer Members questions via written correspondence. The questions are contained in the attached Annex.

Following your response, Members may wish to hold a short evidence session with you on the morning of Thursday 27th September 2012. I would be grateful if your office could liaise with the legislation committee clerk (Fay.buckle@wales.gov.uk) to agree a convenient time.

I would be grateful if you could give consideration to this request and look forward to your response.

Yours sincerely

Mark Drakeford

Mark Drakeford AM
Chair

Bae Caerdydd
Cardiff Bay
CF99 1NA

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?
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 ratings be displayed?
3. Is there a conflict between the Bill and Food Standards Agency/Government work to reduce burdens on businesses?
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?
5. Has the Minister given any thought to how the funds raised from Fixed Penalty receipts 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?
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?
7. Is the Minister satisfied that a 0 – 5 rating system will give clear information to consumers about a premises’ hygiene system?
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 gradings as seen in other countries?
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?

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?
11. Is there a danger that businesses will use the right of appeal to try to improve their rating as an alternative to paying for a re-rating inspection? How might this impact on food authorities' resources?
12. What is the Minister's response to the concern that the Bill's provisions regarding 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?
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?
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?
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?

*The committee is minded to make a recommendation in its Stage 1 report that food hygiene inspection reports should be published in their entirety, either on the Food Standards Agency or relevant local authority website (depending on which is the most appropriate).

16. The Bill as drafted makes it an offence to fail to comply with a request by a person to be informed verbally of the 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?
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?

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?
19. How will a consistent approach to the calculating of “reasonable costs” by food authorities in relation to re-rating inspections be ensured?
20. Will additional financial support be available to local authorities in relation to the administering of fixed penalty notices?

Agenda Item 3f

Lesley Griffiths AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/LG/0253/12

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

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August 2012

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

Lesley Griffiths AC / AM
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.