

National Assembly for Wales
Constitutional and Legislative
Affairs Committee

Report on the Food Hygiene
Rating (Wales) Bill

October 2012



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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Affairs Committee

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Rating (Wales) Bill

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Constitutional and Legislative Affairs Committee

The Constitutional and Legislative Affairs Committee was established on 15 June 2011 with a remit to carry out the functions and exercise the powers of the responsible committee set out in Standing Orders. This includes being able to consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

Current Committee membership



David Melding (Chair)
Deputy Presiding Officer
Welsh Conservatives
South Wales Central



Suzy Davies
Welsh Conservatives
South Wales West



Julie James
Welsh Labour
Swansea West



Eluned Parrott
Welsh Liberal Democrats
South Wales Central



Simon Thomas
Plaid Cymru
Mid and West Wales

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The Committee's Recommendations

The Committee's recommendations to the Welsh Government are listed below, in the order that they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

Recommendation 1. We recommend that the power in Section 6(2) for the Welsh Ministers to prescribe in regulations what further information the food authority must provide the Food Standards Agency should be subject to the affirmative resolution procedure.

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Recommendation 2. We recommend that the power in Schedule 1, Part 1, paragraph 3 to prescribe different limits for the fixed and discounted penalties from those set out on the face of the Bill should be subject to an affirmative resolution procedure.

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The Committee's Role

1. The Constitutional and Legislative Affairs Committee's ("the Committee") remit is to carry out the functions of the responsible committee set out in Standing Order 21¹ and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in the Standing Orders.
3. The Committee also considers and report on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

The Food Hygiene Rating (Wales) Bill

Background

4. On 28 May 2012 the Minister for Health and Social Services, Lesley Griffiths AM introduced The Food Hygiene Rating (Wales) Bill ("the Bill"), which gives effect to the Welsh Government's proposals to introduce a statutory food hygiene rating scheme in Wales.
5. The Committee considered the Bill at its meeting on 28 May 2012 and agreed to scrutinise it further as it contained a number of powers to make subordinate legislation.
6. The Minister for Health and Social Services, Lesley Griffiths AM attended the Committee's meeting on Monday 2 July 2012 accompanied by officials. The Minister's oral evidence was supplemented by additional written information provided on 18 June 2012.
7. The Bill was assigned to the Health and Social Care Committee for stage 1 scrutiny with a reporting deadline of 5 October 2012.

¹ Standing Orders of the Fourth Assembly - National Assembly for Wales

The Bill

8. The Bill establishes a statutory requirement for food authorities to operate a food hygiene rating scheme (which includes rating food businesses and enforcing the scheme) and places a duty on food businesses to display their food hygiene rating at their establishment.

9. The intention of the Bill is to ensure that consumers are provided with information about the food hygiene standards of food businesses in Wales. This will enable consumers to make better informed choices about where to eat or shop for food.

Powers to make Subordinate legislation

10. The Bill contains several powers for subordinate legislation to be made by Welsh Ministers. These are explained in Part 5 of the Explanatory Memorandum laid with the Bill and in the Explanatory Notes that appear at the end of that Memorandum.

11. Section 24 of the Bill provides that regulations and orders under the Bill are to be made by statutory instrument and sets out the National Assembly for Wales (“the Assembly”) procedure in respect of those instruments.

12. The Bill gives the following powers to make subordinate legislation:

Section 2

13. **Section 2(6)(a)** gives the power to make regulations by **affirmative resolution** to amend definition of food business establishment so as to reduce or expand the categories of food businesses establishment that must have a food hygiene rating. **Section 2 (6) (b)** gives the power to make regulations to amend the definition of food authority and is also to be made by **affirmative resolution**.

Section 3

14. **Section 3(2)** provides a power to make regulations to bring establishments that were rated under the voluntary Food Standards Agency (FSA) scheme within the scope of the new compulsory scheme by allowing new (statutory) food hygiene ratings for those establishments to be based on assessments of the food hygiene

standards of an establishment carried out prior to the commencement of the Bill. **Affirmative resolution.**

15. **Section 3(3)(c)** allows Ministers to make regulations by **negative resolution** prescribing the form of the food hygiene rating sticker which must be issued by the food authority and displayed by the operator. **Section 3(3)(d)** is a **negative resolution** power to make regulations prescribing what information, other than that required by clause 3(3)(a), (b) and (c), a food authority must send to the operator of the establishment.

16. **Section 3(5)** provides a power to make regulations by **affirmative resolution** enabling the Welsh Ministers to prescribe that certain categories of establishment may be exempt from rating.

Section 5

17. **Section 5(4)** is a **negative resolution** power to make regulations enabling the Welsh Ministers to prescribe the form that an operator must use when appealing against a food hygiene rating.

18. **Section 5(7)(d)** provides the Welsh Ministers with the power to prescribe in regulations what information, other than that required by clause 5(7) (a), (b) and (c), a food authority must send to the operator of the establishment following a change to a food hygiene rating resulting from an appeal. **Negative resolution.**

Section 6

19. **Section 6(2)** is a power for the Welsh Ministers to prescribe through regulations what further information the food authority must provide to the FSA, in addition to the information set out in section 6(1). **Negative resolution.**

Section 7

20. **Section 7(3)** allows the Welsh Ministers to prescribe through **negative resolution** regulations, the location and manner in which the food hygiene rating sticker must be displayed.

Section 11

21. **Section 11(2)** is a power for the Welsh Ministers to prescribe the form that an operator must use when requesting a re-inspection.

Negative resolution.

22. **Section 11(9)(d)** allows the Welsh Ministers to prescribe what information, other than that required by section 11 (9)(a), (b) and (c), a food authority must send to the operator of the establishment following a change to a food hygiene rating due to a re-rating inspection. **Negative resolution.**

Section 14

23. **Section 14(1)** is a **negative resolution** power for Welsh Ministers to prescribe the information that a food authority must send to the operators of new food business establishments in its area within 14 days of an establishment registration.

Schedule 1

24. **Schedule 1, part 1 paragraph 3** provides Welsh Ministers with a power to prescribe in regulations different limits for the fixed penalty and discounted penalty to those provided in Schedule 1, Part1, paragraphs 1 and 2. **Negative resolution.**

Commencement

25. **Section 25** contains the power for to commence the Bill at a time to be chosen by the Welsh Ministers. As is usual for commencement powers there is **no procedure** prescribed for this power.

Committee's View

General View

26. We agree that there is generally an appropriate balance between the level of detail on the face of the Bill and the subordinate legislative powers granted to the Welsh Ministers.

27. We further agree that, save for section 6(2) and the power in Schedule 1, the Assembly procedure proposed for each delegated power is appropriate.

Section 6(2)

28. Section 6(2) of the Bill allows Welsh Ministers to prescribe through regulations what further information the food authority must provide to the Food Standards Agency (in addition to that in section 6(1)). In her letter of 18 June 2012² the Minister indicated that she does not intend to use the powers at present.

29. The Minister's officials, in oral evidence,³ indicated that such a power could, for example, be used in the future to require food authorities to send to the Food Standards Agency the inspection report prepared by the food authority in order to score the food business.

30. We have some concerns that the power could be used to impose on food authorities a substantial requirement for additional information. This in turn could raise questions of proportionality which should be considered by the Assembly before any regulations are brought into force.

31. In the light of this, our view is that this power should be subject to an affirmative resolution procedure. We note the willingness of the Minister to consider this.⁴

Recommendation 1 - We recommend that the power in Section 6(2) for the Welsh Ministers to prescribe in regulations what further information the food authority must provide the Food Standards Agency should be subject to the affirmative resolution procedure.

Schedule 1

32. Schedule 1, Part1 paragraph 3 allows Welsh Ministers to prescribe in regulations different amounts for the fixed and discounted penalties for offences under the Bill (currently set at £200 and £150 respectively). The power is currently subject to negative resolution. We note that the Minister does not intend to use the power at present.

33. As the power involves a penalty on the citizen and could be of significant public interest were the penalty to be increased, we are of the view that this power should be subject to the affirmative resolution

² CLA(4)-16-11(p8) – Annexe to the Minister's letter of 18 June

³ Record of Proceedings(RoP) 216; 2 July 2012

⁴ RoP 219; 2 July 2012

procedure. We welcome the willingness of the Minister to consider this.⁵

Recommendation 2 - We recommend that the power in Schedule 1, Part 1, paragraph 3 to prescribe different limits for the fixed and discounted penalties from those set out on the face of the Bill should be subject to an affirmative resolution procedure.

⁵ RoP 243; 2 July 2012

Witnesses

The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of the oral evidence session can be viewed in full at www.assemblywales.org

2 July 2012

Lesley Griffiths AM Minister for Health and Social
Services, Welsh Government

Supported by the following officials:

Christopher Humphreys Legal Services Department

Christopher Brereton Head of Environmental Public Health
Legislation, Welsh Government

List of written evidence

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

Paper	Reference
Food Hygiene Rating (Wales) Bill (as introduced)	CLA(4)-16-12(p3)
Explanatory Memorandum to the Food Hygiene Rating (Wales) Bill (as introduced)	CLA(4)-16-11(p4)
Legal Advisers' Report	CLA(4)-16-11(p5)
Letter from the Chair to the Minister for Health and Social Services Lesley Griffiths AM	CLA(4)-16-11(p6)
The Minister's response	CLA(4)-16-11(p7)
Annex to the Minister's response	CLA(4)-16-11(p7)
Letter from the Chair to the Minister for Health and Social Services Lesley Griffiths AM requesting additional information	CLA(4)-19-12 (p11)
Additional information provided by the Minister	CLA(4)-19-12 (p12)