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Constitutional and Legislative Affairs Committee

The Food Hygiene Rating (Wales) Bill

Legal Briefing – Powers to make Subordinate Legislation

1. Introduction and overview of the Bill

- 1.1 This paper sets out the powers contained in the Food Hygiene Rating (Wales) Bill (“the Bill”) for Welsh Ministers to make subordinate legislation.
- 1.2 The Explanatory Memorandum provides that the *“Bill gives effect to the Welsh Government’s proposals to introduce a statutory food hygiene rating scheme in Wales. 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. 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”*.

2. Powers to make subordinate legislation

- 2.1 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.
- 2.2 Standing Order 26.6 (vii) states that when any Bill is introduced, the responsible Member must lay an explanatory Memorandum which must among other matters contain the following:

(vii) where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:

- (a) The person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;*

- (b) Why it is considered appropriate to delegate the power; and*
- (c) The Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure).*

2.3 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.

2.4 The Bill gives the following powers to make subordinate legislation:–

Section 2 (6) (a): power to make regulations 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

Affirmative resolution

Section 2 (6) (b): power to make regulations to amend the definition of food authority.

Affirmative resolution

Section 3 (2): power to make regulations to bring establishments that were rated under the voluntary 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

Section 3 (3) (c): power to make regulations prescribing the form of the food hygiene rating sticker which must be issued by the food authority and displayed by the operator.

Negative resolution

Section 3 (3) (d): 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.

Negative resolution

Section 3 (5): power to make regulations enabling the Welsh Ministers to prescribe that certain categories of establishment may be exempt from rating.

Affirmative resolution

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

Negative resolution

Section 5 (7) (d): power for the Welsh Ministers to prescribe by way of 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 (2): power for the Welsh Ministers to prescribe by way of regulations what further information the food authority must provide the FSA (in addition to that in section 6 (1)).

Negative resolution

Section 7 (3): power for the Welsh Ministers to prescribe by way of regulations, the location and manner in which the food hygiene rating sticker must be displayed.

Negative resolution

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

Negative resolution

Section 11 (9) (d): power for 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 (1): 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.

Negative resolution

Section 25: power to commence the Bill.

No procedure

Schedule 1, Part 1 paragraph 3: power to prescribe by way of regulations different limits for the fixed penalty and discounted penalty to those provided in Schedule 1, Part1, paragraphs 1 and 2.

Negative resolution

3. Conclusion

- 3.1 There do not appear to be any unusual provisions, however, the Committee may like to consider whether they feel that the appropriate balance has been struck between the powers on the face of the Bill, and those set out in regulation making powers, and whether they feel that any of the regulation making powers ought to be subject to a different procedure.

**Legal Services
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