



## **British Hospitality Association response the consultation on the Food Hygiene Rating (Wales) Bill**

### **About the British Hospitality Association (BHA)**

The British Hospitality Association represents the hotel, restaurant and catering industry, which employs 112,000 people directly and contributes £1.88 billion in annual gross value added (wages and profits) in Wales (*Source: Oxford Economics 2011*). The BHA Wales Committee brings together our members to represent their views to the National Assembly and the Welsh Government.

### **Introduction**

The BHA has made a significant contribution to the development of the National Food Hygiene Rating Scheme through membership of the FSA national Steering Group and the various working groups which developed the scheme. We were also instrumental in the development of the Food Hygiene Information scheme in Scotland and have clearly stated on many occasions that we would have preferred a UK wide scheme which would be simple for consumers to understand and preferably based on the Scottish scheme. We recognised the FSA Board decision to develop a six tier scheme and therefore decided to assist its development and part of our consideration was that there would be a brand standard for the scheme which would be imposed on all participating Local Authorities in an effort to produce a consistent approach. We therefore do not see how the proposals in the Food Hygiene Rating (Wales) Bill will add value to the scheme and indeed are likely to result create confusion for businesses with associated added costs and potentially confusion for consumers.

**1 Is there a need for a Bill to introduce a statutory food hygiene rating scheme in Wales?  
Please explain your answer.**

We do not believe that there is a need for a statutory Food Hygiene Rating Scheme in Wales because:

1.1 The voluntary Food Hygiene Rating Scheme in Wales has not been given sufficient time to settle down since its introduction in October 2010. Many operators who have by now received scores 3 and above will be happy to display their scores as research indicates that 3 and above is where consumers are happy to eat. There are however significant differences in the rating scores between England Wales and Northern Ireland as follows:

Wales-**30%** of premises rated 0,1,2,

Northern Ireland- **9%** of premises rated 0,1,2,

England- **15%** of premises rated 0,1,2, (Source FSA Board Paper 12/05/04)

This suggests significant inconsistency in the way the schemes are being administered.

1.2 A major justification for compulsory display is claimed to be the opinion poll from Consumer Focus Wales, indicating that 94 per cent of consumers want to see FHRS scores displayed compulsorily. However, the research failed to ask the preliminary question: do you understand the ratings? Since only 50 per cent of respondents had even heard of the scheme, then 44 per cent were asking for something they had never heard of. Even if they were among the 50 per cent who had heard of the scheme, we suspect that very few will understand the significance of the scoring system, beyond the point made above that consumers will intuitively be happy to eat if the score is 3 or above

**2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer.**

2.1 The local authorities in Wales are already operating the FSA National Food hygiene rating scheme and have been provided with funding by the FSA to implement the scheme. In addition the FSA in Wales carries out audits of Local authorities to ensure that they are carrying out their functions in relation to enforcement of food safety legislation in a competent manner. Therefore in our opinion there is no need for a statutory scheme in Wales and the Bill can only be seen as over Regulation.

### **3. Are the sections of the Bill appropriate in terms of introducing a statutory food hygiene rating scheme in Wales? If not, how does the Bill need to change?**

- 3.1 While we welcome some of the changes which have been made to the Bill following the consultation we do however believe that there should be any variation in Wales whatsoever from the FHRS branded scheme which has been developed by the FSA and the UK Steering Group which covers issues such as re inspection, appeals, scoring, application to food premises etc. Any variation will add to the costs of multi-site businesses that operate not only in Wales but also England and will cause confusion for consumers who have had to deal with a plethora of different schemes run by local authorities.
- 3.2 The proposal to extend the Food Hygiene Rating Scheme to businesses who supply food to other businesses but not directly to the consumer is not part of the FSA scheme and therefore in our view conflicts with the stated aim of the Bill which is to inform consumers about the hygiene standards of the premises they visit.
- 3.3 In particular we do not agree with Clauses 1(6) and 1(7) which introduce the statutory requirements those food businesses must inform members of the public of the food hygiene rating and to display stickers as these requirements fall outside the FSA scheme. In deed there are practical difficulties in some premises which have more than one entrance e.g. a hotel may have a separate entrance to a banqueting room to that of the restaurant or it may have a main external entrance (maybe 2) and the internal entrance to the restaurant. Some quick service restaurants have a restaurant and often a drive through. In our view food businesses should be provided with a sticker but then given flexibility where or whether they display that sticker. The requirement for verbal information with respect to the Food hygiene rating to be provided creates an unnecessary burden on businesses in ensuring that every member of staff has all the relevant information and will be difficult to enforce for local authorities. There is potential for time consuming investigations of frivolous complaints.
- 3.4 The payment of costs for re-rating in our opinion is an unnecessary burden on small businesses. Businesses should be encouraged to improve by working with the local authority Environmental Health Officer and the introduction of payments could result in a change to the relationship between the business and the EHO.
- 3.5 We oppose the introduction of fines for failure to display Food hygiene rating stickers and believe that the proposal for a level 3 fine is excessive. If such a fine is to be imposed then a level 1 fine should be the maximum. Similarly we believe that the level of fixed penalty notices is far too high for this offence and suggest a lower amount e.g. £50 with a discount of 25% for early payment.

#### **4. How will the proposed Measure change what organisations do currently and what impact will such changes have, if any?**

4.1 There will be an increase in costs for businesses with respect to the management of display of Food Hygiene Rating Stickers i.e. ensuring that the sticker is permanently on display, in date, and properly visible.

#### **5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?**

5.1 The Food Standards Agency has recently agreed to carry out an assessment of the impact of introducing parallel legislation in England, Scotland and Northern Ireland with respect to introducing a mandatory approach to the display of Food hygiene ratings and we believe that the Food Hygiene Rating (Wales) Bill should be included in that assessment to ensure consistency with the national scheme.

5.2 The commitment by the Government to reduce the burden of regulation following the “Red Tape Challenge” should be considered by the Welsh Assembly Government and therefore if the Bill is to be made law in Wales then the removal of a burden on small businesses on the basis of “one in, one out” should be introduced.

#### **Powers to make subordinate legislation**

#### **6. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)? In answering this question, you may wish to consider Section 5 of the Explanatory Memorandum, which contains a table summarising the powers delegated to Welsh Ministers in the Bill to make orders and regulations, etc.**

6.1 We have no concerns about the powers to make subordinate legislation which are appropriate.

#### **Financial Implications**

#### **7. What are your views on the financial implications of the Bill?**

**In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.**

7.1 We believe that the voluntary scheme has had a positive effect on businesses and that the competitive nature of business means that many businesses will wish to display ratings as consumers become increasingly aware of the scheme. Our preferred option as described in the Regulatory Impact Assessment would be “option 2 “ We would support more action in raising awareness of consumers to the voluntary scheme.

**Other comments**

**8. Are there any other comments you wish to make about specific sections of the Bill?**

8.1 No

Our response to the initial consultation on the Wales Food Hygiene Rating Bill is attached to this document.

John Dyson  
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## **British Hospitality Association response to the Welsh Government Consultation Document**

### **Proposals for a Food Hygiene Rating (Wales) Bill**

#### **About the British Hospitality Association**

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#### **Response to Consultation questions**

Question 1: Do you have any comments on the first clause in the Bill (Welsh Food Hygiene Rating Scheme)?

We do not believe that the Food Hygiene Rating Scheme in Wales should require the compulsory display of the Food Hygiene ratings because:

- The voluntary FHRS scheme in Wales has not been given sufficient time to settle down since its introduction in October 2010. Many operators who have by now received scores 3 and above will be happy to display their scores as research indicates that 3 and above is where consumers are happy to eat. Given that 3 and above is likely to cover 80% of food businesses and the remainder will be subject to closer scrutiny/enforcement by EHO's then we believe that additional regulation is totally unnecessary. We are aware of the FSA research currently being carried out into whether compulsory display of Food hygiene ratings is necessary and therefore we believe that the decision to proceed with the Bill should be delayed until the results of that consumer research is known. Hence we oppose the clauses relating to criminal offences, fines etc.
- A major justification for compulsory display is claimed to be the opinion poll from Consumer Focus Wales, indicating that 94 per cent of consumers want to see FHRS scores displayed compulsorily. However, the research failed to ask the preliminary question: do you understand the ratings? Since only 50 per cent of respondents had even heard of the scheme, then 44 per cent were asking for something they had never heard of. Even if they were among the 50 per cent who had heard of the scheme, we suspect that very few will understand the significance of the scoring system, beyond the point made above that consumers will intuitively be happy to eat if the score is 3 or above

- We do believe that Local Authorities should be compelled to follow the national scheme to ensure a consistent approach and less confusion for consumers. However, we would much have preferred that Wales adopted the ‘pass’/ ‘improvement required’ Food Hygiene Information Scheme operating in Scotland, which is simpler for both consumers and operators to understand.”
- We also believe that there should be no variation in Wales whatsoever from the FHRS branded scheme which has been developed by the FSA and the UK Steering Group which covers issues such as re inspection, appeals, scoring, application to food premises etc. Any variation will add to the costs of multi site businesses who operate not only in Wales but also England and will cause confusion for consumers who have had to deal with a plethora of different schemes run by local authorities.
- We do not believe that operators should be required to pay for re inspection. Encouraging small to medium enterprises to improve their standards without additional cost burdens should be inherent in the scheme.

Question 2 Do you agree that assessments of the food hygiene standards of an establishment carried out prior to the commencement of this Act can be used as the basis of a rating under the mandatory scheme?

We do not agree with mandatory display but it makes sense for all businesses who are inspected under FHRS to be able to display their ratings.

Question 3: Do you agree that all food businesses supplying food directly to consumers should be included in the scope of the FHRS?

Yes

Question 4: Are there any food business establishments that provide food directly to consumers that you think should be exempt from the FHRS?

Very low risk premises selling wrapped confectionery, sweets etc

Question 5: Should those businesses involved in food business-to-business trade be included in the scope of the FHRS?

Yes

Question 6: Do you have any comments on the appeals process including the timescales? Please provide details of how the appeals process could be strengthened. Comments:

See answer to Q1

Question7: Do you think summary inspection reports (in addition to the Food Hygiene Rating Scores) should be routinely published on an FSA's website or otherwise made available?

No, summary reports can be misleading

Question8: Do you think the operator should be required to display the FHRS sticker at their establishment in a place where consumers can see it easily? Or you have any suggestions on where this location should be?"

No, some premises have more than one entrance e.g. a hotel may have a separate entrance to a banqueting room to that of the restaurant or it may have a main external entrance (maybe 2) and the internal entrance to the restaurant. Some quick service restaurants have a restaurant and often a drive through. In our view food businesses should be provided with a sticker but then given flexibility where or whether they display that sticker.

Question 9: Are the requirements in relation to the duty to remove out of date or invalid food hygiene rating stickers from display practical and reasonable

Yes

Question 10: Do you think that the list of offences is reasonable?

See answer to Q1

Question 11: Should all operators be required to display the food hygiene rating certificate at the premises in addition to the food hygiene rating sticker?

See answer to Q1

Question 12: Do you think the publication of the "right of reply" gives sufficient voice to the operator?

See answer to Q1

Question 13: Do you agree that operators that have actively taken steps to improve their food hygiene rating should be allowed to apply for a re-rating, rather than have to wait until their next planned inspection?

Yes

Question 14: Do you agree that food authorities should be required to charge operators the reasonable cost of undertaking a re-rating inspection?

No



Question 15: Should any food establishments be excluded from the charge for re-rating inspections?

No see answer to Q14

Question 16: Do you have any comments on the duties of the FSA? Are there any omissions? If so, please provide details:

No

Question 17: Do you think it is useful for a sticker to be displayed which informs customers that a food hygiene rating has not yet been issued to the food business establishment?

YES

Question 18: Is a level 3 fine (currently £1000) in relation to offences committed under the legislation appropriate?

See Answer to Q1

Question 19: Do you think food authorities should have the ability to issue Fixed Penalty Notices

See answer to Q1

Question 20: Do you consider the discounted penalty (£150) for early payment (within 14 days) of a Fixed Penalty Notice provides an appropriate discount for early payment?

See answer to Q1

Question 21: Do you agree with the preferred option in the Regulatory Impact Assessment (option 4 – Introduce the mandatory scheme with cost recovery for food hygiene re-rating inspections)?

No see answer to Q1

Question 22: Do you agree with the estimated costs/benefits regarding the implementation of this Bill?

No see answer to Q1

Question 23: Do you have any comments on the expected costs to food businesses and food authorities? :

See answer to Q1

Question 24: Please provide your comments on the impact that the introduction of a mandatory food hygiene rating scheme will have on: small businesses, the voluntary sector, equality, sustainable development, rural issues and the Welsh Language:

The proposal for charging for re inspection will disproportionately affect SME's and the voluntary sector and therefore damage their sustainability from an economic point of view. Many SME's are already subject to a high level of regulation in comparison to their size and the vast majority desire a supportive culture rather than that of regulation, enforcement and prosecution.

Wales has the opportunity to reinforce a "Welcome Culture" through communication, cooperation and commitment.

We should be pleased to discuss this response further with you. I confirm that we have no objection to it being made publicly available.

John Dyson

Food and Technical Affairs Adviser

British Hospitality Association