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



Llywodraeth Cymru  
Welsh Government

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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.

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

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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

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