

## About us

Consumer Focus Wales is the independent statutory organisation campaigning for a fair deal for consumers. We are the voice of the consumer and work to secure a fair deal on their behalf. In campaigning on behalf of consumers we aim to influence change and shape policy to better reflect their needs. We do this in an informed way owing to the evidence we gather through research and our unique knowledge of consumer issues.

We have a duty to be the voice of vulnerable consumers, particularly those on low incomes, people with disabilities, people living in rural areas and older people. In addition, we also seek to identify where other consumers may be disproportionately disadvantaged by a particular consumer issue or policy.

## Overview

Consumer Focus Wales welcomes the opportunity to submit evidence to the Health and Social Care Committee to inform their consideration of the Food Hygiene Rating (Wales) Bill. We strongly support the proposals as outlined by the Welsh Government in the draft Bill and accompanying consultation. We have campaigned on the issue of mandatory display on food hygiene ratings for some time now in order to provide better information to consumers and to help them make more informed decisions about where they chose to eat. We believe these proposals provide a real opportunity to drive up standards in premises serving food and reduce foodborne illness. There is also strong consumer support for this proposal; in fact 94 per cent of people in Wales think it should be compulsory for food businesses to display their food hygiene rating score<sup>1</sup>.

We specifically welcome the provision within the Bill for Welsh Ministers to issue guidance to support the implementation of the Bill. We believe this is key in order that local authorities understand how this mandatory scheme will operate differently from the current Food Standards Agency (FSA) voluntary scheme. We would however highlight areas of concern that we feel need to be addressed within the draft Bill. Namely:

- We believe that clause 3 and resulting regulations should include provision for businesses to request additional stickers (restricted for their own use) where they have multiple entrances or have mobile units serving food to the public e.g. a catering van visiting offices.
- We disagree with the current proposed timelines for appeal within clause 5, believing that these are too long and will mean an necessary delay in consumers having access to ratings
- We also believe that in terms of the display of a rating, the presumption should be that a food business should display a rating immediately *unless* they chose to appeal (currently the provision is that they have 21 days to display)
- We believe that clause 7 should include a requirement for premises serving food display their Food Hygiene Rating Scheme (FHRS) on their promotional material.
- We have concerns about the delays to uploading of ratings onto the Food Hygiene Ratings Scheme website (clause 6).

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<sup>1</sup> Consumer Focus Wales commissioned Opinion Research Services (ORS) to undertake this work as part of their telephone omnibus survey. A total of 1,002 telephone interviews were conducted with a representative sample of adults aged 16 and over between 11<sup>th</sup> October and 17<sup>th</sup> October 2011

We are also disappointed to see that a requirement to provide further information about the reasons behind a score proactively to consumers through the FSA's Food Hygiene Rating Scheme website is missing; we feel this is important omission from the Bill.

The detail of our response, including our key concerns, are outlined below:

### **Clause 3- Food Hygiene Ratings**

We believe that clause 3 and resulting regulations should allow businesses to request additional stickers (restricted for their own use of course) where they have multiple entrances or have mobile units serving food to the public e.g. a catering van visiting offices.

In terms of what is communicated on a sticker, we believe that consideration should also be given to how new media will affect and can support, greater consumer engagement and empowerment through the scheme. For instance, FHRS stickers could have personalised QR Codes which will enable a consumer to scan the code and visit the relevant link to the FHRS website and find out more about the reasons behind a score or find an alternative premises locally. We hope resulting regulations will allow for this.

#### **Recommendation:**

Clause 3 should be amended to allow for:

- Food businesses to request additional stickers where they have multiple establishments or entrances

### **Clause 5- Right of appeal**

We are concerned that as a result of the consultation process on the Bill that the Welsh Government have decided to extend the appeal period for businesses to submit an appeal to a food authority against a rating (now 21 days) and also the time for a food authority to consider an appeal (now 21 days). We do not believe that adequate consideration has been given to the implications of these extensions.

Firstly we would point out that changes to these appeal periods (from the voluntary scheme) would have a knock on effect on when a new rating would be displayed and available to consumers. Specifically, if a food authority has 14 days to send out a notice, then a business has 21 days to appeal once they have received that notice. Following which a food authority has 21 days to consider that appeal. If all of these time periods were observed, this would mean that a new rating in this situation would not be displayed for 56 days.

Whilst we appreciate concerns were raised at consultation around the impact of holidays or either food operators or food authority representatives with responsibility for these issues needing time to respond, we feel that 21 days is excessive for the reasons noted above, the implication of which is significant delay to the consumer being able to view the new rating.

We felt the current timelines (under the voluntary scheme) of 7 days were reasonable and proportionate. However appreciating the concerns raised, perhaps extending this to 10 days (instead of 21 days) might be more appropriate.

#### **Recommendation**

The clause should be amended to reflect the following changes:

- (3) An appeal must be made within 10 days from the data of receipt of notification

- (6) A food authority must determine the appeal and notify the operator of the establishment of its decision within 10 days from the date the appeal was received

### **Clause 6: Notification and publication of food hygiene ratings**

Consumer Focus Wales would like to draw attention to the issue of time delay in notification and publication of food hygiene ratings within the mandatory scheme. The explanatory memorandum notes that the '*local authority informs the FSA of the food hygiene rating that it has awarded*' which enables the FSA to publish the ratings of all food business and for these to be made publically available on the FSA website. Furthermore the Bill itself notes that the FSA must be notified '*within the relevant period*' (sub clause 1).

The relevant period for the local authority to communicate the rating to the FSA noted within the Bill is 49 days from notifying the food business operator (assuming there is no appeal). This in practice means 63 days (some two months) after the initial food hygiene inspection (because the local authority has 14 days to notify the operator in the first place) to notify the FSA. .

Following which, the Bill requires the FSA to publish the rating on its website within 28 days of its receipt (3). **This means in practise that for any standard food hygiene inspection, the rating of that inspection is not required to be published on the FSA's Food Hygiene Ratings Scheme website for 91 days (approx 3 months) from the date of inspection (where there is no appeal from the food business operator).**

In the case of an appeal, as noted in the section detailing issues surrounding clause 5, currently the Bill allows for up to 56 days to elapse before a rating is displayed on the premises. But in the case of the FSA website, the Bill notes that the relevant period for the food authority to notify the FSA is 28 days after the determination of the appeal (sub clause 4b), following which the FSA would have 28 days to publish.

**This means that if a food business operator appeals, not only will the rating not be displayed at a premises for up to 56 days but the corresponding rating will not be visible to consumers for up to 112 days (approx 4 months).** It could be that this time lag before publication in the case of appeal is due to a lack of clarity in the Bill, however either way this is unacceptable and we ask that the Committee considers recommending not only are the appeal periods reduced (as discussed above) but also that these significant delays to publication of the rating on the food hygiene ratings website be reduced.

We are extremely concerned about these potential delays to publication of the food hygiene rating on the FSA's food hygiene ratings scheme website have been allowed for on the face of the Bill. Whilst we appreciate these are maximum periods, we do not consider these to be appropriate, given that both food operators and the FSA should be working to make ratings available to consumers at the earliest opportunity.

We also strongly believe that the rating on the FSA's website should correlate with the sticker on display at the food business as closely as possible, without doing so the scheme risks confusing consumers. We also believe that allowing for the incorporation of such delays within the system put the new scheme at real risk of not delivering for consumers.

We believe that the food authority should be able to upload (suppressed until the end of the appeal period) the proposed rating for the business at the same time as completing paperwork on the inspection itself. We then believe that the FSA should be able to publish this rating immediately at the end of the appeal period.

We would suggest therefore that the Bill is changed to reflect this by reducing the relevant period (sub clause 4) for the food authority to the following:

- a) if there is no appeal against the food hygiene rating, 10 days from the receipt by an operator of a food business establishment of notification of the food hygiene rating
- b) if an appeal is made, at the earliest opportunity after the determination of the appeal, to a maximum of 10 days

Given our understanding of the software systems used, we believe that ratings can be suppressed until they are able to be made publically available. Therefore a rating should be able to be uploaded when the paperwork is being prepared and sent out to the food business operator prior to any appeal. If there is no appeal then this would be published, if there was an appeal the rating would continue to be suppressed until this had been determined. Following which either the initial rating could be published or a new rating uploaded.

We also suggest that the Bill is changed to reflect a reduced time period for the FSA to publish within. We suggest it may be pertinent to not make this dependent on receipt of the information from the local authority, but instead place responsibility on the FSA to ensure that they publish by the end of the appeal period, or if an appeal is lodged, immediately after the determination of that appeal.

#### Additional issues

We also strongly believe that consumers should have greater access to information about the reasons behind a food hygiene rating score and that this information should be available to consumers through the FSA FHRS website, as well as alternative arrangements for those consumers who do not have access to the internet.

Currently consumers only have access to information about the reasons behind a rating through a Freedom of Information (FOI) request for a copy of the inspection report to the relevant local authority<sup>2</sup>. In our recent research, 92% of people in Wales told us they thought they should be able to access this information more easily than through an FOI request. 85% of these people think they should be able to access this information through the FSA's FHRS website.

At present, although people are entitled to request food hygiene inspection reports, in practise this is very difficult (as outlined in our 2011 report<sup>3</sup>) as often local authorities will not release inspection reports where they say there is the possibility of future prosecution. We agree to withholding reports if a prosecution is imminent, but most local authorities in Wales carry out only a handful of prosecutions each year. Despite this, we have found that some local authorities in Wales are operating an extremely cautious approach towards releasing reports.

In researching our 2011 report, we made requests to 11 authorities in Wales to ask for inspection reports for food businesses scoring two and below. Nearly one in four of all the reports we requested were withheld<sup>4</sup>, these included schools, nurseries, care homes and residential homes, as well as high risk businesses such as butchers selling raw and cooked meat.

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<sup>2</sup> With the exception of Staffordshire and Norwich which do make inspection reports available on their own sites

<sup>3</sup> Consumer Focus Wales (2011) Protecting Consumers from E.Coli O157: Second Annual Progress Report, page 43

<sup>4</sup> 17 withheld out of 72 requested

We also found an inconsistent approach towards dealing with our requests. Some local authorities released all reports including where revisits were pending, some authorities only released reports where no revisit was pending, and other authorities withheld some and released some, depending they said on how likely they thought an eventual prosecution would be.

As an aside, in discussing this issue with the Welsh Local Government Association (WLGA) it is clear that there is confusion amongst local authorities about how to handle such requests for information at present. They have noted that they would benefit from more guidance about when to release information that may be subject to/support further action by the local authority against the food business. We have called on the Welsh Government to seek to work with the FSA and local government on this important issue.

In practise therefore it is very difficult for consumers to find out why their local food establishment has a poor score.

Providing more information to consumers where places serving food to vulnerable groups have poor hygiene ratings such as schools, nurseries, playgroups, care homes and hospital is very important, especially those that receive public funding, as often consumers have no choice about whether to eat there and the most vulnerable and disadvantaged consumers have the least power to exercise choice. Such information can also enable consumers to campaign for improvements. For example in schools where low ratings are due to structural issues then pressure from parents and local publicity could lead to structural repairs becoming a priority of the local education authority. Widening public access to this information will also help to guard against disproportionate responses by giving families a better understanding of the exact reasons behind a particular poor rating.

We believe that if local authorities were required to make further detail available about the reasons for the score received by a premises, this would allow consumers to find out the reasons behind poor ratings immediately without the need for time-consuming information requests that are a burden for consumers and Environmental Health Officers alike.

Some Environmental Health Managers in Wales have previously told us they are in favour of placing inspection reports online as this would reduce the amount of time spent responding to Freedom of Information requests, which is currently diverting resources away from the front line.

We believe that providing downloadable reports need not add complexity for consumers who are browsing ratings. A short summary of the key elements of the report could be made available; with the more detailed report available to give consumers a further tier of detail should they wish to see it. The fact that some local authorities are already providing downloadable full reports shows that this level of disclosure is achievable and realistic.

In other countries where similar schemes operate, full inspection reports are generally available on the scheme website to download or on request where people do not have internet access.

We understand that there is some concern about this approach in terms of the work that it would take local authorities to develop greater consistency between different and also within local authority reporting. A paper that went to the FSA UK board in November 2011<sup>5</sup> confirmed that there is great inconsistency in the way that local authorities currently record inspection data and it would be challenging to address this. However the FSA also provided the example of Norwich Council who already make full food hygiene inspection reports available on their website as a model report which could be introduced. We understand the FSA UK board has approved further consideration of the issue of greater transparency in

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<sup>5</sup> Food Standards Agency Open Board, Information for Consumers on compliance and food hygiene in food establishments, 15<sup>th</sup> November 2011

inspection information to consumers, which we strongly support, however we feel that this Bill provides a clear opportunity to allow for this greater transparency as part of the mandatory FHRs being proposed by the Welsh Government.

Consumer Focus Wales does not believe that just because something is challenging, it should not be done. We believe that seeking to develop a model inspection report for use by local authorities across Wales and introducing more consistent reporting and recording of information means that not only will consumers have greater opportunity to understand the reasons behind a score, but at the same time it will benefit local authorities, the FSA and Welsh Government in enabling easier monitoring and reporting of food safety in future.

### **Recommendations**

- We would strongly recommend that provision is made within the Bill to require that a food business' most recent ratings are published on the FSA's Food Hygiene Ratings website for consumers to access at the same time as a consumer would have sight of the new rating at the business
- The maximum time periods for notification and publication of food hygiene ratings should be reduced. We would suggest therefore that the Bill is changed to reflect this by reducing the relevant period (sub clause 4) for the food authority to the following:
  - a) if there is no appeal against the food hygiene rating, 10 days from the receipt by an operator of a food business establishment of notification of the food hygiene rating
  - b) if an appeal is made, at the earliest opportunity after the determination of the appeal, to a maximum of 10 days
  - We also suggest that the Bill is changed to reflect a reduced time period for the FSA to publish within. We suggest it may be pertinent to not make this dependent on receipt of the information from the local authority, but instead place responsibility on the FSA to ensure that they publish by the end of the appeal period, or if an appeal is lodged, immediately after the determination of that appeal.
- We ask the Committee to recommend that provision be made within the Bill for completed inspection reports to be available online with a short summary for consumers. To enable this to happen, standard templates for food inspection reports should also be introduced

### **Clause 7: Requirement to display food hygiene ratings**

Clause 7 currently allows for the food business operator to have 21 days '*until they must display the sticker at the food establishment*' and we appreciate this is connected to enabling them time to consider an appeal. However we believe that a food business operator will know whether they wish to appeal immediately. We therefore feel this clause should be amended to:

- Food businesses should display their food hygiene rating immediately unless they choose to appeal

We would also draw attention to the reference within this clause to when the rating ceases to be valid. Clause 3 (sub clause 10) notes that a rating ceases to be valid when a food business receives notification of a new food hygiene rating. This means in practise that a food business could remove a rating on receipt of their new rating and not replace this with their new rating for 21 days. Secondly, it would allow for a food business to non-display a

rating for the period of an appeal they decide to submit (which, as has been noted in clause 5 above, this could be a significant amount of time – more than 56 days in some cases).

We believe that firstly a clause should be added to the Bill which requires food businesses who are covered by the scheme to show their most current rating at all times (in the case of an appeal, we believe this should be their old or existing rating, until they have been notified of the outcome of their appeal. This rating should also continue to be shown on the FSA's Food Hygiene Ratings website during this period.

In addition, we believe the Bill should include under clause 7 a requirement for food businesses to show their food hygiene rating on appropriate publicity material. This should include their website. Whilst we appreciate that businesses may be concerned about the cost of having ratings on printed material that may go out of date, every effort should be made by the business or premises to make their rating available through any publicity or communication material. Placing a requirement on a food business to make a rating available on their website should be achievable given that this can be easily changed following a change in rating. This is supported by consumers, with 80% of people wanting businesses to display the rating on their website. We believe it should also be an offence for a business not to make their food hygiene rating clearly visible on their website.

In addition, 75% of people think that the rating should be displayed on any printed advertising material, whilst 73% of people want to see the rating on any other materials that the business produce. For takeaways that deliver leaflets through the door, 82% of people think the rating should be made available on these materials too<sup>6</sup>.

For premises serving food to vulnerable groups, such as educational establishments and care homes it is even more important that the rating of the premises is clearly visible on relevant marketing material. This is key to enable the public to have access to the food hygiene ratings of a premises when making important decisions, for example which care home to choose for a vulnerable family member. In fact, 81% of people think that the rating should be displayed on any promotional literature that care homes produce, whilst 61% of people believe it should be displayed on patient menu cards. In hospitals, 82% of people want to see the rating displayed in any hospital cafes or restaurants, 72% of people feel that they should be displayed on menu cards and 72% on any hospital information about catering<sup>7</sup>.

We also asked the public specifically where they felt ratings should be made available in schools, 73% of people believe the ratings should be sent home to parents, whilst 59% of people want the rating to be displayed in the school canteen and 56% of people on any promotional literature<sup>8</sup>. In nurseries, people also believe that the ratings should be sent home to parents (79%) and included in any promotional literature (69%)<sup>9</sup>.

## Recommendations

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<sup>6</sup> Op cit 1

<sup>7</sup> Op cit 1

<sup>8</sup> Op cit 1

<sup>9</sup> Op cit 1

- As noted above, food businesses should display their food hygiene rating immediately unless they chose to appeal
- The Bill should require food businesses who are covered by the scheme to show their most current rating at all times
- It should also include a requirement for food businesses to show their food hygiene rating on appropriate publicity material, this should specifically include their website

### **Clauses 13 -Duties of the Food Standards Agency and Clause 14- Other powers and responsibilities of food authorities respectively**

We believe monitoring and evaluation of the new mandatory scheme will be key to its success. We believe therefore that a responsibility should be placed within the Bill on the FSA and local authorities to monitor the scheme on an ongoing basis and for the FSA to evaluate the operation of the new scheme periodically.

The form that this monitoring and evaluation will take should then be set down in resulting regulations and guidance. Examples of the type of thing we would like to see as part of a monitoring and evaluation plan would be:

- Spot checks to ensure that businesses are displaying correct ratings
- Spot checks to ensure that businesses (when asked) are giving correct ratings to consumers over the telephone
- Regular monitoring by the FSA of the length of time it is taking local authorities to upload ratings onto their website from inspection
- Regular engagement with consumers about their experiences of the scheme and any issues resulting from this that need to be addressed and measures of increased awareness as a result of a mandatory scheme
- Recording measures of reductions of food-borne illness periodically following introduction of the scheme

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**Annex 1:**

## Consumer Focus Wales support for the introduction of a mandatory Food Hygiene Rating Scheme in Wales

As indicated above, Consumer Focus Wales strongly supports the introduction of a mandatory FHRs in Wales. Whilst we welcome the commitment by all 22 Welsh local authorities to adopting the Food Standards Agency (FSA) voluntary FHRs, the Scheme at present is reliant on businesses displaying their scores or consumers visiting the FSA's FHRs website to check the score of a premises. We know that in recent research undertaken by the FSA in Wales, only 31% of audited premises were displaying their score. This fell to only 6% of businesses with a low rating of 0, 1 or 2<sup>10</sup>. Therefore consumers are only likely to see a score when a business has a high score for food hygiene, not when it has a lower score which may affect their decision to eat at the premises.

If businesses have the choice whether to display ratings on the premises, the only way for consumers to find out about poorly performing businesses will be to visit the website. This is not an option for the 31 per cent of people in Wales who do not use the internet and the 73 per cent of people aged 65+ who do not use the internet and who are more vulnerable to food-borne disease<sup>11</sup>.

In addition, whilst the FHRs website is a useful tool for informing consumers, we know that busy lives mean that people will not always plan ahead to visit the website before going out to eat or ordering a takeaway. In fact we know from research we have undertaken with consumers that where they are aware of the Food Hygiene Ratings Scheme only limited numbers had visited the scheme's website<sup>12</sup>.

Whilst our research showed that 50% of people in Wales have seen or heard about the Food Hygiene Ratings Scheme, if mandatory display is not made compulsory with a sticker being visible within the premises to help influence the decision of a consumer about where to eat, there is limited pressure on businesses to improve their standards.

Where ratings schemes operate in other countries, mandatory schemes are much more successful, with higher levels of recognition than those on a voluntary basis. A survey in Los Angeles in 2001 found that 84 per cent of residents had heard of the scheme and 77 per cent noticed the posted grades most or all of the time, whilst a 2007 survey in Denmark found 100 per cent consumer recognition. There is also evidence to prove that mandatory display leads to greater reductions in food-borne illness. A comparison of hospital admissions in Los Angeles County revealed that the policy of mandatory display caused a 20 per cent decrease in food-borne illness hospitalisations, while the policy of voluntary display caused a 13 per cent decrease<sup>13</sup>. The Los Angeles County scheme also demonstrated an overall reduction in hospital admissions for food-related digestive disorders of 13.3 per cent in its first year of operation, while in the rest of California food-borne illness admissions rose by 3.2 per cent.

There has been little significant change in the level of UK food-borne disease since 2005. Each year, it is estimated that in the UK around a million people suffer a food related illness, which leads to around 20,000 people receiving hospital treatment and around 500 deaths, at a total annual cost of nearly £1.5 billion<sup>14</sup>. Therefore the introduction of a mandatory FHRs

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<sup>10</sup> GfK NOP report on the display of Food Hygiene Ratings in Wales for the Food Standards Agency (November 2011)

<sup>11</sup> Richards S (2009) Logged in or Locked out? Consumer access to the internet in Wales. Consumer Focus Wales

<sup>12</sup> Op cit. 1

<sup>13</sup> Jin, GZ, Leslie P (2003) The effect of information on product quality: evidence from restaurant hygiene grade cards. *The Quarterly Journal of Economics* 118: 409-51.

<sup>14</sup> FSA Foodborne Disease Strategy 2010-15

in Wales presents a real opportunity to improve levels of foodborne illness and the associated costs to the National Health Service. Consumers have also told us that they believe that premises serving food to the public should have to display their food hygiene rating score, with an overwhelming 94% of people in Wales wanting to see this. It is for these reasons that we strongly support this proposal by the Welsh Government. It presents a real opportunity for Wales to lead the way and drive up food hygiene standards with the support of more empowered consumers.