

# POLICY INTENTION FOR PROPOSED REGULATIONS UNDER THE FOOD HYGIENE RATING (WALES) BILL

## Section 1 – Introduction

This document provides an indication of the current policy direction for regulations that the Welsh Ministers intend to make using the powers in the Food Hygiene Rating (Wales) Bill. It is the Government's intention to fully consult upon the draft regulations following completion of Stage 2 of the National Assembly for Wales' consideration of the Food Hygiene Rating (Wales) Bill.

This document should be read in conjunction with:

- The Food Hygiene Rating (Wales) Bill [as introduced]  
<http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs.htm?act=dis&id=234602&ds=5/2012>
- The Draft Bill, Consultation Document and Regulatory Impact Assessment -  
<http://wales.gov.uk/consultations/healthsocialcare/food/?lang=en>
- The Food Hygiene Rating Scheme: Guidance for local authorities on implementation and operation – the 'Brand Standard' -  
<http://www.food.gov.uk/enforcement/enfcomm/fhrssteeringgroup/hygieneratingsguidance/>
- Food Law Code of Practice (Wales)  
<http://www.food.gov.uk/multimedia/pdfs/enforcement/copwales.pdf>

The Food Hygiene Rating (Wales) Bill (“the Bill”) will introduce a mandatory requirement for food businesses to display food hygiene ratings based on their compliance with food hygiene standards. This will help consumers to make informed choices about where to eat or shop for food. Food businesses will be required to display their hygiene rating and local authorities will enforce this requirement. The draft Bill was published for consultation on 14 December 2011. The consultation period ended on 7 March 2012. The Bill was formally introduced to the National Assembly for Wales on 28 May 2012.

The Bill gives the Welsh Ministers power to make regulations:

1. Amending the definition of a food business establishment (for example to bring additional categories of establishment within the scope of the new compulsory food hygiene rating scheme established by the Bill. (Clause 2(6)(a)).
2. Amending the definition of a food authority (for example to include other bodies). (Clause 2(6)(b)).
3. Providing for a food hygiene rating to be based on an assessment of the food hygiene standards of an establishment carried out prior to the commencement of the Act. (Clause 3(2)).

4. Prescribing the form a food hygiene rating sticker must take (clause 3(3)(c) and such other information that a food authority must send to the operator of a food establishment following a food hygiene rating inspection. (Clause 3(3)(d)).
5. Prescribing that certain categories of establishment may be exempt from rating. (Clause 3(5)).
6. Prescribing the form in which an appeal against a food hygiene rating must be made. (Clause 5(4)).
7. Prescribing other information to be sent to the operator of an establishment when a food authority notifies the establishment of its decision to change a food hygiene rating following:
  - a. an appeal. (Clause 5(8)(d)).
  - b. a food hygiene re-rating inspection. (Clause 11(9)(d)).
8. Prescribing further information that must be provided to the Food Standards Agency (FSA) when a food authority informs the FSA of the food hygiene rating of a food business establishment. (Clause 6(2)).
9. Prescribing the proper location and manner in which a food hygiene rating sticker must be displayed by a food business establishment. (Clause 7(3)) and making different provision for different types of establishment. (Clause 7(4)).
10. Prescribing the form in which the operator of a food business establishment must make a request for a re-rating inspection. (Clause 11(2)).
11. Prescribing information that a food authority must send to the operator of a new food business establishment after the establishment is either registered under Article 6 of Regulation (EC) No 852/2004 or approved under Article 4 of Regulation (EC) 853/2004. (Clause 14(1)).
12. Prescribing a different amount for the penalty or the discounted penalty for fixed penalty notices from the amounts specified in paragraphs 1 and 2 respectively of the Schedule to the Bill. (Schedule, Part 1 (paragraph 3)).

## **Section 2 – Policy Intention of the Regulations**

- 1. Amending the definition of a food business establishment (for example to bring additional categories of establishment within the scope of the new compulsory food hygiene rating scheme established by the Bill (Clause 2 6)(a) – Affirmative resolution).**

**Policy Intention** - Clause 2(5) provides that a unit of a business is a food business establishment for the purposes of the Bill if it is registered with a food authority in Wales by virtue of Article 6 of Regulation (EC) No 852/2004 or approved by a food authority under Article 4 of Regulation (EC) No 853/2004 (or registered or approved under equivalent alternative provisions for registering or approving food business establishments), and it:

- (a) supplies food direct to consumers, or
- (b) supplies food to another business.

The clause enables the definition of food business establishment to be amended so as to reduce or expand the categories of food business establishment that must have a food hygiene rating.

**The Welsh Ministers do not intend to use the powers to amend the definition of a food business establishment under clause 2(6)(a) at this time.**

**2. Amending the definition of a food authority (for example to include other bodies) (Clause 2(6)(b)- Affirmative resolution).**

**Policy Intention** - Clause 2(5) defines a “food authority” as the county council or county borough council of the area in which the establishment is located (or a port health authority). This clause gives the Welsh Ministers flexibility to amend the definition of a food authority to include other bodies, i.e. the Food Standards Agency, if the scope of the scheme is extended to premises regulated by them.

**The Welsh Ministers do not intend to use the powers to amend the definition of a Food Authority under clause 2(6)(b) at this time.**

**3. Providing for a food hygiene rating to be based on an assessment of the food hygiene standards of an establishment carried out prior to the commencement of the Act (Clause 3(2) - Affirmative resolution).**

**Policy Intentions** – The intention of the Bill is to put the food hygiene rating scheme on a secure statutory footing. However, the Bill can not require food business establishments to display ratings awarded under the FSA’s voluntary scheme. Clause 3(2) enables the Welsh Ministers to allow for food hygiene ratings produced under the new mandatory scheme to be based on assessments of the food hygiene standards of an establishment carried out prior to the commencement of the Act. The intention is that the findings of a previous inspection (under the FSA’s voluntary scheme) could be relied upon, and a new statutory rating could be issued after the Act comes into force. This would avoid the need for a new inspection taking place and allow faster migration of food businesses rated under the FSA’s voluntary scheme to the new mandatory scheme.

The intention is that the regulations will:

- (a) Require food authorities to produce a food hygiene rating based on the last assessment of the food hygiene standards of an establishment carried out prior to the commencement of the Act. The last assessment should be one that was used to generate a rating under the FSA’s voluntary scheme. The rating should be produced having regard to the criteria published by the FSA for the purposes of the Act, (Clause 13 (b)), and the new rating should be issued as if it

was awarded as a rating under Clause 3(1). The other Clauses in the Act would then apply as if the rating had been issued under the Act.

- (b) Require food authorities to undertake this assessment within 12 months of the coming into force of the regulations. This duty will be deemed to have been discharged if:
- (i) The food business has a programmed inspection or a reactive inspection (for example due to a complaint) and is rated under the Act within the 12 month period.
  - (ii) An appeal against a rating issued under the FSA's voluntary scheme is determined within the 12- month period. The criteria used to assess the rating and therefore the outcome of the appeal, should be the criteria published by the FSA for the purposes of the Act and the rating awarded under the Act.
  - (iii) A re-rating inspection is undertaken as a result of a rating issued under the FSA's voluntary scheme. The re-rating inspection should be undertaken having regard to the criteria published by the FSA for the purposes of the Act and the rating awarded under the Act.

**4. Prescribing the form a food hygiene rating sticker must take (Clause 3 (3) (c)) and such other information that a food authority must send to the operator of a food establishment following a food hygiene rating inspection (Clause 3 (3) (d) - Negative resolution).**

**Policy Intentions** -The format of the food hygiene rating sticker will be prescribed in regulations under clause 3(3)(c). Clause 3(3)(d) provides that regulations can require the food authority to send additional information to the operator. The regulations will prescribe what this information is but it could include an explanation of how the rating was calculated and if a rating of '5' was not awarded, details of the issues that need to be addressed in order to achieve a '5' rating.

Regulations made under clause 3(3)(c) will require the stickers, provided by the FSA, to be bilingual and conform to the design set out in Appendix 3 of the Brand Standard – (Food Hygiene Rating Scheme logos, stickers and certificates) but with the addition of the Welsh Government Logo.

The front of the sticker is required to:

- indicate the food hygiene rating produced under clause 3(1) of the Bill;
- bear the logos of both the Food Standards Agency and Welsh Government; and
- conform to the size, colour, content and font set out in design criteria to be provided by the FSA

The food authority will be required to authenticate the reverse of the sticker with:

- The name of the business.
- The date of the hygiene rating.
- The name of the food authority.
- An authorising signature (the inspecting or other officer allocated responsibility to sign them on behalf of the Council); and
- The food authority's logo (which should be incorporated in the top right hand corner of the reverse side of the pre-printed sticker).

The 'sticker' will also need to have adhesive qualities dependant on how it is to be displayed.

Regulations made under clause 3(3)(d) will require food authorities to send to the operator of a food establishment the additional information about the following matters:

- What actions are needed, for each of the rating criteria provisions that are used for the food hygiene rating, in order to improve the level of legal compliance.
- An indication as to when and where the food hygiene rating will be published.
- How the rating should be displayed.
- The appeals process and the deadline by which an appeal must be made.
- Contact details (name, telephone number) for the 'inspecting officer' and Lead Officer for food.
- Information on the "right to reply".
- Information on re-rating inspections, including the obligation on the food authority to require payment of reasonable costs (clause 12 (3)).
- How to obtain prescribed forms for lodging an appeal, for requesting a re-visit, and for submitting a "right to reply".
- A statement to the effect that the previous food hygiene rating sticker ceases to be valid and an instruction to remove it from display and to destroy it.

## **5. Prescribing that certain categories of establishment may be exempt from rating (Clause 3(5) – Affirmative resolution).**

**Policy Intentions** - The current FSA's voluntary scheme applies to all establishments that supply food direct to consumers for consumption either on or off the premises. This includes: restaurants, takeaways, mobile caterers, cafés, hotels, pubs, schools, hospitals and residential care homes as well as supermarkets, bakeries and delicatessens. However, not all businesses in these groups are given a food hygiene rating under the current FSA voluntary scheme as there are some exemptions. These include "low-risk" establishments such as newsagents selling pre-packed confectionary,

certain establishments operating from private addresses i.e. child minders and “sensitive” establishments e.g. Armed Forces.

The Bill provides that all registered food business establishments that supply food direct to consumers or approved food businesses are included in the new compulsory food hygiene rating scheme. However, regulations can prescribe that certain categories of establishment may be exempt from rating. This will ensure that the food hygiene rating scheme remains flexible.

The Welsh Ministers propose to make regulations under clause 3(5) to exempt:

- (a) Low-risk establishments which are not generally recognised by consumers as being food businesses.
- (b) Certain establishments operating from private addresses.
- (c) Sensitive establishments.

**“Low-risk establishments”** are business operations that are required to register as food business establishments but whose primary business or activity is not food-related and they are not seen as food businesses by consumers as the food activity is only a small element of the businesses in comparison with its main activity. This will include, for example:

- Visitor centres and similar establishments selling tins of biscuits or other wrapped goods amongst a range of other goods;
- Leisure centres with only food vending machines selling only drinks or low-risk foods;
- Newsagents selling pre-packed confectionery; and
- Chemist shops selling pre-packed confectionery and/or health foods.

**“Certain establishments operating from private addresses”** is primarily intended to exempt childminders, but also covers other establishments where caring services are being provided in the home environment. This ‘exemption’ is not intended to cover home caterers.

The regulations will also allow for an exempted food business to be rated at the request of the food business operator on the grounds that the operator considers consumers perceive their establishment to be a food business. This provides a safeguard to the operator where they consider that a lack of a food hygiene rating is prejudicial to trade. If the establishment opting in is one exempted on the basis that it operates from a private address, it should be considered as ‘sensitive’ and information should not be published by the FSA.

**“Sensitive establishments”** for example Armed Forces, Police and Crown establishments are, like other food business establishments, subject to the requirements of food hygiene legislation and inspected in accordance with the *Food Law Code of Practice*. They also fall within the defined scope of the Bill. Under the FSA’s voluntary scheme food authorities have discretion whether or not to rate the establishment having regard to the “inherent security sensitivities”. If the operator requests it, a food hygiene rating and sticker

may still be issued but no information on these establishments will be published by the FSA unless specifically requested by the operator. The regulations will allow for a similar exemption.

## **6. Prescribing the form in which a written appeal against a food hygiene rating must be made (clause 5(4) – Negative resolution).**

**Policy Intentions** - To ensure fairness to businesses, an operator has the right to appeal to the food authority against a food hygiene rating that has been produced. This will allow the operator to dispute the food hygiene rating given in respect of their food business establishment if they consider that it does not reflect the hygiene standards that were found at the time of the inspection and/or that the rating criteria were not applied correctly by the food authority when producing the food hygiene rating. Clause 5(4) allows the Welsh Ministers to specify in regulations the form in which a written appeal against a food hygiene rating must be made.

Clause 5 requires any appeal to be made in writing, in a prescribed form, within the period of 21 days beginning with the date that notification of the rating is received by the operator. It is intended that the prescribed form set out in the regulations will replicate, as far as is practicable, the standard template form used under the FSA's voluntary scheme. The current form is available on the FSA's website ([food.gov.uk/ratings](http://food.gov.uk/ratings)) for operators to use to appeal the food hygiene rating.

The Welsh Ministers intend that the regulations will specify that the prescribed form shall contain:

- Business details including operator/proprietor, business name, address, telephone and email address.
- Inspection details including date of inspection, food hygiene rating given and date notified of rating;
- An explanation by the operator of why they do not agree that the food hygiene rating given under provision of the rating criteria produced by the FSA;
- An authorising signature, printed name and job title of the person signing the form; and
- The date the form is signed.

## **7. Prescribing other information to be sent to the operator of an establishment when a food authority notifies the establishment of its decision to change a food hygiene rating following:**

- **An appeal (clause 5(8)(d) - Negative resolution); or**
- **A food hygiene re-rating inspection (clause 11(9)(d) – Negative resolution).**

**Policy Intentions** - These provisions allow regulations to specify the information that must accompany the notification letter and sticker sent to the operator of a food business establishment following either a successful appeal or a re-rating inspection.

The regulations will require a food authority to send to the operator of an establishment following an appeal (clause 5(8)(d)) additional information relating to the following matters:

- What action is needed in relation to each of the rating criteria that were used to produce the food hygiene rating in order to improve the level of legal compliance in those cases where the top rating has not been achieved.
- An indication as to when the food hygiene rating will be published.
- How the rating should be displayed.
- Contact details (name, telephone number) for the “inspecting officer” and the Lead Officer for Food.
- Information about the “right to reply”.
- Information about re-rating inspections, including the obligation on the food authority to require payment of reasonable costs (Clause 12(3)).
- How to obtain prescribed forms for requesting a re-visit, and for submitting a reply under the “right to reply”.
- A statement to the effect that the previous food hygiene rating sticker ceases to be valid and an instruction to remove it from display and to destroy it.

The regulations will require a food authority to send to the operator of an establishment following a food hygiene re-rating inspection (Clause 11(9)(d)) additional information relating to the following matters:-

- What action is needed in relation to each of the rating criteria provisions that were used to produce the food hygiene rating in order to improve the level of legal compliance in those cases where the top rating has not been achieved.
- An indication as to when the food hygiene rating will be published.
- How the rating should be displayed.
- The appeals process and the deadline by which an appeal must be made.
- Contact details (name, telephone number) for the “inspecting officer” and the Lead Officer for Food.
- Information about the “right to reply”.
- Information about re-rating inspections, including the obligation on the food authority to require payment of reasonable costs (Clause 12 (3)).
- How to obtain prescribed forms for lodging an appeal, for requesting a re-visit, and for submitting a reply under the “right to reply”.

- A statement to the effect that the previous food hygiene rating sticker ceases to be valid and an instruction to remove it from display and to destroy it.

**8. Prescribing further information that must be provided to the FSA when a food authority informs the FSA of the food hygiene rating of a food business establishment (clause 6(2) – Negative resolution).**

**Policy Intentions** - Clause 6(1) requires a food authority to inform the FSA of the food hygiene ratings that it has awarded to food business establishments in its area. Clause 6(3) requires that the FSA publish the food hygiene ratings on their website within 28 days of receipt. This clause provides the Welsh Ministers with the flexibility to prescribe what information food authorities must provide the FSA and the form in which it must be provided.

**The Welsh Ministers do not intend to use the powers to prescribe for further information under clause 6(2) at this time.**

**9. Prescribing the proper location and manner in which a food hygiene rating sticker must be displayed by a food business establishment (clause 7(3) – Negative resolution) and making different provision for different types of establishment (clause 7(4) – Negative resolution).**

**Policy Intentions** - Under the FSA's voluntary scheme establishments are encouraged to display their rating sticker in the window or on the door in a prominent position so that it is clearly visible to the public. Regulations under clause 7(3) and (4) will prescribe the location where the sticker must be displayed so that customers can see it easily. They will also cover different types of establishment, for example market stalls that have no door or window or establishments with multiple entrances. The regulations prescribing the proper location and manner for displaying the sticker will therefore contain the following elements:

- (a) The sticker will be displayed in a prominent position at the establishment where it is clearly visible to members of the public. This will be defined to include the following:
- At or near a customer entrance to the establishment for customers; and in a place where the sticker is capable of being read by customers before they enter the establishment when it is open for business.
  - If the establishment is one where food is provided to customers but customers are not permitted or invited to enter the establishment or the establishment (e.g. a mobile catering van) is incapable (for all practical purposes) of being entered by customers, the sticker must be displayed at a place at the establishment where it is capable of being read by customers.

- If the provision of food to customers is carried on at an establishment and the place at which the food is provided ("the outlet") forms part of larger premises at which other activities are carried out, then the sticker may, with the agreement of the food authority, be displayed at the entrance to the outlet (if there is one) or at a place where it is capable of being easily read by customers.
- If an establishment has more than one entrance for customers, the sticker must be displayed at the entrance which is most frequently used by customers. As presently drafted, the Bill contemplates that only one sticker should be provided per establishment but for those with multiple entrances, it would be desirable for additional stickers to be provided at the discretion of the food authority if requested by the operator.

The regulations will also prescribe the manner in which the sticker should be displayed. This will be:

- (a) on a window that forms part of the entrance; or
- (b) on an exterior window that is adjacent to the entrance; or inside the establishment or outlet but capable of being read through such a window; or
- (c) If there is no such window, at some other place at or near the entrance; where there is no suitable glass surface, such as at a market stall, the sticker should be affixed to a wall or other surface readily visible to the customer. The Brand Standard currently recommends that the sticker is affixed to a transparent surface before affixing that on a wall or other surface. If this practice was followed in the regulations it may make verification of the sticker difficult without it being removed for inspection. For the purpose of the regulations it would be desirable for both the front and back of the sticker to be simultaneously visible. This would require the production of two stickers i.e. one front image and one rear image with adhesive qualities on the rear of both.

In addition to the circumstances outlined above the regulations will allow for a sticker to be displayed in a location and manner approved by the relevant food authority. Whilst the sticker would still be required to be displayed in a prominent position where it is clearly visible to members of the public, it would give flexibility when considering difficult display situations and aid business compliance.

#### **10. Prescribing the form in which the operator of a food business establishment must make a request for a further inspection for the purpose of obtaining a re-rating (clause 11(2) - Negative resolution).**

**Policy Intentions** - Clause 11 provides operators with a right to request a re-rating inspection of their establishment. The operator could request the inspection if they have undertaken work which they think may affect their food hygiene rating. This will give the operator an incentive to improve the hygiene at their establishment and if appropriate, to be given a new rating, without

having to wait until the next planned food hygiene inspection. This clause enables the Welsh Ministers to specify the manner in which a request for re-rating must be made. This helps the operator and the food authority by ensuring all the conditions attached to the making of a re-rating request are met when making an application.

Whilst clause 11 does not require the request for a re-rating inspection to be in writing, the regulations will do so. It is the policy intention that the request must be made in writing (including by email) and outline the case for a re-rating, i.e. indicate the actions that have been taken by the operator to rectify the non-compliance(s) identified at the last rating inspection of the establishment and, where appropriate, include supporting evidence. The supporting case should refer to those actions that the food authority informed the operator would need to be made in order to improve the level of legal compliance.

A standard template form is available for the FSA's voluntary scheme on their website ([food.gov.uk/ratings](http://food.gov.uk/ratings)) for operators to use. It is intended that the prescribed form set out in the regulations will replicate, as far as is practicable, the standard template form used under the FSA's voluntary scheme.

The prescribed form will contain:

- A statement covering the conditions applicable to re-rating (clause 11(4)(a-e).
- Business details.
- Inspection details including date of inspection and rating given;
- Action taken including remedial action taken by the food business operator. Reference will be made to the issues identified in the inspection report (having regard to each of the rating criteria provisions that were used to produce the food hygiene rating).
- A requirement for supplementary evidence e.g. photographs, invoices, copies of relevant HACCP (Hazard Analysis, Critical Control Points) documentation etc.
- A authorising signature on behalf of the food business.
- Name and job title of the person signing the form.
- Date of signature.
- A statement concerning the obligation on the food authority to require payment of reasonable costs of the re-rating (clause 11(5)).

**11. Prescribing information that a food authority must send to the operator of a new food business establishment after it is either registered under Article 6 of Regulation (EC) No 852/2004 or approved under Article 4 of Regulation (EC) 853/2004 (Clause 14(1) – Negative resolution).**

**Policy Intention** - Clause 14 requires that when a food authority registers or approves a food business establishment, it must send information about the

food hygiene rating scheme to the operator within 14 days. Details of the information to be sent by the food authority will be prescribed in regulations and will include details of how the scheme operates and where to obtain further advice or information.

The prescribed information will contain:

- An explanation of the different food hygiene ratings (0-5);.
- An explanation of the requirement to display the food hygiene rating sticker, including the location.
- An explanation of how ratings are calculated and a description of what levels of achievement are required for each rating.
- An explanation of who rates the business and when that will be done (i.e. at the first rating inspection).
- An explanation that the business will be notified of its food hygiene rating, before it is published and an outline of the safeguards in place to ensure that businesses are treated fairly (appeals, requested re-inspections/re-visits and 'right to reply').
- Details of where the business may obtain further advice.

**12. Prescribing a different amount for the penalty or the discounted penalty for fixed penalty notices from the amounts specified in paragraphs 1 and 2 respectively of the Schedule to the Bill (Schedule, paragraph 3 – Negative resolution).**

**Policy Intention** – Paragraph 1 of the Schedule provides that a fixed penalty notice (FPN) under section 9 (offence not to properly display food hygiene rating sticker etc ) will be £200 to be paid in 28 days, with a discounted penalty of £150 if the FPN is paid within 14 days. Regulations under the Bill may amend the amount of the penalty or the discounted penalty.

**The Welsh Ministers do not intend to use the powers to amend the penalty or discounted penalty amounts under paragraph 3 of the Schedule at this time.**